AGENDA ITEM #4

SUPPORTING DOCUMENTATION FOLLOWS WITH: 1 PAGES

4. Public Hearing: Annual Water Rates Increase

DISCUSSION/ACTION AGENDA ITEM X.4
Date: August 11, 2010

Item: **PUBLIC HEARING AND COUNCIL ACTION FOR THE ANNUAL WATER RATES INCREASE**

Background: In 2003, the Trinidad City Council approved a procedure for annual increases to the City's Water Rates. The rates include the minimum charge for a customer with a water meter (hooked up to the system), the consumption rate for water used, and the cost to a new customer for new service. At that time, the Council established the annual increase in the Consumer Price Index (CPI) as published in May of that year as the automatic annual increase.

After a five-year period, that automatic annual increase must be approved by the Council on an annual basis after conducting a public hearing.

The unadjusted annual (previous 12 months) CPI for April, 2010 was 2.2%. Using that number as the increase factor, the new rate proposed to be effective on September 1, 2010 for customers inside the City limits would be as follows:

	Current*	**New***
Minimum Charge:	$34.23	**$34.98**
Cost/100Cubic Feet:	$ 2.46	**$ 2.51**
New Meter Charge:	$4,500	$4,500

* Includes the first 300 cubic feet of water consumed.

Customers outside the City limits still are charged 50% higher rates.

Staff Recommendation: Adopt the revised water rates to go into effect on the next billing sycle..

Attachments: None.

AGENDA ITEM #5

SUPPORTING DOCUMENTATION FOLLOWS WITH: 15 PAGES

5. Public Hearing: Proposed Ordinance 2010-03 Regarding the Accessory Dwelling Unit Ordinance

DISCUSSION/ACTION AGENDA ITEM X.5
Date: August 11, 2010

Item: **PUBLIC HEARING AND COUNCIL ACTION ON ORDINANCE 2010-03 REGARDING ACCESSORY DWELLING UNITS IN TRINIDAD**

Background: The proposed ordinance was prepared and considered by the Trinidad Planning Commission in 2008. It went through extensive review at the Planning Commission level and was forward for City Council consideration nearly over years ago. At the time, it was agreed that the Council not consider the ordinance until work had been completed in preparing and adopting the Onsite Wastewater Treatment System Ordinance because the two are related. That was adopted by the Council several months ago.

In July, the Council set a public hearing for August 11, 2010 to consider adoption of the Ordinance.

Trever Parker and representation from the Planning Commission will be at the meeting to address the proposal and the process that was completed to take the issue through the Planning Commission.

Staff Recommendation: Conduct the public hearing to consider proposed Ordinance 2010-03, Accessory Dwelling Unit Ordinance; and Adopt Ordinance 2010-03 as submitted or as modified by action of the City Council.

Attachments: Proposed Ordinance 2010-03; and
Cover memo from Trever Parker dated March 19, 2008

CHAPTER 17.54
ACCESSORY DWELLING UNITS

FINDINGS

1. Government Code §65852 encourages accessory dwelling units (ADUs) and limits jurisdictions' ability to restrict them.
2. Government Code §65852.2.a.1.A allows jurisdictions to limit ADUs to certain areas based on limitations such as water and sewer service or traffic.
3. Government Code §65852.2.a.3 requires applications for ADUs to be considered ministerially without discretionary review or a public hearing if they meet adopted, standard, objective criteria or development standards
4. These State housing regulations do not supersede the CA Coastal Act except that public hearings are not required in issuing a Coastal Development Permit for an ADU.
5. Trinidad has a Local Coastal Plan certified by the CA Coastal Commission in 1980.
6. Trinidad is a very small City, with only around 300 residents and encompassing an area of approx. 0.5 sq. mi with only approx. 200 parcels, most of which are already developed.
7. The ocean waters surrounding Trinidad are a State designated Area of Special Biological Significance. The CA Ocean Plan prohibits all discharges into these areas unless an Exception is granted by the State Water Resources Control Board.
8. The entire City is served by onsite wastewater treatment systems (OWTS) on average urban lot sizes of 8,000 sq. ft.
9. There is enough evidence of, and concern over, OWTS pollution that the City has / will adopted an OWTS Management Program to ensure all systems are inspected, maintained and functioning properly.
10. There are many existing ADUs, both illegal and legal nonconforming
11. Trinidad desires to promote ADUs as affordable housing, while protecting the environment and community values.
12. Trinidad General Plan and Zoning Ordinance place a strong emphasis on private coastal view protection.
13. The Coastal Act and Trinidad LCP protect public views.

Section 17.54.010 – PURPOSE AND INTENT

The City recognizes the importance of a suitable living environment for all residents. The State Legislature has declared that accessory dwelling units (ADUs) are a valuable form of housing in California. It is the intent of the City to permit ADUs, in conformance with state law, subject to standards that will ensure the units contribute to a safe living environment for all residents while protecting the water quality in and around Trinidad. The purpose is to provide flexibility in housing options, an opportunity for the development of small rental units, to provide relatively affordable housing for low- and moderate-income individuals and families, to provide economic support for resident property owners and to provide rental units for the elderly or disabled while still maintaining the small town, residential character of the City.

Section 17.54.020 – DEFINITIONS

A. "Accessory dwelling unit" or ADU means any residential dwelling unit which provides complete independent living facilities on the same building site as a legal single-family

residence, including permanent provisions for living, sleeping, cooking, eating, and sanitation, as defined in Government Code Section 65852.2(i)(4).

B. "Primary unit' means the primary, existing legal single-family residential dwelling unit which provides complete independent living facilities for one or more persons.

Section 17.54.030 – LOCATION

One ADU may be located on any residentially zoned site which either contains a primary unit or which is undeveloped, but there is a concurrent application for a primary unit. ADUs are not required to meet the density requirements of the General Plan or zoning ordinance. A detached ADU is not considered an accessory building or accessory use.

Section 17.54.040 – PERMITS REQUIRED

A. Establishment of an ADU requires a permit from the City
B. Any application for an ADU that meets all standards in §17.54.070 of this chapter shall be approved ministerially without discretionary review or public hearing.
C. A use permit shall be required in accordance with this Chapter and Chapter 17.72 of the Trinidad Zoning Ordinance for establishment of an ADU which does not meet all the development standards contained or referenced in this chapter.

Section 17.54.050 – PERMITTING PROCEDURES

A. Step One – Submittal. Applications for ADUs shall be submitted to the City Clerk's Office on a City of Trinidad ADU Application. The City shall provide information on submittal requirements along with the Application.
B. Step Two – Noticing. Notification for any pending ADU permit shall be provided to neighboring properties and interested persons in accordance with §17.72.130. Notice shall be provided at least seven days prior to any determination by the City Planner on a ministerial permit or Planning Commission on a use permit. If anyone submits evidence that shows that the project will not meet the development standards of §17.54.070 herein to the satisfaction of the City Planner, then a use permit shall be required to be granted by the Planning Commission.
C. Step Three – Issuance. A ministerial permit shall only be issued for an ADU if the application conforms to all the specific standards contained in Section 17.54.070 and only after making the three findings below. For ADUs that do not meet the standards contained in §17.54.070, in addition to the findings required for granting a use permit in §17.72.070 of the Trinidad Zoning Ordinance, the following findings shall also be required from the Planning Commission. The decision of the City Planner and / or Planning Commission may be appealed in accordance with §17.72.100 of the Trinidad Zoning Ordinance.
    1. The ADU is compatible with the design of the main unit and the surrounding neighborhood in terms of landscaping, scale, height, length, width, bulk, lot coverage, and exterior treatment, and will not cause excessive noise, traffic, or other disturbances to the existing neighborhood or result in significantly adverse impacts on public services and resources.
    2. The ADU will not tend to change the character of or cause a concentration of such units sufficient to change the characteristic of the residential neighborhood in which it is located.
    3. The ADU is consistent with the Trinidad Zoning Ordinance and policies of the General Plan, including that it will not cause significant blockage of coastal views from public viewing points and has been designed to minimize view blockage from adjacent residences.

Section 17.54.060 – EXISTING ADU's

A. Nonconforming ADU's

1. Legal, nonconforming ADU's, those established prior to the certification of the City's Zoning Ordinance in 1980, shall maintain their nonconforming status and shall be subject to all the nonconforming regulations in Chapter 17.64 (Nonconforming Uses and Structures) of the Trinidad Zoning Ordinance, unless a permit application for an ADU is approved by the City Planner or Planning Commission for that unit. If such permit is granted, then the ADU shall no longer be considered nonconforming and shall be subject to all the regulations of this Chapter.
2. Units that can not meet all the development standards of §17.54.070 may be granted an exception if, in the opinion of the Planning Commission, findings 1 and 2 of §17.54.050.B can be made and all feasible measures to meet the development standards have been made. A use permit is required to be approved by the Planning Commission.
3. Legal, nonconforming ADU's are required to maintain their Onsite Wastewater Treatment System at a level of Satisfactory or better according to the City's OWTS Management Program. If the OWTS receives a performance rating of less than Satisfactory, then restrictions on water use and occupancy should be enacted through a formal agreement with the property owners. Monitoring wells shall be installed to ensure that effluent is being adequately treated to prevent water pollution.

B. Illegal ADU's

1. Owners of illegal ADU's, those that were constructed or converted after 1980 without Planning Commission approval, have a three year grace period in which to apply for an ADU permit from the City. In addition to meeting the development standards of §17.54.070 or receiving approval of a use permit, they must also conform to the following requirements:
   (a) Units must be inspected by the City Building Official for and upgraded to compliance with health and safety requirements, which may include building permits and fees.
   (b) Registered ADU's are required to maintain their Onsite Wastewater Treatment System at a level of Satisfactory or better according to the City's OWTS Management Program. If the OWTS receives a performance rating of less than Satisfactory, then restrictions on water use and occupancy should be enacted through a formal agreement with the property owners. Monitoring wells shall be installed to ensure that effluent is being adequately treated to prevent water pollution.
   (c) Units that can not meet all the development standards of §17.54.070 may be granted an exception if, in the opinion of the Planning Commission, findings 1 and 2 of §17.54.050.B can be made and all feasible measures to meet the development standards have been made.
2. If an illegal ADU is not registered within the timeframe set forth above, then when discovered, whether by an OWTS inspection or other means, the City may immediately begin Nuisance Abatement against the property.

Section 17.54.070 – DEVELOPMENT STANDARDS

An ADU permit will be issued only it complies with all the following development standards:

(a) Existing Development: A single-family dwelling must exist on the site or shall be constructed on the site in conjunction with the construction of the ADU.

(b) Number per Building Site: A maximum of one ADU shall be permitted on any one parcel or lot. ADU's may not be permitted on residential lots already having two or more dwelling units thereon.

(c) Unit Size: The second unit must be either attached to the primary unit and located within the living area of the primary unit, or detached from the primary unit and located on the same lot as the primary unit. The floor area of an attached second unit shall not exceed 30% of the existing living area of the primary unit or 800 square feet, whichever is less, except that a minimum size of 150 sq. ft. shall be allowed. The total area of floor space of a detached second unit shall not exceed 1000 square feet.

(d) Setbacks: The setback requirements of the zoning district in which the ADU is located shall apply; however, ADUs may be permitted in legally constructed structures located within required rear and side setbacks. A detached ADU shall be at least ten feet from any building. Rear yard setbacks for ADUs on alleys shall be measured from the centerline of the alley.

(e) Height: An attached ADU shall not be greater in height than the primary unit. A detached ADU shall be no greater than 15 feet in height.

(f) Lot Coverage and Floor Area: An ADU shall be included in the lot coverage and floor area requirements applicable to the site. Floor area is measured to the outside surface of exterior walls the walls of the living space. Total floor area of both units shall not exceed 2,600 sq ft. or 30% floor-to-area ratio and 25% lot coverage.

(g) Off-street Parking: The ADU shall provide one off-street parking space per unit. The parking space may be covered or uncovered, must be of standard size. Required parking may be located within required setbacks, and can be tandem.

(h) Permanent Foundation: A permanent foundation shall be required for all ADUs.

(i) Architectural Compatibility:

(1) The ADU shall incorporate the same or similar architectural features and building materials as the main dwelling unit or dwellings located on adjacent properties and shall be consistent with the city of Trinidad Design Review and View Protection findings.

(2) Any exterior alteration or addition to a dwelling on the Historic Resources Inventory shall be consistent with the Secretary of the Interior's *Standards and Guidelines*.

(j) Privacy: The entrance to the accessory unit shall face the interior of the lot unless the accessory unit is directly accessible from an alley or a public street, or if it utilizes the same entrance as the primary unit. Windows which face an adjoining residential property shall be designed to protect the privacy of neighbors; alternatively, fencing or landscaping shall be required to provide screening.

(j) Utilities. All utilities for detached units shall be installed underground. All ADUs shall have separate utility meters from the primary residence.

(k) Onsite Wastewater Treatment System (OWTS): Prior to issuance of a building permit, the applicant shall submit certification by the Health Department, that the existing OWTS is of adequate size and condition to support projected sewage flow for the primary unit and ADU. If the capacity or condition of the existing OWTS is found to be inadequate to serve the existing and proposed units on the property, OWTS shall be replaced or upgraded to meet current standards, at the expense of the applicant.

(l) Accessibility. All newly constructed first-floor ADUs shall be adaptable for use by persons with ADA-defined disabilities as follows:

(1) The bathroom shall provide minimum clearances as specified for accessible units per California state accessibility requirements, and grab bar blocking shall be installed in the walls.
(2) Entry doors shall have a minimum width of three feet.
(3) Interior doors shall have a minimum width of 2 feet 10 inches
(4) Thresholds shall meet California state accessibility requirements
(5) The kitchen shall meet the minimum clearances specified in the California state accessibility requirements

(m) Occupancy.
(1) The principal place of residence of the property owner shall be either the ADU or the primary unit.

Section 17.54.080 – DEED RESTRICTIONS

Before obtaining an ADU building permit, the property owner shall file with the county recorder a declaration or an agreement of restrictions, which has been approved by the city attorney as to its form and content, containing a reference to the deed under which the property was acquired by the owner and stating that:

(a) The ADU shall not be sold separately from the primary unit,
(b) Any conditions required by the City's OWTS Ordinance.
(c) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance shall result in legal action against the property owner.

CITY of TRINIDAD

MEMORANDUM

TO: Trinidad City Council
Steven Albright, City Manager

FROM: Trever Parker, City Planner

DATE: March 19, 2008

RE: Planning Commission Recommendation to consider draft ADU Ordinance

As you know, Accessory Dwelling Units (ADUs) have been a topic of much discussion over the past couple of years. There are many illegal and nonconforming ADUs around town, and several requests to establish new ones have been made recently. State Law requires City's to allow ADUs in residential areas unless specific findings are made (more information below). Because of these issues, the Council budgeted and authorized the Planning Commission to draft an ADU ordinance for the City. I started with an ordinance from another City (Pacific Grove), and the Planning Commission worked on it over several months at public hearings. The attached ordinance is a result of those efforts. The Planning Commission voted 4-1 to request that the Council take up this issue and consider this draft ordinance.

The issue of second units is a complex one. On the one hand we have a State law that requires Cities to allow ADUs, but we also have a Land Use Plan / Zoning Ordinance that has been certified by the CA Coastal Commission, which basically has the effect of State law and does not allow ADUs. There is pressure from residents to allow ADUs as a source of additional income and affordable housing as well as pressure to curtail additional development due to environmental concerns, particularly septic. The Planning Commission envisioned that the main control on, and limiting factor for permitting ADU's will be septic capabilities. Therefore, it is important that the OWTS ordinance be in place prior to the implementation of this ADU ordinance. Note that the OWTS ordinance does not require Coastal Commission approval as opposed to the ADU ordinance. This significantly shortens the timing for implementing the OWTS ordinance.

Procedure

The proposed ordinance would add a new Chapter to the Trinidad Zoning Ordinance; an LCP amendment will have to be submitted to, and approved by, the Coastal Commission. Amendments to the Zoning Ordinance must follow Chapter 17.68.

However, because it is assumed that the Council will not immediately schedule this item for hearing, that process has not been formally started, because it has time limits involved. Zoning Ordinance §17.68.040 requires notices to be sent to the Coastal Commission and other interested agencies prior to the public hearings, and the Council can not take action until at least six weeks after such notice has been sent in order to give the agencies time to comment. In this case, the timing was open-ended because it is anticipated that the Council will not take up consideration of this ordinance until after the OWTS Management Program is passed. The Coastal Act regulations only specify that the Council can not take final action on an LCP amendment until at least six weeks after the Coastal Commission, and other 'interested parties' receives a public notice (14 CCR 13515(c)).

Zoning Ordinance §17.68.030 sets forth a specific procedure for hearing zoning amendment applications, with specific time limits similar to the Permit Streamlining Act. This section seems to be geared toward an applicant so that the City can not stall a proposed project forever. It does not make sense to give the City time limits for its own projects. For example, there is a time limit in the City's Zoning Ordinance that the City Council must take action within 40 days of receiving a report from the Planning Commission. There is no similar requirement in either the Coastal Act or the Coastal Commission Regulations. Furthermore, this section starts out with *"The filing of an application for an amendment to the zoning ordinance, payment of fees…"*, but there was no application in this case. Therefore, staff considers that the time limits set forth in §17.68.030 do not apply to a City-initiated project, as long as the procedure itself is followed.

The same section also requires that a report be transmitted to the Council along with any Planning Commission recommendation for an amendment. The report must include the reasons for the recommendation and an analysis of the relationship of the ordinance to existing General Plan policies. This report should suffice for that requirement. If the Council makes substantial changes to the proposed ordinance that were not considered by the Planning Commission, those changes should go back to the Commission for approval / recommendation. When the City Council is ready to take up discussion of the ADU ordinance, the City will need to send out specific notices, and the six week time-line needs to be taken into consideration. Staff should be notified of the first hearing date as early as possible in order to send out proper notices.

Planning Commission Recommendation

The Planning Commission recommendation was based on the fact that they felt this ordinance is needed in the City for several reasons. It is a good way for Trinidad to provide more diverse and affordable housing options. This is one reason the State has created regulations to encourage ADU's. The City's existing ordinances are not in compliance with State laws regarding ADU's. One of the reasons this has been acceptable is because the limitations are mostly based on septic system requirements.

Another reason to address this issue at this time is because ADUs can have significant impacts on sewage disposal systems (OWTS), and illegal connections may become apparent after the adoption of the City's Draft OWTS Ordinance.

Commissioner Johnson had some concerns about the ordinance procedurally. Although he supports the eventual adoption of an ADU ordinance, he felt that the timing now is premature. He felt that not all the options had been fully explored, including utilizing the existing State standards, possibly designating only certain areas of the City where ADUs are allowed and further review of other Cities' ADU ordinances. Many of Richard's concerns were based on concerns over OWTS. He felt that it is not right to consider this ordinance without first adopting the OWTS program and getting the initial inspection information. This would give the City a better idea of how, when and where this ordinance would be appropriate. Part of the recommendation of the Planning Commission is to review this ordinance after the OWTS Program is adopted, but not necessarily waiting until all the inspection reports have been analyzed. Also note that the OWTS Program does not have to go through the Coastal Commission and so can be implemented immediately upon adoption, where the ADU Ordinance has a longer timeline because it requires Coastal Commission approval.

Environmental Review

Normally, a formal CEQA analysis would be required for the adoption of an ordinance that could result in additional development. However, there is a Statutory Exemption (meaning a specific exemption that has been enacted by the legislature) for: *The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code* (CEQA Guidelines 15282(i)). Since this ordinance will become part of the City's LCP, there is also the Statutory exemption (§15265) for the adoption of local coastal programs by local agencies. Although this exemption states that it shifts the burden of CEQA from the local agency to the Coastal Commission (they have their own certified regulatory program consistent with CEQA requirements (§15250 et seq)), the LCP amendment application submitted to the Coastal Commission must contain sufficient information to enable the Commission to prepare an environmental analysis which satisfies the requirements of CEQA. So even though the City does not have to follow the formal CEQA process such as posting specific notices and sending documents to the State Clearinghouse, an environmental analysis must still be completed prior to adopting the ordinance.

Sate Housing Law (Gov't Code §65852.2)

Currently, Trinidad Zoning Regulations have not been updated to be in compliance with State Laws encouraging ADUs. Trinidad's Zoning Ordinance basically limits them based on density requirements, most liekly related to septic capabilities. Second units are currently only explicitly allowed in the Suburban Residential (SR) Zone in Trinidad.

Guest houses, as defined the Zoning Ordinance (§17.08.340), do not have a kitchen and can not be continuously occupied. Servant's Quarters (§17.08.590) can have a kitchen, but must be occupied by an employee of the property owner who takes care of the property. However, in all three of these cases, the maximum density is the minimum lot size so that you must have a double sized lot to allow any of these uses. State Law does not allow ADUs to be regulated based on density (§65852.2(b)(5)). However, I am still not sure how this restriction interacts with our State certified LCP. The State housing law specifically states that: *Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the CA Coastal Act, except that the local government shall not be required to hold public hearing for coastal development permit applications for second units."*

First of all, because the State regulations are somewhat difficult to understand and read through, I would like to provide you a summary of what the City can and can not regulate in terms of second units (below). Also, if the City does not adopt its own ordinance, then it is required to utilize the State standards to ministerially approve applications for ADUs as follows:

(A) The unit is not intended for sale and may be rented.
(B) The lot is zoned for single-family or multifamily use.
(C) The lot contains an existing single-family dwelling.
(D) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.
(E) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.
(F) The total area of floorspace for a detached second unit shall not exceed 1,200 square feet.
(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.
(H) Local building code requirements which apply to detached dwellings, as appropriate.
(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

The City can <u>not</u>:

- Restrict ADU's based on residential density requirements
- Preclude ADUs within residential zones unless specific findings are made acknowledging the limitation on regional housing and regarding the significant impacts to public heath, safety and welfare from ADUs.
- Require more than one parking space per unit or bedroom, unless specific findings are made; parking shall be allowed in setbacks or in tandem (one behind another).

The City <u>can</u>:

- Limit them to certain geographical areas of the City based on (but not limited to) such things as adequate sewage / water capabilities and traffic impacts.
- Include standards such as parking, height, setback, lot coverage, design review, max size and historic resource protection that are applicable to residential development in general.
- Require the ADU to meet certain standards, including:
  - ADU will not be sold separately and may be available for rental
  - The lot is zone residential (single or multi-family)
  - The lot contains an existing residence
  - Must be located on the same lot as the main residence, attached or detached
  - Maximum floor area / occupancy
  - Meet zoning requirements applicable to other residences (setbacks, height limits, lot coverage, architectural review, site plan review, fees, etc.)
  - Meet building code requirements
  - Meet sewage disposal requirements
  - Require an owner-occupant (of one or the other residence)
- Charge fees to cover the costs of review
- Require that ADUs be only a certain percentage of the size of the primary residence.
- Provide for maximum or minimum sizes, provided that at least an efficiency unit is allowed, which is defined by CA Health and Safety Code (17958.1):

  efficiency units for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities, as specified by the ordinance.

One of the important things to consider in adopting this ordinance is that the State law requires that ADUs that meet the City's requirements can not be considered discretionarily and must be approved ministerially without a public hearing. This means that the City does not have discretion in approving them, as long as they meet all the standards in whatever ordinance is adopted. Although architectural review (such as our Design Review process) is still applicable, it also has to be approved ministerially according to objective design standards, which we do not have. City staff (Planner) would make the determinations according to the ordinance standards. This decision can be appealed, but any appeal would also have to be heard by the appellate body ministerially. Many ADU ordinances do not even have provisions for appeals for this reason.

Trinidad is a little different because it is in the Coastal Zone. The State housing law specifically states that the new regulations do not supersede the Coastal Act except that no public hearings are required for Coastal Development Permits. A clarification letter provided by the Executive Director of the Coastal Commission states that all standards of a certified LCP are still applicable (here is the question of the status of our existing density requirement) except for the public hearing requirement. Clarification is

provided that the public noticing requirements are still in effect. However, public comments can only be considered in a ministerial process to the extent that they show the project does not meet the objective standards. Our LCP has been certified with the density restriction, which the above mentioned letter indicates is actually still effective and valid at this point, but other Coastal ordinances do not generally include density restrictions. The Coastal Commission requires that public view protection be considered in ADU ordinances in the Coastal Zone. However, from what I can tell researching this topic, if a neighbor brings up an issue of view blockage, that does not kick the permit out of a ministerial process, but the project can be appealed to the Coastal Commission, who will only then hold a full public hearing. Keep in mind that the Coastal Commission does not protect private views and probably would not hear an appeal based on private view blockage. Use Permits can be required for ADUs that do not meet the specific standards, but the standards can not be so burdensome that Use Permits are mostly required.

The main impetus for these new State regulations, is to not only provide additional housing within already developed areas (in-fill), but also to provide an opportunity for affordable housing. That is the reason for the owner-occupied stipulation that is allowed by the State and which many cities require. A memorandum from the Dept. of Housing and Community Development to planning departments emphasizes that ADU ordinances must encourage second units. This draft ordinance must be carefully considered up front, because there will be limited ability for the City to make decisions individually on future ADU applications. Because of the use of OWTS in Trinidad and some of the unique neighborhood characteristics, I believe the City can justify a strict ordinance. For example, Trinidad has long standing policies and regulations that protect both public and private views, which will be difficult to incorporate into a ministerial review process.

The Development of this Draft Ordinance

I had trouble finding any example ordinances that had any use permit or appeal process or even public view protection that might be similar to what Trinidad needs. However, the Coastal Commission has required that provisions protecting public views be included in coastal ADU ordinances. Santa Barbara County is an example of this situation, and I did talk to the person who wrote the ordinance; he stated that view issues are not considered at the County level ministerial process, but that the Coastal Commission would hear an appeal on the grounds of public view blockage. Trinidad's options for including a discretionary process are limited without making specific findings.

In my research into the development of this ordinance, I have talked to Coastal Commission staff and City / County staff that have written and implemented ADU ordinance pursuant to the State Law. However, none of the situations I found were similar to the issues facing Trinidad. I have also not talked to the City Attorney about

the nuances of these issues, and he has not yet reviewed the draft ordinance. The ordinance does have to be submitted to and approved by the State Housing and Community Development Department (HCD).

The State law does allow Cities to limit ADUs based on service capacity, public health and safety and environmental impacts. However, specific findings must be made. There are two different provisions for this; one is that the City may *"designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow."* In reviewing other ADU ordinances, I have noticed that many Cities and Counties preclude (or require use permits for) ADUs in coastal and scenic areas and areas that are served by septic. This doesn't work well for a town as small as Trinidad that is entirely coastal, scenic and served by septic. Another provision of the State law states: *"No local agency shall adopt an ordinance which totally precludes second units within single-family or multi-family zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multi-family zoned areas justify adopting the ordinance."*

I believe there is enough documentation of water quality and possibly water saturation problems to make such findings that would allow the City to prohibit ADUs altogether. However, the Planning Commission did not want to take that route. They did discuss the potential for allowing ADUs ministerially east of the freeway, and requiring use permits west of the Hwy 101. This was decided against since it was felt it was unfair, and did not really meet the intent of the State law because that is such a small area. Instead they chose to basically make the environmental limitations findings in order to justify an ordinance that is stricter than what State law allows. There is a ministerial process available that will probably allow many of the existing illegal and nonconforming and some new ADUs to be fully permitted, but if any of the standards can not be met, then a use permit would be required to be approved by the Planning Commission at a public hearing.

Analysis of applicable General Plan Policies

Any LCP Amendment, which this will eventually be, requires an analysis of how it fits with existing General Plan Policies (. There are several existing General Plan policies that recognize development limitations based on septic systems, and are therefore indirectly related to this ADU ordinance. There are also several policies relating to housing and maintaining the rural characteristics of the town.

Policy 10: *More detailed studies of soil characteristics and hydrology are needed in areas with slight soil limitations if such areas are planned for intensive development and septic tanks are to serve as the long term disposal method. Minimum lot sizes should be established in intensive*

development areas based on soils studies to ensure that septic tank use at full development will not create cumulative impacts on ground or surface waters (see Policy 51). Analysis: This ordinance will not affect minimum lot sizes or potential subdivisions. Any ADU approval by the City will also require Health Dept. approval of adequate sewage capabilities.

Policy 37: *All new residences in the planning area should provide graveled or paved parking for at least two vehicles (in addition to any garage parking) so that residents and visitors are not required to park along the streets.* Analysis: This policy does not refer to any specific type of residence. It is assumed that the focus was on single-family residences. This is a somewhat outdated policy and does not necessary meet its purpose since only two parking spaces are required whether there are 3 or 0 garage spaces. There are also not the parking problems that once existed when there was a bigger fishing fleet and season(s). In the proposed ADU ordinance, the Planning Commission recommended requiring one additional parking space for each ADU. If there are already two parking spaces for the existing primary unit, this is actually consistent with the existing parking requirements in the Zoning Ordinance (§17.56.180) that specify 1.5 parking spaces per unit for multi-family dwellings such as a duplex.

Policy 45. *Trinidad's role in the effort to provide adequate housing is focused on three areas:*
(a) attempting to keep the cost of existing moderate cost housing down so it can continue to be available to people with limited incomes who desire to live in Trinidad;
(b) protecting the unique character of the city as a single family owner occupied fishing village;
(c) encouraging the county to allow a variety of housing types in the residential areas surrounding the city consistent with septic tank limitations.

Analysis: The proposed ordinance would provide for more variety of affordable housings. It also makes existing homes more affordable by providing owners an alternative source of income, consistent with (a). One of the standards included in the proposed ordinance is that either the primary or accessory unit be occupied by the property owner, consistent with (b). Although ADUs are not traditional single-family residences, they are meant for a single occupant or family; they are not considered multi-family development. It is arguable that Trinidad has already lost some of the character as stated since a high percentage of owners are absentee, and few fishermen live within City limits. This ordinance specifically requires owner-occupants. Item (c) does not apply. Further, owner-occupancy of one of the units encourages responsible property and tenant management.

Policy 46: *The city should continue to maintain a rural life style because it is preferred by residents and also because it allows for a low level of public services and thereby keeps property taxes and utility charges at a minimum. This helps to keep the cost of operating a residence as low as possible.* Analysis: ADUs are not necessarily considered rural, although the new State law requiring them also applies in the County. As I understand it, this policy is geared more toward things like street improvements (sidewalks and gutters) that

would cost taxpayer money, rather than houses. Infill development such as ADUs utilize existing services and therefore do not put significant additional strains on public services. The UR Zone, where most ADUs are located, is already developed at fairly urban densities. The proposed ordinance helps to implement this Policy by providing homeowners an extra source of income, helping to keep the costs of operating a residence as low as possible.

Policy 47: *Only single family residences should be permitted in the Urban Residential, Suburban Residential, Rural Residential and General Rural categories.* Analysis: This Policy appears to be in conflict with the proposed ordinance allowing ADUs. However, detached ADU's constitute a single-family residence in their own right. The Zoning Ordinance already allows ADUs outright in the SR Zone (RR and GR are County designations). In addition, single-family residences have now been defined by the State to include both a primary and secondary unit since ADUs are required to be allowed in single-family zones.

Policy 49: *The City should investigate and cooperate in implementing appropriate programs providing assistance which will enable low and moderate income persons to find and retain suitable housing.* Analysis: The proposed ordinance helps to implement this Policy by providing for development of and access to safe and affordable housing consistent with septic limitations.

AGENDA ITEM #6

SUPPORTING DOCUMENTATION FOLLOWS WITH: PAGES

6. LACO Report on the Tsurai Study Area Property Damage

DISCUSSION/ACTION AGENDA ITEM X.6
Date: August 11, 2010

Item: **LACO REPORT ON THE TSURAI STUDY AREA PROPERTY DAMAGE**

Background: As a result of the recent cutting of trees and shrubbery on City property along the Old Wagon Road Trail, city staff requested and received a proposal from LACO Engineers, and in July the Council authorized a not –to-exceed contract of $4,200. The scope of work was to be an assessment of the damage and proposed emergency actions to address the damage prior to the next rainy season. The product will be an assessment of the damage (plant, geologic, and slope stability), recommendations for short-term actions to stabilize the area, and a format that will allow the City to immediately contract for work on the site.

A draft report was provided to staff on July 29, 2010, and the draft report was extensively reviewed by staff and in a meeting on August 3, 2010 with the multiple concerned parties (Tsurai Ancestral Society, Yurok Tribe, and the California Coastal Conservancy. Councilmember Mike Morgan and City Manager Steve Albright represented Trinidad.

The report will be presented at the Council Meeting by Mike Nelson, LACO Planning Director.

In consideration of the emergency nature of this project, the most expedient way to proceed may be by authorizing the City Manager certain authority:

> First, instead of pursuing a bidding process to perform the work, the Council could authorize a "sole source" contract arrangement for the actual work on the ground. A "sole source" in this case would mean that the City Manager would negotiate with a qualified business to do the work within a certain budget and in conformance with the recommendations in LACO's report. It would avoid the delay of having a bid process when public funds are involved.
>
> Second, the Council could authorize a limit to the expenditure that could be negotiated in the sole source contract. Since the actual amount is unknown and would

not be determined by a formal bid process, this action would enable the City Manager to negotiate for the work up to a certain funding level and to obtain a contractor who could proceed quickly with the work.

It is understood that the City Manager would continue to work with the other interested parties on this project in the selection of some firm to do the work and in coordinating access to the site, cultural monitors, security, fencing, etc.

City staff is keeping a record of documented costs incurred on this effort in the case that full restitution from the responsible parties in this incident can be pursued.

Staff Recommendation:

1. Authorize the City Manger to select a firm (contractor) and negotiate a sole source contract tom implement the LACO recommendations; and
2. Authorize the expenditure for the sole source contract not to exceed $15,000.

Attachments: Draft LACO Report. (WAS NOT RECEIVED BY PACKET DEADLINE). (CR)

AGENDA ITEM #7

SUPPORTING DOCUMENTATION FOLLOWS WITH: 1 PAGES

7. Authorization for the City Attorney to Initiate Civil Proceedings to Obtain Full Restitution for City Costs Related to the Vegetation Cutting Incident

DISCUSSION/ACTION AGENDA ITEM X.7
Date: August 11, 2010

Item: **DISCUSSION AND COUNCIL ACTION AUTHORIZING THE CITY ATTORNEY TO INITIATE CIVIL PROCEEDINGS TO SEEK FULL RESTITUTION OF CITY COSTS RELATED TO THE VEGETATION CUTTING INCIDENT**

Background: The City Council has already authorized an expenditure of up to $4,200 for an evaluation and plan for addressing the vegetation cutting incident that occurred on City-owned property within the Tsurai Management Plan area. In addition, it is anticipated that additional City funds will be allocated for actual work to stabilize and re-vegetate the slope. Finally, the City has spent money on staff time, rental of the fencing, and billable contract time from the City Planner and the City Attorney in dealing with this issue.

These are all real costs that were not included in the recently adopted FY2010-11 Annual Budget.

Mayor Binnie requested that this item be placed on the agenda to discuss potential strategies, including legal action, to recover City costs.

Staff Recommendation: Discuss the agenda item, and give direction to staff and/or the legal counsel to pursue the recovery of documented City costs.

Attachments: None.

AGENDA ITEM #8

SUPPORTING DOCUMENTATION FOLLOWS WITH: 1 PAGES

8. Discussion Item: Removal of a Council Appointee to the Planning Commission

DISCUSSION/ACTION AGENDA ITEM X.8
Date: August 11, 2010

Item: **COUNCIL DISCUSSION REGARDING THE REMOVAL OF A COUNCIL APPOINTEE TO THE PLANNING COMMISSION**

Background: At the last meeting, Council Member Bhardwaj requested that this item be placed on the agenda. The City Attorney suggested that it be a discussion item, and that the Council refrain from taking any action until he had an opportunity to inform them regarding an appropriate process for removing an appointed member from a City Commission.

City Attorney Paul Hagen will be prepared and present at this meeting to direct the Council on a fair and equitable process for removing an individual from an appointed non-staff position.

Staff Recommendation: Discuss the agenda item and give direction to staff for the preparation of a follow-up agenda item, if necessary.

Attachments: None.

AGENDA ITEM #9

SUPPORTING DOCUMENTATION FOLLOWS WITH: 1 PAGES

9. Proposed Property Transfer of the 12.5 Acres Tsurai Management Area

DISCUSSION/ACTION AGENDA ITEM X.9
Date: August 11, 2010

Item: **UPDATE REPORT ON THE PROPOSAL TO LEASE AND TRANSFER CITY-OWNED 12.5 ACRE TSURAI MANAGEMENT AREA SITE TO THE YUROK TRIBE**

Background: This item was continued from the July 14, 2010 Council Meeting.

Representatives from the City, the Yurok Tribe, the Tsurai Ancestral Society, and the California Coastal Conservancy all worked hard in 2008-2009 to agree on transferring the 12.5 acre site to the Yurok Tribe. By the end of the summer last year, the strategy and the agreements for transferring the property were nearly complete and in place for presentation to the various governing Boards. But the process got stalled.

The staff is pleased to report that the parties are ready to move forward. The City and the Yurok Tribe, who are the principal parties in the real estate transaction, are prepared to proceed and take the transfer documents for public review and action. Those documents are a Lease and a Irrevocable Transfer Agreement. The Lease will enable almost immediate transfer of responsibility for the property to the Tribe, while the Irrevocable Transfer Agreement will be the ownership transfer document that can be finalized as soon as certain property boundary and subdivision issues are settled.

At this time, the attorney representing the Tsurai Ancestral Society, Christine Williams, has requested that the City Council delay any further transfer discussions until the brush-cutting incident is resolved.

Staff suggests that, if the Council chooses to discuss this item and proceed with the negotiations with the Yurok Tribe, then another daytime "workshop meeting" could be set between the two meetings to solicit public input.

Staff Recommendation: The draft lease and transfer documents are lengthy. They have been provided to the members of the City Council and are available for public review in the City Clerk's Office.

Attachments: None.