



Posted: Friday, September 21, 2012

NOTICE AND CALL OF A SECOND REGULAR MEETING OF THE TRINIDAD CITY COUNCIL

The Trinidad City Council will hold a Second Monthly Meeting on
WEDNESDAY, SEPTEMBER 26, 2012 at 7:00 PM
in the Town Hall at 409 Trinity Street

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- I. **CALL TO ORDER/ROLL CALL**
 - II. **PLEDGE OF ALLEGIANCE**
 - III. **CLOSED SESSION**
There is no Closed Session planned for this meeting.
 - IV. **APPROVAL OF AGENDA**
 - V. **COUNCIL MEMBER REPORTS, INCLUDING COMMITTEE ASSIGNMENTS**
 - VI. **ORAL STAFF REPORTS**
 - City Manager
 - Specific Department Reports
 - VII. **ITEMS FROM THE FLOOR**
(Three (3) minute limit per Speaker unless Council approves request for extended time.)
 - VIII. **CONSENT AGENDA**
There are no Consent Agenda items for this meeting.
 - IX. **DISCUSSION/ACTION AGENDA ITEMS**
 1. Discussion/Decision regarding Appeal of Planning Commission Approval of CDP#2012-04, Civic Club Lighthouse Landscaping Project.
 - X. **COUNCIL, STAFF, or PUBLIC REQUESTS FOR FUTURE AGENDA ITEMS**
 - XI. **ADJOURNMENT**



NOTICE OF PUBLIC HEARING

Notice is Hereby given that the **City Council of the City of Trinidad** will conduct a Public Hearing on the following appeal of a Planning Commission action at a specially scheduled meeting on **Wednesday September 26, 2012**.

APPELLANT: Tsurai Ancestral Society / Ralph Faust

PROJECT DESCRIPTION:

Appeal of Planning Commission approval of Civic Club 2012-04: After-the-fact Design Review and Coastal Development Permit to remove fencing, conduct landscaping (removal of sod and invasive blackberries) and terrace an existing slope to provide access to the Axel Lindgren Memorial Trail through the Memorial Lighthouse Civic Club property. Most of the work has already taken place. Located at the Trinidad Memorial Lighthouse; APN: 042-091-04

ENVIRONMENTAL REVIEW:

Categorically Exempt from CEQA per §15304 of the CEQA Guidelines exempting minor alterations to land.

DATE: September 26, 2012 specially scheduled City Council meeting.

The City Council meeting will be held at **7:00 P.M.** at Trinidad City Hall, 409 Trinity Street.

All interested parties are invited to attend.

Documents relating to the above projects are available for review at the City Clerk's office, 409 Trinity Street, Trinidad, CA, weekdays, 8:00 a.m. to 2:00 p.m.

Please note that, pursuant to Section 65009 of the Government Code, as amended: if you challenge City action on the above projects in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Trinidad Planning Commission/City Council at or prior to the public hearing. Please note that current plans may be revised prior to or at the hearing.

Trever Parker, City Planner

Date of Public Notice: September 19, 2012

DISCUSSION AGENDA

Date: September 26, 2012

Item: Appeal of Planning Commission approval of Civic Club 2012-04: After-the-fact Design Review and Coastal Development Permit to remove fencing, conduct landscaping (removal of sod and invasive blackberries) and terrace an existing slope to provide access to the Axel Lindgren Memorial Trail through the Memorial Lighthouse Civic Club property. Most of the work has already taken place. Located at the Trinidad Memorial Lighthouse; APN: 042-091-04

Background: The Trinidad Planning Commission took action to conditionally approve the above project at their regularly scheduled meeting of August 15, 2012. The Planning Commission originally heard the project at their regular meeting of June 20, 2012. However, the item was continued twice in order to allow more time to respond to and consider issues brought up by the Tsurai Ancestral Society (TAS). There was a significant amount of discussion and public / stakeholder input at all three meetings (minutes are not included, but available at City Hall). The Planning Commission final vote was in favor 3-1-1; Commissioner Johnson was opposed (due to wanting additional time to consider the issues and the TAS letter submitted at the meeting); and Commissioner Vanderpool abstained (due to feeling that he did not have enough information to make a decision either way, but other options were lacking). Additional project background is provided in the various attached documents.

I think it is also important here to mention what the implications of your action tonight might be. If the Council denies the appeal and upholds the Planning Commission decision, that action would be appealable to the Coastal Commission. However, if the Council upholds the appeal, denying the Civic Club permit, that action would not be appealable to the Coastal Commission. Further, a simple denial of the project is not possible in this case, because work has already been done, and site can not be put back exactly the way it was. Therefore, if the Council is going to uphold the appeal, they would also need to provide instructions as to what would be required from the Civic Club to rectify the unpermitted activity. This could be an order to submit a restoration plan to be approved by the Planning Commission, or to complete an EIR for the project as requested in the appeal; there could be several different options.

Proposed Action: Hold a public hearing on the above appeal. Staff recommendation is for denial of the appeal and upholding the Planning Commission's decision. A sample motion could be as follows:

Based on application materials, information and findings included in the Staff Reports and supplements, and based on public testimony, I move to deny the appeal and adopt the information and required Design Review findings and approve the project as submitted and as conditioned by the Planning Commission.

Attachments: (1) Final Staff Report, Approved August 15, 2012; (2) Supplemental Staff Report for Civic Club 2012-04 Design Review, August 2012; (3) City Council Staff Report for Appeal of Civic Club 2012-04; (4) Civic Club application materials; (5) Submitted Letters: TAS – 07/10/12, RF – 07/16/12, TAS – 08/14/12; (6) Appeal submittal, TAS, August 29, 2012.



Filed: June 12, 2012
Staff: Trever Parker
Staff Report: June 13, 2012
Commission Hearing Date: June 20, 2012
Commission Action: Conditionally Approved

STAFF REPORT: CITY OF TRINIDAD

APPLICATION NO: 2012-04

APPLICANT (S): Trinidad Civic Club

AGENT: Charles Netzow

PROJECT LOCATION: Trinidad Memorial Lighthouse
Edwards and Trinity Streets
Trinidad, CA 95570

PROJECT DESCRIPTION: After-the-fact Design Review and Coastal Development Permit to remove fencing, conduct landscaping (removal of sod and invasive blackberries) and terrace an existing slope to provide access to the Axel Lindgren Memorial Trail through the Memorial Lighthouse Civic Club property. Most of the work has already taken place.

ASSESSOR'S PARCEL NUMBER: 042-091-04

ZONING: PR – Public & Religious

GENERAL PLAN DESIGNATION: PR – Public & Religious

ENVIRONMENTAL REVIEW: Categorically Exempt from CEQA per §15304 of the CEQA Guidelines exempting minor alterations to land.

APPEAL STATUS:

Planning Commission action on a coastal development permit, a variance or a conditional use permit, and Design Assistance Committee approval of a design review application will become final 10 working days after the date that the Coastal Commission receives a "Notice of Action Taken" from the City unless an appeal to the City Council is filed in the office of the City Clerk at that time. Furthermore, this project is X / is not _____ appealable to the Coastal Commission per the City's certified LCP, and per Section 30603 of the Coastal Act.

SITE CHARACTERISTICS:

The proposed project is located at the Trinidad Memorial Lighthouse (MLH) on Civic Club property located at the top of the bluff near the intersection of Trinity and Edwards Streets. Most of the site is relatively flat due to past grading, but slopes towards the bluff to the south. Surrounding the property to the south, east and west is City property that makes up a portion of the Tsurai Study Area (TSA). Residential development is located to the north, across Edwards Street. Access to the site is via walkways and stairs from Edwards Street.

STAFF COMMENTS:

As stated by Patti Fleschner, representing the Civic Club, the goals of the project are as follows:

1. Remove an unsafe and unattractive fence barrier below the MLH
2. Beautify the grounds
3. Preserve and protect the site from erosion as much as is humanly possible within the limits of a meager Trinidad Civic Club budget
4. Provide safe and graceful access to the Axel Lindgren Memorial Trail (ALMT)
5. Respect the public bluff site for the people who are commemorated at the site and for the people who lived at the village site before to the best of our ability.

According to Civic Club representatives, the Civic Club was considering a landscaping and beautification project and met at the site on Feb. 18 with Kelly Lindgren of the Tsurai Ancestral Society to discuss ideas and opportunities for grounds improvements. At this meeting the idea of removing the fence along the southern boundary of the property to provide access to the ALMT was discussed and verbally agreed to. However, the exact details of the work to be done were not finalized. Due to vacations and health issues, various people were heading up the project at different times. Civic Club representatives contacted the City and discussed the fence removal with the City Building Inspector, John Roberts, who indicated that no building permit was necessary. Thinking that the City and everyone involved in the project was in agreement on moving forward with the project, the improvements commenced (description of the work below). Unfortunately there was misunderstanding / miscommunication regarding the exact specifications and the amount of the work to occur. And the project design likely evolved over the months with the various people involved. Because of the sensitivity of the area, and because earthmoving activities occurred, a Coastal Development Permit should have been obtained prior to the work proceeding. At this point, the work is about 90% complete and the Civic Club would like to get the project finished as soon as possible since it is now the height of tourism season.

The following is a description of the work that occurred from Charles Netzow, who carried it out:

I am 90% complete with the project I was told was verbally approved by the Tsurai Ancestral Society and the City of Trinidad. Following the attached plan drawn by a hired landscape designer I removed 6 fence posts set in 200 pounds of concrete each which I

disposed of at Kern Construction yard. Using a hand shovel and fingers, I then removed approximately 1/2 yard of sod - grass and its roots going about 1 inch into the dirt - and disposed of that at a dump site. It is not recoverable. I then removed about 1- 2 yards of loose dirt that was mingled with fist to head size imported quarry rock. This rock was kept on site and carefully placed on a slope where invasive species of berries and grasses had first been removed, serving to stabilize the slope that will be the route draining water will move over as it exits the Memorial Lighthouse grassy area. The loose soil was taken to the Trinidad Museum site and is there now, in an isolated pile. No mechanized equipment was used in this project, only hand tools.

I then terraced the site using 6" high wood for stair risers and 18" wide x 3" thick areas of gravel as treads. About 2 yards of 3/8 minus sharp angular gravel was imported and used in the process.

When the representative of the Tsurai Ancestral Society was asked to observe the work at 90% completion, their reaction was that it was a "wonderful job", they "loved it" and they were glad to see the steps opened up to the traditional route.

I am no longer working on the project having been requested by the city to voluntarily stop and then ordered to stop. Best practices erosion control and site management are in place.

Consultation since the last meeting

This issue was first heard at the June 20th meeting, where a continuance was requested by both representatives of the Yurok Tribe and the Tsurai Ancestral Society (TAS) to allow more time to review and comment on the project. Representatives of the Civic Club set up a meeting between themselves, the Yurok and the TAS for Friday July 6, 2012. Unfortunately, the TAS was not able to make it to the meeting. The Yurok representatives (Bob McConnell, Heritage Preservation Officer and Buffy McQuillen, Repatriation and Collections Manager) indicated that they would not object to the project as long as the dirt that was removed is returned to the site. The plan for putting the dirt back on the site will be to disperse / sift it over existing vegetation so that it does not pose an erosion risk. The Yurok also requested that an MOU be developed between the Civic Club and the Yurok to provide a process for notification and consultation for future projects on this site. They also requested a few changes to the staff report, which have been accommodated. No additional comments have been received from the TAS at this time other than the statements made at the last meeting. TAS objections at that time were based on the fact that soil had been removed and that the improvements, though the fencing was removed, did not open or follow the traditional access to the ALMT.

ZONING ORDINANCE/GENERAL PLAN CONSISTANCY:

In most areas of the City, a project of this scale would be exempt from permit requirements. Section 17.72.070.C provides exemptions from Coastal Development Permits. Item three includes exemptions for grading that include (a) 1000 sq. ft. of surface area, or (b) 50 cubic yards, and this project is less than both of these. However, these exemptions do not apply outside of the identified stable areas as mapped on Plate 3 of the General Plan (b.i). In addition, current Coastal Act regulations (14 CCR

§13253) require a permit for work within 50' to 100' from the edge of a coastal bluff (depending on the type of work), and the project is clearly within this limit.

This project requires a Coastal Development Permit, and also Design Review due to the changes in topography and public trail access (though existing trail access will not be altered). The project is located on a parcel zoned PR – Public and Religious. The regulations of this zone are minimal, including only permitted uses, minimum lot size, yards and maximum building height, none of which apply to the proposed improvements. However, this project is located adjacent to a sensitive open space area and on top of an ocean bluff. The site itself is designated as being of “questionable stability” on Plate 3 of the General Plan, and other areas of the bluff are mapped as being “unstable.” Therefore, the applicable requirements of the SE – Special Environment zone must also be considered. Most of these are not applicable, including the requirements for development in the tsunami hazard area (§17.20.070), on the bluff face (§17.20.080), in a stream protection area (§17.20.100), or in the Tsurai Study Area (§17.20.110). Other sections apply to buildings and structures as opposed to landscaping, such as the requirements for development on slopes near bluffs (§17.20.090), or requirements for open space protection (§17.20.120).

The main concern for this project is erosion and bluff stability, because it is located in an area of ‘questionable stability.’ One of the project purposes was to reduce erosion and increase stability along with public safety. There was a small drop-off below the fence that was removed that needed to be smoothed and terraced to reduce erosion potential and to protect public safety in order to open the area to the public. Zoning Ordinance §17.20.130 includes requirements for review by a qualified geologist. This section requires a site visit and a determination from the geologist that the “proposed development will not significantly increase erosion and slope instability and that any potential adverse impacts have been mitigated to the maximum extent feasible.” The Civic Club had a Certified Engineering Geologist (#1895), David Lindberg, visit the site on June 18 and review the project. David is familiar with the site, and has worked on a number of projects in the area. His findings were that the improvements should improve the stability of the site and reduce erosion. He had no further recommendations.

Policy 69 of the General Plan states in part: *“There shall be no disturbance, vegetation removal or construction, except for a protective fence around the burial ground, on lands designated as Open Space within the Tsurai Study Area without the approval of the lineal descendants of Tsurai, Trinidad Rancheria, City of Trinidad and the State Historic Preservation Officer.”* The project is not located within the Tsurai Study Area, but is adjacent to it. Interested parties have been notified and given an opportunity to comment on the project.

Policy 74 of the General Plan protects Open Space areas lying south of Edwards and Van Wycke streets from development in order to maintain the unparalleled views of the coastline. This project is consistent with this policy since it does not affect views from these areas.

This project is consistent with the purposes of the Coastal Act (§30001.5) and Trinidad's Local Coastal Plan by improving public access to and along the coast and enhancing public recreational opportunities and public safety consistent with sound resource conservation principles and private property rights. This coastal development permit process allows for maximizing public participation in the proposal, consistent with Coastal Act §30006. The project has been sited and designed to protect views to and along the coastline and other scenic resources, to minimize the alteration of existing landforms and to be visually compatible with the character of the surrounding areas, as required by Coastal Act §30251.

LANDSCAPING AND FENCING

The project consists of landscaping and removal of existing fencing.

SLOPE STABILITY

The project is located on property designated as questionable stability. The proposed improvements will only require minimal disturbance of soils that consist of fill that has already been disturbed and landscaped. Part of the purpose of the project was to reduce erosion and increase stability of the slope where the fence was removed. A geologist has reviewed the site and work that was completed and found that stability would not be affected and erosions would not be increased by the project.

SEWAGE DISPOSAL

There is no sewage disposal system associated with this project or property.

DESIGN REVIEW/VIEW PRESERVATION FINDINGS:

Because the project altered a structure and the natural contours of the land, this project is subject to the Design Review and View Preservation criteria set by Zoning Ordinance Section 17.60. Recommended Design Review / View Preservation Findings are written in a manner to allow approval without endorsing the project. However, if public hearing information is submitted or public comment received indicating that views, for instance, may be significantly impacted, or the structure proposed is obtrusive, the findings should be reworded accordingly.

Design Criteria

- A. *The alteration of natural landforms caused by cutting, filling, and grading shall be minimal. Structures should be designed to fit the site rather than altering the landform to accommodate the structure.* Response: Only minimal grading was

required; the slope below the fence needed to be terraced to allow safe public access through the area and to the ALMT once the fence was removed.

- B. *Structures in, or adjacent to, open space areas should be constructed of materials that reproduce natural colors and textures as closely as possible.* Response: The proposed landscaping and terraced steps, consisting of wood and gravel, are consistent with other nearby improvements and consistent with public access and safety.
- C. *Materials and colors used in construction shall be selected for the compatibility both with the structural system of the building and with the appearance of the building's natural and man-made surroundings. Preset architectural styles (e.g. standard fast food restaurant designs) shall be avoided.* Response: Materials used for the improvements are natural, including wood, rock and gravel.
- D. *Plant materials should be used to integrate the manmade and natural environments to screen or soften the visual impact of new development, and to provide diversity in developed areas. Attractive vegetation common to the area shall be used.* Response: The site is already landscaped, and vegetation placed within the trail / walkway area would impede public access. Invasive species were removed as part of the project.
- E. *On-premise signs should be designed as an integral part of the structure and should complement or enhance the appearance of new development.* Response: No on-premise signs are proposed as part of the project.
- F. *New development should include underground utility service connections. When above ground facilities are the only alternative, they should follow the least visible route, be well designed, simple and unobtrusive in appearance, have a minimum of bulk and make use of compatible colors and materials.* Response: No utilities are required for the project.
- G. *Off-premise signs needed to direct visitors to commercial establishments, as allowed herein, should be well designed and be clustered at appropriate locations. Sign clusters should be a single design theme.* Response: No off-premise signs are proposed as part of the project.
- H. *When reviewing the design of commercial or residential buildings, the committee shall ensure that the scale, bulk, orientation, architectural character of the structure and related improvements are compatible with the rural, uncrowded, rustic, unsophisticated, small, casual open character of the community. In particular:* Response: No buildings are associated with this project.

View Protection

- A. *Structures visible from the beach or a public trail in an open space area should be made as visually unobtrusive as possible.* Response: Though visible from trails and open space areas, the project is small and consistent with surrounding

development; the project purpose is for beautification of the site and public access and safety.

- B. *Structures, including fences over three feet high and signs, and landscaping of new development, shall not be allowed to significantly block views of the harbor, Little Trinidad Head, Trinidad Head or the ocean from public roads, trails, and vista points, except as provided in subdivision 3 of this subsection.* Response: Public coastal views will not be impacted by the project; the existing fence was removed as part of the project.
- C. *The committee shall recognize that owners of vacant lots...* Response: No building is associated with this project, and coastal views from residences will not be impacted by the project.
- D. *If a residence is removed or destroyed by fire or other means...* Response: No previous residence was destroyed.
- E. *The Tsurai Village site, the Trinidad Cemetery, the Holy Trinity Church and the Memorial Lighthouse are important historic resources. Any landform alterations or structural construction within one hundred feet of the Tsurai Study Area, as defined in the Trinidad general plan, or within one hundred feet of the lots on which identified historical resources are located shall be reviewed to ensure that public views are not obstructed and that development does not crowd them and thereby reduce their distinctiveness or subject them to abuse or hazards.* Response: The project is located within 100' of the Tsurai Study Area and the Memorial Lighthouse. The project is intended to improve the appearance of the lighthouse property and to improve access to the ALMT. Erosion control improvements have been included. A Certified Engineering Geologist found that the project will not affect the bluff stability or erosion above the TSA.

PLANNING COMMISSION ACTION:

As conditioned, the project was found to be consistent with the City's Zoning Ordinance and General Plan and the necessary findings for granting approval of the project were made. The Planning Commission found that the Design Review / View Protection Findings could be made, and followed staff's recommendation that the Planning Commission approve the project with the following motion:

Based on application material, information and findings included in this Staff Report, and based on public testimony, I move to adopt the information and required findings and approve the project as submitted and as conditioned herein with the added condition that the Civic Club not construct the proposed bench and move the steps, railing and rip-rap further to the east for better alignment with the existing ALMT.

CONDITIONS OF APPROVAL

1. The applicant is responsible for reimbursing the City for all costs associated with processing the application unless an exception or waiver is approved by the City Council.
2. The applicant shall employ a certified monitor, as necessary, from either the Yurok Tribe or Tsurai Ancestral Society to monitor the construction site for cultural and archeological resources. The monitor will be present during any additional excavation or ground disturbing activities, including the soil relocation.
3. The Civic Club is responsible for ensuring that the soil that was removed from the site (other than the sod that is not recoverable) is returned to the site. Erosion control Best Management Practices or site dispersal will be incorporated to ensure that the soil does not pose an erosion hazard.
4. The Civic Club will not construct the proposed bench (or move it to an alternative location) and will move the steps, railing and rip-rap further to the east for better alignment with the existing ALMT.

Supplemental Staff Report for Civic Club 2012-04 Design Review

This represents staff's response to the July 10, 2012 TAS letter regarding the Civic Club project (2012-04). The TAS letter and supporting documentation were carefully reviewed and considered. However, much of it consists of quotes from various documents without context and without an explanation of how they apply to this particular project. Many assumptions had to be made as to what the intent of the quotes and comments was. A list of acronyms used in this document can be found at the end.

CEQA Issue

3-tiered Process

The City of Trinidad is the responsible party, or Lead Agency, in CEQA for this project. The California Environmental Quality Act sets forth a 3-step, or 3-tiered process. Once you have a project, you determine whether that project falls under either a statutory or categorical exemption. If it doesn't, then an initial study is prepared to determine if there are potentially significant impacts resulting from the project. If there are none, then a Negative Declaration is prepared. Only if there may be significant impacts that can not be mitigated is an Environmental Impact Report (EIR) (a much larger and more involved document) prepared as the third step in the process. The TAS is asking the City to skip a major step in the CEQA process, the initial study. It can be reasonably concluded, based on the evidence in the record, that the proposed project is minor in nature and does not have the potential to have significant impacts on the environment.

Exemptions

Statutory exemptions are specific exemptions adopted by the legislature that may or may not have impacts (e.g. buildings for 1980 Olympic Games, or SFO runway expansions). Categorical exemptions are regulatory in nature (adopted by the Resources Agency) and are general categories or types of projects that normally do not have significant impacts (e.g. maintenance of existing structures, or new construction of small structures). The project as described clearly falls under a Class 1 and / or a Class 4 exemption. (Note that if a project needs two exemptions to cover all its elements, then it should not be exempt. However, there are many projects that may fall under more than one exemption.) Class 4 (§15304) as cited in the staff report is for: "*minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes.*" Examples of the types of project that fall under the exemption are also provided. Class 1 (§15301) is for: "*the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.*"

Exceptions

There are however, certain exceptions to the Categorical Exemptions that are noted in the TAS letter. Follows is CEQA Guidelines §15300.2, which describes these exceptions; the TAS letter cited exceptions a, b and f:

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource."

In order to overturn an agency's CEQA determination, CEQA requires that a 'fair argument' be made, that is based on 'substantial evidence,' that there will be significant impacts or that an exception applies. Substantial evidence is defined as: "*facts, reasonable assumptions predicated upon facts, expert opinion supported by facts.*" It is staff's opinion that the information submitted by the TAS has not met this standard of review.

Exceptions Continued – Cumulative Impacts

One of the exceptions to the exemptions cited by the TAS is 'b' (cumulative impacts). CEQA Guidelines §15064(h) provides guidance for assessing cumulative impacts and determining whether an individual project's impacts are 'cumulatively considerable:'

"(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(4) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable." (emphasis added)

The various projects that have occurred over the years on and near the bluffs may have had cumulative impacts. However, staff does not believe that the current project represents a 'considerable' addition to cumulative impacts. The direct and even indirect impacts of this small project are negligible. Though the TAS cites a couple of different projects that have occurred, and one possibly without a proper permit, other projects on and near the bluff have gone through the permit, public review and environmental analysis process. No significant impacts were ever found, even for the construction of the ALMT.

One example that was cited by the TAS is the 1994 handicap accessible walkway. That project went through the permit process, and no significant impacts were identified. The LACO geologic report cited in the TAS letter found that work to be of a 'minor' nature, and it was larger than the current project. The 1994 Staff Report for the walkway (and other improvements) notes that Policy 69 approval was required. This indicates that the appropriate parties were notified, and no objections were received. There was no documented opposition to the Categorical Exemption (§15301) used for that project at that time. The TAS have not provided 'substantial evidence' that the Civic Club landscaping project will have cumulative impacts, or even specifically what those cumulative impacts may be.

Exceptions Continued – Historic Resources

Another exception to the CEQA exemptions cited by the TAS is 'f,' impacts to historic resources (which also relates to exception 'a'). The TAS documents that the Tsurai Village Site is an important and officially recognized historic resource, and the City does not dispute that. However, no evidence is provided that the project will cause a 'substantial adverse change in the significance of a historic resource.' Again, the CEQA Guidelines provide assistance to agencies making a determination as to the impacts on historic resources (§15064.5(b)):

"(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its

eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA."

The TAS has not provided 'substantial evidence' that the Civic Club project will have an adverse affect on the TSA or that it will alter its historic significance. The TAS letter states that the current Civic Club project *"has altered the natural landform to block the traditional path to the western access trail."* The City recognizes that the ALMT is a cultural resource. However, the TAS argument does not make sense in light of the fact that prior to the current project, there was a fence and small but steep drop-off / retaining wall that completely blocked any access to the trail from the Lighthouse. The current project may not result in opening the traditional access, but certainly does not further block that access. In fact, it opens much of the area up to provide additional access to the ALMT, which is consistent with several policies, plans and documents that cover the site.

Geology

According to the detailed slope stability map produced by SHN Consulting Engineers and Geologists for two alternative trail construction scenarios (Feb. 21, 1996; Reference # 920215.100), the Lighthouse property is located on the most stable area of this bluff. The overall conclusion was: *"Trail construction as proposed will not contribute to the existing slope failure hazard in any significant way. The entire project area is subject to significant long term risk of slope failure. In this geologic environment slope failure events tend to be episodic and unpredictable. Slope failure events large enough to substantially damage a significant portion of either trail alignment are considered to be a low level hazard through the lifespan of the project."* CEQA analysis and a Mitigated Negative Declaration were prepared for this trail project (SCH# 05113041).

The April 20, 1994 LACO Associates brief geologic report prepared for the handicap accessible walkway project states: *"It does not appear that the grading or improvements will adversely impact the coastal bluff or slopes within the project site. ... The adjacent coastal bluff area is generally unstable and is subject to erosion and slope movement. The processes involved in slope instability are complex and slope movement is hard to predict. Some time in the future coastal bluff retreat may require that the site be re-evaluated for repairs or relocation. In summary, the proposed project should have little or no effect on the stability of the coastal bluff. The proposed design, handicap access and stairs, seems to be adequate to minimize the potential for increased erosion or destabilization of the bluff during the anticipated lifespan of the project."* This LACO report also makes several recommendations to minimize the risks. These recommendations either do not apply to this project (because no new impervious surfaces were created), or the project is consistent with them (e.g. dispersing discharge with gravel). The SHN (cited above) and other Geologic reports (e.g. Busch Geotechnical Consultants Dec. 7, 1990) also note that there are several long-term and natural slope processes at work in the area, including slumping, toe slope wave erosion, high groundwater and seismic activity. This small project does not have the potential to alter those large-scale processes.

The Tsurai letter (p. 12) argues that the geologist's report prepared for this project by Lindberg Geologic Consulting is inadequate because it does not include all of the exact language of §17.20.130 which dictates the requirements for geologic investigations in unstable and

questionably stable areas. However, this project does not technically require a geologic report according to the City's certified LCP. This section applies to the SE zone; the UR and SR zones also refer to this section, but there is no such requirement in the PR zone. Further, this section applies to permitted development and permanent structures, not landscaping. Landscaping is not generally a regulated development and is considered exempt from permit requirements under the City's certified LCP. In this case, it is staff's understanding that current Coastal Act regulations do not exempt any development, including landscaping, within 50' of a bluff. Therefore, to err on the side of caution, the City is requiring a Coastal Development Permit and requested that the applicant have a geologist review the site, since it is mapped as being of questionable stability.

It is also staff's opinion that the information provided by Lindberg Geologic Consulting meets the requirements of Zoning Ordinance §17.20.130, particularly considering the minor nature of the work that occurred. The Civic Club's geologist made the required findings, including that the project would not increase slope stability: *"Based on my recent site visit, plan review, past site visits and explorations, and the information presented here, it is my opinion as a professional geologist and certified engineering geologist that the project will not significantly increase slope instability or erosion potential of the bluff top at the project location."* This portion of the bluff has been the subject of several detailed geologic reports that cover the issues that are mentioned in the TAS letter. The Civic Club geologist noted that he was familiar with this background material. Also, the minor nature of the project disturbance must be recognized. Things like slope failure are caused by multiple factors, particularly wave cutting at the toe of the slope. These processes are unpredictable and speculative. The Civic Club's geologist found that: *"Replacement with the steps as proposed will reduce the threat of slope instability..."* and that: *"Surface runoff will be slowed and dispersed by the gravel incorporated into the steps of this project... So, as with slope stability, the proposed project is anticipated to reduce the potential for concentration of runoff and erosion on the south side of the lighthouse and the top of the Axel Lindgren trail."*

The TAS has not presented any evidence that conflicts with the findings and information of the Civic Club's geologist. The TAS letter quotes a variety of geologic reports prepared for various projects in the past, but these statements are taken out of context, and no direct link is made to the current Civic Club project. For example, at the end of the letter, a 2002 Busch Geotechnical Consultants report is quoted as saying that a landslide near the lighthouse appears dormant because there are no cracks in the Edwards Street paving. A 2004 LACO Associates report is also quoted as saying that there is visible cracking in the concrete around the Lighthouse. I believe the intended implication is that in 2002 there were no cracks, and in 2004 there were, so the slide must now be active. However, the Busch report refers to paving on Edwards Street, and the LACO report refers to concrete around the Lighthouse. These are two different locations, and such a conclusion can not actually be assumed.

In addition, the 2004 LACO report found that *"addition of water to the subsurface is likely to be the single greatest factor contributing to the destabilization of the coastal bluff."* The Civic Club project will not affect groundwater conditions or drainage. This comprehensive LACO report also included the following conclusions: *"Based upon LACO's field investigation and review of existing geotechnical investigations, it appears that the coastal bluff occupied by Tsurai Village is subjected to long-term erosional processes occurring at relatively slow rates punctuated by episodic debris slide events. Rotational slumping of the coastal bluff toe slope, resulting from*

ongoing wave and tidal action, also contributes to destabilization of the upslope areas. The coastal bluff as a whole generally appears stable in its present configuration and is unlikely to undergo catastrophic slope movement. Factors which may ultimately contribute to localized slope instability in and around the Tsurai Village are:

- The diversion, concentration, and improper discharge of surface runoff onto the slopes above and on the Tsurai Village, originating from hardscaped surfaces such as rooftops, driveways, and patios;
- an increase in the groundwater elevation, and spring and creek flow volume due to excessive landscape irrigation, densely spaced and undersized septic leachfields, and the addition of new leachfields resulting from continual development;
- disposal of landscape yard waste and the girdling and topping of trees on the slopes above Tsurai Village;
- continual destabilization of the coastal bluff toe slope resulting from wave and tidal processes, and;
- strong earthquake groundshaking.

The Civic Club landscaping project will not contribute to any of these factors.

The TAS letter also reflects a concern about a retaining wall that was mentioned in the geologist's letter, but not the staff report or project description. Staff was unaware that the 'drop-off' below the old fence was partially held up by a small retaining wall. As I understand it now, the wooden retaining wall ranged from approximately 8" in height to a maximum of 18" in height. That does not change the permitting or requirements of the project; a retaining wall of that height would fall under the same requirements and exemptions as other landscaping. Another statement in the TAS letter implies that best management practices for erosion control were not properly placed during construction. However, such BMPs are not generally required during the dry season or during construction where they could interfere with active construction areas. For example, straw could not have been placed while the steps were under construction.

Policy 69

Policy 69 states in part: "*There shall be no disturbance, vegetative removal or construction, except for a protective fence around the burial ground, on lands designated as Open Space within the Tsurai Study Area without approval or the lineal descendants of Tsurai, Trinidad Rancheria, City of Trinidad and the State Historic Preservation Officer. Lands designated as Special Environment within the Study Area may be developed as provided in the Special Environment regulations provided the State Historic Preservation Officer is consulted and reasonable measures are required to mitigate any adverse impacts on this cultural resource*"

However, the project does not occur within Open Space or Special Environment designated lands; the Civic Club property is designated and zoned PR – Public and Religious. The site plan provided by the applicant shows all work occurring within the boundaries of the Civic Club property. The TAS has submitted no evidence to show that the work that occurred was outside those boundaries. Therefore, Policy 69 does not apply. However, the interested parties, even beyond those listed in Policy 69, have been notified and given a chance to comment on the project. The only objection received has been from the TAS.

Axel Lindgren Memorial Trail

The current Civic Club project does not impact the existing trail. I am not sure exactly where the traditional trail access was located through the Civic Club property. Based on the TAS comments, it can be concluded that the steps that were constructed, though broad and closer to the original entrance, do not provide access to that traditional entrance. The TAS letter claims that the project reduces the distinctiveness of the ALMT and subjects it to abuse and hazards. Staff can find no support for this claim. The steps do not block, hinder, redirect or otherwise affect the existing access on City property. Prior to the Civic Club project, the traditional access was blocked by a fence and a small retaining wall with a slope drop-off. In terms of public safety, it would not have been prudent to remove the fence and allow the public to walk over this drop-off without steps. The project simply provides an alternative access to the existing trail. The project also does not preclude additional or adjusted access in the future. I have requested that the Civic Club consider whether more access can be opened up to the east by removing the bench that was proposed and possibly some of the rock rip-rap.

Permitting, Coastal Act and LCP Consistency

The TAS letter notes that this project is subject to analysis under the Coastal Act. The letter also cites several policies and sections from the City's certified LCP, including the General Plan and Zoning Ordinance. As you know, the City's LCP has been certified by the Coastal Commission as consistent with and carrying out provisions of the Coastal Act. The City is authorized to issue Coastal Development Permits under its certified LCP. Staff is aware of some inconsistencies between current Coastal Act regulations and the City's LCP. However, most of these discrepancies are minor, and when they are known, staff uses the stricter of the two. Therefore, a separate analysis of Coastal Act policies is not required. In general, the project could be found to be consistent with policies promoting public access, improved viewsheds and coastal resource protection. In terms of the General Plan policies and Zoning Ordinance sections that are quoted, there is little explanation of the intent of these quotes. Staff has reviewed this information and some of the quotations do not apply to this project (e.g. the purpose of the Open Space zone), and it is staff's opinion that the project is consistent with the others that do apply (e.g. Policy 72 that protects beaches and cliffs from development).

In terms of specific projects mentioned in the TAS letter, the 1994 Staff Report for the walkway and other improvements notes that Policy 69 approval was required. This indicates that the appropriate parties were notified, and no objections were received. Also there was not opposition to the Categorical Exemption (§15301) used for that project. The 1992 fence project was cited in the TAS letter as being unpermitted development. That project was likely determined to be exempt from permit requirements. Section 17.72.070.C.1 of the Trinidad Zoning Ordinance exempts fences up to 6 ft. in height except in the SE Zone. It has been since that time that City staff has learned that this exemption would conflict with current Coastal Act regulations in certain situations (e.g. at the top of a bluff).

The City recognizes that the Coastal Conservancy easement extends over the Civic Club property. However, that easement does not convey approval authority to the TAS over development on that property or changes in access as stated on p. 9 of their letter. The landscaping project improves and expands public access and does not alter existing access, and

therefore would be consistent with the Conservancy easement. The Coastal Conservancy has not offered an objection to the current project (and neither have they endorsed it, but they have been informed). Similarly, neither the Coastal Act, nor the TMP give the TAS veto power over projects within the Civic Club property. Policy 69 is the only place that such authority has been given, and it only applies to lands designated as Open Space.

Tsurai Management Plan

One of the recommendations of the Tsurai Management Plan (TMP) is to reopen the traditional entrance of the ALMT through the Civic Club property. Some of the findings of the TMP for the ALMT (p. 57) are that: *"The entrance of the ALMT trail has been diverted and is not in its traditional path, due to the location of fencing around the Memorial Lighthouse over the objections of the TAS and Yurok Tribe;"* and that: *"Per the terms of the litigation settlement agreement signed by the Coastal Conservancy, the City, and the TAS, "all parties are to make the best effort to open a portion of the fence currently blocking the traditional trails (ALMT)."* In addition, Part 12 of the TMP outlines proposed projects and implementation. Section 12.2.1 is to 're-establish traditional entrance to ALMT at top of trail' with the following steps:

- Reinitiate discussions with the Civic Club to open fencing to allow passage across lighthouse grounds.
- Engineering evaluation of stability of, and recommendations for, western approach (ramps) to trail.
- Obtain Coastal Development Permit, if necessary, to open fencing.
- Open traditional entrance to ALMT.

The proposed project does not conflict with these recommendations. The Civic Club public and staff were not generally involved in the development of the TMP, and do not have the same background to specifically know what these recommendations intended. For example, I have no information that shows me where the traditional trail entrance was. Though not every step of this TMP implementation project has been executed, (e.g. the engineering evaluation of the western approach the ALMT has not occurred) the Civic Club project appears to implement this TMP recommendation in part. However, opening the fence and an engineering evaluation of the western ALMT access are two different projects under two separate ownerships. One project does not require or preclude the other. The Civic Club landscaping project also addresses some other issues, concerns and recommendations of the TMP including erosion control and invasive species removal. The Civic Club project included removing invasive Himalaya blackberries as well as installing erosion control and drainage improvements, including the rip-rap made from rocks found on the site and the terracing towards the ALMT.

List of Acronyms

ALMT: Axel Lindgren Memorial Trail
CDP: Coastal Development Permit
CEQA: California Environmental Quality Act
LCP: Local Coastal Plan
TAS: Tsurai Ancestral Society
TMP: Tsurai Management Plan
TSA: Tsurai Study Area

City Council Staff Report for Appeal of Civic Club 2012-04

Response to issues brought up in TAS August 14, 2012 letter, submitted at the Planning Commission meeting.

Pre-historic and Historic Artifacts

Representatives of the TAS, including Sarah Lindgren-Akana who is a trained and certified cultural monitor, have stated that both historic and prehistoric items important to the TAS were found in the soil from the Civic Club property that was deposited at the Museum site. This could be considered expert testimony under CEQA meeting the substantial evidence standard. Therefore, the issue becomes a determination of whether there are impacts and whether any impacts may be significant. I have included several excerpts from the CEQA statutes, guidelines, court cases and other sources to help put this question into perspective.

Baseline

We'll start at the beginning. From which point are impacts measured? Under CEQA, impacts must be considered in relation to the 'baseline' conditions. Section 15125(a) of the CEQA Guidelines includes a description of the required 'environmental setting': "*An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.*"

The TAS has brought up issues of past unauthorized or illegal uses and activities occurring at the site and surrounding areas, and that the impacts of these projects should be included in the analysis of the current project. (Permitting issues are further addressed in the supplemental staff report under the subheading 'Permitting, Coastal Act and LCP Consistency' starting on page 7. Cumulative impact analysis under CEQA is further discussed in the supplemental staff report under the subheading 'Exceptions Continued – Cumulative Impacts' starting on page 2) The CEQA baseline generally reflects the existing conditions regardless of what has occurred in the past. Unauthorized, long-term, existing uses are considered part of the baseline (*Kenneth F. Fat v. County of Sacramento* (2002) 97 Cal. App. 4th 1270). Similarly, prior illegal activity does not require rolling back the existing baseline (*Riverwatch v. County of San Diego* (1999) 76 Cal. App. 4th 1428). Therefore, when considering the impacts of this project and possible exceptions to the exemptions, the existing conditions, prior to the project commencing, are the starting point for determining significance, not some point in the past.

Archeological Resources

Section 21083.2 of the CEQA statute includes definitions of unique and non-unique archeological resources. This differentiation is important, because impacts to non-unique resources are not considered significant under CEQA:

(g) *As used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to*

the current body of knowledge, there is a high probability that it meets any of the following criteria:

- (1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.
 - (2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.
 - (3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.
- (h) As used in this section, "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects. [emphasis added]

Though there are important historic and archeological resources found within the TSA, the site itself has to be considered. (Historic resources and CEQA are further addressed in the Supplemental Staff Report under the subheading 'Exceptions Continued -- Historic Resources' starting on page 3.) The site where the work occurred has clearly been disturbed several times over the years, most notably when the site was graded for placement of the lighthouse in 1948. It is also evidenced by the fact that foreign materials (Trinidad quarry rock), not native to the bluff were within the soil that was disturbed as part of this project. When historical or archeological items are disturbed and removed from their original context, they can lose much of their significance. "*Critically essential to the methodologies, techniques, and processes of studying archaeological resources is the preservation of the undisturbed stratigraphic context of the cultural debris. Directly stated, the cultural debris of this nation's archaeological resources have no value for studying the past once they have been rearranged on the landscape by a bulldozer or a dragline.*" (Nickens, 2000; 'The Destruction of Archeological Sites and Data,' excerpt from 'Protecting the Past,' edited by Smith and Ehrenhard; available at: <http://www.nps.gov/seac/protecting/index.htm>).

Appendix 2 of the CEQA Technical Advice Series, 'CEQA & Archeological Resources, April 1994' (available at: <http://ceres.ca.gov/ceqa/more/tas/ArcAppn2.html>) provides further guidance as to what constitutes and important archeological resource:

"III. If the Lead Agency determines that a project may affect an archaeological resource, the agency shall determine whether the effect may be a significant effect on the environment. If the project may cause damage to an important archaeological resource, the project may have a significant effect on the environment. For the purposes of CEQA, and "important archaeological resource" is one which:

- A. Is associated with an event or person of:
 1. Recognized significance in California or American history, or
 2. Recognized scientific importance in prehistory.
- B. Can provide information which is both of demonstrable public interest and useful in addressing scientifically consequential and reasonable or archaeological research questions;
- C. Has a special or particular quality such as oldest, best example, largest, or last surviving example of its kind;
- D. Is at least 100 years old and possesses substantial stratigraphic integrity; or

- E. Involves important research questions that historical research has shown can be answered only with archaeological methods.*
- IV. If an archaeological resource is not an important archaeological resource, both the resource and the effect on it shall be noted in the Initial Study or EIR but need not be considered further in the CEQA process.* [emphasis added]

TAS often refer to 'CA State Historic Landmark #838,' which is listed as the 'Old Indian Village of Tsurai.' This landmark, designated in 1969 includes the Village and some of the surrounding area, but not the entire TSA. Nor does it include the Lighthouse site, which had already been constructed by 1969. It should be noted that CA State Historic Landmark #216 is the Town of Trinidad, but that does not mean that soil disturbance anywhere within the City has negative impacts; it is not even required to be addressed in development permits. The preceding information leads me to conclude that any prehistoric or historic items that were disturbed during the work that occurred related to the Civic Club project are not important or unique archeological resources in terms of State law and CEQA, even though they may be personally important to the TAS.

Level of Impact

The following quote comes from an existing EIR discussing how to determine impacts to historic and cultural resources: "*Significant impacts are those that diminish the integrity, research potential or other characteristics that make a resource significant or important. Adverse but not significant impacts are those that alter the characteristics of a resource but do not diminish the resource's significance, such as the removal of a small, disturbed portion of an archaeological site. Adverse but not significant impacts also include impacts on non-significant resources and temporary impacts.*" [emphasis added] (Sonoma-Marín Area Rail Transit, DEIR, 11/05, 3.15.3)

Similarly: *If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.* (Native American Heritage Commission, 'Determining the Significance of Impacts to Archeological and Historical Resources,' available at: http://www.nahc.ca.gov/Article_5.html)

Conclusion / Summary

Based on the information above, several conclusions can be made. First, the condition of the site as it existed before the project started in early 2012 is the baseline from which the level of any impacts is measured. Second, any prehistoric or historic resources that may have been disturbed as a result of the work had previously been disturbed and are no longer within their historic context. These resources are not considered unique or important. Finally, because of their previously disturbed status, impacts to these resources are not considered significant under CEQA. Representatives of the Yurok Tribe have suggested that the soil that was removed from the project area be respectfully redistributed back on the site, and the Planning Commission included this as a condition of project approval. Since the soil and materials had previously been disturbed, this would essentially return them to their pre-project condition.

Within this section of their August 14, 2012 letter, the TAS also bring up the issue of redirection of the ALMT, which further discussed in the Supplemental Staff Report on page 7 under the heading of 'Axel Lindgren Memorial Trail' and page 8 under the heading of 'Tsurai Management Plan.' The location and boundaries of the Civic Club property was also raised as an issue, which is further discussed in the Supplemental Staff Report page 6 under the heading of 'Policy 69.'

Retaining Wall

When I wrote the original staff report, I did not know there had been a small, wooden retaining wall below a portion of the fence that was removed. I thought it had simply been a topographical / ground drop-off. It could be assumed that the retaining wall was put in when the fence was installed. Retaining walls 18" in height or less are exempt from a CDP per the City's certified LCP (§17.72.070.C.2.a) in the PR zone. It has only been recently that staff has become aware that these exemptions are not consistent with current Coastal Act regulations in certain instances, such as at the top of a bluff. Therefore, City staff probably would have considered such a retaining wall (along with the fence) to be exempt from permits in the 1990's.

March 2012 Landscape Drawing

Emailing the staff report to Sarah was a courtesy, not a requirement. If I had thought about it, I would have included the site plan, but only the staff report was requested. Plus, I assumed the TAS already had a copy of the plan. The City did not receive a copy of the Civic Club plan until the official application was submitted on June 12, 2012. I received a copy when I met Patti and Charles on the site the previous day (June 11). Therefore, when Karen spoke with Kelly regarding the Stop Work Order, she had not yet received any written materials, just as she stated.

The following issues were brought up within this same section of the TAS letter of August 14, 2012:

Drainage & Runoff

The brief geologic report that was submitted by the Civic Club regarding this project did in fact address drainage and runoff: *"Surface runoff will be slowed and dispersed by the gravel incorporated into the steps of this project. The old fence and wall was apparently undrained, so that the retained soils could become saturated and surface runoff could flow over the top of the wall, concentrating flow and increasing erosion potential. So, as with slope stability, the proposed project is anticipated to reduce the potential for concentration of runoff and erosion on the south side of the lighthouse and the top of the Axel Lindgren trail."* Other than various quotes from geologic reports prepared for other projects, sometimes taken out of context, no additional information or expert opinion has been submitted by the TAS or the public regarding geologic or hydrologic impacts of this particular project.

Handicap Ramp Drainage

This comment is in reference to a project 18 years ago on City property. Whether that project complied with certain conditions is not germane to the current project and is not the responsibility of the Civic Club. The TAS should pursue this directly with the City through proper channels.

Comments in Bold

CEQA and cumulative impacts have been adequately addressed in the Supplemental Staff Report. To summarize, requesting an EIR is to skip a major step in the CEQA process: the initial study. It can be seen, with reasonable certainty, that this project does not have a considerable contribution to any cumulative impact. The City can not legally hold the Civic Club responsible for projects occurring over the past 20 years that were conducted by the City and others on adjacent property whether or not they were permitted.

Photos

I'm not really sure what these photos are supposed to be evidence of, and they are not in context. The Civic Club site was never under the management of the Coastal Conservancy as it was donated directly to the Civic Club from the Hallmarks in the 1940's. Though it did turn out that the Lighthouse was not actually constructed on the donated property, and this oversight was corrected with the 1997 quitclaim deed. And again, this is not really germane to the discussion of the current project.

Response to issues brought up in the Aug. 29, 2012 appealIllegal construction of additional steps to the ALMT located within the TSA:

Without further information, this appears to be what the Civic Club is currently applying for a permit to construct. Though it is recognized that the work occurred prior to obtaining appropriate permits, approval of the current application would correct that problem.

Misrepresentation of the original project design by the Trinidad Civic Club and its agent Charles

Netzow: It is not clear exactly what this is referring to. It does appear that the project that was originally envisioned and discussed with various parties (including the City Building Inspector) evolved into something more ambitious by the time the work occurred. However, this is not particularly unusual. What is unfortunate is that the Civic Club and Charles did not continue to inform the interested parties as the project description changed. A summary of this history is included on page 2 and 3 of the original staff report (June, July or August versions). However, such a history does not affect the current decision, and is not a valid basis for an appeal. The City now has a complete and current project description, which is the subject of this permit application.

Redirection of ceremonial trail known as the Axel Lindgren Memorial Trail:

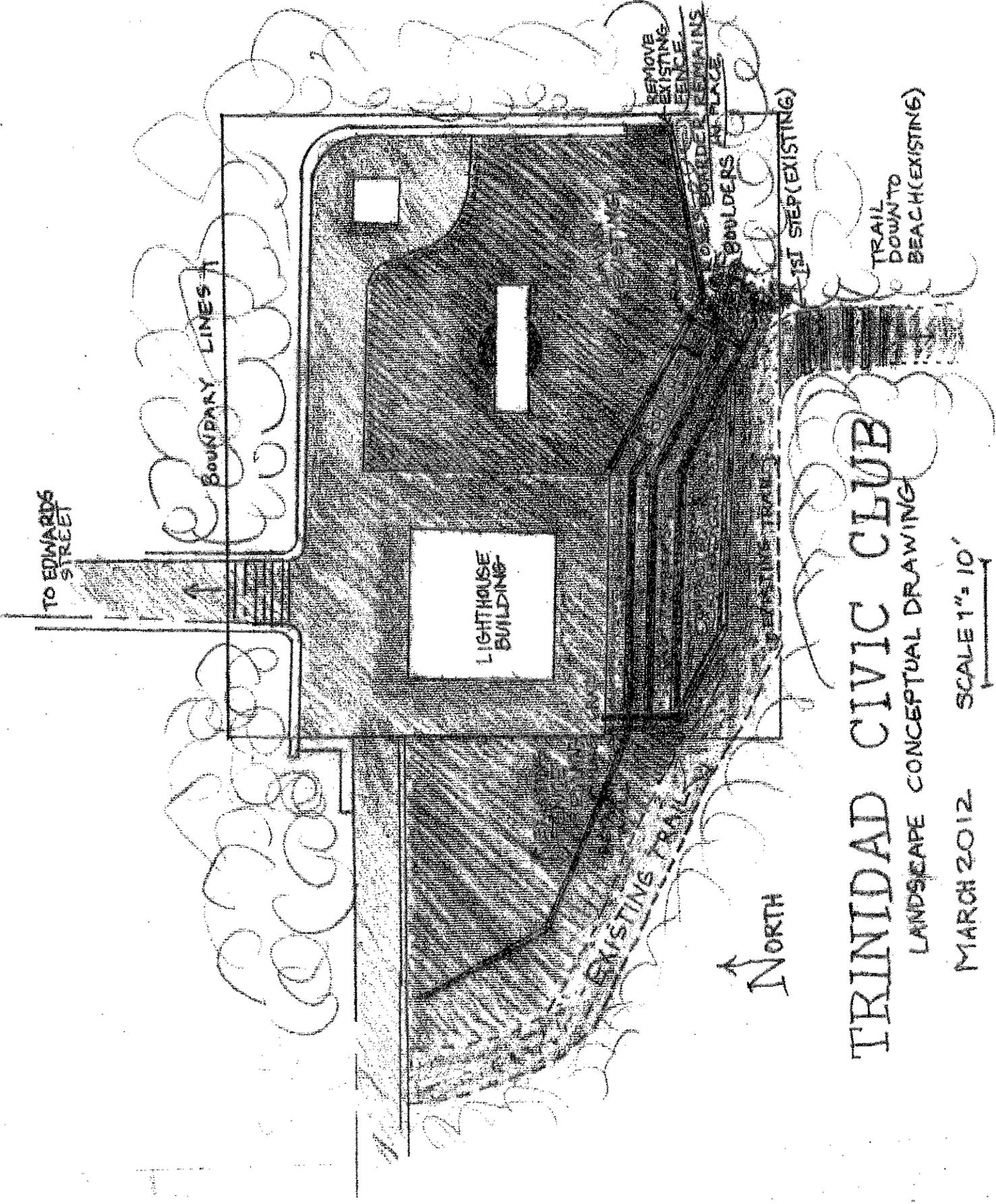
This statement is somewhat misleading. The existing entrance to the trail is unaffected by this project. The Civic Club project provides additional access to the trail, but does not redirect it from its current configuration. This issue is further discussed in the Supplemental Staff Report on page 7 under the heading of 'Axel Lindgren Memorial Trail' and page 8 under the heading of 'Tsurai Management Plan.'

Destruction and illegal distribution of historical and pre-historical artifacts from a protected Indian Village (CA State Historic Landmark #838): Please see discussion above under the section 'Pre-historic and Historic Artifacts' starting on page 1 of this document.

Violation of City of Trinidad Policy 69 (construction of additional steps resulting [in] redirection of ceremonial trail located within the Tsurai Study Area: The site plan submitted by the Civic Club shows all work occurring with the Civic Club property. Policy 69 only applies to areas zoned Open Space within the TSA, and the Civic Club property is zoned Public and Religious. Therefore, Policy 69 does not apply. The TAS has not submitted any evidence that conflicts with this determination or that shows work occurred outside the Civic Club property boundaries. This issue is further discussed in the Supplemental Staff Report page 6 under the heading 'Policy 69.'

Unknown environmental impact upon the TSA from construction of terracing steps intended to redirect water runoff onto the ALMT and resulting areas located within the TSA: It can be seen with reasonable certainty that this small project will not have environmental impacts, though slope stability is an important consideration. This statement is somewhat misleading, as runoff has not been directed onto the ALMT. One of the purposes of the project is to reduce erosion potential and improve drainage. The Civic Club has provided a brief geologic report that supports this and found that there would be no impacts. The TAS has not submitted any evidence to the contrary except for various excerpts from geologic reports that were prepared for other, larger projects. This issue is further discussed on pages 4 through 6 of the Supplemental Staff Report under the heading of 'Geology.'

Cumulative construction upon the bluff resulting in major changes to the natural contours of the land, resulting in negative, adverse impacts to the TSA, and visual destruction of natural landforms: Again, it can be seen, with reasonable certainty, that this small project will not have significant environmental impacts, including ones that are cumulatively considerable. The TAS have not submitted evidence of such impacts or even stated specifically what the impacts are. Please see the discussion of cumulative impacts on page 2 through 3 of the Supplemental Staff Report under the heading of 'Exceptions Continued – Cumulative Impacts.' Further, the City can not legally hold the Civic Club responsible for projects occurring over the past 20 years that were conducted by the City and others on adjacent property whether or not they were permitted.



TRINIDAD CIVIC CLUB

LANDSCAPE CONCEPTUAL DRAWING

MARCH 2012

SCALE 1" = 10'

LINDBERG GEOLOGIC CONSULTING

David N. Lindberg, CEG

Post Office Box 306

Cutten California 95534

(707) 442-6000

June 18, 2012

0045.00

Mr. Charles Netzow
Post Office Box 234
Trinidad, California 95570

Subject: Trinidad Lighthouse Landscaping Modifications

Dear Mr. Netzow:

Thank you for meeting me today at the Trinidad Memorial Lighthouse in Trinidad. As requested, this letter was prepared to address concerns over the proposed site landscaping modifications and the potential effects of those modifications on erosion potential and slope stability at the Memorial Lighthouse. An on-site inspection of the proposed work (in progress), and the immediate area of the bluff top around the Memorial Lighthouse was conducted on June 18, 2012. Also, the plan for the landscape modifications was reviewed during our site meeting. Over the years, I have performed and/or collaborated on a number of geologic investigations around the Trinidad bluff top, at the lighthouse and for the Axel Lindgren trail.

As proposed, the project will replace a failing wooden landscape retaining wall on the south side of the Memorial Lighthouse at the Axel Lindgren trail. Several broad, wide, wood and gravel steps will replace a portion of the existing, failing wooden fence and retaining wall. Work was started before it became apparent that there were certain permitting constraints affecting this site, so between one and two cubic yards of soil were removed and are stockpiled at the Trinidad Museum/Library property. As of the date of this letter, roughly half of the new steps have been installed and the project sits incomplete.

Replacement with the steps as proposed will reduce the threat of slope instability at the project location through removal of the leaning fence and wall, and the unstable mass of soil formerly retained by the wall. Inevitably, the wall would have failed and released that mass of soil down the slope. It seems likely that the soil removed was mainly imported topsoil placed as landscaping fill, and not soil originally present on the site. Thus, the proposed project will have a beneficial effect on slope stability.

Surface runoff will be slowed and dispersed by the gravel incorporated into the steps of this project. The old fence and wall was apparently undrained, so that the retained soils could become saturated and surface runoff could flow over the top of the wall, concentrating flow and increasing erosion potential. So, as with slope stability, the proposed project is anticipated to reduce the potential for concentration of runoff and erosion on the south side of the lighthouse and the top of the Axel Lindgren trail.

Based on my recent site visit, plan review, past site visits and explorations, and the information presented here, it is my opinion as a professional geologist and certified engineering geologist that thee project will not significantly increase slope instability or erosion potential of the bluff top at the project location.

Please contact me at the number above if you have any concerns or questions.

David N. Lindberg, CEG 1895
Lindberg Geologic Consulting

DNL:



Tsurai Ancestral Society
P.O. Box 62
Trinidad, Ca. 95570

July 10, 2012

City of Trinidad Planning Commissioners
Trevor Parker, City of Trinidad Planner
P.O. Box 390
Trinidad, CA. 95570

RE: June 13, 2012 Staff Report
Application: 2012-04
Applicant: Trinidad Civic Club
Agent: Charles Netzow

Dear Planning Commissioners and Trevor Parker,

The following is the Tsurai Ancestral Society's response to the City Planner's Staff Report regarding the Civic Club Project. **The Tsurai Ancestral Society request the Commission to deny the project and request an Environmental Impact Report with Cumulative Impact Analysis be conducted to address the cumulative impacts of all previous projects of the same type within and around the Trinidad Memorial Lighthouse. Many if not all of these previous projects were conducted without benefit of a permit, including a Coastal Development Permit. The City should also require that all of this unpermitted development be incorporated into this permit application, so that a proper review of the individual and cumulative impacts of this development may be conducted.**

The City Planner's Staff Report Environmental Review claims the project is Categorically Exempt from CEQA per 15304 of CEQA Guidelines exempting minor alterations to land. That section on Categorically Exempt Guidelines states the following:

"Class 4 consists of minor public private alterations in condition of land, water and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes."

The Tsurai Ancestral Society disagrees with the City's Staff Report findings that the Civic Club Project is Categorically Exempt from CEQA per 15304. In fact the exceptions to that exemption apply to this development.

The 15300.02 Exceptions to Categorical Exemptions states the following:

"(a) Location. *Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies."*

"(b) Cumulative Impact. *All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant."*

"(f) Historic Resources. *A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource."*

15300.02 Exceptions (a) Location and (f) Historic Resources apply to this project. The location of the Civic Club Project and the Project itself has caused substantial adverse change to the State Historic Landmark #838 Village of Tsurai, and the Tsurai Study Area which contains a portion of the village including the Traditional Yurok Trail known as the Axel Lindgren Memorial Trail. The Tsurai Management Plan for the Tsurai Study Area (TSA) Part 10 Findings, Cultural Resources pages 59 and 60 states the following:

"The Tsurai Village is listed in the inventory of Historic Places as CA-HUM-169. It was placed on the California Inventory of Historic Places in 1969 as State Historic Landmark #838 "Old Indian Village of Tsurai."

"In 1977 the Tsurai Village was nominated to the National Register of Historic Places as CA-HUM-169."

"Tsurai Village and the cemetery are sacred sites that should be protected in accordance with exiting local, state, and federal law, as applicable."

"Archaeological deposits and human burials, exist throughout the TSA, and extend into areas beyond the TSA."

The Tsurai Management Plan for the Tsurai Study Area (TSA) Part 10 Findings, Axel Lindgren Memorial Trail (ALMT) pages 56, 57 and Part 11 Recommendations, Axel Lindgren Memorial Trail (ALMT) page 69 states the following:

"The ALMT is a Ceremonial Trail and a Traditional Cultural Property for the Yurok Tribe and the Tsurai Ancestral Society. The ALMT is the Traditional Yurok Trail to the Village of Tsurai."

"The ALMT requires special consideration due to its status as both the designated primary beach access trail and as the Tsurai Traditional and Ceremonial Trail."

"The ALMT should be managed as a Traditional Cultural Property, an Established Historic Property type under the National Historic Preservation Act."

The Tsurai Management Plan for the Tsurai Study Area (TSA) Part 10 Findings, Recreational Resources Page 55 states the following:

"The Coastal Conservancy retains a conservation easement through the City and Civic Club Properties for recreational, cultural and natural resources. This conservation easement includes the preservation of public access and recreational uses, the protection of archaeological resources, and the protection of natural resources within the TSA..."

The City of Trinidad General Plan Policy 69 states in part:

"There shall be no disturbance, vegetation removal or construction, except for a protective fence around the burial ground, on lands designated as Open Space within the Tsurai Study Area without the approval of the lineal descendants of Tsurai, Trinidad Rancheria, City of Trinidad and the State Historic Preservation Officer..."

Most of the development for which approval is sought in this permit application has already been conducted, without any permit in hand, and without any concern for the sensitive nature of the resources that have been damaged. The Civic Club project has negatively impacted the Tsurai Village and the Axel Lindgren Memorial Trail. The Tsurai Ancestral Society had no knowledge nor agreed to the Civic Club

Project; including the alteration to the Axel Lindgren Memorial Trail. Historic and Pre-Historic items have been found in the soil at the project site and in the soil that was dumped at the Trinidad Museum. The soil excavated from the site has been used as fill for the western access trail, piled to the side of the Axel Lindgren Memorial Trail, and given to unknown Trinidad residents for their yard and gardens. Also, soil mixed in with grass was thrown off the cliff at a Trinidad resident's home located off Stagecoach Road. Best practices erosion control and site management may be in place now but this was not the case during the 90% of the project's construction. The matting and straw were not placed throughout the project till several weeks later after the City of Trinidad stopped the project.

The City of Trinidad General Plan Zoning Ordinance Section 17.60 Design Review/View Preservation states:

"Design Criteria,

1)The alteration of natural landforms caused by cutting, filling, and grading shall be minimal. Structures should be designed to fit the site rather than altering the landform to accommodate the structure."

"View Protection,

E) The Tsurai Village site, the Trinidad Cemetery, the Holy Trinity Church and Memorial Lighthouse are important historic resources. Any landform alterations or structural construction within one hundred feet of the Tsurai Study Area, as defined in the Trinidad General Plan, or within one hundred feet of the lots on which identified historical resources are located shall be reviewed to ensure that public views are not obstructed and that development does not crowd them and thereby reduce their distinctiveness or subject them to abuse or hazards."

The Civic Club's Project has reduced the distinctiveness and has subjected the Axel Lindgren Memorial Trail to abuse and hazard. The project's design has altered the natural landform to block the traditional path way. The traditional path way is straight up through the Memorial Lighthouse not as the project has done by constructing a 30 foot terraced steps and placement of rocks that redirects the traditional path to the western access trail.

For all these reasons, the project is subject both to the "Location" exception and to the "Historic Resources" exception to the CEQA categorical exemption and full CEQA review is required.

15300.2. Exceptions (b) Cumulative Impact applies to this project.

Successive projects of the same type in the same area of the Civic Club Project over time are having a significant adverse impact to the Tsurai Village, Axel Lindgren Memorial Trail and the Tsurai Study Area. Some of the projects in the past 20 years include but are not limited to:

1: The 1992 Fence:

In 1992 the City of Trinidad and the Civic Club constructed a fence to block the Tsurai Lineal Descendant's Traditional Path to the Tsurai Village. This was done without a permit and without the approval of the Tsurai Ancestral Society.

The November 11, 1992 City of Trinidad Council meeting minutes state in part:

"Agenda Item #2 City/Civic Club Discussion RE: Expenditure made for closure and installation of fence at illegal Indian Beach Trail... "Kirk reported a trail has been cut below the lighthouse...Ladies Club will assist in the cost. Fence installed and brush laid across trail, no trespassing sign, labor done by public works dept, Kirk and Odom... Motion was made by Rotwein to instruct the City Clerk to post in all the appropriate places an notice of \$50.00 reward for information leading to the apprehension of person or persons involved in the clearing of the new trail below the Trinidad lighthouse. Odom seconded all approved motion carried.

In April of 2005 a Settlement Agreement was entered into by and among the California Coastal Commission, the State Coastal Conservancy, City of Trinidad, and the Tsurai Ancestral Society, as the "Parties." The Settlement Agreement states in part:

"The Tsurai Village is a vital resource both for the Tsurai and for the public at large. The parties desire to protect the Tsurai Village from negative impacts both intentional and unintentional."

"Management Plan Process; The Conservancy and its grantee, the Yurok Tribe, will continue the Management Plan Process and the Parties agree to cooperate and assist in that process."

"ALMT; The Parties will make best efforts to open a portion of the fence now blocking the traditional trail to the Tsurai Village site ("Axel Lindgren Memorial Trail").

The 2007 Tsurai Management Plan for the Tsurai Study Area (TSA)
12.0 Proposed Projects and Implementation 12.2.1 Re-Establish Traditional Entrance to the Axel Lindgren Memorial Trail (ALMT) at top of trail page 75 states the following:

"Steps

- Reinitiate discussions with Civic Club to open fencing to allow passage across lighthouse grounds.
- Engineering Evaluation of stability, and Recommendations for western approach (ramp) to trail.
- Obtain Coastal Development Permit, if necessary to open fencing.
- Open traditional entrance to ALMT.

Timeline 1-2 years

Cost to be considered:

- Permitting fees.
- Engineering Evaluation of western approach (ramp).
- Follow-up activities to Engineering Evaluation."

As part of the current 2012-04 Civic Club's Project, the fence has been taken down and replaced with terraced steps and rocks that continues to block the Axel Lindgren Memorial Trail from its traditional path way. This was done without a permit and without the approval of the Tsurai Ancestral Society.

2: 1994 Handicap Ramp:

On May 9, 1994 the California Coastal Commission received from the City of Trinidad a notice of local action on the coastal development permit (Commission Reference #1 TRN-94 115). The applicant, Trinidad Civic Club. Their project description, location states, "Install sidewalks and memorial plaque on existing wall and handicapped ramp and refurbish landscaping, at Edwards Street, Trinity Lighthouse, City of Trinidad, APN 42-091-04."

Although the project description states the location of the handicapped ramp and landscaping being on APN 42-091-04 it was actually on APN 42-091-05.

APN 42-091-05 is part of the Tsurai Study Area. This was done without the approval of the Tsurai Ancestral Society.

On April 20, 1994 LACO Associates provided the Trinidad Planning Department a Geologic Report for the proposed remodel for the Trinidad Civic Club Memorial Lighthouse. LACO Associates states the following:

"To insure that storm surface runoff from the pavement does not cause increased erosion or contribute to slope instability of the coastal bluff, the runoff should be collected and tight lined to a down slope ridge site. The discharge should be dispersed with energy dissipaters (e.g. cobbles or rock). Any disturbance to the coastal bluff should be revegetated. Grading and remodeling at the site should be conducted during the dry months of the year to prevent erosion and increased slope instability. Heavy equipment should not get within 5 feet of the coastal bluff break in slope as defined by the existing wood fence."

On November 16, 1994 LACO Associates provided City of Trinidad Mayor Tom Odom a Slope Stability Report at the Civic Club Memorial Lighthouse. LACO states:

"In response to the request of Mr. Marvin Manor, the Memorial Lighthouse site was examined by a geologist from our office on November 10, 1994. Mr. Manor was concerned about the headscarp of an apparent slope failure (landslide or earthflow) which he had noticed in the southeast corner of the site (Figure attached).....While on site, it was noted that some of the recommendations in our geologic report were not being adhered to. The contractor stated he had employed a tractor to pile the landscaping boulders in the south east corner of the site; we had recommended no heavy equipment within 5 feet of the break in slope as defined by the existing fence on the south edge of the

site). The additional weight of the landscaping boulders on the top portion of the slide may have had a destabilizing effect on the slope below. We had also recommended that the work of remodeling the site and installation of the handicapped access ramp be conducted during the dry months to avoid potential problems due to runoff and erosion....In addition to the recommendations in our April 20, 1994 report we further recommend that this site be monitored regularly during the wet season so that any additional slope movements can be noted promptly and any necessary repairs or site controls can be initiated immediately. Runoff and general site drainage controls should be reviewed by the Trinidad City Engineer for adequacy.

Throughout the planning process of the Tsurai Management Plan (2003-2007) the City of Trinidad refused to provide any documentation regarding the Tsurai Study Area. To this day it is still unknown if the Trinidad Civic Club Project followed LACO Associates April 20, 1994 Recommendation:

"To insure that storm surface runoff from the pavement does not cause increased erosion or contribute to slope instability of the coastal bluff, the runoff should be collected and tight lined to a down slope ridge site. The discharge should be dispersed with energy dissipaters (e.g. cobbles or rock)."

As part of the 2007 Tsurai Management Plan for the Tsurai Study Area (TSA) Proposed Projects and Implementation 12.2.1 to re-establish traditional entrance to the Axel Lindgren Memorial Trail (ALMT) the proposed project includes Engineering Evaluation of Stability and Recommendations for the handicap ramp to trail, page 75 states in part:

"Steps

*Engineering Evaluation of stability of and Recommendations for western approach (ramp) to trail.

Timeline 1-2 years

*Permitting fees.

*Engineering Evaluation of western approach (ramp).

*Follow-up activities to Engineering Evaluation."

The current 2012-04 Civic Club Project is located in the same area where the headscarp slope failure occurred during construction of the 1994 Civic Clubs handicap ramp project (the southeast corner of the Memorial Lighthouse property). The Civic Club's June 18, 2012 Geologic Report prepared by **Lindberg Geologic Consulting did not address this slope failure as part of his assessment for the Civic Club Project.**

3: The 1997 City of Trinidad Quitclaim Deed:

In 1997 the City of Trinidad quitclaim deed a portion of the Tsurai Study Area to the Trinidad Civic Club. This transfer of land blocked the Axel Lindgren Memorial Trail from its traditional path way straight up through the Memorial Lighthouse. This was done without the approval of the Tsurai Ancestral Society.

The 2007 Tsurai Management Plan of the Tsurai Study Area (TSA) Part 10 Findings, 10.1 Recreational Resources, pages 55 and 56 states in part:

"The Conservancy reserved its Conservation easement over the entire 12.5 -acre property deeded to the City in 1989. A portion of this property was later conveyed to the Civic Club. The Civic Club thus took title subject to the pre-existing easement in favor of State."

"The Coastal Conservancy retains conservation easement through the City and Civic Club properties for recreational, cultural and natural resources. This conservation easement includes the preservation of public access and recreational uses, the protection of archaeological resources, and the protection of natural resources within the TSA..."

The City could not convey to the Civic Club a property interest that it did not possess. Because the Coastal Conservancy retained an easement that included the preservation of public access, neither the Civic Club nor the City can act unilaterally to modify that access. **Pursuant to the terms of the easement, the provisions of the Coastal Act and the requirements of the Management Plan changes to the traditional path of the Axel Lindgren Memorial Trail require the prior approval of both the Conservancy and the Tsurai Ancestral Society.**

4: The 1997 Western Access Trail:

After the City of Trinidad conveyed by quitclaim deed part of the Tsurai Study Area to the Civic Club, the City constructed a western access trail to provide access to the Axel Lindgren Memorial Trail. This was done without a permit and without the approval of the Tsurai Ancestral Society.

The 2007 Tsurai Management Plan of the Tsurai Study Area (TSA) Appendix G: LACO Associates Study of TSA 10.0 Recommendations page 232 states in part:

"4) Access to the Axel Lindgren Memorial Trail should be re-routed back to its original location through the grounds of the memorial lighthouse. The existing upper trail access, sited on failing sidecast fill material alongside the southwest corner of the lighthouse grounds should be abandoned and the fill removed to prevent the need for ongoing maintenance..."

All of these projects have had not only individual but cumulative impacts as well upon the cultural and historic resources of the Tsurai Study Area. Further, most if not all of these projects have not been conducted pursuant to required permits, including coastal development permits. **The cumulative impacts of this project, in conjunction with the impacts of those previous successive projects require that this project be found to be an exception for Cumulative Impacts to the CEQA Categorical Exemption suggested by staff. Full CEQA review of all individual and cumulative impacts of this project and these previous projects is required.**

Further, even if the Planning Commission were to follow its staff's suggestion that this project is exempt from CEQA, it is still subject to the full requirements of the Coastal Act. It is not exempt from Coastal Development Permit requirements, and therefore a full analysis of the individual and cumulative impacts of the proposed project is required. CEQA exemptions do not alter any of the requirements for review under the Coastal Act. This project may not be approved until that analysis has been conducted, so that the Planning Commission properly may consider the full impacts of the project, along with all of the impacts of the prior successive projects.

The City of Trinidad's General Plan Land Use and Zoning Ordinances for the area where these projects were constructed within and around the Memorial Lighthouse include but not are limited to: Public and Religious, Open Space, Community Design and Policy 69.

The City of Trinidad's General Plan Land Use Public and Religious Category states the following:

"The Public and Religious Category identifies areas owned by public agencies or religious organization. (Public ownerships that are essentially open space on the land use map.) Public agency ownerships include school sites, public parking areas, utility substation, fire stations, public buildings, and cemeteries, existing church sites are also included in this category. Any proposed public and religious facilities are intended to be compatible with near by land use and to be located on streets which offer convenient access."

The City of Trinidad's General Plan Zoning Ordinance Section 4.02 states the following:

"The Open Space Zone is intended to be applied to areas designated open space in the Trinidad General Plan. The purpose of this zone is to maximize preservation of the natural and scenic character of these areas. Including protection of important wildlife habitat and culture resources and ensure that the health and safety of the public is ensured through careful regulations of development in area affected by geologic instabilities, steep slopes, tsunami and flood hazards."

Appendix A of the City of Trinidad's Land Use Plan defines "Open Space" Land Use designation as follows:

"The open space category is intended for unstable areas, steep slopes that will be difficult to develop, and areas of riparian habitat except where such areas are included within large agricultural or timber management areas. The natural constraints require that development be carefully controlled in Open Space areas. Special site investigations should precede any environmental disturbance in order to minimize adverse impacts. Limited timber harvesting, and limited recreation may be appropriate uses. Public Open Space and park land are also included in the Open Space Category."

The City of Trinidad's General Plan Community Design, Policy 72 states:

"The beaches and sea cliff which border the southern and western sides of the City (identified as open space) shall be preserved from

further development and allowed to remain in there present, essential natural state."

The City of Trinidad General Plan Community Design, Policy 76 states:

The design assistance committee should ensure that any purposed development does not detract from the historical sites and structures.

The City of Trinidad's General Plan Policy 69 states in part:

"There shall be no disturbance, vegetation removal or construction, except for a protective fence around the burial ground on lands designated as Open Space within the Tsurai Study Area without the approval of the lineal descendants of Tsurai, Trinidad Rancheria, City of Trinidad and the State Historic Preservation Officer..."

This policy has been violated by the actions of the contractor for the Civic Club on this project to date, and **approval of this project will be in violation of this Policy**. None of the required approvals have been obtained.

The City of Trinidad's General Plan Zoning Ordinance 17.20.130 requires projects to be reviewed by a geologist.

The June 18, 2012 one page Geologist Report prepared by David Lindberg of Lindberg Geologic Consulting for the 2012-04 Civic Club project, prepared after most of the project had been illegally constructed, did not sufficiently demonstrate the following: the geotechnical hazards of the site consistent with geologic, seismic, hydrologic and soil conditions at the site; the extent of potential damage that might be incurred by the development during all foreseeable normal and unusual conditions, including ground saturation and shaking caused by the maximum credible earth quake; the effect the project could have on the stability of the bluff; how the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability through the lifespan of the project; description of the degree of uncertainty of analytical results due to assumptions and unknowns.

It was also noted that throughout the Geologic Report references were made regarding a retaining wall. There is no mention of a retaining wall in the staff's report "Project Description" nor is it mentioned throughout the report including "Staff's Comments" by the Civic Club representative Patti Fleschner and agent of the project Charles Netzow.

The Geologist's Report does not address the project's impact to the Axel Lindgren Memorial Trail. As part of the Civic Club's Project, the Axel Lindgren Memorial Trail was altered by the addition of steps redirecting the pathway to the Western Access Trail. Furthermore, there is no mention of this alteration in the City Planner's Staff Report.

A portion of the State Coastal Conservancy grant that funded the preparation of the April 2007 Tsurai Management Plan was combined with funds provided by the Tsurai Ancestral Society to contract with LACO Associates to conduct an Engineering and Geologic Assessment of Tsurai Village and the Tsurai Study Area. The LACO Associates' 2004 Engineering Geologic Assessment of Tsurai Village Report states in part the following regarding Geologic Setting:

4.0 Geologic Setting

"...The edge of the coastal bluff crest above Tsurai Village is characterized by coalescing, arcuate shaped head scarps having likely formed in response to shallow, translational/rotational debris slides. Consequently, the upper portions of the bluff becomes increasingly steep over time resulting in bluff crest retreat which has the potential to deliver sediment to the slopes below, including Tsurai Village. Presently, settlement and cracking of concrete is readily observable around the Trinidad Lighthouse which may be a precursor to future slope instability at this location. Based on conversations with the Lindgren brothers of the Tsurai Ancestral Society, a recent debris slide (less than 25 years ago) originating along the bluff crest occurred west of the lighthouse near Van Wycke Street, resulted in sediment delivery to the slopes below, Presently, the headscarp and transportational midslope at this location are vegetated with invasive English Ivy and are completely devoid of trees and shrubs which attest to the recency of slide activity..."

In March 28, 2002 Busch Geotechnical Consultants conducted a Limited-Scope Geotechnical Investigation for City of Trinidad's proposed sidewalk improvements being engineered by Winzler & Kelly. Busch Geotechnical Consultants Investigation states the following regarding Seismic Setting, Site Geology, and Stability:

"A review of aerial photographs we had flown in 1987 for another project (BGC, 1988) indicates that two moderate- to large- scale landslides are present in the project area (see Figure 1). At least two other similar sized landslides are present in the coastal bluff face between these two mapped landslides, but we did not map them because they are not relevant to the project. Both mapped landslides are slump-earthflows (SEFS). Each Of these failures initiated in the recent-past when marine waves undercut the toe of the bluff face, the m \acute{e} lange bedrock in the base of the bluff plastically deformed (crept or flowed) downslope,.....The large SEF landslide near the lighthouse is dormant, and the absence of cracks in Edwards Street indicates that the head region of this slide has not settled since the street was last paved. Presumably, the risk level in the head region of this large dormant slide is now higher than Moderate. The second, smaller landside is located along the foot path between Galindo and Edwards Streets. This SEF is active and, consequently, the slope above the head is a High-Risk setting. We did not investigate either landslide in detail, although we did drill borehole BGC-10 just above the smaller landslide."

The Tsurai Ancestral Society request the Planning Commission deny the project and request an Environmental Impact Report with Cumulative Impact Analysis be conducted to address the cumulative impacts of all previous projects of the same type within and around the Trinidad Memorial Lighthouse. Many, if not all, of these previous projects were conducted without benefit of a permit, including a Coastal Development Permit. The City should also require that all of this unpermitted development be incorporated into this permit application, so that a proper review of the individual and cumulative impacts of this development may be conducted.

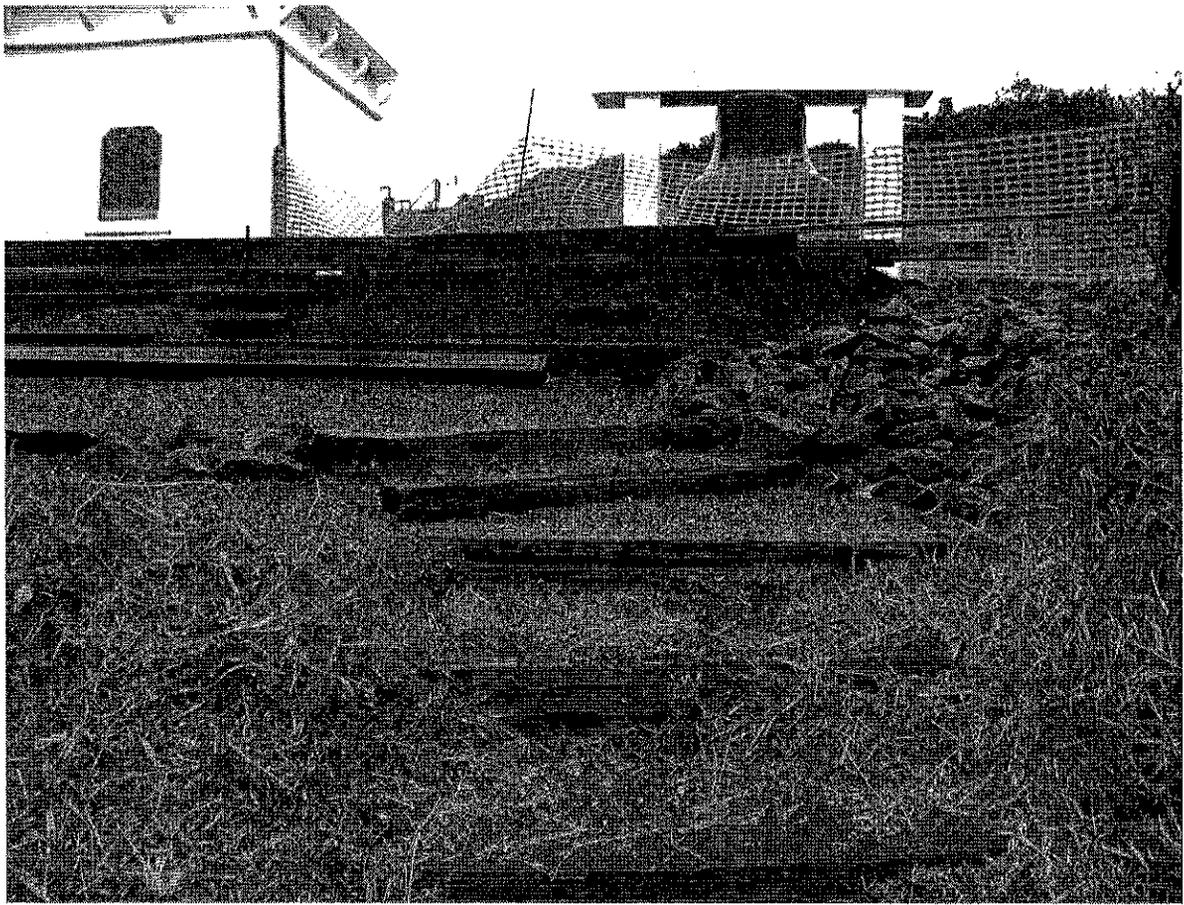
Additionally, the Tsurai Ancestral Society requests LACO Associates be contracted to conduct an engineering geologic assessment as part of the Environmental Impact Report and the Cumulative Impact Analysis to ensure the safety and stability of the current and past projects.

Please see attached photos (taken May 21, 2012) of 2012-04 Civic Club Project:









Soil dumped alongside Axel Lindgren Memorial Trail:



Soil dump site located at Trinidad Museum:

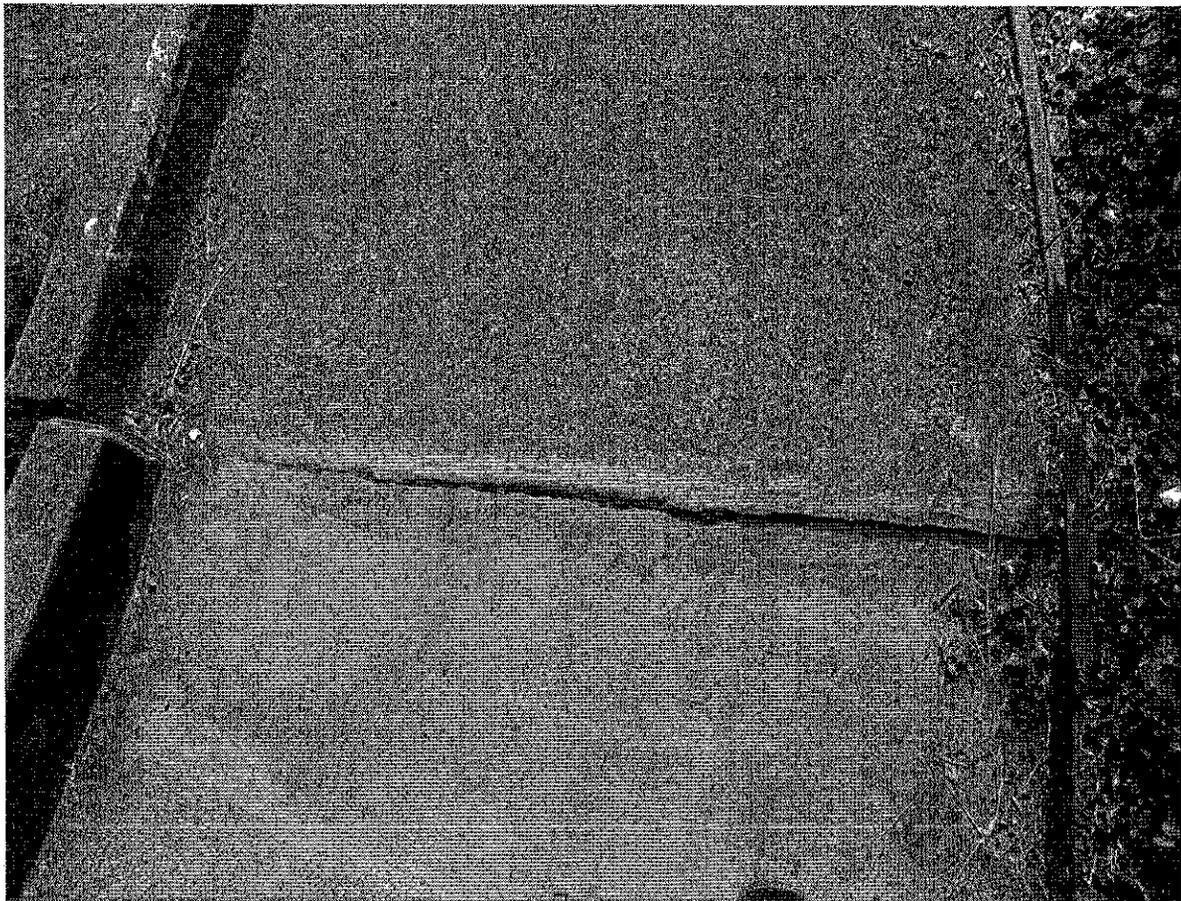


Soil dump site located at cliff off Stage Coach Road:

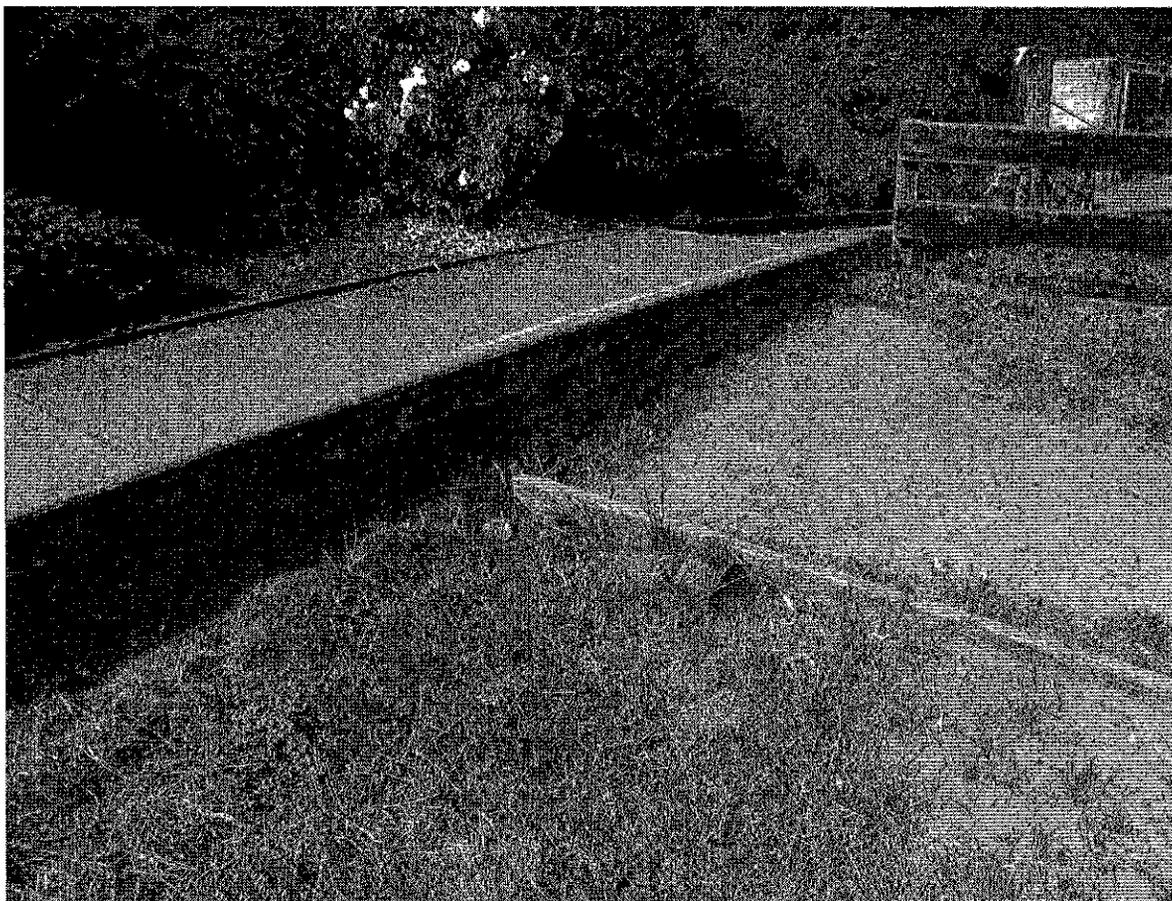


Failing Handicap Ramp leading to Memorial Lighthouse (Photos taken July 10, 2012):





Entrance to Western Access Trail from failing Handicap Ramp:





Ralph Faust
P. O. Box 135
Bayside, CA 95524
July 16, 2012

City of Trinidad Planning Commission
P. O. Box 390
Trinidad, CA 95570

Honorable Planning Commissioners:

Re: Application # 2012-04

I write this letter at the request of the Tsurai Ancestral Society (TAS), and, as well, on my own behalf with regard to the ongoing development activities at the Trinidad Civic Club site, a portion of which is before you for consideration at your meeting of July 18, 2012. Factually, this letter relies upon the extensive factual documentation contained within the letter submitted by the TAS and should be considered in conjunction with that letter.

Much of the development that is before you has already been constructed, without a permit, without environmental review, and without the knowledge or consent of the TAS or of the California Coastal Conservancy, both of which have acknowledged legal interests in the property affected by the development. It has been done in a slapdash manner, perhaps serving the interest of the Civic Club, perhaps at the whim of the contractor, but entirely without regard to the sensitive historic and cultural resources on the site, to the historic Axel Lindgren Memorial Trail and to the delicate geological constraints that exist there.

Unfortunately, this is not the first time that the Civic Club has engaged in unpermitted development activity on this site. As is made clear in the above-mentioned letter sent concurrently to the Planning Commission by the TAS regarding this proposal, this development is part of a pattern of illegal activity that stretches back almost twenty years. In this "death of a thousand cuts", each ill-considered and illegal development builds upon the last, further desecrating the historic and cultural resources on the site, interfering with the historic access to and across the Tsurai Study Area and worsening the geologic stability of the area.

Faced with this circumstance, the Planning Commission should deny the proposed development, require that all of the unpermitted development on the site be properly brought under the umbrella of a City and Coastal development permit application, and that a full CEQA and coastal impact review of the individual and cumulative impacts of all of this historic and unpermitted development be

conducted before any additional work is done at the site. In addition, review and consideration of the impacts of this development, and of the future course of any restoration and development at the site must include the full participation and consent of both the TSA and the Coastal Conservancy.

The revised staff report to the Commission is simply inadequate. For example, it states that the project is not located within the Tsurai Study Area. In fact, as the letter from the TAS makes clear, part of the project has been conducted within the Study Area. Consequently, Policy 69 of the General Plan is applicable to this project. Because there has been disturbance, vegetation removal and construction within the Study Area, Policy 69 requires that this development have the prior approval of, among others, the lineal descendants of the Tsurai. Because it does not have this approval, this development cannot be approved by the Planning Commission consistent with Policy 69 and Section 4.02.C.8, and must instead be denied. In addition, as the letter from the Tsurai Ancestral Society also makes clear, the development already actually carried out by the applicant has subjected the sensitive cultural and historic resources of the Study Area to abuse, contrary to subsection E. of the View Preservation section of Zoning Ordinance section 17.60. The staff report's attempt to paper over and ignore this inconsistency should be rejected by the Commission.

The General Plan also requires that a special site investigation precede any environmental disturbance in order to minimize adverse impacts. This did not occur for this project. Instead, a short form after the fact geologic report was obtained in an attempt to justify the development that had already occurred. A valid geologic site investigation would have begun from the baseline of no unpermitted development on the site. The present evaluation simply ignores the previous unpermitted development and the problems that has caused, ignores the previous geologic evaluations, and appears to operate from a different project description than that before the Planning Commission for which approval is sought. This is not acceptable.

In conclusion, the application before you does not encompass all of the unpermitted development that has been conducted by or on behalf of the Applicant, ignores the continuing impact of that historic, recent and proposed development on the Tsurai Study Area contrary to the requirements of the City of Trinidad General Plan and the certified Local Coastal Program, ignores the requirement to obtain the consent of the TAS and of the Coastal Conservancy, which holds an easement over the property, prior to engaging in that development, and is not based upon an appropriate site investigation that considers the entire historic unpermitted and site destabilizing development that has occurred. Most important, the development, and the almost flip manner in which it has been implemented by the contractor for the applicant completely ignores the sensitive cultural and historic resources of the Tsurai Study Area and the Axel Lindgren Memorial Trail. The City should not compound this

problem by ignoring the constraints of its General Plan, its certified Local Coastal Program, and the Tsurai Management Plan to which it agreed.

The Planning Commission should deny this project and require that all unpermitted development on site be brought forward under one permit umbrella, be fully evaluated for its individual and cumulative impacts under CEQA and the Coastal Act, and only then be considered for approval by the City.

Respectfully submitted,

[Original Signed by]

Ralph Faust

Tsurai Ancestral Society

P.O. Box 62
Trinidad, Ca. 95570

August 14, 2012

City of Trinidad Planning Commissioners
Trever Parker, City of Trinidad Planner
P.O. Box 390
Trinidad, CA. 95570

**RE: June 13, 2012 Staff Report,
Revised June 2012 Staff Report
August 2012 Supplemental Staff Report for
Civic Club 2012-04 Design Review
Application: 2012-04
Applicant: Trinidad Civic Club
Agent: Charles Netzow**

Dear Planning Commissioners and Trever,

Please enter this letter of response along with our July 10, 2012 letter of response for the record regarding the Tsurai Ancestral Society opposition to the Civic Club Project.

The Tsurai Ancestral Society disagrees with City Staff's findings in the August 2012 Supplemental Staff Report. The integrity of all parties involved has come into serious question as information surrounding the project is not freely disclosed and seems to only come forward when the Tsurai Ancestral Society brings about their concerns before the Planning Commission. Throughout the three City Staff Reports, there is a failure to mention the following information pertaining to Pre-historic and Historic Artifacts, Retaining Wall and Civic Club's March 2012 Draft Landscape Conceptual Drawing.

Pre-historic and Historic Artifacts;

The City Staff Reports and Supplemental Staff Report fail to mention the fact that pre-historic and historic artifacts have been negatively impacted during the construction of the civic club project. At the request of the Tsurai Ancestral Society the City placed a "Stop Work Order" to the project on May 22nd. Also, the City Staff's Revised June 2012 Report fails to reflect Tsurai Ancestral Society's representatives, Sarah Lindgren-Akana, comments regarding the impact to pre-historic and historic artifacts during the June 20, 2012 Planning Commission Meeting.

The City Staff Reports and Supplemental Staff Report fail to mention the fact that the Civic Club constructed steps to the Axel Lindgren Memorial Trail (which is a cultural resource in itself) redirecting it from it's traditional pathway and directing it instead, to

the western access trail. One of the purposes of opening the traditional path is to avoid further impact of cultural resources found along either side of this ceremonial trail.

In a telephone conversation, prior to the "Stop Work Order", with City Manager Karen Suiker, Tsurai Ancestral Society representative Kelly Lindgren asked Karen who constructed the additional steps to the Axel Lindgren Memorial Trail. Karen stated that the Civic Club constructed the additional steps to the Axel Lindgren Memorial Trail. When pressed about the boundaries lines between the Tsurai Study Area and the Civic Club property, she stated that a survey would have to be done to be certain the project was on Civic Club property.

Retaining Wall:

The June 13, 2012 City Staff Report and the Revised June 2012 Staff Report failed to mention the fact that a "retaining wall" was being removed as part of the Civic Club Project. Only after we inquired about this "retaining wall" did the City Staff acknowledge it in the August 2012 Supplemental Staff Report. What remains unclear is who constructed the "retaining wall" and did it have a Coastal Development Permit? Also, when was the "retaining wall" constructed and why? Where was the "retaining wall" located? Civic Club Property or the Tsurai Study Area (underground or above)?

If the City Staff views the "retaining wall" as a public safety issue, then why didn't the City Staff address it before they allowed the Civic Club to take the fence down?

March 2012 Draft Landscape Conceptual Drawing of the Civic Clubs Project:

The Revised June 2012 City Staff Report emailed by City Planner Trevor Parker to Tsurai Ancestral Society's Secretary, Sarah Lindgren Akana for the July 18th Planning Commission Meeting failed to include the Civic Clubs March 2012 Draft Landscape Conceptual Drawing. It was eventually brought to Sarah's attention by a Tsurai Ancestral Society Member who viewed the Staff Report on the City's Web Site.

In a telephone conversation, prior to the "Stop Work Order", with City Manager Karen Suiker, Tsurai Ancestral Society representative Kelly Lindgren asked Karen for all written material pertaining to the Civic Club Project. Karen stated there was none and that everything was handled verbally between the City and Civic Club.

When did the City Staff receive the March 2012 Draft Landscape Conceptual Drawing of the Civic Club Project?

As stated in the latest Supplemental Staff report, the City believes the Civic Club Project is "minor in nature". Although the project may at first appear to be minor, there has been a significant amount of ground disturbance, construction within the Tsurai Study Area and an unknown impact placed on the Axel Lindgren Memorial Trail due to (as stated by Charles Netzow) the redirection of water runoff from the Memorial Lighthouse

to the Axel Lindgren Memorial Trail. To date there has been no report submitted to address the impact of the redirection of water runoff.

The Tsurai Management Plan Appendix G: LACO Associates Study of TSA (Tsurai Study Area) 6.1 Site Conditions and Slope Failure Processes states in part:

'Improperly controlled surface run-off can incise gullies perpendicular to the slope which tend to reduce fs in a manner similar to toe erosion. Bluff erosion and retreat increases the gully flow line gradient which eventually leads to further slope destabilization. Subsequent runoff down the gully will transport newly deposited sediment into the swash zone and away from bluff. While slope erosion itself causes coastal bluffs to retreat slowly, the resulting landslide volume can easily be a large or larger than the volume of material that is removed by erosion from the face of the bluff (Barlow, 1980). For this reason if a slope is to be stabilized, it is equally important to control surface runoff in such a manner that eliminates formation of gullies (Larson and Slosson 1997).'

Furthermore, the August 2012 Supplemental Staff Report did not clarify if the runoff from the Handicap Ramps is being properly collected and tight lined to a sown slope ridge site and discharged onto cobbles or rock as proposed by LACO Associates recommended in 1994. Where is the discharged site located and who manages it?

The Civic Club Project fiasco is a direct reflection of the City of Trinidad's continuing poor land use management practice of the Tsurai Study Area. It is disturbing to have City Staff attempt to devalue the Tsurai Ancestral Society's concerns and to continue to push forward with yet another Civic Club Project in the Tsurai Study Area.

The Tsurai Ancestral Society request the Commission to deny the project and request an Environmental Impact Report with Cumulative Impact Analysis be conducted to address the cumulative impacts of all previous projects of the same type within and around the Trinidad Memorial Lighthouse. Many, if not all, of these previous projects were conducted without benefit of a permit, including a Coastal Development Permit. The City should also require that all of this unpermitted development be incorporated into this permit application, so that a proper review of the individual and cumulative impacts of this development may be conducted.

Additionally the Tsurai Ancestral Society requests LACO Associates be contracted to conduct an engineering geologic assessment as part of the environmental Impact Report and the Cumulative Impact Analysis to ensure the safety and stability of the current and past projects.

There are countless photos of the Tsurai Village and the Civic Club Lighthouse area throughout the years. The photos attached are from an article in the Trinidad News and Views September 15, 1983 Newspaper. The photo of "the new bench down by the memorial lighthouse" shows how **flat and undeveloped** the area was in 1983 under the ownership/ management of the State Coastal Conservancy. When comparing this

photo to what you see today it is clear to see the extent of negative adverse impacts from the City/Civic Club projects to the Tsurai Village and the Tsurai Study Area since the City of Trinidad took ownership/management in 1989.

Sincerely,

Axel Lindgren

Axel Lindgren III
Chairman of the Tsurai Ancestral Society

Tsurai Ancestral Society

P.O. Box 62
Trinidad, Ca. 95570

August 29, 2012

City of Trinidad Mayor Kathy Bhardwaj
Council Members Fulkerson, Miller, Morgan, and Davies
City of Trinidad
409 Trinity Street
Trinidad, CA. 95570

Dear Mayor Bhardwaj and Council Members,

On behalf of the Tsurai Ancestral Society this letter will serve as an official request to the Trinidad City Council for an appeal to overturn the decision by the Trinidad Planning Commission to approve the Civic Club Project 2012-04 (After the fact Design Review and Coastal Development Permit).

The Tsurai Ancestral Society contests the permit for the Civic Club Project 2012-04 After the Fact Design Review and Coastal Development Permit due to the following:

- Illegal construction of additional steps to the Axel Lindgren Memorial Trail located within the Tsurai Study Area.
- Misrepresentation of original project design by the Trinidad Civic Club and it's agent, Charles Netzow.
- Redirection of ceremonial trail known as the Axel Lindgren Memorial Trail.
- Destruction and illegal distribution of historical and pre-historical artifacts from a protected Indian Village (California State Historic Landmark #838).
- Violation of City of Trinidad Policy 69 (construction of additional steps resulting of redirection of ceremonial trail located **within the Tsurai Study Area.**)
- Unknown environmental impact upon the Tsurai Study Area from construction of terracing steps intended to redirect water runoff onto the Axel Lindgren Memorial Trail and resulting areas located within the Tsurai Study Area.
- Cumulative construction upon the bluff resulting in major changes to the natural contours of the land, resulting in negative, adverse impacts to the Tsurai Study Area, and visual destruction of natural landforms.

The Tsurai Ancestral Society has provided sufficient evidence to prove the Civic Club Project needs to have an Environmental Impact Report with Cumulative Impact Analysis conducted to address the cumulative impacts of all previous projects of the same type within and around the Trinidad Memorial Lighthouse. Many, if not all, of these previous projects were conducted without benefit of a permit, including a Coastal Development Permit. The Tsurai Ancestral Society has provided sufficient evidence to prove that all

of the unpermitted development needs to be incorporated into this permit application, so that a proper review of the individual and cumulative impacts of this development may be conducted.

Additionally the Tsurai Ancestral Society has provided sufficient evidence to prove an engineering geologic assessment needs to be conducted as part of the Environmental Impact Report and the Cumulative Impact Analysis to ensure the safety and stability of the current and past projects.

The Tsurai Ancestral Society would like this appeal to be placed on the official City Council agenda at your earliest convenience.

Thank you for your consideration.

Sincerely, *axel Lindgren*

Axel Lindgren III
Chairman of the Tsurai Ancestral Society

Tsurai Ancestral Society

PO Box 62
Trinidad CA 95570

August 29, 2012

City of Trinidad Mayor Bhardwaj
Council Members: Fulkerson, Miller, Morgan and Davies,
City of Trinidad
409 Trinity Street
Trinidad, CA 95570

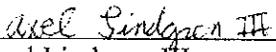
Dear Mayor Bhardwaj and Council Members.

It is our understanding that no particular form for the appeal is required. Per City resolution 90-4 "An initial fee of one hundred twenty dollars (\$120.00) is to be paid at the time of filing the appeal. This fee will cover the first two (2) hours of the City Clerk's time, and the first one (1) hour of the City Planner's time and the first one (1) hour of the City Engineer's time.

Any additional staff time spent over and above these original time limits will be billed to the applicant."

In this matter, it is our understanding that the Civic Club would be the "applicant" as referred to in the City resolution. Therefore, the Tsurai Ancestral Society has enclosed a check for the one hundred twenty dollar (\$120.00) fee as required, and any additional time spent over and above shall be billed to the Civic Club (applicant). Please find our appeal request attached.

Sincerely,



Axel Lindgren III
Tsurai Ancestral Society
Chairman