



MEMORANDUM

TO: Trinidad Planning Commission

FROM: Trever Parker, City Planner

DATE: December 12, 2012

RE: Appeal Fee Zoning Ordinance Amendment

Purpose

Part 1

The primary purpose of this Zoning Ordinance amendment (see attachment) is to allow the City Council to set fees by resolution for appealing Planning Commission (or City staff) decisions. Currently, §17.72.100 (Appeals) states: *“There shall be no fee for filing an appeal.”* (see attached ordinance) This is in contrast to §17.72.120 (Application Fees), which allows the City Council to set application fees, including for variances, conditional use permits, design review, coastal development permits and zoning ordinance amendments, by resolution. In 1990, the City Council adopted a resolution (90-4) establishing an initial \$120 fee for filing an appeal. This was based on §17.72.120, which allows the Council to set fees for various types of applications and other zoning ordinance related actions. However, the City has been informed by Coastal Commission staff that the fee and resolution are invalid due to the language of §17.72.120 quoted above, which is more specific.

Likely, the original rationale for not having an appeal fee was because the Coastal Commission does not charge a fee for appeals, unless they are deemed frivolous. And they allow appeals to be filed directly with the Coastal Commission, without exhausting local appeal options, among other reasons, if there is a local appeal fee (14 CCR §13573(a)(4)). This means that someone could bypass the City Council and go directly to the Coastal Commission with an appeal. This could avoid some expense and difficult / controversial decisions for the City, but the City Council has expressed a desire to promote local decision-making. However, with no appeal fee, there is a risk of frivolous or malicious appeals. Local Coastal Commission staff informed me that there are places where they do get direct appeals because of the local appeal fee, but that it is not very common in Humboldt County. The Council will have to carefully consider an appropriate appeal fee and resolution at a future public meeting if this amendment is approved.

A secondary purpose of this amendment is to clean up some of the language relating to the filing of an appeal. It is customary to require an appellant to have submitted comments or spoken against the project prior to filing an appeal. This is part of 'exhausting your administrative remedies,' just like you can't bring a lawsuit in court without trying other avenues first. The concern with the existing language is that the burden falls on the City Clerk to prove that comments were made and to determine if there was valid justification for not submitting comments. Therefore the amended language requires that the appellant submit proof of comments or justification for not commenting and puts the burden of determining if those reasons were valid on the appellate body.

Part 2

The purpose of the second part of the amendment (deleting subsections C and D from §17.72.120) is to remove language that exempts government bodies from payment of application fees. As far as I know, this is not standard practice, and most jurisdictions and government agencies charge fees for applications by other agencies. For example, the City had to pay a substantial fee to appeal the Humboldt County Planning Commission decision on the Moss subdivision. The language of this subsection is also fairly broad and could be argued to cover many entities. This could make the City responsible for significant permit processing costs for projects that do not necessarily benefit the City. The City Council would still have the option of setting a lower fee deposit or other cost-reducing measures for certain types of applicants such as government agencies or non-profits based on subsection A of §17.72.120. Also, the City Council should have the option to reduce or refund fees at the request of the applicant.

Currently though, the language of subsection D could be read to prohibit the Council from waiving or refunding any application fees. However, this is not an unheard of practice in Trinidad. A current example would be the Trinidad Coastal Land Trust's request to refund fees paid for the recent tree removal permit application. Staff has determined that this is a decision that the Council should be able to make on a case-by-case basis rather than having it prohibited in the zoning ordinance.

Process

This Zoning Ordinance amendment was initiated by the City. All zoning amendments must be heard by the Planning Commission. After holding an appropriately notices public hearing on the proposed amendments, the Planning Commission will make a recommendation to the City Council. If the Planning Commission's recommendation is for approval, the City Council will then consider the amendment, which requires two readings of the ordinance, at a public hearing. The first reading will be heard at a special meeting on January 23. This second monthly City Council meeting will focus on several planning issues. If the City Council approves the ordinance amendment, then an application for an LCP amendment will have to be prepared and submitted to the Coastal Commission for consideration and certification. Therefore, the changes would not take effect until after the Coastal Commission decision. Also note that the Planning Commission is not being asked to consider whether to set an appeal fee or to decide how much it should be. That will be up to the City Council if the amendment is approved and certified.

Consistency with the Local Coastal Program

The proposed changes are administrative in nature and will have no physical impacts; the changes will not affect development allowances, restrictions or densities. The amendment will not affect or be affected by policies of the Trinidad General Plan dealing with unstable slopes, seismic hazards, soil characteristics, water resources, biological resources, existing land uses, public services, housing, commercial development, visitor accommodations, recreation, public access or community design.

The proposed changes are consistent with other sections of the certified zoning ordinance. An appeal fee will help cover the costs to the City of processing the appeal. This is consistent with many other jurisdictions, and is also consistent with other sections of the zoning ordinance and municipal code that allow the City Council to set fees for applications by resolution. There is nothing in the Coastal Act or associated regulations that would prohibit a local jurisdiction from charging a fee for an appeal. Charging a fee for an appeal should promote responsible citizenship, and will not interfere with due process because of the ability to appeal directly to the Coastal Commission. Further, the Council would have the option of waiving, reducing or refunding fees for good cause, such as a public benefit.



ORDINANCE NO. 2013-XX

AN ORDINANCE OF THE CITY OF TRINIDAD AMENDING SUBSECTION D OF SECTION 17.72.100 AND DELETING SUBSECTIONS C AND D OF SECTION 17.72.120 OF THE TRINIDAD MUNICIPAL CODE (AMENDING SUBSECTION D OF SECTION 7.14 AND DELETING SUBSECTIONS C AND D OF SECTION 7.16 OF THE COASTAL COMMISSION CERTIFIED ZONING ORDINANCE).

The City Council of the City of Trinidad does hereby ordain as follows:

ORDINANCE 2013-XX, SECTION 1:

Subsection 17.72.100.D of the Trinidad Municipal Code (subsection 7.14.D of the Coastal Commission certified Zoning Ordinance) is hereby amended as follows:

Chapter 17.72 Variances, Conditional Use Permits and Design Review

17.72.100 Appeals

D. Filing Requirements. Appeals to the planning commission, hearings officer or city council shall be addressed to the appellate body on a prescribed form and shall state the basis of the appeal. Appeals shall be filed in the office of the city clerk within the appeal period provided in Section 17.72.060 (7.11). ~~There shall be no fee for filing an appeal. Fees for appeals shall be set by resolution of the city council and may be modified from time to time by resolution of the city council. The city clerk shall determine from the records whether the appellant submitted comments on the issue being appealed to each previous appellate body. Only if such comments have been submitted shall an appeal be accepted, unless the appellant can demonstrate that there were valid reasons why he could not attend the hearings or submit written comments. As part of the filing of an appeal, the appellant shall submit proof that they submitted comments, either in writing or verbally, to each previous decision-making body. If such comments were not submitted, the appellant shall demonstrate that there were valid reasons why he/she could not attend the hearings or submit written comments. Failure to do so will result in the appeal being rejected by the appellate body.~~

ORDINANCE 2013-XX, SECTION 2:

Section 17.72.120 of the Trinidad Municipal Code (section 7.16 of the Coastal Commission certified Zoning Ordinance) is hereby amended as follows:

Chapter 17.72 Variances, Conditional Use Permits and Design Review

17.72.120 Application fees.

A. The city council shall by resolution establish a schedule of fees, charges and expenses for variances, conditional use permits, design review, coastal development permits and amendments to the zoning map and other matters pertaining to this title. The schedule of fees may be changed or modified only by resolution of the city council.

B. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application, or other matters for which a fee, charge or payment of expense is required by this title or the fee schedule resolution adopted pursuant thereto.

~~C. Any municipal, political or governmental corporation, district body, or agency is exempted from payment of any fee or charge in connection with an application for any variance, conditional use permit, design review, coastal development permit, appeal or zoning title amendment.~~

~~D. No fee, charge or expense shall be refundable except in any case where the planning commission or hearings officer determines and certifies any such fee or portion thereof has been received in error, in which case the amount received in error may be refunded. (Ord. 166 §7.16, 1979)~~

ORDINANCE 2012-02, SECTION 3:

This Ordinance shall take effect upon certification by the Coastal Commission.

PASSED AND ADOPTED by the Planning Commission of the City of Trinidad, State of California on Wednesday, December 19, 2012.

PASSED AND ADOPTED by the City Council of the City of Trinidad, State of California, on **Wednesday, February 12, 2013**, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

First Reading: Wednesday, January 23, 2013

Second Reading: Wednesday, February 13, 2013

Attest:

Gabriel Adams
Trinidad City Clerk

Kathy Bhardwaj
Mayor



MEMORANDUM

TO: Trinidad Planning Commission

FROM: Trever Parker, City Planner

DATE: December 13, 2012

RE: General Plan Update – Next Elements

Noise and Public Safety Element

The Planning Commission has approved the text of the Noise and Public Safety Element, but there was still some work to do on the figures. The three figures for this element (16-18) have been updated per your most recent comments.

Housing Element

The City Council concurred with the Planning Commission's recommendation from the October meeting to complete a 'middle-ground' Housing Element. This will be the last of the seven State required general plan elements. The State Housing Dept. has strict requirements for housing elements that go way beyond what is necessary for a small, rural community like Trinidad. To comply with the State requirements, the housing element would have to be longer than the entire rest of the general plan and address issues that are not applicable, such as transient housing. Further, I have recently found out that the Census Bureau will not be updating all the information required for a complete housing element for 2010. Instead they will be providing estimated statistics that are not as accurate. Their website notes that for jurisdictions with less than 10,000 people, the data are unreliable. Therefore, staff will work on a Housing Element that makes a good faith effort towards meeting the State requirements, but focusing on the needs of Trinidad.

The following are the statutory requirements for a housing element based on the State of California General Plan Guidelines (2003).

- Quantify projected housing needs (this is done through the Regional Housing Needs Assessment process by the local COG and HCD)
- Review and revise housing element at least every 5 years (Trinidad's was approved in 1998); the review should include an assessment of the following:
 - Effectiveness of the element
 - Progress in implementation
 - Appropriateness of goals, objectives and policies
- Public participation from all segments of the community
- Analyze an inventory of resources and constraints, including: population, household characteristics and needs, land inventory, government and non-governmental constraints, special housing needs, energy conservation opportunities, market forces, etc.

- Assess funding to Redevelopment Agency
- 5-year implementation program (through administration of land use and development controls, provision of regulatory concessions and incentives, utilization of state and federal financing), which must:
 - Identify adequate sites with appropriate zoning, development standards and public services that encourage and facilitate a variety of housing types to accommodate all income levels, including multifamily, factory-built, mobile homes, farmworker housing, emergency shelters and transitional housing
 - Assist in development to meet needs of low and moderate income households
 - Address and remove governmental constraints on development
 - Conserve and improve existing affordable housing stock
 - Promote equal housing opportunity
 - Preserve assisted housing developments at risk of conversion to market rates
- Quantify objectives by income level for the construction, rehabilitation and conservation of housing
- Demonstrate consistency with other general plan elements
- Circulate element with local water and sewer providers

The General Plan Guidelines also provide additional information and tips on how to address each of the above issues. As you can see though, many of the issues are not applicable to Trinidad and/or are difficult to address when considering septic system limitations. What staff has started doing is looking at trends from the 1990 data to 2000 and 2010 in order to help characterize the population and housing needs. As an example, for a couple of decades leading up to 2000, Trinidad's population and household size was decreasing. But that has changed in the last 10 years, and it appears there are now more families living in town again. However, there is also a growing vacant housing stock with all of the vacation rentals. Staff will be presenting you with a more detailed assessment in the next month or two. In the meantime, for this meeting, I would like for the Planning Commission to brainstorm on the issues listed above. For example, what are the primary housing issues and needs, opportunities and constraints, etc. based on your knowledge of the community? What trends do you see? What will be future challenges? How do we maximize public participation (are there underrepresented groups that require special outreach)? This will give staff some guidance as to what to focus on in the development of an appropriate housing element that will meet the State requirements to the degree feasible, while focusing on and addressing the needs of Trinidad residents.

Cultural & Historic Element

Throughout the general plan update, staff has tentatively planned on a separate element to address cultural and historic resources in Trinidad. This is not a required element, but these topics would have to be addressed somewhere in the general plan anyway. With some of the issues that have resurfaced lately related to the Tsurai Study Area (TSA), staff felt this would be a good time to start developing this important element. This will be a crucial first step in codifying the policies and recommendations of the Tsurai Management Plan (TMP) and moving toward implementation. This process will also provide a basis for a holistic approach to management and impact analysis that has been requested by the Tsurai Ancestral Society (TAS) and others. It will also include cultural resources and issues outside of the TAS, including Trinidad Head and others. I also feel that it is important to address more recent historic resources, including homes and other structures that are important to the community.

At their November meeting, the City Council concurred with the suggestion to develop a Cultural and Historic Element of the General Plan. This element will be difficult and time consuming. There are numerous important issues that need to be addressed as well as several interested parties, community groups and Tribes with sometimes conflicting issues and priorities that will need to be involved. Therefore, I thought that the Coastal Conservancy might be a good resource for funding, neutral third party involvement and technical expertise. I did have a chance to speak at length with Su Corbaley, who served as the Conservancy's representative on the development of the TMP. Though very supportive of this effort, the Conservancy does not have a lot of funding opportunities to offer, particularly for planning. The Conservancy can however, provide some staff technical assistance, make their existing data available to the City and attend key meetings. The City can still move forward on the development of this element under the existing General Plan budget.

There are a lot of recommendations included in the TMP that should be made policies within the General Plan. I will be approaching the three interested Tribal entities—the TAS, Yurok Tribe and Trinidad Rancheria—to set up meetings with each of them and then continue with consultation through the development of this element. Formal consultation, as required by the State, will also occur in the future when the Council is reviewing the entire general plan. I would also like to include other community groups, such as the Museum Society, to get their perspective as well. For this meeting, similar to the Housing Element, I would like to brainstorm and get ideas from the Commission on the priority issues that need to be addressed, suggestions for how to proceed, and community groups to include. Just like with some of the other elements, there will likely be tasks that Commissioners can take a lead on to help reduce staff time and costs, so please also think about what you may be interested and willing to work on. I have included an outline of key issues that should be addressed, but this is certainly not exhaustive. You can review the TMP on the City's website at: <http://www.trinidad.ca.gov/documents-library/category/22-tsurai-management-plan.html>

Cultural & TSA Issues

- Consultation protocol for TSA
- Identify culturally significant areas within and around the City (not just TSA)
- ID areas for project notification to tribal interests
- Policies for requiring a cultural monitor
- Trail maintenance guidelines
- Site-monitoring and policies for how to deal with looting and trespassing, etc.
- Signage
- Consideration of GHD groundwater study
- Policies / considerations for land transfer
- Vegetation management policies

Historic Resources

- Inventory historic homes and historic characteristics
- ID other historic events / places, if any
- ID policies to protect and alter historic homes / resources
- ID threats and opportunities

Procedural Considerations

- Formal Tribal consultations (Yurok, Trinidad Rancheria, TAS)
- Clarification of Conservancy easement (TSA)
- CEQA analysis
- Coastal Commission certification

Trinidad General Plan

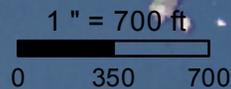
Figure 16. Noise



● Noise Readings (in dB)
 City Boundary

City of Trinidad Noise Readings				
Station	Time	Reading (dB)		Notes
		Average	Max	
corner of Frontage Rd & Westhaven Dr	4:59pm	66	73	
Murphy's Market (@ refrigeration units)	5:05pm	80		
Murphy's Market (50 ft south)	5:07pm	59		
View Ave, southwest (kitty-corner) of Murphy's Market	5:06pm	55		meter pointed east from residence toward Murphy's Mkt
401 Ocean Avenue (AT&T substation)	5:10pm	40		multiple bird species chattering
Lighthouse on Edwards St (1" collector)	5:15pm	48		wind calm; ocean flat
Marine Lab (at the pumps)	5:20pm	63		pumps humming
Parking lot west of Marine Lab	5:22pm			
State Beach (parking lot)	5:24pm	60		meter pointed at waves. extremely calm
Seascape Restaurant	5:27pm	53		low tide; no waves; wind <5
Chevron Station (refrigeration unit)	5:35pm	55	60	Chevron Station refrigeration unit (60 dB included cars)
Chevron Station (50 ft from propane tank)	5:37pm	64		
Patrick's Point Dr (recycling area)	5:43pm	60	70+	Patrick's Pt Dr, at recycling station (70+ w recycling noise, 60+ w freeway noise)

noise readings were taken on 05/16/2012

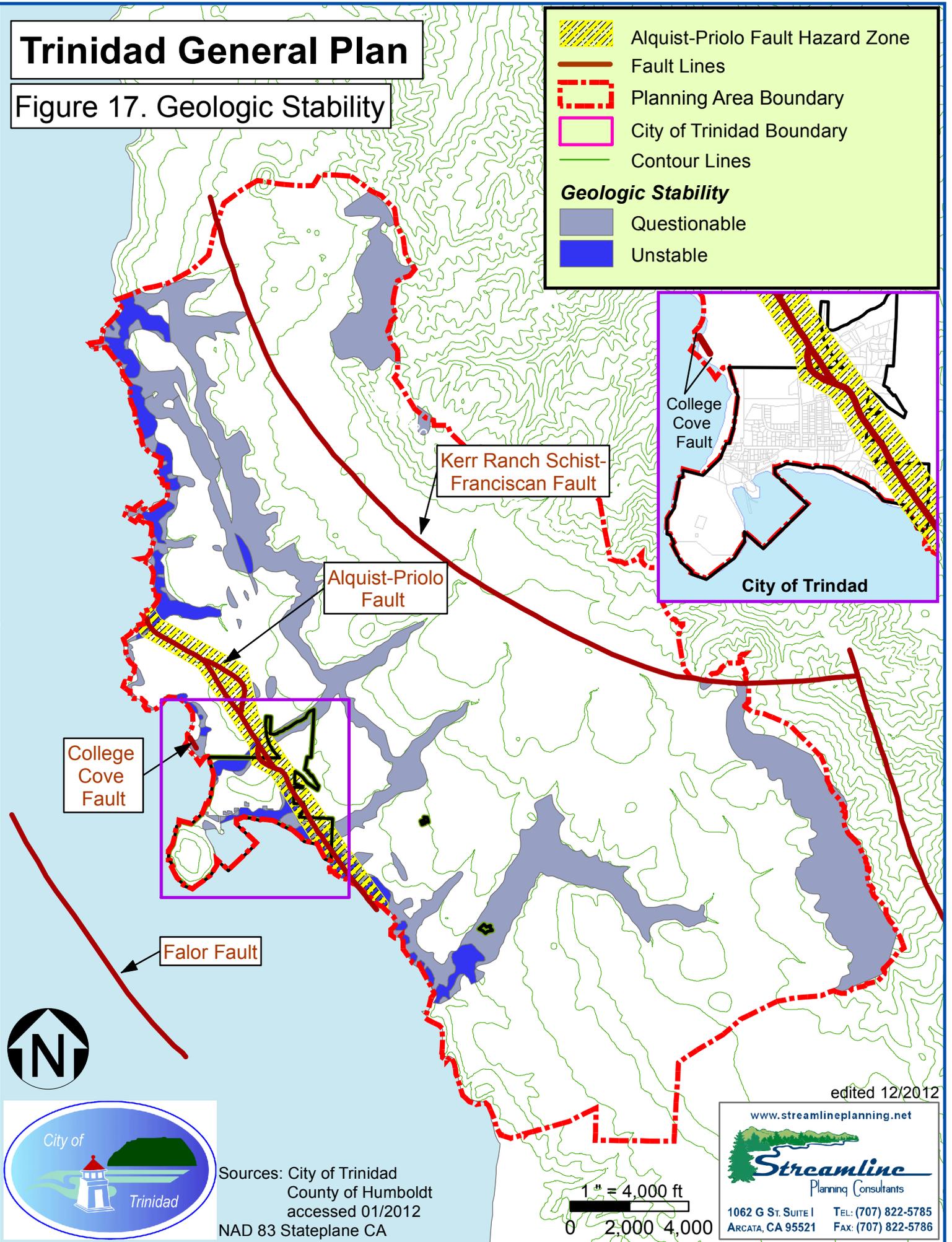


created: 05/2012



Trinidad General Plan

Figure 17. Geologic Stability



edited 12/2012

www.streamlineplanning.net



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Sources: City of Trinidad
County of Humboldt
accessed 01/2012
NAD 83 Stateplane CA

Trinidad General Plan

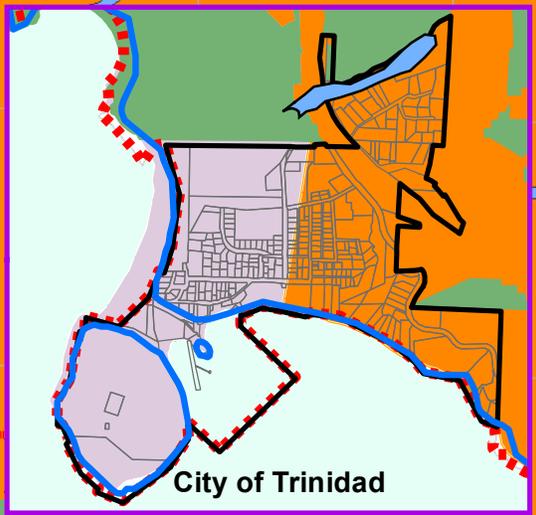
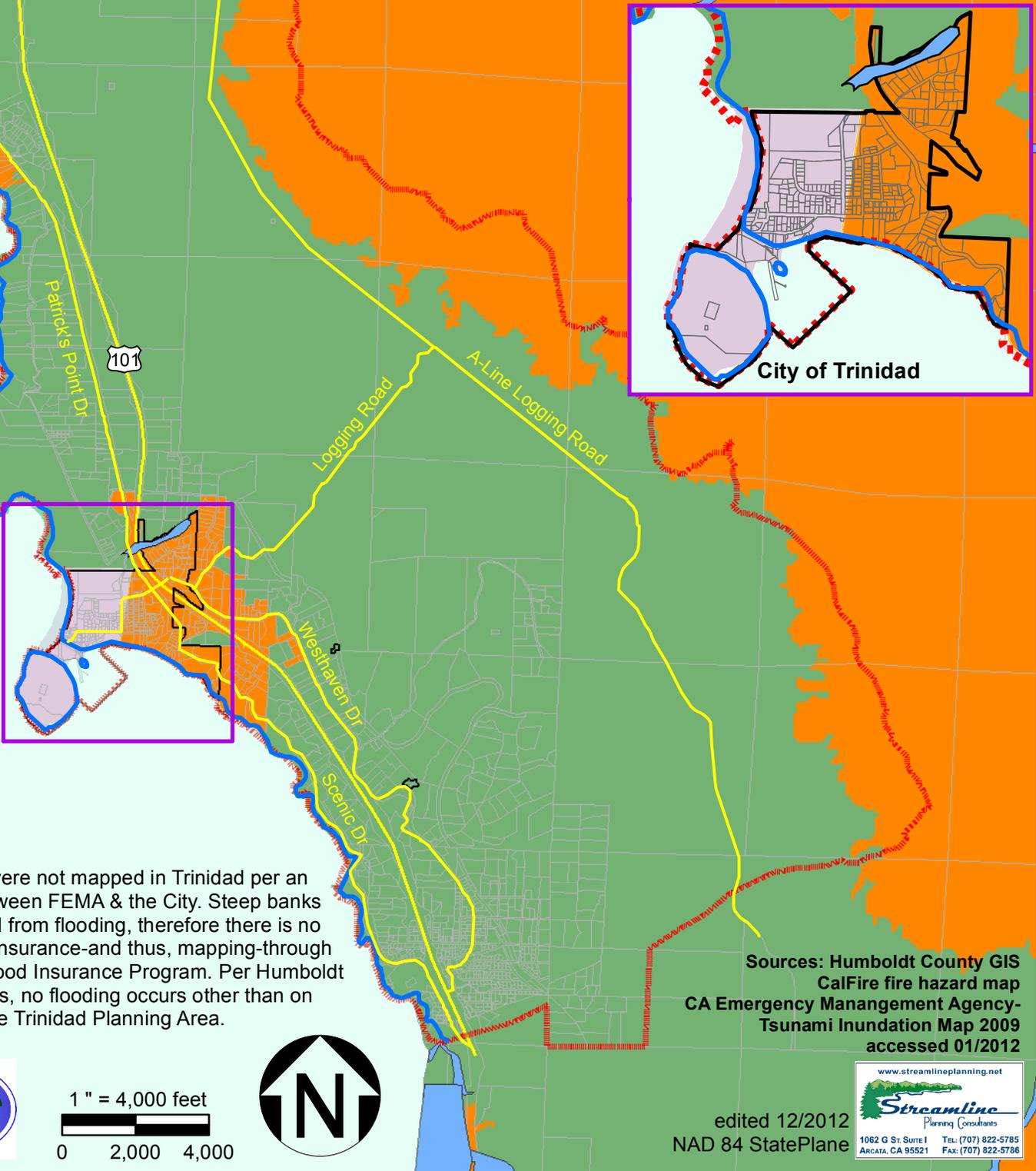
Figure 18. Hazards Map

-  Evacuation Routes
-  Tsunami Inundation Line
-  Flood zone*

fire hazard class

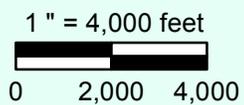
-  very high
-  high
-  moderate
-  low

-  City Boundary
-  Planning Area Boundary



*Flood zones were not mapped in Trinidad per an agreement between FEMA & the City. Steep banks protect Trinidad from flooding, therefore there is no need for flood insurance-and thus, mapping-through the National Flood Insurance Program. Per Humboldt County GIS files, no flooding occurs other than on Mill Creek in the Trinidad Planning Area.

Sources: Humboldt County GIS
 CalFire fire hazard map
 CA Emergency Management Agency-
 Tsunami Inundation Map 2009
 accessed 01/2012



edited 12/2012
 NAD 84 StatePlane

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