APPEAL STAFF REPORT

APPELLANT: Friends of Trinidad Head

APPEAL:
Friends of Trinidad Head 2006-10: Appeal of Planning Commission approval of application #2005-13a on the basis that the existing cellular site, and therefore this project, is illegal under City regulations and that there is no verifiable need for the project.

APPEAL DATE: July 6, 2006

ORIGINAL PROJECT DESCRIPTION:
US Cellular 2005-13a: Design Review, Coastal Development Permit and Conditional Use Permit to Permit to install two new antennas on existing 20' poles. New equipment cabinets will be installed within the existing fenced area on a concrete pad on the southwest portion of the site. Models of the proposed antennas have been installed for viewing.

PLANNING COMMISSION ACTION / DATE: Conditionally Approved June 21, 2006

PROJECT LOCATION: Trinidad Head, Trinidad CA 95570; APN: 042-121-05

STAFF REPORT:
This staff report has been written as an addendum to the previous staff report (June 2006) for application #2005-13a to address comments made regarding the appeal of the US Cellular project. Please also refer to the original staff report in considering the appeal, as this addendum provides additional information, rather than repeating or summarizing information that has already been provided by staff. Also, please review the memo I wrote dated June 23, 2006 regarding the Planning Commission's action and recommendations to the Council regarding the US Cellular application.

The appeal was filed by Friends of Trinidad Head (hereinafter Friends). The reason for the appeal, as stated in the appeal request is because: ***"Friends have provided more than sufficient evidence to prove the illegality of the commercial facilities currently located on Trinidad Head. Allowing further commercial telecommunication facilities to be constructed on Trinidad Head would further the illegality and nonconforming use of the area. Furthermore, U.S. Cellular has presented no verifiable statistics to support their claim that they have a problem with cellular telephone service in the area."*** It should be noted that until now, staff has not addressed the first issue, as far as the legality of the site. Under the advice of the City Attorney, staff processed this application consistent with previous cellular projects, with the understanding that the site is legal. Since that is the basis for this appeal, staff is now addressing and responding to the materials submitted by Friends supporting their appeal.

In reviewing the evidence that has been submitted or referenced by Friends, I have utilized the following documents:

- Cell Towers – Trinidad Head blue notebook submitted by Friends (293 p.)
- City files on Trinidad Head
- Letter to the Council from the Binnies on behalf of Friends dated August 21, 2006
- Information submitted 6/20/06 by Brad Twoomy (28 p.)
- Letter from Kathy Bhardwaj to Trinidad City Council, Planning Commission and staff, dated 6/20/06 (6 p.)
- Email from Jim Baskin, CA Coastal Commission, to Trever Parker, dated 12/6/05
- Letter from Jim Baskin, CA Coastal Commission, to Trever Parker, dated 12/20/05

These are the documents dealing specifically with the legality of the existing communication site according to City Ordinances. Although not specifically mentioned as part of their appeal, for completeness I also took into consideration a letter dated April 17, 2006 to Mayor Lin and Councilmembers from Stan Binnie, Friends of Trinidad Head, that relates to findings and information contained in the staff report. Some of the comments in that letter are covered by the legality issues, others are not applicable because the project has changed. I have also briefly responded to a letter from Cindy Lindgren dated June 20, 2006. Another letter, from Kim Tays, Friends of Trinidad Head, to Mayor Lin and City Councilmembers, dated 5/1/06, reviews court cases related to cellular projects and has been forwarded to the City Attorney. As you are aware, a variety of other materials and letters have also been submitted, which are less specific, and I believe those concerns are included in the above referenced materials or addressed in earlier staff reports / comments.

Background

The original staff report(s) provide a detailed accounting of the project's history, but is also briefly summarized as follows: The original project, proposing a new cellular site adjacent to the existing one (#2005-13), was heard at the December Planning Commission meeting, and continued to January, where various project alternatives were discussed. In January, the Commission voted 3-2 to deny the project. US Cellular appealed that decision to the City Council. Prior to the appeal hearing, US Cellular submitted a new alternative that avoided the need for a separate facility outside of the existing site, instead locating the proposed equipment within the already developed communications site. Although the Council could have legally taken action on the revised proposal, because of its substantial variation from the original project, the Council voted to send the amended proposal back to the Planning Commission for review. That project (#2005-13a) was then heard, and approved by a 4-1 vote at the June Planning Commission meeting. Along with their decision, the Commission made several recommendations to the City Council regarding cellular facilities and management of Trinidad Head. Their action is summarized in a memo from me dated 6/23/06. The Planning Commission's approval was then appealed by Friends on July 6, 2006, within the legal appeal period.

Response to Appeal

Staff's approach

The legality of the existing site has been questioned by Friends who cite a variety of Zoning Ordinance provisions and other land use regulations. I would first like to point out that Zoning Ordinances are commonly written to allow some flexibility in interpretation, and Trinidad's is no exception. Also, many of the findings that must be made, especially in terms of design review and view protection, such as those dealing with aesthetics and compatibility, must be made on a case-by-case basis. Staff generally makes no specific judgments or recommendations regarding these findings. The responses to these findings are generally written in a manner to allow approval of the project based on the information submitted by the applicant, it is left up to the Planning Commission to make the findings based on the project description, community values, past precedent and common sense. The City Council also needs to use these same considerations in making a decision on this appeal, supported by specific findings (see 'Appeal Process' section below). As far as the interpretation of other ordinance sections, staff utilizes established land use and planning principals and practice to make determinations. We also keep notes as to how previous decisions have interpreted Trinidad regulations in order to document precedent and remain consistent as much as possible. Much of the information submitted by Friends constitutes an alternative interpretation of various ordinance sections, and I will attempt to explain staff's basis for our interpretations. The submitted materials vary, and do not necessarily bullet all the important points, but do provide a lot of information. Staff has attempted to summarize the major issues that have been brought up, and address each one separately.

There is no need or public benefit

The second part of the Friends appeal request (*U.S. Cellular has presented no verifiable statistics to support their claim that they have a problem with cellular telephone service in the area"*) is the easiest for staff to address, and so I will address it first. Friends base this comment on an informal 'study' they conducted on existing cellular service around Trinidad. First of all, there is no requirement for U.S. Cellular to prove that there is a need, or to quantify the need for them to place additional antennas on Trinidad Head, although that can be a consideration in making (or not making) the required findings. As far as staff analysis is concerned, it is implicit in the application that there is a need; U.S. Cellular would not make such an investment if there was no need for it. Further, U.S. Cellular has provided documentation, in the form of coverage maps, of the improved service if the project is approved, particularly in topographically limited areas such as ravines. As stated by the applicant's agent, this project is not just about telephone coverage, but other in-home digital, wireless services as well, which were not 'tested' by Friends. There is a use permit finding required (A) that *"the proposed use at the site and intensity contemplated and the proposed location will provide a development that is necessary or desirable for and compatible with the neighborhood or the community."* Friends have some submitted evidence to dispute this finding and present an alternative viewpoint. However, this issue was discussed at the first Planning Commission meeting, and in response, US Cellular submitted detailed coverage maps to provide support for this finding, which the Planning Commission did make as part of their action. It was up to the Planning Commission, and

now the City Council, to balance the needs of the neighborhood or the community and the applicant.

The Friends argue that the cellular facility represents commercial development which benefits only a few, as opposed to the Federal facilities on the Head, which benefit the public as a whole. Friends provide a definition of "public service" from the 1999 Edition of Black's Law Dictionary. However, there is no Trinidad ordinance provision requiring the use to be a legally defined public service other than as a potential consideration in making some of the required findings. Further, the Planning Commission made the determination that the project provides a public benefit as part of their decision. The only place where public service is mentioned in any regulatory documents is in the City's Management Plan for Trinidad Head that was adopted as part of the BLM land transfer. The BLM has already found the existing site to be in compliance with their programs and policies. Further, cellular and wireless use is so widespread, that it should be considered to benefit the public in general. This industry is recognized as such, and is therefore specifically regulated by the Public Utilities Commission, one of the legally defined traits of a public service according to Friends' definition. Cable (the original use of the site) and internet service providers are similar examples of privately owned, for-profit, utilities that may disproportionately benefit those people who can afford their services. Coastal Commission staff (12/20/05 letter, p. 7) also acknowledge that telecommunication facilities *"clearly provide a public benefit"*, and staff agrees with this conclusion.

During the original approvals of the Cal-North facility in 1997, the community was generally in strong support of the project, because the City was gaining both cellular service and revenue. Further, there have been four subsequent approvals (1999, 2000, 2001 and 2002) for additional equipment with essentially no objections. Although Friends have united as representing the entire community, there have been residents that have indicated to staff that they do not care, or that they are in favor of the project, but are not willing to speak out at a meeting with an audience 'stacked' against the project. Another consideration is that tourists and fishermen must rely on cellular service almost exclusively for communication, making such service important to these industries, which form a major basis of Trinidad's economy. There will be more appropriate opportunities in the future, when the original lease is up, to reevaluate community priorities. There will also be an update of the General Plan over the next few years that will provide a positive forum for developing new management policies for Trinidad Head, which can then be implemented as part of an overall plan rather than project by project. In recognition of these circumstances, the Planning Commission made several recommendations in terms of future cellular development and management of the Head as part of their action on this project (see memo from me dated June 23, 2006).

<u>Inconsistency between original proposal citing the need for an additional site and the current proposal of co-locating.</u>
This has been cited as one of the major concerns for Friends. However, the above scenario is quite common; applicants often redesign their project after a public hearing where significant objections are expressed. For example, in 2002 and 2004, unrelated applications were completely withdrawn and redesigned based on neighbor comments. In

general, the community expressed gratitude for the considerations that were given to their comments. Probably ½ to ⅓ of the applications for additions and remodels within the view areas of town are continued for at least one month and alterations made to the original design. Since there had never been any public opposition to the cellular facility, US Cellular had no reason to believe that their proposal would meet with such objection, and therefore, there was no need to make the additional effort to co-locate, since the site is near capacity. With public opposition, US Cellular made that extra effort and succeeded in getting permission to co-locate their new equipment. This may have been due to more diligent effort on the part of US Cellular. Or, it could have been because between the time of the original application and the revision, Verizon took over ownership of the site, and may have different policies from Cal-North, making co-location easier. In either case, the situation shows that US Cellular has made concessions to address community concerns.

<u>The nonconforming use was abandoned for more than a year, requiring it to be discontinued indefinitely.</u>
One of the most significant and less open to interpretation of the Zoning Ordinance regulations cited by Friends has to do with the abandonment of nonconforming uses. "Nonconforming" is defined by Zoning Ordinance §17.08.500 as *"a structure and / or land use which was lawfully established but which does not now conform with the land use, yard, height or other requirements and conditions of this chapter."* The Zoning Ordinance provides for the continued use and operation of nonconforming structures and uses under §17.64.010 which states that: *"The lawful use of lands or structures existing on the effective date of the regulations codified in the title, although such use or structure does not conform to the regulations applied to such property or structure, may be continued except as provided…"* At the crux of the issue is one of these exceptions (§17.64.010.C), which states that *"a nonconforming use which has been discontinued for a period of one year or more shall not be reestablished."* The Friends cite the fact that Cox replaced the use of the microwave receiver dish on Trinidad Head with fiber-optics infrastructure that was completed in 1994, and after that time did not pay rent on the Trinidad Head site, to support their contention that the use had been abandoned at that time.

However, just because a site or structure has been vacated, does not necessarily mean it has been abandoned, or "discontinued." The Merriam-Webster Online Dictionary defines 'discontinue' as: 1) to break the continuity of: cease to operate, administer, use, produce, or take; or 2) to abandon or terminate by a legal discontinuance. The Blue Cell Towers Notebook submitted by Friends (hereinafter 'Notebook') provides clear evidence that administration of the site was continuous and that its use was not legally terminated in terms of both an active lease, and active inquiries to the City from other parties wanting to utilize the site. If there are planning and permitting activities ongoing, then the use has not been abandoned. This interpretation is supported by precedence in past Planning Commission determinations. The planning and permitting process often takes more than a year, so this section has been interpreted in the past to include the intent of the use as well as active use, as long as that intent can be reasonably demonstrated.

In addition, if there was an active lease agreement for example, even though the use was not being actively utilized, it does indicate active administration, and it would not constitute

an abandonment of that use, which is the situation for the communications facility. Cox could have reestablished their use of the site within the terms of the active lease agreement, and the lease precluded others from establishing any use. A lease to use the site on Trinidad Head was granted to Cox in order to renew the previous lease on July 1, 1991, and terminated in five years on June 30, 1996 (Notebook p. 93), only 10 months prior to Cal-North submitting an official application to redevelop the site as a cellular facility. In addition, correspondence between the City of Trinidad, Cox Communications and Cal-North Cellular demonstrate that Cal-North, and others, were actively working towards using the site (planning and permitting stages) as early as 1995. The City Council minutes of 9/13/95 indicate that Scripps Institute was interested in installing a generator and using the site in addition to the Federal property. In a letter dated May 15, 1995, Cox Cable indicated in a response to an inquiry by Tom McMurray (then agent for Cal-North Cellular) that *"Cox Cable is not presently using the above mentioned facility* [Trinidad Head Microwave Site] *and does intend to abandon the site in the immediate future."* (Notebook p. 105). This letter indicates two things: 1) that although Cox was not using the site, it had not yet been officially abandoned a year after Friends claim it was; and 2) that prior to the site being abandoned, Cal-North was actively taking the steps necessary to establish their proposed use at the site. Also supporting this viewpoint is a letter from the City of Trinidad to Cox dated 8/23/95, which indicates both that the lease was still active and requests clarification of Cox's intent to possibly terminate the lease early *"as there is some interest by others in the site."* Staff has determined that, based on the evidence, the existing communications site on Trinidad Head, established in 1981, was never abandoned, and is therefore not subject to Zoning Ordinance §17.64.110.C quoted above.

<u>Any change of a nonconforming use shall be to a conforming use and there shall be no expansion of nonconforming uses:</u>
This provision comes from the same Zoning Ordinance section as the previous discussion (§ 17.64.010.C). Friends argue that the conversion of the site from television to cellular constitutes a change of use and that subsequent projects expanded the nonconforming use contrary to the above provision. Staff does not consider the change from a cable television broadcasting site to a cellular communications site a change of use. This is supported by the City's management plan adopted for Trinidad Head, that was accepted by BLM and certified by the CA Coastal Commission, which stated that: *"The City will continue to coordinate with the Cable T.V. company and any future, <u>similar-type users that provide a public service</u>* (emphasis added)*, and where use does not conflict with the primary purposes of open space and public recreation*."

Further, the cellular facility is within a discrete area, the size of which has not changed in more than 20 years, consistent with §17.64.010.C. Although there are multiple users and structures, the use of the 60' x 45' site has remained as a cellular communication facility and such use has not been altered or expanded. The intensity of use is not specifically regulated by City ordinances, except as a consideration in making Use Permit Finding 'A,' quoted above. Further, based on the fact that accessory structures are allowed in the OS Zone with a Use Permit per Zoning Ordinance §17.16.030, once a Use Permit is approved, additional structures are not nonconforming as stipulated by §17.64.010.A, and therefore, do not increase the existing degree of nonconformance.

Accessory structures and uses

Friends contend that the proposed, and some existing, structures are not accessory structures allowable under the Open Space regulations. The Trinidad Zoning Ordinance defines an 'accessory structure' as *"detached building or structure, other than a sign, the use of which is accessory to the use of the lot* (§17.08.690)*."* An 'accessory use' is defined as *"a subordinate use which is customarily incidental to the primary use of the premises, and which does not alter or change the character of the premises* (§17.08.710)." There are no accessory uses within the existing communications site; the entire use is for cellular communications; the site itself would be considered an accessory use to the remainder of the property, which contains the primary use of recreation and open space. In this case, the original structures associated with the Cox facility would constitute the primary structures, and all others are accessory structures and allowed by the Zoning Ordinance with approval of a Use Permit. This is consistent with past analysis for a variety of projects.

Appurtenances and height regulations.

Similar to the above section, Friends argue that the cellular poles and antennas are not appurtenances and therefore violate height restrictions. Please refer to the original staff report for 2005-13a (June 2006) pages 5-6 for an analysis of these regulations; a portion is also quoted below. The section cited in the staff report (below) lists the types of structures that are not subject to height limits; it is a very specific, but short, list and would severely limit certain development if interpreted to be all inclusive. This is a good example of why the Zoning Ordinance language can't be considered all inclusive in all instances. Staff interprets this section to be examples of the types of structures not included in height limits. Telephone poles are an example of appurtenances that necessarily would not be subject to these height restrictions, but which are not specifically listed as exempt.

> "Section 17.56.100 of the zoning ordinance provides further guidance on measuring height. This section reads: *"Heights of buildings and structures shall be measured vertically from the average ground level of the ground covered by the building to the highest point of the roof. Chimneys, vents, flagpoles, conventional television reception antennas, ventilating and air conditioning equipment, parapet walls and similar architectural and mechanical appurtenances shall be excluded in making such measurement."* The transmission antenna could be considered to fit in to the second section as a 'mechanical appurtenance' or similar to a flagpole or T.V. antenna."

Open Space regulations

These are specifically addressed in the original staff report for this project.

Open Space Zoning does not apply to the Federal land.

This is correct in the sense that the Federal Government is not subject to local zoning regulations. However, the fact remains that the entire Trinidad Head is zoned as Open Space in the City's LCP. Under the Federal Coastal Zone Management Act, the Federal development is subject to review by the Coastal Commission. In making their consistency determination for the Federal development, the Coastal Commission only considers the provisions of the Coastal Act and their own regulations, rather than the City's zoning. However, they must consider such things as scenic resources, open space and cumulative

impacts (also see discussion under CEQA below). The main reason for Friends to make this statement is to show how the federal facilities are somehow different from the cellular facilities, and that staff erroneously considered those facilities to be in an open space area in analyzing the impacts of the current proposal. Staff fails to see the merits of this argument. The Scripps and NOAA weather site sits at the very summit of, and takes up approximately 33,500 sq. ft. of the scenic headland that Friends is trying to protect verses the approximately 1,300 sq. ft taken up by the cellular site below the 'summit'. The Coast Guard tower is also much larger than the cellular poles. Just because the Federal Government is not subject to the City's regulations does not make that development less visible, or less obtrusive, especially to tourists, who don't know the difference. When considering such things as aesthetics and cumulative impacts, the whole of the landscape must be taken into consideration, which includes all development on the Head (also see the discussion under CEQA below) and surrounding vegetation, etc.

Site Characteristics – Ground Disturbance.

The June staff report for this project included several statements regarding the amount of ground disturbance. Friends point out that there are inconsistencies in the staff report, because in a couple places, the phrase *"no new ground disturbance"* is used, and in at least one place the phrase *"only minor ground disturbance"* is used. These statements are not conflicting when viewed in context. It is clear that some soil disturbance will need to occur in order to place the proposed equipment cabinets, but they will be placed within the previously disturbed fenced area. This area has already been graded and disturbed by previous construction activities, precluding the potential to disturb sensitive vegetation or cultural resources. That is what is meant by *"no new ground disturbance."* The difference can be seen in the December staff report for the original project proposed on an adjacent site, which included several conditions regarding ground disturbance and protecting vegetation and cultural resources that are not necessary for the current proposal.

Selective citing

Staff takes exception to the widespread quotation of this phrase from the Coastal Commission staff 12/6/05 email which states: *"Having mow made a full reading of Section 17.16.030.E, and seen that it was apparently selectively cited with regard to the rather crucial pre-1979 facilities qualifier…"* The exact language of §17.16.030.E (Uses permitted with a use permit (in the OS Zone)) is as follows: *"Structures accessory to uses and buildings existing within the open space zone at the time the ordinance codified in this title is adopted."* The 1997 Cal-North staff report (Notebook p. 137) includes the following statement: *"Section 17.16.030(e) allows structures accessory to uses and buildings existing within the Open Space zone at the time the Zoning Ordinance was codified with approval of a use permit."* Although not quoted as written in the Zoning Ordinance, all the elements of that section were included in the staff report description. It was clearly qualified by the fact that the section only applied to existing, nonconforming uses. As described in my response (memo dated 1/6/06) to the more official and detailed Coastal Commission letter dated 12/20/06, there is disagreement between Coastal Commissions staff and City staff as to when the Zoning Ordinance should be considered to be codified for Trinidad Head. Normally this would be a straightforward date of adoption or certification, but Trinidad Head was not within City limits, and therefore, the Zoning

Ordinance did not apply to that property when it was originally codified in 1979 and certified by the Coastal Commission in 1980. Therefore, Staff feels that the appropriate date for establishing an existing use is when the City's LCP and Open Space zoning were applied to the Head when it was annexed in 1984 (certified in 1985), as the cable site was legally established by 1983. Please see the referenced Coastal Commission email and letter and my response for more information.

In a related note, staff would like to respond to a letter to staff dated 6/20/06, which implies that staff was remiss by not analyzing all the available information, because staff did not research what exactly happened between the construction of the cable facility in 1983 and 1997 when the Cal-North project was originally approved. However, there was no need to do further research to obtain this information since the staff report was based on previous approvals in 1997, 2000, 2001 and 2003. It was not until the legality of the 1997 approval was officially questioned in terms of this appeal that staff needed to find that information. Although the Notebook has been available and is a useful document, it represents only a partial file record, and staff must rely on the complete files. This staff report represents the results of that research.

Misstatement on 'Notice of Action' for the 1997 Cal-North approval

It has been pointed out that the 1997 "Notice of Action" prepared by the City Clerk and sent to the Coastal Commission had a misprint that erroneously listed the project location as "Trinidad School" (Notebook p. 145). However, the correct parcel number is listed prior to the incorrect location. Also, the staff report was attached to the Notice of Action, which listed the correct location. The community was aware of the correct location based on the application materials, public notice and staff report, which all included the correct location. Coastal Commission staff never indicated that they were misled as to the location in terms of the 1997 approval.

CEQA (CA Environmental Quality Act) Review

Friends argue that the current proposal and previous cellular approvals were not properly reviewed under CEQA. The following explanation shows that the City has correctly and appropriately applied CEQA provisions. However, it should also be noted that there is a maximum 180 day statute of limitation to file a lawsuit for CEQA determinations, and therefore previous approvals are not challengeable. Notwithstanding that, I will still respond to the issues raised. Two different Categorical Exemptions (CEQA Guidelines §15300-15332) have been used for the current and previous cellular projects: 1) §15301 – Existing Facilities – *Class 1 consists of 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;* and 2) §15303 – New Construction or Conversion of Small Structures – *Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from use to another where only minor modifications are made in the exterior of the structures.* Both of these exemptions are followed by several examples of the types of projects that would fall under them. These two exemptions are the most commonly used

ones for all projects in Trinidad, and the cellular antennas clearly fall under them. The argument against the original, 1997 approval was that it was a new use rather than an alteration of an existing use, since the previous use had been abandoned. This issue is already discussed above under nonconforming uses, and staff has determined that the use was not actually abandoned. Furthermore, through noticed public hearings, the issue of impacts to scenic resources or other CEQA topics was not raised during past approvals, and the City correctly supported and determined those categorical exemptions. As part of their action on the US Cellular application 2005-13a, the Planning Commission made the determination that the project is exempt under CEQA per § 15301 of the CEQA Guidelines exempting alteration of, and minor additions to, existing facilities, as stated in the June Staff Report.

However, there are also exceptions to the exemptions in certain situations, including where there are cumulative impacts, which Friends argue is the case for the current proposal. Section 15300.2(b) states: *"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."* It is well documented in court cases that: *"In categorical exemption cases, where the agency establishes that the project is within an exempt class, the burden shifts to the party challenging the exemption to show that the project is not exempt because it falls within one of the exceptions listed in Guidelines section 15300.2"* (*Davidon, supra,* 54 Cal.App.4th at p. 115 & *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1259). Friends showed panel 'representations' of changes that have occurred over the years on the cellular site at the last Planning Commission hearing. These representations were from one point on the Head and considered only the fenced area and not the surrounding landscape, including the nearby vegetation or the Federal property. Cumulative and aesthetic impacts are most appropriately considered on a landscape scale. The communication facility can be seen in context on landscape and aerial photos that have been available at City Hall. These photos show the entire developed area on top of Trinidad Head, which consists of approximately 50,000 sq. ft. of non-vegetated area, the cellular site (1,300 sq. ft. fenced area, 2,400 sq. ft. leased area), the Federal facilities (33,500 sq. ft. developed area, 47,000 sq. ft. property area), the PG&E facility (700 sq. ft.), existing vegetation and the loop trail on Trinidad Head. Staff believes that the City has been prudent in preventing cumulative impacts from the communications site by keeping improvements to existing developed areas, by preventing removal of tall vegetation, by not allowing improvements to encroach closer to the loop trail (which does not include the access road), by requiring screening vegetation, and by limiting the size and height of improvements. It has only been this recent project where this issue has been raised. As part of their action, the Planning Commission made the determination that the cumulative impacts have not yet reached a 'significant' level. But they also recognized the potential for future cumulative impacts, thereby making the recommendations for the City Council to place a moratorium on additional cellular projects, develop a comprehensive management plan, and seek alternative locations and options for cellular providers.

Another consideration that should be taken into account is that the Federal facilities on the Head have been subject to the federal equivalent to CEQA, the National Environmental Policy Act (NEPA), which requires the BLM to consider cumulative impacts when reviewing

projects. Further, the CA Coastal Act, and the CA Coastal Commission operating under their regulations, are considered "functionally equivalent" to CEQA, and their determinations are therefore similar to, but not specifically subject to CEQA. This 'functionally equivalent' process would have included a review of aesthetics and scenic resources for the Federal development on the Head, although the City was not made aware of the process. Under both of these processes, it was not determined that there were significant, adverse impacts to scenic or other resources for projects the Federal Government and the Coastal Commission approved, which were taller, larger and covered more of the actual 'summit' of Trinidad Head.

Findings

Friends have disputed several of the findings contained in the previous staff report, some of which have already been discussed herein. Staff feels that there is enough information to show that the findings as originally written by staff can be made. This was also the determination of the Planning Commission at their public hearing for this project in June. Friends present an alternative viewpoint, and their information can be used by the Council to make alternative findings as they see fit (see attached appeal procedure write-up and appeal section below).

Appeal Process

Although the project was appealed specifically on the legality of the site and the need for the project, the appeal is essentially a new hearing, and the Council can uphold, reverse or modify the Planning Commission's decision. However, the Planning Commission did make the required findings and took action on this project after several public hearings. The Council should only modify the Planning Commission's action if it is determined that the Commission acted inappropriately in making their determination. The discussion should be focused on the basis of the appeal, but the public and / or City Council can open it up to other issues, such as the required findings. The Council should consider all the evidence that has been presented. A reversal of the Planning Commission's decision (denial of the project) should be based on specific evidence that results in not being able to make one or more of the required findings. Any motion should explicitly reflect the findings being made, or which can not be made and the factual basis for that decision. Sample motions can be found in the attached appeal procedure write-up. The Planning Commission's action included eight conditions of approval as well as the five recommendations to the City Council. The Council may also remove, modify or add conditions of approval through this appeal hearing process.

Summary

In summary, staff finds that this project is consistent with City regulations and such decision is supported by past project approvals. Staff also appreciates the fact that community priorities have changed in the last 10 years, and supports the Planning Commission's compromise and recommendations made at their June 21, 2006 hearing. Staff feels that the Planning Commission took appropriate action and recommends that the Council uphold the Planning Commission's determination and deny the appeal, approving the project as conditioned.