DISCUSSION AGENDA ITEM #1

SUPPORTING DOCUMENTATION FOLLOWS WITH: 6 PAGES

1. Presentation and Acceptance of the FY2009 Annual Audit

DISCUSSION/ACTION AGENDA ITEM X.1
Date: July 14, 2010

Item: **PRESENTATION AND ACCEPTANCE OF THE FY2009 ANNUAL AUDIT**

Background: The firm of Marcello and Company has performed the annual fiscal and management audit for the City of Trinidad for seven years. The principal in the firm, Ralph Marcello, has personally performed these audits and is exceptionally aware of the City's practices and finances. He performed the audit again this year and has offered to again prepare the audit for the FY2010 year (July 1-June 30, 2010).

In addition to a complete review and check of the City's finances, the auditor prepares a management letter that offers recommended changes to practices used by the City in its financial management. There are fifteen (15) recommendations this year, and staff agrees that all of these recommendations be implemented to the extent possible.

There were difficulties in completing the audit this year, and those difficulties can be grouped into three areas:

1. The increasing complexity of the City's financial records, based on a growing number of "fund accounts" that were never previously established;
2. The immediate need to improve record keeping by upgrading the accounting software used by the City's contract accounting firm; and
3. The fact that this is the first year that the new accounting firm was responsible for the preparation of the year-end financial statements and the integration of those statements with the financial audit.

Since these difficulties were either addressed during the preparation of the audit or will be addressed in the near future, staff is confident that next year's audit will go much smoother, despite the growing complexity of the City's financial responsibilities. Staff remains very pleased and satisfied with the work and the "team" that is dealing with the finances on a day-to-day basis and in the annual review

Recommended Actions:

1. Accept the FY2009 Annual Financial Audit;
2. Instruct the staff to implement the recommendations in the Audit Management Letter; and
3. Authorize the staff to execute an Audit Engagement Letter" with Marcello & Associates to perform the FY2010 Financial Audit within the limitations of the approved FY2011 Budget.

Attachments:

Copies of the Annual Audit were provided to each of the City Council members in mid-June. It is available for public review in Town Hall.

The Management Letter is included as an attachment to this agenda item

MARCELLO & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS

2701 Cottage Way, Suite 30 / Sacramento, California 95825 / 916.979.9079

June 4, 2010

To the Trinidad City Council, and City Manager
Trinidad, California

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of City of Trinidad for the year ended June 30, 2009. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated January 11, 2010. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by City of Trinidad are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during fiscal year 2008-09. We noted no transactions entered into by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the City's financial statements was as follows:

> Because of the inadequacy of historic accounting records, we were unable to form an opinion regarding the amounts at which property and equipment, and accumulated depreciation, are recorded in the accompanying financial statements at June 30, 2009, therefore the reported capital assets, accumulated depreciation and related depreciation expense could be subject to change should the actual amounts become available.

Difficulties Encountered in Performing the Audit

We encountered some difficulties in dealing with the City's bookkeeping service in their providing us with accurate and complete trial balances, supporting schedules, and complete financial statements.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. The following material misstatements detected as a result of audit procedures were corrected by management:

(1) Unrealized losses in the amount of $39,427 in the Smith-Barney account were not recorded.

(2) Prepaid insurance in the amount of $36,257 was not recorded.

(3) An account payable in the amount of $34,919 was recorded in the wrong fiscal year.

(4) Accounts receivable for grant income in the amounts of $38,250 and $43,426 were not recorded.

(5) Investment earnings in the amount of $12,285 in the LAIF account were not recorded.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We requested certain representations from management that are to be included in the management representation letter dated January 22, 2010.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention. Other issues that came to our attention that are appropriate to communicate to you at this time are as follows:

1. The accounting software used by the prior and current bookkeepers is not adequate for a multi-fund entity such as the City, nor does it provide management with the information necessary to make accurate decisions. New accounting software should be purchased and installed prior to the closing of the June 30, 2010 books in order to provide accurate accounting data.
2. Due to the small size of the accounting department which is typical in a small governmental unit, there is limited segregation of accounting duties. One way to reduce the risk of misappropriation of assets, and mitigate the potential for loss, is to purchase an employee fidelity insurance policy for a larger than normal amount.
3. Coding of revenues should be improved to match budgeted revenues. Currently general ledger account codes are not correct in several revenue types. The State Controller Office annual report of financial transactions lists the basic account names and provides a good example as a chart of accounts.
4. Business license renewals for FY 2009-10 were mailed out in May 2009. Some checks were received in June 2009. Although probably not material, these are technically for FY 2009-10 and a should be reported as "deferred revenue" if received in the 2008-09 year and subsequently reversed and recognized in the 2009-10 fiscal year. The easiest solutions are either: (1) mail out

the business license renewals on July 1st (preferred method) or (2) hold all such received checks in the safe and deposit them after July 1st.

5. The City has grouped; planning, engineering capital and grant project expenditures into one account in the past. That might have been fine when there was only one grant, or one on-going project but there are multiple grants and projects currently. Grant agreements usually require strict accounting when pre-funded. Developer deposits should be segregated for easy accounting to offset developer expenses. Capital projects should be accounted for separately, especially when they span multiple fiscal years.

6. The City opened a separate bank account for police department confiscated money. The City granted and authorized the City Clerk authority to open bank accounts in a recent Resolution. Due to the small operating environment and general lack of internal controls over the process of cash receipts, this Resolution increases the current deficiency in the design of the internal controls by giving the City Clerk that authority. Currently the City Clerk can open a bank account without anyone's knowledge, deposit City money in that account without anyone's knowledge, write checks on that account without anyone's knowledge, and totally avoid recording those transactions on the City's books. Recommend the City Council change its resolution to remove the City Clerk from authority to open bank or investment accounts and when possible remove that position as a check signer.

7. The new bookkeeper has been recording depreciation expense on a monthly basis. Although this is often helpful for commercial type clients with a bias towards reducing their income tax liability, it has the opposite effect for governments. In our opinion, it is generally most efficient, and in the best interest of small governments, to wait until the end of the fiscal year to record depreciation for the year, based upon capital assets in place, remove sold or obsolete assets, and adjust for additions from debt issues or capital leases. This recommended procedure usually leads to more accurate data.

8. The new bookkeeper has been setting up insurance premiums as "prepaid expenses" then expensing the cost of insurance on a monthly basis. In our opinion, it is generally most efficient, and in the best interest of small governments, to wait until the end of the fiscal year to record prepaid expense and insurance at year end where there is a better chance of accurate data. Because most governmental insurance policies are on the fiscal year, there is very little prepaid expense or insurance at fiscal year end.

9. Based upon conversations with city personnel, in order to curb the misuse and generally minor burden placed upon city personnel, it might be appropriate to start a fee schedule of renting the City Hall auditorium. A program might start out at $2.00 per event with a rate plan for automatic increases over the next 5 to 10 years with a goal of achieving market rental rates. Either way, a clean-up deposit should always be collected and its policy enforced.

10. The new bookkeeper should be given copies of all LAIF quarterly and interest statements. They have not gotten them in the past; consequently interest earnings have not been recorded. The City can obtain these LAIF statements on-line and provide them to the bookkeeper. On occasion, some banks will send extra bank statement copies to a bookkeeper or treasurer.

11. During our audit fieldwork we noticed piles of unfiled bank statements in City Hall. These statements display account numbers which are confidential information, and are easily accessible to customers that enter the city hall office. A fraud could occur. We consider this a weakness in the design of internal controls and recommend that <u>all</u> bank statements be filed and locked when not in use.

12. Due to the small operating environment, and lack of segregation of duties, we suggest that all bank statements be mailed to the attention of the city manager or city treasurer, who opens and reviews them, then passes them onto the city clerk for filing. Often times bank statements are mailed to a separate Post Office Box for the city manager or city treasurer to retrieve and review, before the reconciliation process takes place.

13. Consider a separate general ledger revenue account be established for recording "unrealized gains (losses)" to record the monthly fluctuations in the Smith Barney-Citigroup investment (bond)

account. As an alternate, the city manager can request that those fluctuations only be recorded at fiscal year end, but still monitored with the receipt of each statement.

14. Per inquiry with the Humboldt county treasurer, the City had a cash balance of $6,167 in the county investment pool at June 30, 2009. This amount was not recorded on the City books nor known to the bookkeeper. We suggest the City inquire with the county treasurer every June 30th to determine how much money the treasurer is holding for the City, and record that amount on the books with an offset to property tax revenue, then reversed the following July 1st.
15. In accordance with generally accepting accounting principles (GAAP), consider allocating insurance expense to the water and cemetery funds since the policy provides enterprise fund property and liability coverage. The current annual insurance premium is approximately $40k (including a police department).

This information is intended solely for the use of Trinidad City Council and management and is not intended to be and should not be used by anyone other than these specified parties, particularly due to the sensitive discussion of internal controls related to the cash and investment accounts.

Sincerely,

Marcello & Company

DISCUSSION AGENDA ITEM #2

SUPPORTING DOCUMENTATION FOLLOWS WITH: 15 PAGES

2. First Reading of Ordinance 2010-03 for the Accessory Dwelling Unit Ordinance

DISCUSSION/ACTION AGENDA ITEM X.2
Date: July 14, 2010

Item: **FIRST FEADING OF ORDINANCE 2010-03 FOR THE ACCESSORY DWELLING UNIT ORDINANCE**

Background: This is the first reading of an ordinance to establish and regulate accessory dwelling units in the City of Trinidad.

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.

If the Council agrees, a public hearing will be set for Ordinance adoption at the meeting in August. At that time, 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: Set a public hearing to adopt proposed Ordinance 2010-03, Accessory Dwelling Unit Ordinance, for August 11, 2010 at 7:00 PM.

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

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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.

<u>The Development of this Draft Ordinance</u>

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.

DISCUSSION AGENDA ITEM #3

SUPPORTING DOCUMENTATION FOLLOWS WITH: 4 PAGES

3. Proposed Council Policy for Commenting on County Land Use Issues

DISCUSSION/ACTION AGENDA ITEM X.3
Date: July 14, 2010

Item: **PROPOSED COUNCIL POLICY FOR COMMENTING ON COUNTY LAND USE ISSUE**

Background: In June, the City Council again discussed how and when the City of Trinidad should comment on land use proposals in the adjacent County areas. Staff had proposed written policy direction. After lengthy discussion, the Council requested that staff return with a more simplified approach to the policy statement.

Two basic questions are addressed in the proposed policy:

- What type proposals being made to the County merit comment from the City of Trinidad?

  and

- Who should comment on a proposal (staff, Planning Commission, or City Council).

The City of Trinidad receives a limited number of referrals for comment on land use or environmental review actions that are within the County's jurisdiction. There is no mandate that the City respond to a notification of a review period, and in fact most notification that have been received in the past at Town Hall have not generated a formal response from Trinidad.

Some proposed actions that are within the County's jurisdiction are still very important to the city of Trinidad. These may rise to a level where the City may want to, at minimum, point out to the County that some potential impact needs to be addressed in the County's review process. For example, a project which may impact drinking water quality or quantity, surface drainage, traffic, municipal services, or other environmental issues may deserve attention from the City. On the other hand, a project proposal which is likely only to impact the specific property, such as a variance from a side-lot setback requirement, would have minimum if any impact on the City of Trinidad.

Most jurisdictions leave the determination of whether or not to comment up to its professional planning staff. It is rare to see one jurisdiction actively support or oppose the actions of another

jurisdiction unless a highly controversial proposal is involved. That has been the case only two times in the last three years in Trinidad, so this review and comment process is not likely to happen often. If the review process is intended to bring to light project impacts and potential problems, then the comment period is the City's opportunity to do just that.

Staff Recommendation: Approve or amend the proposed policy, or take whatever other action is deemed appropriate by the members of the City Council.

Attachments: Revised proposed policy regarding commenting on Land Use Proposals in the adjacent Humboldt County jurisdiction.

CITY OF TRINIDAD
P.O. Box 390
409 Trinity Street
Trinidad, CA 95570
(707) 677-0223

Steve Albright, City Manager

Date: July 14, 2010

To: Trinidad City Council

From: Steve Albright, City Manager

Subject: Draft **Revised** Policy:

COMMENTING ON LAND USE PROPOSALS IN ADJACENT JURISDICTIONS

The purpose of this policy is to give guidance to elected officials, appointed officials, and staff in Trinidad when requested to provide comments on land use proposals or environmentally related documents in adjacent jurisdictions. Requests for comments are typically received from Humboldt County either as a courtesy or as a legislative mandate due to the proximity to Trinidad of the project proposal.

Initial Screening: Requests for Comments (RFC) are normally received in the City Clerk's Office. The RFC will be date stamped and forwarded to the City Manager. The City Manager will determine whether to forward the RFC for comment to the City Planner or have it filed for information purposes only. Those filed for information purposes only will be kept for one year and available for review by the public in a binder in the City Clerk's Office.

Staff Comment: A RFC on a project which has the potential to impact in some manner the City of Trinidad or an environmentally sensitive area for which Trinidad has some responsibility will be reviewed, and a letter expressing the City of Trinidad's concerns will be forwarded to the County of Humboldt (normally the County Planning Department). Comment letters will be drafted by the City Planner and reviewed by the City Manager. Typical areas of concern will be water resources, water quality, surface drainage, traffic, or demand for municipal services. Other environmental concerns may be present for specific projects.

Planning Commission Review and Comment: There will be a limited number of RFCs that relate to projects of special significance to the City of Trinidad. Special significance may relate to the historic interest in a project, the size of the project, the potential for environmental impacts, or the potential impact on City-provided services. Those projects will be forwarded for review by the Trinidad Planning

Commission, and the Planning Commission's comments will then be reflected in a letter of comments drafted and signed by the City Planner.

Follow-Up: On a case by case basis, the staff or the Council may choose to attend a public meeting where decisions on significant projects are being discussed. This would be for the purpose of personally reporting the actions of the Trinidad Planning Commission.

The City Council would only become involved if requested by the City Planning Commission of if requested specifically by the members of the Council.

This policy is proposed for comment on projects which are outside the City of Trinidad's jurisdiction. Therefore, there is no legal requirement regarding how, when, or if the City chooses to comment. This is solely at the discretion of the City Council in the implementation of this policy.

DISCUSSION AGENDA ITEM #4

SUPPORTING DOCUMENTATION FOLLOWS WITH: 7 PAGES

4. Approval of Agreement to Stabilize the Damaged City Property

DISCUSSION/ACTION AGENDA ITEM X.4
Date: July 14, 2010

Item: **APPROVAL OF AGREEMENT WITH LACO ASSOCIATES TO STABILIZE DAMAGED CITY PROPERTY**

Background: As a result of the recent cutting of trees and shrubbery on City property along the Old Wagon Road Trail, city staff has requested and received a proposal from LACO Engineers. The proposed work would 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.

This will be an intense two-week effort on the part of LACO. That firm was selected because its staff has the professional expertise needed and an existing knowledge of the site.

The quoted cost to do this work will not exceed $4,200. This is a time and materials contract.

The City staff and LACO will be cooperating with representatives of the Tsurai Ancestral Society and the Yurok Tribe in doing the work.

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

Staff Recommendation: Approve the service agreement with LACO Associates for an amount not to exceed $4,200.

Attachments: Proposed Service Agreement.

LACO ASSOCIATES
ENGINEERS · GEOLOGISTS · ENVIRONMENTAL CONSULTANTS

PROJECT NO. 7342.00

ENGINEERING SERVICE AGREEMENT for Engineering and Materials Testing
City of Trinidad, referred to as "CLIENT", requests, and LACO ASSOCIATES, Consulting Engineers, referred to as "LACO" agree to provide engineering services for the following projects:

Project Name: Tsurai Village Vegetation Removal and Erosion Potential Assessment

Project Location: Trinidad, California

Description and Scope of Services to be provided:
- Please refer to the attached Exhibit A dated July 7, 2010

Description and Scope of Services not provided:
- Please refer to the attached Exhibit A dated July 7, 2010

Special Conditions and / or Assumptions:
- Please refer to the attached Exhibit A dated July 7, 2010

Estimated Date of Completion:
- August 6, 2010

Prevailing Wage rates **do not** apply to this project.

CLIENT agrees to pay at the hourly rates and to pay all other costs for the work or portion of work performed as set forth in the "SCHEDULE OF RATES" attached and made a part of this Agreement. These rates are subject to periodic revision, of which written advance notice will be provided. The time and material based estimated fee is: **$4,200**.

A retainer of 50 percent of the estimated fee, **$2,100**, is attached herewith, to be applied to the final invoice.

This agreement includes the following attachments: GEO GENERAL CONDITIONS, labeled GEO2007, Schedule of Rates, and others (if any) noted above.

This agreement is entered into this 7th day of July, 2010, Eureka, Humboldt County, California.

SIGNED _____

LACO Associates
PO Box 1023
Eureka, CA 95502
707 443-5054
707 443-0553 Fx
By: Michael D. Nelson

RECEIVED ON ACCOUNT _____

SIGNED _____

DATE _____

CLIENT: City of Trinidad
Steven Albright
Address: 409 Trinity Street
Trinidad, CA 95570
Phone No.: 677-0430
Fax No.:
Email:

GEO GENERAL CONDITIONS

LACO will perform only those services outlined in the agreed scope of work, except that CLIENT and LACO may subsequently agree in writing to provide for additional services to be rendered under this agreement for additional, negotiated compensation. The above scope of work represents the minimum program at this time. As the results of records search or other investigations or tests become known, other tests and/or sampling may be recommended to the CLIENT for written approval as Additional Services.

Invoices may be submitted to CLIENT as frequently as monthly and/or upon completion of the work and are due and payable when presented. All accounts not paid in full within fifteen (15) days from the invoice date shall bear a finance charge of 1.5% per month. If legal action is instituted on this account, the prevailing party shall be awarded such attorney's fees and other costs as the Court may adjudge to be reasonable.

If CLIENT for any reason fails to pay the undisputed portion of LACO's invoices within thirty (30) days of presentation, LACO has the right to cease work on the project, and CLIENT agrees to waive any claim against LACO for cessation of services, and shall defend and indemnify LACO from and against any claims for injury or loss stemming from LACO's cessation of service. CLIENT agrees to pay LACO the cost associated with premature project demobilization.

In the event the project is remobilized, CLIENT agrees to pay the cost of remobilization, and shall renegotiate appropriate contract terms and conditions, such as those associated with budget, schedule, or scope of service.

In the event any bill or portion thereof is disputed by CLIENT, CLIENT shall notify LACO within ten (10) days of receipt of the bill in question, and CLIENT and LACO shall work together to resolve the matter within sixty (60) days of its being called to the attention of LACO. If resolution of the matter is not attained within sixty (60) days, either party may terminate this Agreement in accordance with condition contained herein.

LACO agrees to strive to perform the services set forth in this Agreement in accordance with generally accepted professional practices, in the same or similar localities, related to the nature of the work accomplished, at the time the services are performed. LACO's services shall not be subject to any expressed or implied warranties whatsoever.

LACO's services shall not include directly or indirectly storing, arranging for or actually transporting, disposing, treating or monitoring hazardous substances, hazardous materials, hazardous wastes or hazardous oils, except for delivery of samples to a laboratory. Unless specifically listed in the Proposal or Scope of Work, services exclude testing for the presence of asbestos, polychlorinated biphenyls (PCBs), radon gas, or any airborne pollutants.

CLIENT recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made, and that site conditions may change with time. Data interpretations, and recommendations by LACO will be based solely on information available to LACO. LACO is responsible for these data, interpretations, recommendations, but will not accept responsibility for other parties' interpretations or use of the information developed. Because geologic and soil formations are inherently random, variable, and indeterminate in nature, the professional services rendered by LACO, and opinions provided with respect to such services under this Agreement (including opinions regarding potential cleanup costs), are not guaranteed to be representative of actual site conditions or contamination or costs, which are subject to change with time as a result of natural or man-made processes.

The CLIENT shall provide all information in its possession, custody, or control which relates to the site, its present and prior uses, or to activities at the site which may bear upon the services of LACO under this Agreement. LACO may rely on the completeness and accuracy of information supplied by CLIENT without further verification.

In recognition of the inherent risk of claims associated with the services to be provided and in consideration of our agreement to perform these services, CLIENT agrees to limit LACO's liability for CLIENT and any third parties arising from LACO's professional acts, errors or omissions, such that the total aggregate liability of engineer to all those named shall not exceed **$10,000** or LACO's total fee for services rendered on this project, whichever is greater. (If CLIENT wishes to discuss higher limits and charges involved, he should speak with LACO.) CLIENT further agrees to require of any contractors or subcontractors an identical limitation of LACO's liability for damages suffered by the contractor or subcontractor arising from LACO's professional acts, errors, or omissions. Neither the contractor, nor any of his subcontractors assumes any liability for damages to others which may arise on account of LACO's professional acts, errors or omissions except as otherwise stipulated herein. Limitations on liability and indemnities in this Agreement are business understandings between the parties, voluntarily and knowingly entered into, and shall apply to all theories of recovery, including but not limited to, breach of contract, warranty, tort (including negligence), strict or statutory liability, or any other cause of action, except for willful misconduct or gross negligence.

Both CLIENT and LACO agree that, to the extent allowed by law, they will not be liable to each other for special, indirect, or consequential damages arising out of or related to this Agreement, whether caused by negligence, errors, omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever.

By this Agreement, LACO specifically excludes, disclaims and is discharged from any responsibility or liability for all direct or indirect loss or harm resulting from the presence, failure to discover, interception, escape or discharge of hazardous or toxic materials of any kind, including the contamination of soil, water, air or other property as a result thereof. This exclusion included, but is not limited to, exploration, testing, analysis, or recommendations by LACO.

LACO's scope of work does not include the investigation or detection of the presence of any Biological Pollutants in or around any structure. CLIENT agrees that LACO will have no liability for any claim regarding bodily injury or property damage alleged to arise from or be caused by the presence of or exposure to any Biological Pollutants in or around any structure. In addition, CLIENT will defend, indemnify, and hold harmless LACO from any third party claim for damages alleged to arise from or be caused by the presence of or exposure to any Biological Pollutants in or around any structure, except for damages arising from or caused by LACO's sole negligence. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, and viruses, and the byproducts of any such biological organisms.

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold LACO, its agents, subcontractors, and employees harmless from and against any and all claims, defense costs, including attorney's fees, damages, and other liabilities arising out of or in any way related to LACO's reports or recommendations concerning this Agreement, LACO's presence on the project property, or the presence, release, or threatened release of asbestos, hazardous substances, or pollutants on or from the project property; provided that CLIENT shall not indemnify LACO against liability for damages to the extent caused by the negligence or intentional misconduct of LACO, its agents, subcontractors, or employees.

CLIENT waives any claim against LACO and agrees to defend, indemnify and hold LACO harmless for injury or loss which may arise as a result of (1) alleged cross-contamination of aquifers caused by sampling, (2) release of pollutants to the environment, (3) drill cuttings, fluids or other presumed hazardous materials being left on-site after containerization by LACO, (4) containing, labeling, transporting, testing, storing, or other handling of contaminated samples, (5) any work, error, omission or negligent act performed by contractors or others under not complete and direct supervision by LACO for the specific task concerned.

CLIENT is responsible for accurately delineating the locations of all underground structures and utilities. LACO will take reasonable precautions to avoid known subterranean structures, and CLIENT agrees to defend, indemnify and hold LACO harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located.

In the absence of special arrangements, all uncontaminated samples of soil or rocks will be disposed of by LACO sixty (60) days after submission of our report. Soil, water, rock and/or other waste materials generated during work on the project site shall remain the sole property and responsibility of CLIENT. It is CLIENT's sole responsibility to arrange for lawful disposal of all waste materials. Soil, water, rock and/or other waste materials generated during LACO's work efforts on behalf of the CLIENT which may be contaminated with hazardous or toxic materials or potentially hazardous or toxic materials will be containerized on the site in approved containers at such times as they may be generated. Such materials may be required by law to be characterized and disposed of within a limited time frame. Arranging for disposal of hazardous or toxic materials or potentially hazardous or toxic materials is specifically excluded from the scope of LACO's services. Upon written request from the CLIENT, LACO may assist in coordinating or facilitating lawful disposal procedures by an appropriately-licensed contractor employed by the CLIENT. Regardless of any coordination or facilitation of disposal of hazardous or toxic materials or potentially hazardous or toxic materials by LACO on behalf of the CLIENT, CLIENT agrees to indemnify and hold harmless LACO from any claim of liability for injury, loss or environmental damage, including cost of defense, arising from any disposal of hazardous or toxic materials or potentially hazardous or toxic materials.

All laboratory and field equipment contaminated with suspected or potentially toxic or hazardous substances in performing our services will be cleaned at CLIENT's expense. Contaminated consumables will be disposed of and replaced at CLIENT's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of the CLIENT. All such equipment shall be delivered to the CLIENT or disposed of in a manner similar to that indicated for hazardous samples. CLIENT agrees to pay the fair market value of any such equipment which cannot reasonably be decontaminated.

CLIENT has relied on LACO's judgement in establishing the workscope and fee for this project, given the project's nature and risks. CLIENT shall, therefore, rely on LACO's judgement as to the continued adequacy of this Agreement in light of occurrences or discoveries not originally contemplated or known. Should LACO call for contract renegotiation, LACO shall identify the changed conditions which, in LACO's judgement make such renegotiation necessary, and LACO and CLIENT shall promptly and in good faith enter into renegotiation of this Agreement to help permit LACO to continue to meet CLIENT's needs. If renegotiated terms cannot be agreed to, CLIENT agrees that LACO has an absolute right to terminate this Agreement.

LACO and CLIENT agree that discovery of unanticipated hazardous or toxic materials constitutes a changed condition mandating renegotiation or termination of services. LACO agrees to notify CLIENT as soon as practically possible shouldunanticipated hazardous materials or suspected hazardous or toxic materials be encountered. CLIENT agrees to make any disclosures required by law to the appropriate governmental agencies. CLIENT and LACO also agree that discovery of hazardous materials may make it necessary for LACO to take immediate action to protect health and safety. CLIENT agrees to compensate LACO for all costs required for such action and other costs incident to such unanticipated discovery of hazardous or toxic materials.

CLIENT agrees that construction contractors, subcontractors or others not affiliated with LACO are solely responsible for safety at and near the project site. LACO will have no responsibility or liability for methods of work performance, supervision including selection of equipment, selection or direction of contractor's employees, or sequencing of construction other than that done by LACO's own employees. LACO will not be responsible for excavation safety, temporary slopes, shoring, underpinning, dewatering, or other construction activities of the contractor(s) and subcontractor(s).

Unless otherwise agreed, CLIENT will furnish to LACO, its agents, representatives and subcontractors right-of-entry on land for planned field operations. CLIENT will notify any and all possessors of the project site that the CLIENT has granted LACO free access to the site. LACO will take reasonable precautions to minimize damage to the site, but it is understood by CLIENT that, in the normal course of work, some damage may occur and the correction of such damage is not part of the Agreement unless so specified in the proposal or scope of work.

All documents, reports, boring logs, field and survey notes, tracings, and other documents prepared by LACO as instruments of service shall remain the property of LACO. All designs, information, reports, or recommendations prepared or issued by LACO are for the sole use of the CLIENT for the specific project for which they are prepared. CLIENT agrees not to provide such materials to any person or organization unless the person or organization agrees in writing to be bound by the conditions of this Agreement. CLIENT agrees to save and hold LACO harmless from any liability arising from any use made by CLIENT or any other party outside the intent of this Agreement.

All claims, disputes, and other matters in controversy between LACO and CLIENT arising out of or in any way related to this Agreement will be submitted to "alternative dispute resolution" (ADR) before and as a condition precedent to other remedies provided by law. If and to the extent that CLIENT and LACO have agreed on methods for resolving such disputes, then such methods will be set forth in the "Alternative Dispute Resolution Agreement" which, if attached, is incorporated into and made a part of this Agreement. If no specific ADR procedures are set forth in this Agreement, then it shall be understood that the parties will submit disputes to mediation as a condition precedent to litigation.

If a dispute at law arises from matters related to the services provided under this Agreement and that dispute requires litigation instead of ADR as provided above, then: (1) the claim will be brought and tried in the judicial jurisdiction of the Court of the county where LACO's principal place of business is located and CLIENT waives the right to remove the action to any other county or judicial jurisdiction, and (2) the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, Court costs, attorney's fees, and other claim related expenses.

This Agreement may be terminated by either party upon ten (10) days written notice by certified mail, return receipt requested. If CLIENT elects to terminate this Agreement, CLIENT will be responsible for all charges, as computed under this Agreement, for work performed by LACO through the tenth day after mailing of the notice of termination.

The laws of the State of California will govern the validity of the terms, their interpretation and performance. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this Agreement for any cause.

EXHIBIT A
TSURAI VILLAGE – VEGETATION REMOVAL AND EROSION POTENTIAL ASSESSMENT

Prepared for the City of Trinidad
By LACO Associates
LACO Project No. 7342.00
July 7, 2010

INTRODUCTION

Erosion Potential Assessment and Mitigation; Tsurai Village, Trinidad, California
Total Cost, Time and Materials, Not to Exceed: $4,200

The following Scope of Work is provided per the request of Trinidad City Manager, Steve Albright. LACO understands that the City of Trinidad requires an assessment of the erosion potential resulting from the removal of vegetation below the Wagner Street Trail. The area to be investigated is located within the lands of Tsurai Village, which is currently under ownership by the City of Trinidad.

A Professional Geologist conducted a cursory site visit to review existing conditions. It appears that all vegetation removal was performed using hand tools such that any ground disturbance was minimized. The extent of vegetation removal has, however, created the potential for soil erosion to occur during the next wet season due to the lack of ground cover and rainfall interception. The loss of root strength formerly provided by the numerous deciduous trees may also adversely affect the long term stability of the coastal bluff.

WORK SCOPE

LACO proposes to conduct a phased approach to the assessment and implementation of a short-term erosion control plan and long-term revegetation plan. The following work scope items will be addressed by the initial phase.

- Complete a detailed assessment documenting existing field conditions including aerial photographic analysis and mapping of geomorphic slope features, perform a qualitative slope stability analysis, document the disturbed area with digital photographs, and prepare a report of findings with recommendations for immediate erosion control measures to be implemented prior to the ensuing wet season.
- Interaction and coordination with the Tsurai Ancestral Society, Yurok Tribe, the City of Trinidad, and State Coastal Conservancy with Steve Albright, City Manager, as Point of Contact. Limitations: This interaction will include a joint site visit and a review of findings.

- This report will provide detailed information sufficient to allow the City to solicit bids for erosion control improvements.

EXCLUSIONS

The following Scope of Work is NOT included:

- Formal application for construction or improvements under a Coastal Development Permit are excluded from this Scope of Work.
- Recommendations for additional erosion control measures where deemed necessary by Scope of Work outlined above.
- Consultation with a biologist to develop a long-term vegetation management plan to include revegetation, annual maintenance, and monitoring.

DELIVERY TIME

Two weeks from receipt of signed contract from City Manager.

FEE ESTIMATE

Our fee estimate for the Phase 1 work assumes two site visits by a Professional Geologist, one of which will include meeting with a representative(s) from the Tsurai Ancestral Society. Due to the sensitive nature of the area, no subsurface explorations or ground disturbances will occur on the site for this Phase.

Total Cost - *Time and Materials, Not to Exceed:* **$4,200**

P:\7300\7342.00 City of Trinidad\7342.00 Tsurai Village Vegitation Removal & erosion Potential\01 Proposal Documents\Tsurai Village_Erosion Control Assessment_City of Trinidad 20100707.doc

DISCUSSION AGENDA ITEM #5

SUPPORTING DOCUMENTATION FOLLOWS WITH: 1 PAGES

5. Status of the Lease and Transfer of 12.5 Acre Tsurai Study Area Site

DISCUSSION/ACTION AGENDA ITEM X.5
Date: July 14, 2010

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

Background: 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.

Staff suggests that the Council discuss this at the July meeting and propose action on the real estate transaction at the August meeting. If so desired, another daytime "Workshop meeting" could be set between the two meetings.

Staff Recommendation: The 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.