



Posted: October 13, 2023

## NOTICE AND CALL OF A MEETING OF THE **TRINIDAD PLANNING COMMISSION**

The Trinidad Planning Commission will hold a regularly scheduled monthly meeting on  
**WEDNESDAY OCTOBER 18<sup>th</sup>, 2023, AT 6:00 P.M.**

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**For your convenience, this meeting will be held in person and via videoconference hosted on the Zoom platform.**

### **PUBLIC COMMENT:**

Public comment may be submitted via email in advance of the meeting, or in an orderly process during the conference orally or via email or Zoom chat. Your comments will be included in the public record for the meeting and will be accepted at any time during the meeting.

You can email comments before the meeting to [asouza@trinidad.ca.gov](mailto:asouza@trinidad.ca.gov). Or you can deliver hand-written comments to 409 Trinity Street, or mail them to P.O. Box 390, Trinidad CA, by 2:00 p.m. on the day of the meeting for posting on the City website.

### **HOW TO PARTICIPATE:**

You are invited to participate in person at Trinidad Town Hall or by Zoom.

Join from PC, Mac, Linux, iOS or Android:

<https://us06web.zoom.us/j/89834495236?pwd=5VBvclytWDYyLP6jcVuyciNeMPbznO.1>

Password: 702391

To phone in, dial 888-278-0296 (toll free); Conference Code: 685171

*Please note that live meeting logistics will be prioritized. The quality of the Zoom teleconference meeting cannot be guaranteed. Technical challenges experienced by either the participant or the City will not interrupt or halt progress of the meeting.*

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The following items will be discussed:
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- I. ROLL CALL**
- II. APPROVAL OF MINUTES** – April 19, 2023
  - July 12, 2023
  - September 20, 2023
- III. APPROVAL OF AGENDA**

**IV. ITEMS FROM THE FLOOR**

**V. AGENDA ITEMS**

**Public Hearing / Discussion / Decision / Action**

1. Trinidad 2023-03E: Extension of the temporary closure of the ALMT and monthly update on the Old Home Beach Trail (ALMT and Parker Creek) closures and progress to-date to reopen them.
2. General Plan Update – Cultural and Historic Resources Element: Discussion of a draft Cultural and Historic Resources Element of the Trinidad General Plan.
3. Policies on Detached Living Spaces: Discussion/ decision regarding modification of the standard conditions for approving detached living spaces as set forth in the policy adopted by the Planning Commission on April 18, 2018. *Continued from the September 20, 2023 meeting.*
4. Policies for After-the-Fact Planning Permits: Discussion/ decision regarding modification of the policies for considering and approving after-the-fact planning permits as set forth in the policy adopted by the Planning Commission on February 17, 2021.

**VI. COMMISSIONER REPORTS**

**VII. STAFF REPORT**

**VIII. FUTURE AGENDA ITEMS**

The items listed below have been requested to be on a future Planning Commission agenda and will not be discussed at this meeting. Publication of this list is not required by law, and the list's inclusion on this agenda does not constitute, nor substitute for any noticing requirements. Also, please be aware that this list is subject to change.

- Vegetation regulations
- Signage Master Plan/Sign regulations
- Annexation (09/20/23)

**IX. ADJOURNMENT**

*The meeting packets can be accessed at the following link:*

<https://www.trinidad.ca.gov/meetings>

**MINUTES OF THE MEETING OF THE TRINIDAD PLANNING COMMISSION**  
**WEDNESDAY, APRIL 19, 2023 VIA HYBRID**

**I. CALL TO ORDER/ROLL CALL (6:00 pm)**

Commissioners Present: Cole, Hopkins, Johnson, Slay

Commissioners Absent: Hakenen

City Planner Staff: Parker

City Staff: Souza

**II. APPROVAL OF MINUTES - March 15, 2023**

*Motion (Hopkins/Cole) to approve the minutes. Johnson abstained, having been absent from the meeting. Passed unanimously (3-0).*

**III. APPROVAL OF AGENDA**

*Motion (Hopkins/Cole) to approve the agenda. Passed unanimously (4-0).*

**IV. ITEMS FROM THE FLOOR**

None.

**V. AGENDA ITEMS**

**Public Hearing/ Discussion/ Decision/ Actions**

1. Trinidad 2023-02: Grading Permit and Coastal Development Permit to replace water mains on Edwards and Van Wycke Streets; the project will also replace an existing 150,000-gallon redwood water storage tank with a 300,000-gallon steel water tank. Located within the Edwards Street right-of-way from Hector to Galindo, and the upper Van Wycke Street right-of-way from Edwards to 723 Van Wycke. A portion of the project will also occur within the City's water storage tank properties east of Westhaven Drive. APNs: City ROW; 515-141-059, -088, -089.

City Planner Parker explained that this action will be for the coastal development permit (CDP) for the same project that the Planning Commission approved a CEQA Mitigated Negative Declaration for at the last meeting. Parker provided an overview of the project, noting that some portions of the project are inside City limits and some portions are in County jurisdiction. All the mitigation measures from the CEQA document have been included as conditions of approval of

the CDP and grading permit. City Engineer, Steve Allen, was on hand to answer questions from the Commissioners and public.

Commissioner Hopkins asked about the location for the mitigation for the loss of redwood trees. City Engineer Allen responded that the details have yet to be determined in consultation with various permitting agencies. Hopkins also asked what would happen to the redwood from the dismantled tank and the trees to be cut. Allen stated that it would be up to the contractor to dispose of, and since it has value, should reduce the amount of the bid. There was a discussion about the potential high value of the wood. Commissioner Johnson asked that the disposition of the redwood be included in the bidding process so that the value and disposition are clear.

Commissioner Slay asked how the tank size was determined, suggesting that the storage capacity should be maximized. Allen responded that it was based on various factors, including space, weight and funding.

Commissioner Johnson asked about slope stability and leaks; he also expressed concern about the tank outlet being underground. Engineer Allen stated that a soils investigation had been completed for the tank foundation and line replacements; he added that underground components are standard practice and generally safer.

#### *Public Comments*

Bryce Kenny (Trinidad resident) commented on the size of the water tank, noting that bigger is not always better due to longer retention times.

Anita Thompson (Trinidad resident) asked about replacement of the hydrant connected to the temporary water line on Van Wycke. City Engineer Allen confirmed that it will be connected to the new line.

Don Allen asked if the geologic stability of the site had been analyzed, and Allen responded that a geotechnical report had been completed.

Sherri Provolt (Greater Trinidad Area resident / Yurok Tribal Councilmember) suggested donating the redwood generated by the project to the local tribal community, because it has cultural value.

Kathleen Lake (Trinidad resident) suggested the City complete cost benefit analysis for the removal of the redwood and not just leave it up to the contractor.

### *Commissioner Comments and Questions*

Hopkins would like to see the redwood reused in town or provided to the tribal community. Johnson suggested making that a condition of approval. Parker suggested adding the disposition of the redwood as recommendations rather than a condition, since the details are unknown.

Parker shared Commissioner Hakenen's comments. He requested a condition of approval that temporary storage locations have screening that does not consist of bare chain link fencing to lessen visual impacts. He also asked that paving and restriping be coordinated with other City street projects so as to avoid redundancy. There was further discussion regarding adding conditions and/or recommendations.

***Motion (Cole / Slay) Based on the information submitted in the application, included in the staff report, and public testimony, I move to adopt the information and findings in the staff report and approve the Coastal Development Permit and Grading Permit for the Trinidad Tank and Pipeline Replacement Project as conditioned in the staff report with the addition of the following recommendations: (1) the contractor be required to specify details regarding the reuse and disposal of the redwood tank and trees as part of the bid; (2) the mitigation for replanting redwood trees removed for the project should occur as close to the site as possible; and (3) to minimize chain link fencing but maximize screening of staging area(s). Motion passed unanimously (4-0).***

2. Trinidad 2023-02: Coastal Development Permit for emergency, temporary closure of the Parker Creek and Axel Lindgren Memorial Trails due to unsafe conditions and to protect sensitive environments. Located at the Parker Creek Trail below the intersection with Old Wagon Road Trail, and the Axel Lindgren Memorial Trail; APNs: 042-091-004 & -005, 042-102-039, 042-111-008, 042-131-005, -007, & -008.

City Planner Parker explained that the City was informed in February about erosion along the base of the bluff that occurred this past winter, including along the Tsurai Study Area. At an emergency meeting, the Tsurai Management Team (TMT) recommended closure of the Parker Creek and Axel Lindgren Memorial Trails to protect public safety and sensitive areas. Parker issued an emergency CDP for the temporary closures, and the City is now following up with the formal approval. She explained that the TMT is meeting regularly to discuss short-term and longer term mitigations and repairs so that public access can be restored.

### *Commissioner Comments and Questions*

Cole voiced his concerns about keeping the trails closed and prohibiting public access, noting that erosion is a regular occurrence. Parker explained that opening the trail could create potential for further erosion and damage to the base of the bluff and sensitive cultural areas. She informed

the Commission of some of the short-term solutions discussed at the recent Tsurai Management Team meeting.

Hopkins pointed out that the City's liability is limited on public trails. He also asked what has been done since the closure in February. Parker explained that there have been meetings with the Coastal Commission staff, Coastal Conservancy staff, representative of the Yurok Tribe, the Tsurai Ancestral Society, and several City staff. Johnson asked who is accountable for remedying the closures. Parker said that the Tsurai Ancestral Society and the City are taking the lead in the meetings, but it is the City's jurisdiction. Cole voiced his concern about the lack of progress since February.

Commissioner Slay pointed out that there are many damaged trails along the coast that have not been closed. He is concerned that blocking the trails may cause people to go around the barriers and cause further damage to sensitive environments.

#### *Public Comments*

Tim Needham (Trinidad resident, member of the Trails Committee) stated that the Parker Creek Trail should be opened as it is no worse than it has been for the past several years. He emphasized the importance of Old Home Beach for families, due to it being sheltered from most wave action. He encouraged implementation of recommendations of the Tsurai Management Plan.

Don Allen (Greater Trinidad Area resident) informed the Commission about a feasibility analysis for the ALMT he and Steve Madrone performed in 1994 and suggested that it be revisited to look at options for the trail. He requested that only one trail be closed at a time.

Kathleen Lake (Trinidad resident) asked for clarification on the need for the trail closures. She stated that the recent storms created comparable damage on other trails along the coast that have not been closed. She stated that the staff report did not provide adequate evidence of the need for the closures.

Anita Thompson (Trinidad resident) asked that the Parker Creek Trail to be opened immediately. She noted that work on the trails hadn't yet begun and that there are no alternate access routes to Old Home Beach. She does not agree that the Parker Creek Trail is unsafe. She also requested that TMT meetings be open to the public.

Bryce Kenny (Trinidad resident) provided current photos of the trails and noted that the City is free from liability. He also suggested a more open process for the TMT meetings. Kenny suggested adding a condition that the Parker Creek Trail be closed only while repair work is

being performed. He shared his concern regarding the precedent of the Van Wycke Trail temporary closure that has gone on in excess of four years.

Sherri Provolt (Greater Trinidad Area resident, Yurok Tribal Councilmember) stated that she understands the community's concerns and emphasized that the TMT is working hard to get the trails opened as soon as possible.

Johnson asked for clarification that the emergency CDP was issued on February 10th and was valid for thirty days. Parker clarified that within thirty days a complete application must be submitted. He followed up by asking what would happen if the Commission did not approve the emergency permit. Parker explained that it would likely be appealed and added that the primary reason for the closure is to protect cultural resources. She also explained some of the complexities of working in this area.

Sarah Lindgren-Akana (member of the Tsurai Ancestral Society) provided a summary of TMT meetings on this topic. She explained that the City is a member of the TMT and a signatory to the Tsurai Management Plan. The TMT has been meeting regularly to address the erosion. She informed the Commission that the Tsurai Ancestral Society recently received a grant to redesign the Axel Lindgren Memorial Trail. The TMT is just asking for enough time to reopen the trails in a safe and responsible manner. She also informed the Commission that there are legal protections against discussing cultural resources in an open meeting. Lindgren-Akana added that the TMT is trying to also control foot traffic and damage to a sacred site. There is a recommendation for temporary fencing around the unstable bluff area and to block the ALMT while still allowing public access to the beach via the Parker Creek Trail.

Commissioner Slay recognized that there are ongoing, long-term issues, but suggested that repairing trails could be done quickly and asked what the City can do to expedite the process. Commissioner Hopkins also recognized that repairs and rerouting of the ALMT will take time; he would like to see the Parker Creek Trail reopened by Memorial weekend, but is willing to wait a month to hear the TMT recommendations.

Commissioner Cole expressed doubts about whether pedestrian traffic contributes to the instability of the bluff. He disagrees with the idea of placing riprap on the bluff as a long-term repair option. Cole was also concerned that any fencing on the beach would potentially be washed away during the next storm.

Commissioner Johnson recognized that any long-term solutions will take time and will require broad community input. He expressed appreciation for the efforts of the TMT and that Coastal Commission staff have been involved in these discussions. He is willing to approve the temporary closures in order to provide time for experts to recommend solutions.



***Motion (Johnson/Hopkins) Based on application materials and information included in this Staff Report, and based on public testimony, I find that the project is consistent with the City's certified LCP and other applicable regulations, and I move to adopt the information in this staff report and approve the project as described in this staff report, and as conditioned therein. Motion failed to pass (2-2).***

#### *Public Comments*

Bryce Kenny suggested an alternative motion that would allow a five-day closure of the Parker Creek Trail while work is being performed.

Kathleen Lake expressed her support for B. Kenny's idea.

Tim Needham also expressed support for B. Kenny's suggestion, noting that he is an attorney. He added that the City should not risk losing the public's right of access to easements from disuse.

Sarah Lindgren-Akana informed the Commission that the City's attorney has been present at the TMT meetings. She expressed a willingness to provide regular reports at meetings on behalf of the TMT. She appreciates people's patience while the TMT works through complex issues. Planner Parker suggested adding a condition that regular progress reports will be provided by staff at City Council and Planning Commission meetings for the duration of the trail closures.

***Motion (Johnson/Hopkins) Based on application materials and information included in this Staff Report, and based on public testimony, I find that the project is consistent with the City's certified LCP and other applicable regulations, and I move to adopt the information in this staff report and approve the project as described in this staff report, and as conditioned therein with the added condition that monthly reports will be provided to the Planning Commission and the City Council for the duration of the trail closures. Motion passed (3-1).***

3. Water Conservation – Permitting and Landscaping: Discussion/decision regarding (1) new landscaping requirements, including a water efficient landscaping consistent with state law; and (2) water use patterns and potential permitting and/or allocation of water use; this is a LEAP grant funded task implementing by Housing Element Policy HI-17.

#### *Staff Report*

City Planner Parker that this is another LEAP grant task designed to monitor and conserve water use to ensure there is enough water supply to serve residential development and implement portions of Housing Element implementation measure HI-17. She noted that the task was broadly written and includes several components. One is to review landscaping requirements and adopt or otherwise implement a water efficient landscaping ordinance. Information regarding the



State's model water efficient landscape ordinance was presented at the February meeting, and revised landscaping regulations are provided in the staff report.

Another component of the LEAP grant task is to review water use patterns and develop a system to monitor individual water use over time. To that end, Parker provided several graphs showing collective and examples of individual water use over time. Finally, the grant task includes consideration of water contracts and incorporating water use into permit review procedures. Parker noted that many providers have a contract or service agreement with their customers, but that permitting and allocating water is not very common but has become more so during recent droughts. She provided some examples from other communities. Parker acknowledged that these are big issues that will take substantial discussion and input from various sectors of the community and other staff.

#### *Commissioner Comments and Questions*

Commissioner Hopkins asked about the tracking of water use and whether individuals know how their water use varies. Parker explained that only Short-Term Rentals are tracked specifically by water use; she added that OWTS permits receive a general score based on high or conservative water. Commissioner Slay suggested that a comparison be included on the water bills like what PG&E does. There was a brief discussion about the City's water rate study and how a tiered structure can promote conservation.

It was noted that overall water usage is down over the last 10 years. Commissioner Johnson asked if the water use could be monitored or regulated through the OWTS permits. Parker explained that many residential systems predate current design flow information. In addition, most people use well under the design flow, so it might not be a good measure, she added that it would be a good target for commercial usage. There was a discussion about the water demand assessment and the possibility of the City annexing land in the future.

The Commission discussed the new draft landscaping regulations. Johnson asked whether the new regulations would apply to already existing landscaping. Parker explained that the City did recently adopt some new water waste prohibitions that would apply to all water use. The landscaping regulations would apply to new and modified landscaping only. Johnson commented that he feels some of the new standards are too strict. Commissioner Slay is concerned about encouraging over-fertilization.

#### *Public Comments*

None

### *Commissioner Comments and Questions*

Commissioner Cole opined that the data does not justify a heavy-handed approach at this time. Johnson stressed that he'd like input from the Water Advisory Committee and suggested a joint meeting. He also requested more information regarding the reporting capability of the City water account software. Hopkins would like to encourage rainwater storage tanks for residents. Parker responded that the City will be completing a demonstration project at Trinidad Elementary.

## **VI. COMMISSIONER REPORTS**

Hopkins attended the Trails Committee meeting on April 17th.

## **VII. STAFF REPORT**

City Planner Parker continues to prioritize the SB2 and LEAP grant tasks. She has been meeting regularly with Coastal Commission staff. She is also working with Jennifer on issuing OWTS permit and working on the bluff erosion issue with the TMT.

## **VIII. FUTURE AGENDA ITEMS**

- TMP Incorporation into General Plan
- Vegetation Regulations
- Signage Master Plan
- Rainwater Catchment
- Trail Closure Progress Reports

## **IX. ADJOURNMENT**

Adjourned at 9:35 P.M. The next regularly scheduled meeting is on May 17, 2023.

**Submitted by:**

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**Anton J. Souza**  
Deputy Clerk

**Approved by:**

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**Richard Johnson**  
Acting Planning Commission Chair

**MINUTES OF THE SPECIALLY SCHEDULED MEETING OF THE TRINIDAD  
PLANNING COMMISSION WEDNESDAY, JULY 12, 2023 (LIVE/HYBRID)**

**I. CALL TO ORDER/ROLL CALL (5:00 pm)**

Commissioners Present: Hakenen, Johnson, Slay, Cole

Commissioners Absent: Hopkins

City Planner Staff: Trevor Parker

City Staff: City Manager Eli Naffah, City Clerk Gabriel Adams

**II. APPROVAL OF AGENDA**

*Motion (Johnson/Cole) to approve the agenda. Passed unanimously (4-0).*

**III. ITEMS FROM THE FLOOR**

**Paula Levine** – Trinidad Area Resident

I wrote the Council and Commission an email regarding the outside city water service connection application. I asked to have it on the Commission's regular meeting agenda next week to expedite approval. The City Planner has not replied, and I am frustrated by a conversation I had with the City Manager. Please read my emails.

**IV. AGENDA ITEMS**

**Public Hearing/ Discussion/ Decision/ Actions**

1. Water Conservation – Permitting and Landscaping; Discussion/ decision regarding (1) new landscaping requirements, including a water efficient landscaping consistent with state law; and (2) water use patterns and potential permitting and/or allocation of water use; this is a LEAP grant funded task. Continued from the April 19, 2023 meeting.

*Staff Report*

Parker summarized a staff report included in the meeting packet, explaining that Trinidad was approved for \$65,000 in funding through HCD's Local Early Action Planning Grant Program (LEAP) for housing planning and to facilitate acceleration of housing production to comply with the 6<sup>th</sup> cycle of the regional housing need assessment (RHNA). Trinidad's LEAP grant tasks focus in increasing housing opportunities and resources, and improving water infrastructure capacity and conservation.

Water availability is one of the factors that limits potential new housing in and around Trinidad. Therefore, Housing Element Implementation Program HI-17 includes water conservation measures including the following:

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- Change the rate structure to encourage conservation and develop a drought contingency plan that would require cutbacks as certain milestones/low flows are reached.
- Creating a water efficient landscape ordinance
- Look into limiting individual water use based on a contract at the time of connection.
- Incorporate review of water use as part of permit approvals.

The LEAP grant tasks are focused on two areas: (1) developing new landscaping regulations that increase water use efficiency, and (2) limiting water use through some kind of allocation system and/or permitting. In terms of water use, there was a general consensus that, while some customers use much higher amounts of water, overall water use is down so there's no reason to take a heavy-handed, regulatory approach. However, the Planning Commission wanted to get input from the WAC and continue to track water use.

At this time, staff is focused on meeting and wrapping up the LEAP grant requirements. To that end, staff have provided revised landscaping regulations based on the discussion at the last meeting and additional water use information and is requesting additional feedback from the Commission.

#### *Commissioner Comments and Questions*

Parker provided 2020 data based on an estimated population of 307. Cole pointed out that results could fluctuate significantly due to the small population.

Commissioner Hakenen asked about the prescriptive landscape permitting process under the State MWEL. Parker explained that the State's MWEL is very complicated, and suggested that reference to those requirements be referenced in Trinidad's ordinances to make them easier to find.

Commissioner Johnson advocated for as simple of an approach as possible for the sake of residents' understanding and staff enforcement. Hakenen stated his preference for variety in landscaping throughout town, and his concern with painting the City into a corner by requiring a formula-based landscape. Parker responded that the City could take a more performance-based approach that would address properties that use more than their fair share of water.

Commissioner Cole suggested that the City should take an educational approach to keeping residents from creating hardscapes over their leach fields. Johnson agreed.

Commissioner Hakenen suggested that a tiered water rate structure could be a great conservation incentive.

Johnson recommended doing nothing at this time to regulate customer water use, but be prepared to review water use annually, flag high-users, and notify the customer. Cole agreed, stating he was not particularly concerned with egregious water users as long as overall water use is down, noting that excessive water use is likely going to landscaping and not through septic systems. He suggested that the City should focus on making the distribution system more efficient.

Commissioner Slay agreed with Cole and Johnson, noting that the water distribution system should be prioritized over monitoring ornamental landscapes. Household size is not a static figure, so using a questionnaire to collect household data size periodically would be one option of gathering data. Also, non-punitive education can mitigate above average consumption, with simple comparisons to other users and averages being very useful. For example, print and mail each customer's annual water consumption summary and include water use information in an annual newsletter.

There was a general consensus that an annual water usage report should be prepared and reviewed by the WAC and Planning Commission. There was a discussion about what kind of information to include in such a report and what percentage of increase should be cause for concern.

City Planner Parker noted concern that the current size of Trinidad may not be sustainable in the future with increasing state mandates and associated costs so that annexation may be necessary at some point to meet future needs. But, she pointed out that the City would need enough water to supply any annexed areas.

The Planning Commission moved on to reviewing the draft landscaping regulations. City Manager Naffah noted that the focus of any regulatory period should be during the dry months, not during normal or high-flow periods. Residents should consider drought tolerant landscaping as well.

Commissioner Hakenen wants to make sure resident unique character landscaping such as dahlia gardens are protected from these regulations. He suggested incentivizing utilization of more drought tolerant landscaping rather than mandating it.

Commissioner Johnson preferred not requiring preliminary and final landscape plans since all other application requirements continue to get more complicated. Preliminary plans should be combined and reviewed once in the final plans. Rain sensors could be recommended on irrigation systems.

Commissioner Slay noted rain catchment systems may not be affordable for everyone and shouldn't be a requirement, and the City should discourage residents from ripping out landscape and installing impervious surfaces. There should also be exemptions for edible food gardens and native/drought tolerant plants. He also requested clarification about some of the provisions in the ESHA section.

Commissioner Cole suggested that if no irrigation was needed then the landscaping should be exempt from Design Review. Also, solar and wind access should be considered and included somehow. The Commission generally favored simplifying the regulations and only reviewing larger projects; projects that do not irrigate with potable water, and those that use drought tolerant and/or native vegetation could be exempt.

Parker pointed out that the Planning Commission included a landscaping section in the new draft design review guidelines and that it addresses views, privacy, screening, and other aspects besides just irrigation. Parker suggested using performance standards, and if all the boxes can be checked, then no further review would be required. She will provide the various community design policies and landscaping design review criteria at the next meeting for context.

## V. ADJOURNMENT

Meeting adjourned at 9:05 P.M. The next regularly scheduled meeting is September 20, 2023.

**Submitted by:**

**Approved by:**

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**Gabriel Adams**  
Trinidad City Clerk

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**Aaron Hakenen**  
Planning Commission Chair

**MINUTES OF THE REGULAR MEETING OF THE TRINIDAD PLANNING  
COMMISSION WEDNESDAY, SEPTEMBER 20, 2023 VIA HYBRID**

**I. CALL TO ORDER/ROLL CALL (6:00 pm)**

Commissioners Present: Cole, Hakenen, Hopkins, Johnson, Slay (arrived at 6:11 p.m.)

Commissioners Remote:

Commissioners Absent:

City Planner Staff: Parker

City Staff: Souza

**II. APPROVAL OF MINUTES**

July 12, 2023

*Approval of minutes continued to next meeting due to the minutes not being in the online packet.*

August 16, 2023

This item was moved to the end of the agenda because Commissioner Slay was needed for a quorum. Johnson noted that “requested” was missing at the top of page 7. Slay wanted to make sure his comment that if parking is plentiful, then excess parking spaces maybe used, where needed, to improve safety and promote alternative forms of transportation is reflected in the discussion about prioritizing strategies on page 4.

*Motion (Johnson/Slay) to approve the minutes as amended. Passed unanimously (5-0).*

**III. APPROVAL OF AGENDA**

*Motion (Johnson/Hopkins) to approve the agenda, moving the August 16, 2023 minutes to the end of the discussion items. Passed unanimously (4-0). Slay arrived at 6.11pm.*

**IV. ITEMS FROM THE FLOOR**

None.

**V. AGENDA ITEMS**

**Public Hearing/ Discussion/ Decision/ Actions**



1. Trinidad 2023-03: Update on the closures of the ALMT and Parker Creek Trail closures and progress to-date to reopen them.

#### *Staff Report*

City Planner Parker explained that the GHD report for the Tsurai Ancestral Society on options/recommendations for rerouting the base of the trail has been completed. A copy of the report has not yet been provided to the City, though the City Manager has requested it. Public Works staff have begun dismantling the lower fence on Old Home Beach.

Parker also provided an update on the Van Wycke Trail closure. The Coastal Commission found no substantial issue with the 6-month trail closure, essentially denying the appeal. However, the Coastal Commission expressed concerns about the closure and expect the City to take steps towards a solution in a timely manner. City staff met with the Coastal Commission STAFF on Monday, September 18<sup>th</sup> to discuss alternatives and next steps.

#### *Commissioner Comments and Questions*

Johnson asked what would happen if the trail isn't opened in six months. Parker explained that there would be the option to extend the closure, which would likely be appealed again. Hopkins asked about liability. Parker explained that although there is a state law that limits liability, due to failed improvements (the old retaining wall), the City could still be liable.

#### *Public Comments*

None.

2. Rancheria 2021-06E: Extension of August 18, 2021 approval of Grading Permit and Design Review to construct an approximately 1,300 sq. ft., single-story interpretive/visitor center located on previously disturbed lands currently occupied by storage units and the gift/tackle shop. The building will house the gift and tackle shop, a seating and viewing area, coffee bar, reception area, two offices and a restroom. It would also provide educational opportunities focused on regional resources for tribal citizens and the public. Located at 1 Bay Street within the Trinidad Harbor Area; APN: 042-071-012

#### *Staff Report*

City Planner Parker provided an overview of the Interpretive Center project. She explained that conditions have not changed since the permit was issued and that the Rancheria has been actively working towards meeting conditions and submitting a CDP application to the Coastal Commission. She recommended approving the extension.

#### *Applicant Comments*

Leslie Sanders, Trinidad Rancheria Transportation and Land Use Director, stated that conditions to the lot-line adjustment and this permit have been carried out carefully. She noted that the CDP was submitted earlier today. She also explained that all documentation for the lot line adjustment was submitted to the title company in June, recognizing the stipulation that they bring the documentation back to the Planning Commission. The preliminary title reports were received last Wednesday. She is happy to answer any questions.

#### *Commissioner Comments and Questions*

Commissioner Slay asked whether Commissioner could ask about project details other than just the extension. Parker responded that the whole project could be considered. Slay asked if there had been an increase in the cost of materials that would change the design. Sanders responded that cost has increased but, the Rancheria plans to keep the design the same, though there have been some changes to the building code.

#### *Public Comments*

James Brown, Trinidad Rancheria Tribal Councilmember, thanked the City and encouraged open communication.

#### *Commissioner Discussion*

There was no further discussion.

***Motion (Johnson/Cole) Based on the fact that conditions have not substantially changed and the fact that the Rancheria is continuing to actively pursue all the necessary permits and funding, I move to extend the approval for a grading permit and design review for the Trinidad Rancheria Interpretive Center Building for another two years as conditioned in the original approval. Passed unanimously (5-0).***

3. Reiner 2023-07: After-the-fact Design Review and Coastal Development Permit to construct approximately 30 feet of stairs from an existing deck leading to a 12-foot

by 12-foot viewing platform and a separate 4-foot by 16-foot deck extension/ access walkway. Located at 170 Scenic Drive; APN: 042-141-018

### *Staff Report*

City Planner Parker provided an overview of the project, which has already been constructed. She explained that the project is relatively small and meets all the zoning requirements. She recommended that the Commission approve the project, and she explained the eight conditions of approval included in her report.

### *Commissioner Comments and Questions*

There was a discussion about the project's visibility from various locations including Old Home Beach and Scenic Drive. The Commission talked about prior work and improvements and confirmed that it had been permitted.

Commissioner Cole asked why the deck platform wasn't exempt if it is less than 500 sq. ft. and 30 inches high. Parker explained that exemptions are generally interpreted to be cumulative to avoid serial exempt improvements.

Andrew Zappettini, agent for the applicant, explained that the OWTS application questionnaire described in condition six has been submitted. He also noted that vegetation would be planted that will screen the platform from Scenic Drive.

Hakenen clarified some discrepancies between what is shown as existing deck in the present design and what was proposed/ approved in 2021. Slay clarified that the access walkway provides a secondary exit.

Noting that a previous project in 2021 had also begun without permits, Hopkins asked why the applicant began work without a permit and asked the agent what penalties or incentives could have prevented it. Zappettini responded that there is no real excuse, but it started out as a smaller project, which would not have required a permit. There was a discussion about the City's enforcement process and penalties for after-the-fact permits.

### *Public Comments*

None.

### *Commissioner Discussion*

There was a discussion about the conditions of approval.

*Motion (Hopkins/Cole) on application materials, information and findings included in this Staff Report, and based on public testimony, I find that the project complies with the Trinidad LCP and other applicable policies and regulations, and I move to adopt the information and required Design Review, View Protection, and other findings in this staff report and approve the project as submitted in the application, as described in this staff report, and as conditioned herein. Passed unanimously (5-0).*

4. Policies on Detached Living Spaces: Discussion/ decision regarding modification of the standard conditions for approving detached living spaces as set forth in the policy adopted by the Planning Commission on April 18, 2018.

#### *Staff Report*

City Planner Parker explained the policies for approving detached living spaces that were approved by the Planning Commission, including definitions for “kitchen” and “wet bar.” She further explained that a recent project highlighted some dissatisfaction with one of the standard conditions requiring the applicant to agree to periodic walk-throughs by the City Building Inspector.

#### *Commissioner Comments and Questions*

There was a discussion about the use of detached living spaces. Hakenen expressed concern that the condition could be used by a neighbor to harass the applicant by submitting unfounded complaints. Commissioner Johnson suggested a flowchart or rubric to determine the necessity for inspections. Hakenen suggested an appeal or hearing process. Parker suggested requiring that any new complaints after a complaint within the last year to have proof.

Commissioner Cole asked how to streamline the process. There was a discussion about the complaint and enforcement processes. Parker suggested that performance standards (e.g. water use) could be used either instead of or to trigger inspections. Cole prefers a complaint driven process, noting that the City can be the complainant. Johnson thinks the 24-hour notice is too short, but it was noted that too much notice could give the property owner time to hide violations. Parker agreed to reach out to the Building Inspector.

#### *Public Comments*

None.

### *Commissioner Discussion*

After further discussion, there was general agreement to rewrite Condition 4 to change the condition to limit inspections to no more than once every 12 months without agreement from the Building Inspector, Zoning Administrator, and City Manager that another inspection is warranted based on the evidence. Parker will bring this item back with suggested wording at the next meeting.

5. Administrative CDP Regulations: Discussion/decision regarding a Zoning Ordinance amendment to add regulations allowing for the issuance of administrative coastal development permits.

### *Staff Report*

City Planner Parker provided an update regarding the draft regulations which mostly follow the Coastal Commission regulations. She explained that there is little flexibility in how the City can administer and process CDPs. She noted that these regulations only apply to CDPs, and that the City can also adopt regulations for other types of administrative approvals, such as design review, as needed. The report included a map or permit applicability and a flowchart. She recommended the Commission review the administrative CDP regulations and provide feedback.

### *Commissioner Comments and Questions*

Johnson asked for clarification regarding Section K (Expiration). Parker explained that a new application could be for another administrative CDP and the process can restart without a penalty. Hakenen followed by asking about the three-year timeline. Parker stated that one to two years is standard with other permits in Trinidad. Hakenen suggested aligning the timeframes.

Hakenen suggested adding language to Section G and or E to clarify that Zoning Administrator approval of an administrative CDP is not final until reported to the Planning Commission with no objection. Parker agreed.

### *Public Comments*

None.

### *Commissioner Discussion*

Johnson confirmed that these regulations will become part of the zoning ordinance as section 17.72.076.

## **VI. COMMISSIONER REPORTS**

Hakenen informed the Commission that the Water Advisory Committee will meet next week. He also noted that the City is participating in the formation of a Greater Trinidad Area CERT (Community Emergency Response Team) and to look out for meeting and training announcements.

Hopkins notified the Commission that the Trails Committee will meet in October.

Slay mentioned that the Short-Term Rental Committee will also meet in October.

Johnson shared that RCEA has a survey out on county-wide disaster resiliency and power issues.

## **VII. STAFF REPORT**

City Planner Parker is finishing the reports and deliverables for SB2 and LEAP. But she will continue to work on uncompleted tasks like the ADU ordinance. She will get back to the general plan update starting with the Cultural and Historic Resources Element in the and will provide an update on all of the Elements. She will also be working on Coastal Resiliency Planning tasks. There are also a couple of REAP grant tasks – updating the application forms and creating permitting FAQs and a preliminary annexation study.

## **VIII. FUTURE AGENDA ITEMS**

- TMT incorporation into the general plan
- Vegetation regulations
- Signage Master Plan/Sign regulations
- Rainwater catchment

Hakenen suggested adding after-the-fact permit policies and the date that each of these items was added to this list for tracking purposes. Parker noted that TMT incorporation into the general plan has occurred at the staff level and will be part of the Cultural and Historic Resources Element. She also explained that the stormwater grant will be providing rainwater catchment cisterns at the school as a demonstration project, and the City Engineer is planning on providing some pre-drawn plans. Therefore, both of those

items can be taken off the list. Johnson suggested adding annexation to the list, noting that the City Council expressed an interest in learning more about the process.

## **IX. ADJOURNMENT**

Meeting adjourned at 8:03 p.m. The next regularly scheduled meeting is October 18, 2023.

**Submitted by:**

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**Anton J. Souza**  
**Administrative Assistant**

**Approved by:**

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**Aaron Hakenen**  
**Planning Commission Chair**



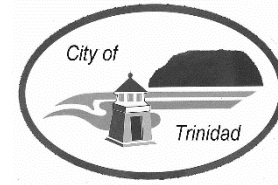


## DISCUSSION AGENDA ITEM #1 SUPPORTING INFORMATION

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3. Trinidad 2023-03E: Extension of the temporary closure of the ALMT and monthly update on the Old Home Beach Trail (ALMT and Parker Creek) closures and progress to-date to reopen them.

## DISCUSSION / ACTION AGENDA ITEM



Wednesday, October 18, 2023

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**Item:** Trinidad 2023-03E: Extension of the temporary closure of the ALMT and monthly update on the Old Home Beach Trail (ALMT and Parker Creek) closures and progress to-date to reopen them.

### **Background**

At the April 19, 2023, meeting, the Planning Commission approved a CDP (2023-03) to temporarily close the ALMT and Parker Creek Trail to protect sensitive areas and public safety due to erosion along the toe of the bluff. The Planning Commission approved the closures on the condition that monthly reports are provided at the regular Planning Commission meetings for as long as the trail(s) are still closed.

The Parker Creek Trail was reopened on May 26, 2023; the ALMT remains closed. The temporary closure of the ALMT was approved for six months starting on the effective date of the permit (after the appeal period). The six-month closure will expire on November 9, 2023. Therefore, staff is proposing extension of the temporary closure for seven months, which would expire in early June 2024 with the intent that the trail would be reopened by Memorial Day weekend (Friday May 24, 2024).

### **Current Conditions**

The trail is not in a condition to reopen to public access at this time. The failing steps at the bottom of the trail were completely removed, and the base was covered with erosion control matting. The base of the trail is an exposed, steep slope that would be hazardous to traverse, particularly under wet conditions. In addition, foot traffic would damage the erosion control matting, which was not designed for that use, potentially leading to additional erosion at the base of the trail.

### **Update**

The fencing along Old Home Beach was removed between September 20 and 22.

As has been reported previously, the report that TAS contracted with GHD to produce that would make recommendations for rerouting and stabilizing the base of the ALMT has been completed. However, although the City Manager has requested a copy, the TAS has not yet provided one to the City. The City Manager will reiterate his request.

In the meantime, the City Manager will request the City Engineer to provide some suggested alternatives for a temporary repair to the base of the trail that would allow the resumption of public access prior to rerouting the trail. A temporary repair would be appropriate, because planning, design and permitting for rerouting of the base of the trail will very likely take

more than a few months. These repair alternatives will be presented to the Tsurai Management Team at a future meeting.

Note that the fencing and signage at the top and bottom of the trail were authorized to remain only as long as the trail closure remains in effect. No changes to that approval (Trinidad 2023-05) are necessary at this time.

**Staff Recommendation/Suggested Action(s):**

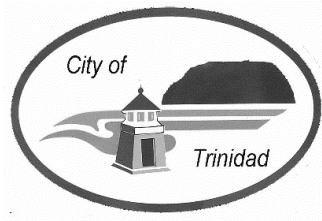
Due to the need to continue to the closure of the ALMT until repairs can be completed due to the currently unsafe and unstable conditions at the base of the trail, staff recommends extending the closure of the ALMT for another seven months with the intent to have it reopened by Memorial Day weekend. The extension may be granted with the following motion:

Based on the fact that current conditions at the base of the trail are hazardous and unstable, I move to extend the coastal development permit for the temporary closure of the ALMT for another seven months as conditioned in the original approval with the modification of Condition #1 as follows:

1. Because the approval is for a temporary trail closures, the CDP shall expire after ~~two~~ seven months of going into effect ~~for the Parker Creek Trail and after six months of going into effect for the ALMT~~, unless an extension is granted by the Planning Commission based on the need for more time to obtain funding and/or further explore repair and access alternatives if the Planning Commission finds that substantial progress has been made in the initial time period.

**Attachments**

- Final staff report for Trinidad 2023-03 (6 pages)
- Map of closure area (1 page)



Application Filed: NA  
Staff: Trever Parker  
Staff Report: April 10, 2023  
Commission Hearing Date: April 19, 2023  
Commission Action: Conditionally Approved

### **STAFF REPORT: CITY OF TRINIDAD**

APPLICATION NO: 2023-03

APPLICANT / OWNER(S): City of Trinidad

AGENT: NA

PROJECT LOCATION: Parker Creek Trail below the intersection with the Old Wagon Road Trail and the Axel Lindgren Memorial Trail.

PROJECT DESCRIPTION: Coastal Development Permit for the temporary closure of the Axel Lindgren Memorial Trail and a portion of the Parker Creek Trail due to unsafe conditions and to protect sensitive environments.

ASSESSOR'S PARCEL NUMBER: 042-091-004 & -005, 042-102-039, 042-111-008, 042-131-005, -007, & -008.

ZONING: Open Space – OS; Special Environment - SE

GENERAL PLAN DESIGNATION: Open Space – OS; Special Environment - SE

ENVIRONMENTAL REVIEW: Categorically Exempt per § 15304 of the CEQA Guidelines exempting minor alterations of land, including temporary use of land having negligible or no permanent effects on the environment.

APPEAL STATUS: Planning Commission action on a Coastal Development Permit, Variance, Conditional Use Permit, and/or Design Review approval 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 may be appealable per Section 30603 of the Coastal Act.

## **SITE CHARACTERISTICS:**

The Axel Lindgren Memorial Trail descends the bluff from the vista point at the end of Trinity Street to Old Home Beach. The bottom of the trail has been eroding for several years. And the large winter storms this year caused significant erosion at the toe of the bluff and the cable steps at the bottom of the trail are now completely gone, posing a hazard to pedestrians.

Parker Creek Trail begins along Parker Creek Drive and also accesses Old Home Beach. The Old Wagon Road Trail and Groth Lane Trail feed into the Parker Creek Trail. While not as steep, the base of this trail was also subjected to significant wave action this past winter and the base of the trail has eroded, creating unsafe conditions.

The toe of the bluff along most of Old Home Beach from the rocky point below 723 Van Wycke, which separates Launcher Beach from Old Home Beach, all the way to the large, buried sea stack below 40 Scenic (Groth House) suffered erosion due to the abnormally large and west wave action this winter. The erosion has potentially increased bluff instability and caused damage to the Tsurai Study Area and sensitive environments.

Land uses adjacent to the project include residences and open space.

## **STAFF COMMENTS:**

The Tsurai Ancestral Society (TAS) informed the Tsurai Management Team (TMT) of the erosion issue in early February and requested an emergency TMT meeting. The TMT agreed that emergency action to close the trails to protect public safety and sensitive environmental resources was needed. The City Planner issued an emergency Coastal Development Permit (CDP), pursuant to Trinidad Municipal Code (TMC) § 17.72.080 on February 10, 2023. The City then placed sawhorse barriers and signage to notify the public of the trail closures. The attached portion of the trails map shows where the closures are located. (Note that after recently walking the Parker Creek Trail, I think the map is incorrect, so I X'ed out the wrong trail portion and added approximately where it should be.)

Within 30 days of issuance of an emergency permit, a complete application for a standard CDP must be submitted. In this case, further information was not essential, because the closure is temporary, but it still needs to be approved by the Planning Commission. Since the closure, City staff have continued to meet with the TMT to discuss both short and long-term solutions to the issues that the erosion this winter has caused.

The CDP approval currently before the Planning Commission is for temporary closure of the Axel Lindgren Memorial Trail for up to six months and the lower Parker Creek Trail for up to two months. The Tsurai Management Team, including the City, is working with the Coastal Commission and professional staff to develop a plan to protect the sensitive environment, stabilize the toe of the slope, and repair the bases of the trails. It is likely that the ALMT will need to be closed longer, because the bottom of the trail is completely washed out, and designing and funding a repair will take time. We will likely come back with a standard CDP for a longer (though still temporary) closure and potentially more robust barriers and signage at the top of the trail once we have a plan in place. It is anticipated that the Parker Creek Trail can be reopened for the upcoming tourist season once we have a plan to keep people away from potentially unstable and sensitive environmental areas. That work will also likely require a CDP.

#### *Potential Conflicts of Interest*

There are no known conflicts of interest; no Commissioners own property or reside within 300 feet of the project.

### **ZONING ORDINANCE / GENERAL PLAN CONSISTENCY**

The Axel Lindgren Memorial Trail is on land zoned Open Space (OS), and the Parker Creek Trail is located on land zone Special Environment (SE).

The City's zoning ordinance does not include required findings for projects that require a CDP but no other type of planning approval such as Design Review. Therefore, overall consistency with the City's LCP and Coastal Act have been considered.

The Parker Creek Trail is an important and heavily used part of the City's trail system laid out in the 1978 General Plan and is shown on the Circulation Map (Plate 4). The Axel Lindgren Memorial Trail was rebuilt after the adoption of the general plan but has been designed as the "primary" trail to Old Home Beach through a settlement agreement. It is considered a Tribal Cultural Resource as it is the traditional access for the nucleus of the Tsurai Village and Ceremonial Trail.

Policy 64 of the Trinidad General Plan requires that the trail system be marked and maintained for use by the public. This project is consistent with that requirement, because the closure is only temporary while the City investigates options to improve the trail and protect public safety and sensitive environments.

Policy 5 of the Trinidad General Plan states that: *"Where access trails must traverse steep slopes, they should be located away from unstable areas and improvements should be provided to minimize erosion and slope failures. Existing trails which are creating these problems should either be improved or closed."* The project is consistent with this policy.

In terms of the Coastal Act, the primary standard of review for this project is whether it is consistent with the public access policies of the Coastal Act (Chapter 3).

One of the primary purposes of the Coastal Act is to *“Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principals and constitutionally protected rights of private property owners.”* (§ 30001.5), which also carries out a similar principal found within the CA Constitution. Section 30210 states: *“In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.”* The project is consistent with these sections, because the trail currently poses a risk to public safety and sensitive environments, and it is subject to further erosion and instability.

Coastal Act § 30211 states: *“Development shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.”* This temporary closure will not interfere with the public’s right to access the sea, because it is short term, and there are numerous other coastal access points in and around Trinidad.

Section 30214(a) allows that: *“The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: (1) Topographic and geologic site characteristics...”* This temporary closure is necessary due to the unsafe conditions caused by wave erosion that has compromised the integrity of the trail and the toe of the bluff.

A condition has been included as part of the project that the approval is only for a six-month period for the ALMT and a two-month period for the Parker Creek Trail while the TMT and other stakeholders explore short and long-term solutions. The Planning Commission may extend that time limit if found necessary and if progress can be shown in advancing repair or access alternatives.

Although the temporary closure will affect public access during the closure, it is necessary to protect public safety and sensitive environments. The project can be found to be consistent with the City’s certified LCP and other applicable regulations and the public access policies of the Coastal Act.



### **SLOPE STABILITY:**

The project is located outside of the Alquist-Priolo Fault Zone. But the property where the proposed project is located is within an area designated as unstable and questionably stable based on Plate 3 of the Trinidad General Plan. The City is working with a geologist and the City Engineer on potential solutions. The closure will not further impact stability.

### **SEWAGE DISPOSAL:**

The project will not generate wastewater.

### **LANDSCAPING AND FENCING:**

This project does not involve any new landscaping or fencing.

### **DESIGN REVIEW / VIEW PROTECTION FINDINGS:**

Public safety and directional signage, such as what has been placed sawhorses at the trail closure to inform users, are exempt from Design Review per §17.56.160.A.5, exempting public safety and directional signage less than 2 sq. ft. in area. Temporary structures are also exempt. No other structures are proposed at this time. No design review findings are required.

### **PLANNING COMMISSION ACTION**

Based on the above analysis, the project was found to be consistent with the City's Zoning Ordinance, General Plan, Coastal Act, and other applicable policies and regulations. Therefore, the necessary findings for granting approval of the project were made. The Planning Commission agreed with staff's analysis and approved the project with the following motion:

Based on application materials and information included in this Staff Report, and based on public testimony, I find that the project is consistent with the City's certified LCP and other applicable regulations, and I move to adopt the information in this staff report and approve the project as described in this staff report, and as conditioned herein with added condition number 2.

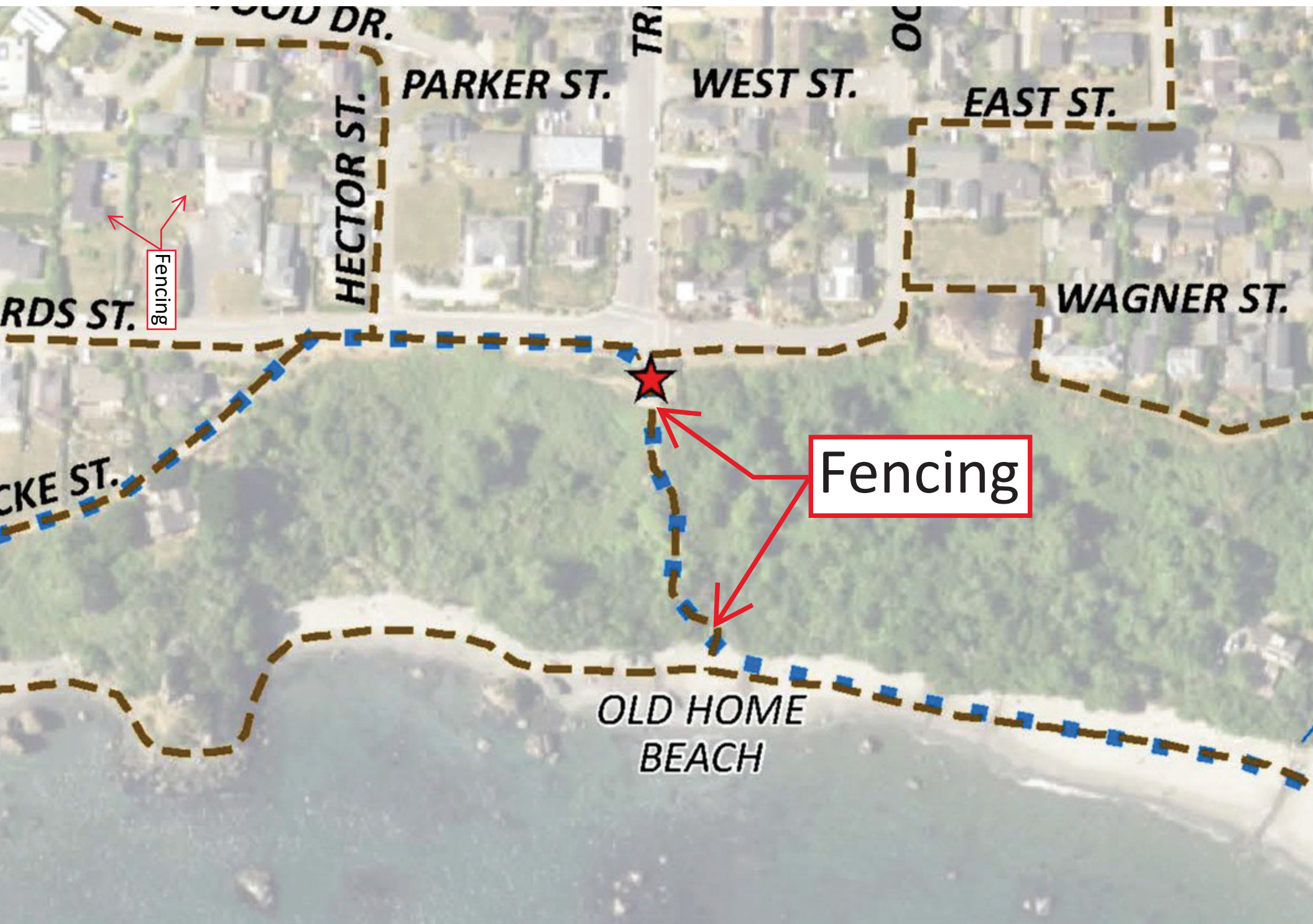
## PLANNING COMMISSION ALTERNATIVES

### CONDITIONS OF APPROVAL

1. Because the approval is for a temporary trail closures, the CDP shall expire after two months of going into effect for the Parker Creek Trail and after six months of going into effect for the ALMT, unless an extension is granted by the Planning Commission based on the need for more time to obtain funding and/or further explore repair and access alternatives if the Planning Commission finds that substantial progress has been made in the initial time period.
2. Monthly progress reports shall be provided by City staff or another representative of the Tsurai Management Team at City Council and Planning Commission meetings while the trails remain closed.

### ATTACHMENTS

- Map of closure area (1 page)





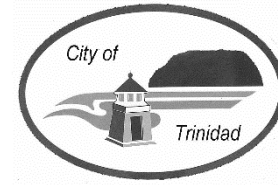
## DISCUSSION AGENDA ITEM #2 SUPPORTING INFORMATION

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2. General Plan Update – Cultural and Historic Resources Element: Discussion of a draft Cultural and Historic Resources Element of the Trinidad General Plan.

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## DISCUSSION / ACTION AGENDA ITEM



Wednesday, October 18, 2023

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**Item:** General Plan Update – Cultural and Historic Resources Element: Discussion of a draft Cultural and Historic Preservation Element of the Trinidad General Plan.

### **Background and Current Status**

The City has been working towards updating its General Plan since the late 1990s. However, those efforts have been put on hold and restarted several times based on grants, staff workload, and other priorities. The existing General Plan was adopted in 1978 and has only been minimally updated since then. Another concerted effort to update the General Plan started in 2017 and has continued to the current time.

The Introduction; Land Use; and Conservation, Open Space, and Recreation Elements were recommended by the Planning Commission and submitted to Coastal Commission staff for review in 2018, and the Circulation Element was submitted in 2019. It took time to get comments back from Coastal Commission staff, but comments were received in 2019 and 2020 on all four of these elements. City staff then revised the elements and drafted responses to Coastal Commission staff comments, which were extensive. The responses and revisions along with updated figures were brought to the Planning Commission in 2019-2022 and submitted to Coastal Commission staff in February 2023. The City has not received additional comments back yet.

The elements resubmitted to Coastal Commission staff, hopefully in a near final format, are as follows:

- Introduction (September 2019)
- Land Use Element (August 2020)
- Circulation Element (April 2021)
- Conservation, Open Space, and Recreation Element (August 2021)
- Figures 1-12 to supplement these elements were updated in 2022

In addition, a Housing Element was drafted in 2019 and adopted in April 2020. The Housing Element does not need to be certified by the Coastal Commission as part of the LCP.

A Community Design Element and new design guidelines were drafted in 2022-2023. And a draft Noise Element was reviewed in September 2022, but staff have not yet had time to update it due to other obligations (e.g. SB2 and LEAP grant tasks). Neither element has yet been submitted to Coastal Commission staff.

The Public Safety Element has been on hold pending the outreach and planning work occurring as part the OPC coastal hazards planning grant process. That process is now far

enough along that staff can start updating a related background report and then the Public Safety Element in the next few months.

### **Cultural and Historic Preservation Element**

A draft Cultural and Historic Preservation Element was sent to the Yurok Tribe, Trinidad Rancheria, and TAS in October 2022. Although several reminders have been sent, the City has yet to receive comments from the Yurok Tribe and TAS, though Yurok Tribe staff have indicated that comments will be provided soon. Staff met with Trinidad Rancheria staff to discuss the Element and they also provided comments in the draft document.

Note that the text from the section on the Tsurai Study Area was removed at the request of the City Attorney pending upcoming mediation on some related issues. I have not edited the draft Cultural and Historic Preservation Element since providing a copy to the Tribes except for a few minor corrections and some reorganization to put regulatory and guidance language in appendices rather than the document itself. I thought it would be better to wait to include updates based on Trinidad Rancheria's comments until I also have comments from the Yurok Tribe.

But the City cannot continue to wait for comments indefinitely. The General Plan update is a priority for the City Council, Planning Commission, City staff, and Coastal Commission staff. In addition, update of the Cultural and Historic Preservation Element is a task under the City's LCP update grant, which has gotten behind schedule. Therefore, I decided to go ahead and get it to the Planning Commission, so you can start your review.

This element will be a work in progress, and staff will continue informal consultation with Tribes throughout the review. There will also be a formal consultation process for the entire General Plan once it gets to the City Council for review.

### **Staff Recommendation:**

Review the Draft Cultural and Historic Preservation Element and ask questions and provide comments for incorporation into the draft.

### **Attachments**

- Cultural and Historic Preservation Element (26 pages)



## **CULTURAL & HISTORIC PRESERVATION ELEMENT**

### **A. Purpose**

### **B. Background**

#### **1. Historical Overview**

### **C. Tribal Cultural Resources**

#### **1. General Cultural Resources Protection**

#### **2. Tribal Consultation and Communication**

#### **3. Tribal Confidentiality**

#### **4. Tsurai Study Area**

### **D. Historic Resources**

#### **Appendix 1: Glossary**

#### **Appendix 2: Tribal Consultation Guidance**

#### **Appendix 3: Legal Background**

### **A. PURPOSE**

This is the Cultural & Historic Resources Element of the Trinidad General Plan. This Element discusses the purpose and importance of preserving archeological and historical resources, describes methods for protecting these resources, and provides local policies to guide the implementation of cultural and resource preservation. The Cultural & Historic Resources Element establishes goals, policies, and actions for the protection and preservation of cultural and historical resources as well as consultation and information sharing (or confidentiality) protocols. Though this is not one of the seven elements required by state planning law, Trinidad has a rich history and contains significant cultural resources deserving of intentional on-going robust protections.

### **B. BACKGROUND**

Cultural resources are elements of cultural heritage. From a land use perspective, important cultural resources include archaeological sites, historic architecture, industrial relics, artifacts, cultural landscapes, spiritual places, and historic districts. These elements provide traces of Trinidad's rich history and add to the unique character and identity of the county.

Cultural resources relate only to remains and sites associated with human activities and include the following:

- Prehistoric and ethnohistoric Native American archaeological sites;
- Historic archaeological sites;
- Historic buildings;
- Elements or areas of the natural landscape which have traditional cultural significance.

### **1. Historical Overview**

The City of Trinidad is located within the ancestral lands of the Yurok People. Before 1700 AD, Yurok People established the village of Tsurai on bluffs overlooking Trinidad Bay. The settlement of ten to twelve houses supported all the necessities as well as providing facilities for ceremonial brush dances and burial grounds. And their descendants are still here.

A Portuguese sea captain, Sebastian Rodriguez Cermeno, provided the first written documentation of Trinidad Bay in 1595. Many years later, it was “discovered” again by Spanish captains, Heceta and Bodega, on Trinity Sunday, June 9, 1775. They named the port La Santisima Trinidad and claimed the area for Spain. Visiting Trinidad in 1793, Captain George Vancouver found the natives “friendly and courteous ...” Russian and other seafaring fur traders found safe harbor in Trinidad Bay in the early 1800's.

In December of 1849, Josiah Gregg and seven companions arrived in Trinidad after a month-long struggle over the mountains from the gold fields. After the prominence provided by the Josiah Greggs party in 1849 and the establishment of the City (1850), Trinidad competed with the City of Arcata as a gold mining supply and timber shipping center. Trinidad became a boomtown! Gold-seekers from all over the world used Trinidad as a supply port for mines on the Klamath, Trinity, and Salmon rivers – goods, gear and miners were off-loaded, and lumber to build San Francisco was on-loaded for the trip back.

Trinidad was the County seat of Klamath County from 1851-1854. Early photos show a ‘railroad’ trestle from wharf along the eastern edge of Trinidad head and into the town. Trinidad’s first sawmill was operational by 1852. Trinidad was also later connected by rail to the Hammond line and had a train station adjacent to Potato Rock, which has, for the most part, been removed by a long history of rock quarrying. By 1851 Trinidad was a bustling town of 3000 people. The City of Trinidad was officially incorporated in 1870 - making it one of the first cities in California. But activity died down by the early 1900's, after lumber was primarily shipped by rail.

Activities again boomed when Trinidad became one of sixteen whaling stations in California, developing later than activities in the south. Another short-term enterprise, Trinidad Whaling Station lasted from 1918 to 1934. An average of 29 whales per week were brought in and ‘processed’. Blubber was shipped by the railroad. In those days one could ‘smell’ Trinidad all the way down to Arcata. Trinidad also became an important commercial and sport fishing port, and the original pier was built in 1948.

The early trail that connected Trinidad north to the Klamath River mining activity soon transformed into a road and Trinidad became a stop along the Redwood Highway. By the 1950's, the decade of the automobile, Trinidad had a filling station and auto repair shop, hotels and restaurants. This center was mostly removed by the 1960's freeway

project. Fishing and tourism continue to be the most important components of Trinidad's economy.

The Trinidad Head Light Station ( #123857376 ) is on the National Register of Historic Places and National Historic Landmarks Program: California MPS. The following State Historical Landmarks are in Trinidad: Trinidad Head (#146), Town of Trinidad (#216), and the Old Indian Village of Tsurai (#838). The Yurok village of Tsurai was located directly below the #838 Marker. "A prehistoric permanent Indian community, it was first located and described by Captains Bodega and Heceta, June 9-19, 1775. The houses were of hand-split redwood planks, designed for defense and protection. The village was occupied until 1916. Location: SW corner of Ocean and Edwards Streets, Trinidad"

The Yurok village of Tsurai is located within the Tsurai Study Area (TSA) and is a component of a larger cultural landscape utilized by Yurok people in generations past and into the present day. Yurok people inhabited Tsurai (later generally referred to as Trinidad) since time immemorial. Since the early decades of the 20th century, and after Yurok people were removed from the village lands, the cultural resources contained within the TSA have undergone periods of archeological excavation, looting, erosion, and neglected management.

There are a number of Tribal entities that are stakeholders in the Trinidad Area, but there are currently two that the City interacts with on a regular basis. The Yurok Tribe is the largest Tribe in California, with more than 5,000 enrolled members. The Yurok Reservation, along the Klamath River, was created through the Hoopa-Yurok Settlement Act of 1988, and the Yurok Tribe adopted its constitution in 1993; their headquarters are located in Klamath. Cher-ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) was established in 1906 and is located adjacent to the City. The Trinidad Rancheria has ancestral ties to the Yurok, Wiyot and Tolowa peoples. A new constitution was ratified by the Trinidad Rancheria in 2008.

## C. TRIBAL CULTURAL RESOURCES

Prehistoric cultural sites represent the material remains of Native American societies and their activities. Ethnohistoric sites are defined as Native American settlements occupied after the arrival of European settlers in California. Such sites include villages, seasonal camp sites, stone tool quarry sites, hunting and butchering sites, traditional trails, and sites with rock carvings or paintings.

Areas of traditional cultural significance are areas which have been, and often continue to be, of economic and/or religious significance to peoples today. They include Native American sacred areas where religious ceremonies are practiced or which are central to their origins as a people. They also include areas where Native Americans gather plants

for food, medicinal, or economic purposes. A certain measure of protection is provided for such resources by California State Law.

Yurok culture is deeply connected to the environmental landscape in which it has existed for many generations. Cultural relationships between places and people are evident in Yurok cultural traditions, language, stories, resources use, land management, settlement, and contemporary life. The cultural landscape of Yurok people comprises what is known as “ancestral territory” and connects coastal, inland, river, and high country areas and resources. Yurok people utilized specific resources obtained from each region within their ancestral territory. Yurok culture, tradition, and oral histories reflect the complex, integrated, and interdependent relationships that exist between Yurok people and their natural environment.

The importance of coastal resources to all Yurok people and villages is evident through extensive trail systems that linked river and coastal villages, ceremonial areas, and resource areas throughout Yurok territory (Gates 1995). Coastal areas provided abundant food resources including a variety of seaweeds, mussels, clams, surf fish, and other diverse coastal marine species. In addition a variety of coastal plant species were utilized as foods, medicines, and for other cultural practices, throughout Yurok country, including spruce root, ferns, and grasses used for basketry. Many important traditional Yurok resources are only available from coastal environments and access to these resources has been a vital component of the coast-river connection of Yurok culture.

Tsurai Village, Trinidad Head, the sea stacks, and other landscape features within the Trinidad viewshed are components of the Yurok cultural landscape embedded with deep cultural, historical, and spiritual significance to the Yurok people. The Trinidad area continues to be of profound cultural and spiritual significance to contemporary Yurok people.

## **1. General Cultural Resource Protection**

**GOAL CULT-1: To protect, preserve and enhance cultural resources, particularly those that provide significant heritage, historic, scientific, educational, social and economic values that benefit present and future generations.**

### General Cultural Resource Protection Policies

**CULT-1.1** Identify the potential for significant impacts to cultural resources during the design phase of City projects, and if found to be significant, protect resources from substantial adverse change per California Public Resources Code (PRC) §5020.1 thorough design changes and/or appropriate mitigation measures developed in consultation with affected Tribal entities.

**CULT-1.2** Development shall not be allowed to cause substantial adverse changes to significant cultural resources unless:

- A. The site or resource has been found not to be of significant value based on consultation by representatives of the cultural resources community and relevant experts; or
- B. There is an overriding public benefit from the project, and compensating mitigation to offset the loss is made part of the project.

**CULT-1.3** Projects located in areas known to have historic or prehistoric ruins, burial grounds, or archeological sites shall be designed, mitigated, and/or conditioned to avoid loss or substantial degradation of these resources, including standard provisions for post-review inadvertent discoveries of archaeological or Native American remains in accordance with Health and Safety Code §7050.5 and Public Resources Code §5097.98 and other applicable laws. Preserving Native American remains undisturbed and in place shall be selected as the preferred alternative unless substantial factual evidence is presented demonstrating that no alternative(s) are feasible.

*Program CULT-1.3.1:* The following guidelines will be utilized to design and mitigate projects to avoid impacts to cultural resources:

- A. Design projects involving any ground disturbance to avoid known archaeological or paleontological sites;
- B. Provide protective cover (e.g. cap with geotextile material and/or other barrier and cover with imported fill soil using lightweight rubber tired equipment) for all or portions of known (for) sites that cannot be feasibly avoided, after the site has been adequately characterized (depth, area, constituents) and reported on using appropriate scientific excavation techniques;
- C. Where site avoidance is infeasible, design and implement a research design guided mitigation excavation program, in consultation with culturally affiliated Tribe(s) under the direction of a professional archaeologist knowledgeable about regional archaeology, to recover and document significant scientific information that would otherwise be lost by project implementation;
- D. Voluntary deeding of the site into a permanent conservation easement is encouraged;

*Program CULT-1.3.2* For discretionary and ministerial projects that will involve ground disturbing activities, the following measures shall be included as a standard conditions of approval or as notations to be placed on development plans:

- A. A Monitoring Plan / NAGPRA Plan of Action, which sets up a formal agreement between stakeholders regarding the plan for items discovered and excavated dirt removed during project construction, has been drafted with

input from the NAHC, Yurok Tribe, Trinidad Rancheria, and the Tsurai Ancestral Society. This Plan, which may be amended with consent from the interested parties, will be included as part of the construction contract for the work.

- B. Any grading or earthwork activities within the project area shall be monitored by tribally appointed monitor(s).
- C. Cultural resource monitors shall be empowered to halt heavy equipment operations in the event that significant cultural features or human remains are uncovered. Construction activities in the immediate vicinity will be delayed until an archaeologist, qualified to the Secretary of Interior Standards, has assessed the significance of the find.
- D. The cultural resource monitor(s) shall be kept informed by the contractor of the ground disturbance schedule. Field notes shall be kept by the monitor(s) and a brief letter report of the monitoring effort filed with the Northwest Information Center.

**CULT-1.5** Work with the Sheriff's Department and Tribes to ensure that the appropriate staff are trained in the protection of cultural resources and how to respond to incidents involving cultural resources.

**CULT 1.6** The City, when feasible, should strive to help preserve the integrity of, access to, and the use of cultural places, mitigation may often be achieved through a broad range of measures:

- A. Minimizing impacts by limiting the degree of magnitude of the action and its implementation.
- B. Rectifying the impact by repairing, rehabilitating, or restoring the impacted cultural place.
- C. Reducing or eliminating the impact over time through monitoring and management of the cultural place.
- D. Designating of open space land in accordance with Government Code §65560(b).
- E. Enhancement of habitat or open space properties for protection of cultural place.
- F. Development of an alternative site suitable for tribal purposes and acceptable to the tribe.
- G. Other alternative means of preserving California Native American cultural features.

## **2. Tribal Consultation and Communication**

The City is legally obligated to conduct formal Tribal Consultation as part of any General Plan updates or amendments and during the CEQA review process as outlined below. However, the City desires to maintain an open dialog with Tribes to conduct informal and ongoing consultation above and beyond what the law requires.

1. Prior to the adoption or any amendment of a general plan or specific plan, the City must notify the appropriate tribes (on the contact list maintained by the

NAHC) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts to, cultural places located on land within the City's jurisdiction that is affected by the proposed plan adoption or amendment. Tribes will have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code §65352.3). The City must consult with tribes that have requested consultation in accordance with Government Code §65352.3. The purpose of this consultation is to preserve, or mitigate impacts to, cultural places that may be affected by a general plan or specific plan amendment or adoption.

2. Prior to the adoption or substantial amendment of a general plan or specific plan, the City must refer the proposed action to those tribes that are on the NAHC contact list and have traditional lands located within the City's jurisdiction. The referral must allow a 45-day comment period (Government Code §65352). Notice must be sent regardless of whether prior consultation has taken place. Such notice does not initiate a new consultation process.
3. The City must consult with tribes before designating open space, if the affects land contains a cultural place and if the affected tribe has requested public notice under Government Code §65092. The purpose of this consultation is to protect the identity of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5).
4. Prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project, the lead agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. (Public Resources Code §21080.3.1)

In addition to legally mandated consultation, the City desires to maintain an open dialog and conduct continuing informal consultation with Tribes and the TAS.

**Goal CULT-2: To establish clear lines of communication that further the government-to-government relationship between the City and Tribes that that result in true and effective communication, meaningful consultation, open information exchange, and informed decision-making.**

#### Tribal Consultation and Communication Policies

**CULT-2.1** Native American Tribes shall be consulted during discretionary project review for the identification, protection and mitigation of adverse impacts to significant cultural resources. Consultation on ministerial permits shall be initiated if it has been determined the project may create a substantial adverse change to a significant cultural resource. At their request, Tribes shall be afforded the opportunity to review and provide comments to the City early in project review and planning (screening) about known or potential Tribal cultural resources.

**CULT 2.2** The City must consult with each Tribe who is identified by the NAHC and requests consultation. In continuing consultation with the NAHC and the Governor's Office of the Tribal Advisor, the City will maintain and update a Tribal Contact List to be comprised of Tribes that appear on the NAHC's California Tribal Consultation List.

**CULT-2.3** Consultation should further the following principles:

- A. Recognizing that cultural places are essential elements in tribal culture, traditions, heritages and identities.
- B. Establishing meaningful dialogue between the City and tribal governments in order to identify cultural places and consider cultural places in local land use planning.
- C. Avoiding potential conflicts over the preservation of Native American cultural places by ensuring the City and tribal governments have information available early in the land use planning process.
- D. Encouraging the preservation and protection of Native American cultural places in the land use process by placing them in open space.
- E. Developing proper treatment and management plans in order to preserve cultural places.
- F. Enabling tribes to manage and act as caretakers of their cultural places.
- G. The City should consider the involvement of tribes in the ongoing treatment and management of cultural places, objects, or cultural features through a specific monitoring program, co-management, or other forms of participation.

**CULT-2.4** The City shall establish effective mechanisms for:

- A. providing information to Tribes regarding proposed City Actions that may affect Tribal Interests;
- B. seeking information and input from Tribes;
- C. soliciting the collaboration, cooperation, or participation of Tribes; and
- D. offering or seeking consultation with affected Tribes.

**CULT-2.5** In addition to legally required formal consultation (e.g. SB18 and AB52), the City shall expand consultation to other projects and situations that may impact cultural resources. Ongoing informal consultation is encouraged.



**CULT 2.6** Any Tribe may submit to the City a written request to institute an alternative process to the City's adopted Tribal Consultation Policies, including the designation of either an alternative contact person for the Tribe (i.e., someone other than the contact listed by the NAHC) or additional contact persons. The City will make a good faith effort to work with Tribes requesting such alternative processes; provided, however that City staffing resources may make it difficult or impractical to fully implement all such requests.

### **3. Tribal Confidentiality**

Local governments should be aware that the confidentiality of cultural places is critical to tribal culture and that many tribes may seek confidentiality assurances prior to divulging information about those sites. As prescribed by California Public Records Act, Government Code §6250 et seq., and the Information Practices Act of 1977, Civil Code §1798 se seq., the exact location of Native American grave sites, burial grounds, sacred sites, sensitive cultural places, and prehistoric and historic archaeological sites shall not be publicly disclosed to prevent the possibility of theft or vandalism.

Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Section 5097.9 and 5097.993 of the Public Resource Code maintained by the City are subject to confidentiality. In addition, records that relate to archaeological site information and reports maintained by, or in the possession of the City, including the records that the City obtains through consultation process between a California Native American tribe and a state or local agency are subject to confidentiality.

**Goal CULT-3: Help assure tribes of continued access and use of cultural places by maintaining the confidentiality of a cultural place, including its location, traditional uses, and characteristics.**

#### Tribal Confidentiality Policies

**CULT-3.1** Maintain tribal confidentiality by developing appropriate policies and procedures in consultation with Tribes.

**CULT 3.2** Only those tribal designees, planning officials, qualified professional archaeologists, and landowners involved in the particular planning activity should obtain information about a specific site.

**CULT-3.3** Tribal Consultation should be conducted in a setting that promotes confidential treatment of any sensitive information that is shared about cultural places. Consultation should not take place in public meetings or public hearings when it involves sensitive information.

**CULT-3.4** Develop public awareness information regarding significance of the Trinidad area, appropriate signage and protective measures in consultation with the Yurok people.

**CULT-3.5** Landowners participating in Tribal Consultation should be asked to sign a non-disclosure agreement with the appropriate tribe prior to gaining access to any specific site information.

**CULT 3.6:** The City should be aware that there may be some occasions where a tribe may prefer to maintain strict confidentiality without the inclusion of a private, third party landowner. If a tribe is interested in involving the landowner in preservation or mitigation activities, the City may consider the following methods to facilitate landowner involvement:

- (a) Suggesting that the tribe contact the private landowner directly to facilitate discussions between the tribe and landowner.
- (b) Offering to contact the private landowner directly on behalf of the tribe.
- (c) Suggesting that the private landowner be included as a party to the consultations.

#### **4. Tsurai Study Area**

### **D. HISTORIC STRUCTURE PRESERVATION**

Trinidad is California's oldest city, smallest city and the westernmost city. It has had a rich history, starting with the Tsurai village on the southern slopes and involvement in the early maritime history along the north coast.

Trinidad buildings changed dramatically. Much was torn down between the settlement and the whaling days. Two town fires, 1911 and 1928 removed much of the downtown and well-known landmarks. The 1920's proved to be an era of public projects. Aerial photos suggest that the 'new' school building, City Hall, the Memorial Lighthouse, and the stone cross on Trinidad Head all were constructed during this time.

Today, there are only five structures that predate 1930 remaining in Trinidad. However, there are approximately 210 structures, including sheds, garages and additions to older structures, that were constructed prior to 1966, and therefore meet the age criteria for consideration as historic structures. However, age is not the only factor that makes something historically significant. In general, a structure also has to be associated with an important event or person, be an exceptional example of its type, or have the potential to yield important historic information. The City has never completed an

historic resources inventory, other than a rapid assessment that was done in 2006 based on aerial photo overlays (Figure #).

**Goal HIST-1 Preserve, protect and enhance important historic resources in the City.**

Historic Preservation Policies

*HIST-1.1* Protect and preserve buildings and sites with historic and cultural significance to the community.

*Program HIST-1.1.1:* Develop and update a comprehensive Historic Resource - 1inventory using the National Register, the California Register, California Historical Landmarks, California Points of Historical Interest, and any other structures or properties the City Council determines to have historic value.

*Program HIST-1.1.2* Establish and maintain a process for identifying significant historic buildings and structures (individually or as part of districts or landscapes).

*Program HIST1.1.3:* Include regulations in the Zoning Ordinance which define historic resources, historic structure, and building styles and which establish procedures to evaluate, protect, and preserve sites, buildings, structures, districts, and objects that reflect significant elements of Trinidad's cultural, social, economic, and architectural heritage.

*Program HIST-1.1.4* To assist in protecting potential historical structures yet to be surveyed, the Board of Supervisors may designate areas of historical concern, in which all structures 45 years or older would be assessed as outlined for discretionary projects above. Designating an "area of historic concern" shall require providing written notice to all the affected property owners and at least one public hearing by the Board of Supervisors prior to approving the designation.

*HIST-1.2:* Assist and encourage property owners and tenants to maintain the integrity and character of historic resources, and to restore and reuse historic resources in a manner compatible with their historic character.

*Program HIST-1.2.1:* Promote the use of the State Historic Building Code for historic sites.

*Program HIST-1.2.2:* Establish incentives for the preservation and restoration of historic buildings and sites. Consider the following incentives: low interest loans for rehabilitation consistent with the original character of historic buildings, tax incentives for the preservation of historic structures, including the use of Mills Act

preservation contracts, and awards or grants for the preservation and protection of historic buildings and those with cultural significance.

*Program HIST-1.2.3:* Prepare a public information package describing available programs for property owners to restore and rehabilitate historic structures, including information on tax incentives.

*Program HIST-1.2.4:* Establish a procedure whereby property owners may initiate a program for preservation of historic structures within their neighborhood.

### *HIST-1.3 Discourage the demolition of historic buildings.*

*Program HIST-1.3.1:* Require archival research be carried out determining the cultural and historic significance of buildings, based on the Secretary of Interior standards and paid for by the project proponent.

*Program HIST-1.3.2:* Revise the City's Coastal Land Use & Development Code to require the preparation of drawings and/or photographic records and the salvaging or preservation of architectural fixtures of historic structures that are demolished.

### *HIST-1.4 Increase public awareness and appreciation of the City's cultural and historic resources.*

*Program HIST-1.4.1:* Work with the Trinidad Museum Society to increase public awareness concerning the importance of historic preservation and the location of significant and protected structures in the City.

*Program HIST-1.4.2:* Support the activities of the Trinidad Museum Society.

## APPENDIX 1: Glossary:

**California Indian Tribe:** Refers to a federally-recognized California Indian Tribe, as listed on the Federal Register. Only in situations involving cultural resources will a non-federally recognized California Native American Tribe that is on the list maintained by the Native American Heritage Commission (“NAHC”) be included in this definition. The NAHC will provide a list of non-federally recognized California Native American Tribes for each instance.

**Communication:** Refers to the dissemination, exchange or sharing of information between City staff and California Native American Tribes.

**Consultation:** Means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between the City and Tribe(s) shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the Tribes’ potential needs for confidentiality with respect to places that have traditional Tribal cultural significance.

**Action (or “City Action”):** Means a discretionary action taken by the City that may have a significant impact on Tribal Interests.

**Cultural Place:** A Native American sanctified cemetery, place or worship, religious or ceremonial site, or sacred shrine (Public Resources Code §5097.9), or a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the CRHR pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, or archaeological or historic site (Public Resources Code §5097.995).

**Federally Recognized Tribe:** A tribal entity that is recognized as having a government to-government relationship with the United States; these entities are listed on the Federal Register and the current list is posted on the Governor’s Office of the Tribal Advisor’s website.

**Indian Country or Tribal Lands:** Has the same meaning as the term “Indian country” in United States Code of Federal Regulations, title 18, section 1151, which states: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

**Non-Federally Recognized Indian Tribe:** Those Tribes that are not federally recognized and are on the list maintained by the Native American Heritage Commission.

**Tribe:** Refers to a California Indian Tribe.

**Tribal Leaders:** Refers to elected officials of Indian Tribes.

**Tribal Interests:** Include but are not limited to: (a) Cultural Resources; or (b) fish, wildlife, plant, water, or similar natural resources.

**Tribal Sovereignty:** Refers to the unique political status of federally-recognized Indian tribes. Federally-recognized Indian tribes exercise certain jurisdiction and governmental powers over activities and Tribal members within its territory. Existing limitations on Tribal sovereignty are defined through acts of Congress, treaties, and federal court decisions.

## APPENDIX 2: Tribal Consultation Guidance

The City has a legal obligation to conduct Tribal Consultation in the following circumstances:

1. Prior to the adoption or any amendment of a general plan or specific plan, the City must notify the appropriate tribes (on the contact list maintained by the NAHC) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts to, cultural places located on land within the City's jurisdiction that is affected by the proposed plan adoption or amendment. Tribes will have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code §65352.3). The City must consult with tribes that have requested consultation in accordance with Government Code §65352.3. The purpose of this consultation is to preserve, or mitigate impacts to, cultural places that may be affected by a general plan or specific plan amendment or adoption.
2. Prior to the adoption or substantial amendment of a general plan or specific plan, the City must refer the proposed action to those tribes that are on the NAHC contact list and have traditional lands located within the City's jurisdiction. The referral must allow a 45-day comment period (Government Code §65352). Notice must be sent regardless of whether prior consultation has taken place. Such notice does not initiate a new consultation process.
3. The City must consult with tribes before designating open space, if the affects land contains a cultural place and if the affected tribe has requested public notice under Government Code §65092. The purpose of this consultation is to protect the identity of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5).
4. Prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project, the lead agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. (Public Resources Code §21080.3.1)

The California Tribal Consultation Guidelines provides the following guidance for conducting Tribal Consultation:

- Effective consultation is an ongoing process, not a single event. The process should focus on identifying issues of concern to tribes pertinent to the cultural place(s) at issue – including cultural values, religious beliefs, traditional practices, and laws protecting California Native American cultural sites. Simply notifying a tribe of a plan proposal is not the same as consultation.
- The City consults with tribes one at a time. Both parties to the consultation are required to carefully consider the views of the other. If multiple tribes are involved and willing to jointly consult, the City may consult with more than one tribe at a time. In some instances, local governments may be unable to reach agreement due to other state laws or competing public policy objectives.
- Government leaders of the two consulting parties may consider delegating consultation responsibilities (such as attending meetings, sharing information, and negotiating the needs and concerns of both parties) to staff. Designated representatives should maintain direct relationships with and have ready access to their respective government leaders. These individuals may, but are not required to, be identified in a jointly-developed consultation protocol. In addition, the services of other professionals (attorneys, contractors, or consultants) may be utilized to develop legal, factual, or technical information necessary to facilitate consultation.
- Tribal consultation should be done face-to-face. If acceptable to both parties, local and tribal governments may wish to define circumstances under which parts of the consultation process can be carried out via conference call, emails, or letter.
- The time and location of consultation meetings should be flexible to accommodate the needs of both the City and tribe. The City will offer a meeting location at the city hall, or other appropriate location, and will be open to a tribe's invitation to meet at tribal facilities.
- Whenever feasible, both local and tribal governments should strive to find mutually acceptable resolutions to differences identified through consultation.
- Some consultations may involve highly sensitive and complex issues that cannot be resolved in just one discussion. Consultation may require a series of meetings before a mutually acceptable agreement may be achieved. When engaging in consultation, the City and tribal representatives should consider leaving the process open-ended to allow every opportunity for mutual agreement to be reached.



- Consultation, pursuant to Government Code §65352.3 and §65352.4, should be considered concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measure for preservation or mitigation; or
  - b. Either the City or tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning appropriate measures of preservation or mitigation.

DRAFT

## APPENDIX 2 Legal Background

### Federal

#### *National Historic Preservation Act*

The National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470 et seq., as amended, authorizes the Secretary of the Interior to expand and maintain a National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment.

A "historic property" is any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. Historic properties include artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 Code of Federal Regulations (CFR) Part 800 Protection of Historic Properties, Section 800.16 Definitions 1).

Overseen by the National Park Service (NPS), under the Department of the Interior, the National Register was authorized under the National Historic Preservation Act (NHPA) as amended. Its listings encompass all National Historic Landmarks as well as historic areas administered by NPS.

National Register guidelines for evaluation of significance were developed to be flexible and to recognize accomplishments of all who have made significant contributions to the nation's history and heritage. Its criteria were designed to guide State and local governments, Federal agencies, and other in evaluating potential entries in the National register for a property to be listed or determined eligible for listing, it must be demonstrated as possessing integrity and meeting at least one of the following criteria. It must be demonstrated that:

- "The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:*
- a. Associated with events that have made a significant contribution to the broad patterns of our history; or*
  - b. Associated with the lives of persons significant in our past; or*
  - c. Embodies the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that*

- represent a significant and distinguishable entity whose components may lack individual distinction; or*
- d. *Has yielded, or may be likely to yield, information important in prehistory or history."*

Integrity is defined in National Register guidance, How to Apply the National Register Criteria, as "the ability of a property to convey its significance. To be listed in the National Register...a property must not only be shown to be significant under the National Register criteria, but it also must have integrity" (NPS 1990). The seven aspects of integrity are location, design, setting, materials, workmanship, feeling, and association.

The National Register guidance asserts that properties be at least 50 years old to be considered for eligibility. Properties completed less than 50 years before evaluation must be "exceptionally important" (Criteria Consideration G) to be considered eligible for listing.

*Section 106 of the NHPA.*

Section 106 of the National Historic Preservation Act of 1966, as amended, states that:

*The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in any State and the head of any Federal department of independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.*

The state also states that the head of the responsible Federal agency shall provide the Advisory Council on Historic Preservation (ACHP) the opportunity to comment on those undertakings. Regulations issued by the ACHP, the Code of Federal Regulations at 36 CFR Part 800, "Protecting Historic Properties," guide the Section 106 process.

Under Section 106, Title 36 Code of Federal Regulations (CFR) Part 800 defines adverse effects on historic properties as follows:

*Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable

effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

According to 36 CFR Section 800.5(a) (2), examples of adverse effects on historical properties include, but are not limited to:

- a. Physical destruction of or damage to all or part of the property;
- b. Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines;
- c. Removal of the property from its historic location;
- d. Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;
- e. Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;
- f. Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
- g. Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance (36 CFR Part 800.5 (a) (2)).

*The Secretary of the Interior's Standard for the Treatment of Historic Properties*

The (U.S.) Secretary of the Interior has established standards for the treatment of historic properties. The 1995 Secretary of the Interior's Standard for the Treatment of Historic Properties document outlines specific standards and guidelines for the preservation, rehabilitation, restoration, and reconstruction of historic properties. Preservation standards provide guidelines by which to sustain the integrity of a historic resource. Rehabilitation standards guide the compatible reuse of a historic resource and retain its character-defining features. Restoration standards guide the process of restoration of a historic resource to a particular period of time. Reconstruction standards and guidelines apply to new developments that replicate a non-surviving site, landscape, building, structure or object in its historic location.

*The Secretary of the Interior's Standards for Rehabilitation.*

The Secretary of the Interior's Standards for rehabilitation (the Standards) are the benchmark by which Federal agencies and many local government bodies evaluate rehabilitative work on historic properties. The Standards are a useful tool for understanding and describing the potential impacts of substantial changes to historic resources. Compliance with the Standards does not determine whether a project would cause a substantial adverse change in the significance of an historic resource. Rather, projects that comply with the Standards benefit from a regulatory presumption that they would have a less-than-significant adverse impact on an historic resource. Projects

that do not comply with the Standards may or may not cause a substantial adverse change in the significance of an historic resource.

The Standards acknowledge that some changes are typically necessary to ensure the continued use of a historic property. Regarding alterations and additions for the new use of a historic property, the guidelines for Rehabilitation state:

*Some exterior and interior alterations to a historic building are generally needed to assure its continued use, but it is most important that such alterations do not radically change, obscure, or destroy character-defining space on an existing historic building site; cutting new entrances or windows on secondary elevations; inserting an additional floor; installing an entirely new mechanical system; or creating an atrium or light well. Alteration may also include the selective removal of buildings or other features of the environment or building site that are intrusive and therefore detract from the overall historic character. The construction of an exterior addition to a historic building may seem to be essential for the new use, but it is emphasized in the Rehabilitation guidelines that such new additions should be avoided, if possible, and considered only after it is determined that those needs cannot be met by altering secondary, i.e., non-character-defining interior spaces. If, after a thorough evaluation of interior solutions, an exterior addition is still judged to be the only viable alternative, it should be designed and constructed to be clearly differentiated from the historic building and so that the character-defining features are not radically changed, obstructed, damaged, or destroyed.*

The 10 Rehabilitation Standards are listed below:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historic development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall retain and preserved.
5. Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

#### *Federal Historic Preservation Tax Incentives Program*

The National Park Service and the Internal Revenue Service, in partnership with the State Office of Historic Preservation, operates the Historic Preservation Tax Incentives program. The 20 percent income tax credit is available for the “rehabilitation of historic, income-producing buildings that are determined by the Secretary of the Interior, through the National Park Service, to be “certified historic structures.” A 10 percent tax credit is available for “the rehabilitation of buildings placed in service before 1938.” Rehabilitation must comply with the Secretary of the Interior’s Standards for Rehabilitation.

#### State

##### *California Register of Historical Resources*

The California Register of Historical Resources (CRHR) is an inventory of significant architectural, archaeological, and historical resources in the State of California. Resources can be listed in the CRHR through a number of methods. State Historical Landmarks and National Register-listed properties are automatically listed in the CRHR. Properties can also be nominated to the CRHR local governments, private organizations, or citizens. The evaluative criteria used by the CRHR for determining eligibility are closely based on those developed by the National Park Service for the National Register of Historic Places.

In order for a property to be eligible for listing in the CRHR, it must be found significant under one or more of the following criteria.

- Criterion 1 (Events): Resources that are associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California of the United States.
- Criterion 2 (Persons): Resources that are associated with the lives of persons important to local, California, or national history.

- Criterion 3 (Architecture): Resources that embody the distinctive characteristics of a type, period, region, or method of construction, or represent the work of a master, or possess high artistic values.
- Criterion 4 (Information Potential): Resources or sites that have yielded or have the potential to yield information important to the prehistory or history of the local area, California, or the nation.

Resources eligible for the National Register are automatically listed in the California Register of Historical Resources.

#### *California State Landmarks*

Designated California Historical Landmarks are numbered sequentially as they are listed by the State Historical Resources Commission. California Historical Landmarks numbered 770 and above are automatically listed in the CRHR. According to PRC Section 5031(a), to be eligible for California Historical Landmark designation, a property must be of statewide historical importance and must demonstrate its statewide significance by meeting one of the following three requirements:

1. The property is the first, last, only, or most significant historical property of its type in the region. The regions are Southern California, Central California, and Northern California. If a property has lost its historic appearance (integrity), it may still be listed as a site.
2. The property is associated with an individual or group having a profound influence on the history of California. The primary emphasis should be the place or places of achievement of an individual. Birthplace, death place, or place of interment shall not be a consideration unless something of historical importance is connected with the person's birth or death. If a property has lost its historic appearance (integrity), it may still be listed as a site.
3. The property is a prototype of, or an outstanding example of, a period, style, architectural movement, or construction, or...it is one of the more notable works, or the best surviving work in a region of a pioneer architect, designer, or master builder.

An architectural landmark must have excellent physical integrity, including integrity of location. An architectural landmark generally will be considered on its original site, particularly if its significance is basically derived from its design relationship to its site.

Note: Only preeminent examples will be listed for architectural importance. Good representative examples of a style, period, or method of construction are more appropriately nominated to other registration programs.

#### *California Points of Historical Interest*

California Points of Historical Interest (CPHI) includes "sites, buildings, features, or events that are of local (City of County) significance and have anthropological, cultural, military, political, architectural, economic, scientific or technical, religious, experimental, or other value" (Office of Historic Preservation 2008). Points of Historical Interest designated after

December 1997 and recommended by the State Historical Resources Commission are also listed in the CRHR. To be designated, a property must be demonstrated to meet at least one of the following criteria:

1. The first, last, only, or most significant of its type within the local geographic region (City or County),
2. Associated with an individual or group having profound influence on the history of the local area, or
3. A prototype of, or an outstanding example of, a period, style, architectural movement or construction of is one of the more notable works or the best-surviving work in the local region of a pioneer architect, designer, or master builder.

#### *California Historical Building Code*

The purpose of the California Historical Building Code (CHBC) is to provide alternative regulations for the preservation, restoration, rehabilitation, relocation or reconstruction of buildings or structures designated as qualified historical buildings or properties by a local, State or Federal jurisdiction (as defined in Section 8-218 of Division 13, Part 2.7 of Health and Safety Code). The CHBC defines a “qualified historic structure” as:

*Any building, site, structure, object, district or collection of structures, and their associated sites, deemed of importance to the history, architecture or culture of an area by an appropriate local, State or Federal governmental jurisdiction. This includes designated buildings or properties on, or determined eligible for, official national, State or local historical registers or official inventories, such as the National Register of Historic Places, California Register of Historical Resources, State Historical Landmarks, State Points of Historical Interest, and officially adopted city or county registers, inventories, or surveys of historical or architecturally significant sites, places or landmarks.*

The CHBC’s standards and regulations are intended to:

Facilitate the rehabilitation or change of occupancy so as to preserve their original or restored elements and features, to encourage energy conservation and a cost effective approach to preservation, and to provide for reasonable safety from fire, seismic forces or other hazards for occupants and users of such buildings, structures and properties and to provide reasonable availability by the physically disabled.

#### *California Environmental Quality Act*

The California Environmental Quality Act (CEQA) is State legislation (PRC Section 21000 et seq.), which provides for the development and maintenance of a high quality environment effects. CEQA applies to “projects” proposed to be undertaken or requiring approval from State or local government agencies. “Projects” are defined as “...activities which have the potential to have a physical impact on the environment and may include the enactment of zoning ordinances, the issuance of conditional use permits and the approval of tentative subdivision maps.” Historic and cultural resources are considered to be part of the environment. CEQA equates a “substantial adverse change” in the significance of a historical resource with a significant effect on the environment (PRC Section 21084.1).



Historical resources are defined in PRC Section 21084.1 as:

*“a resource listed in, or determined eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources..., or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, [is]...presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant.”*

*Substantial Adverse Change.* Thresholds of substantial adverse change are defined in PRC Section 5020.1 as demolition, destruction, relocation, or “alteration activities that would impair the significance of the historic resource.” Material impairment occurs when a project results in demolition, or materially alters in an adverse manner, the physical characteristics that convey a property’s historic significance, or is the reason for that property’s inclusion in an official register of historic resources (CEQA Guidelines Section 15064.5(b)(2)).

The CEQA Guidelines define a significant impact as one that would cause “a substantial adverse change” defined as “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” (CEQA Guidelines Section 15064.5 (4)(b)(1)).

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 of 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 the evidence that the resource is not historically or culturally significant; or
- c. Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its eligibility or inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA (CEQA Guidelines Section 15064.5).

The concept of substantial adverse change includes both, direct effects (or impacts) to historical resources, and indirect effects to the immediate surroundings of the resource. Examples of direct impact include:

- Physical destruction of, or damage to, all or part of an historical resource

- Demolition of a building that contributes to the significance of an historic district, damaging the cohesiveness and overall character of the district alteration of historical resources, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of accessibility features that are not consistent with concepts in the Standards for Rehabilitation, applicable related guidelines or technical advisories.

Examples of indirect impacts to the immediate surroundings of a historical resource include:

- Alternation of the character of physical features within the setting of the historical resource that contribute to its historic significance.
- Introduction of visual, atmospheric or audible elements that diminish the integrity of the character defining features of the historical resource.

Alteration of an historical resource that is not found in compliance with The Secretary of Interior's Standards for Rehabilitation may also be considered an impact under CEQA.

#### *California Native American Traditional Tribal Cultural Places*

Senate Bill (SB) 18 provides California Native American tribes an opportunity to participate in local land use decisions at an early planning stage for the purpose of protecting or mitigating impacts to cultural places. SB 18 requires local governments to consult with tribes prior to making certain planning decisions, including the adoption and amendment of general plans.

#### *California Native American Graves Protection and Repatriation Act*

The California Native American Graves Protection and Repatriation Act (NAGPRA) of 2001 was enacted to ensure that all California Indian human remains and cultural items are treated with dignity and respect. Other provisions of California law address the discovery of human remains outside a dedicated cemetery and require consultation with appropriate Native American individuals for disposition of the remains. The Public Resources Code establishes the Native American Heritage Commission and the State's Sacred Places List.



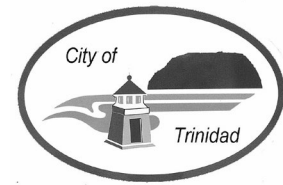
## DISCUSSION AGENDA ITEM #3 SUPPORTING INFORMATION

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3. Policies on Detached Living Spaces: Discussion/ decision regarding modification of the standard conditions for approving detached living spaces as set forth in the policy adopted by the Planning Commission on April 18, 2018. *Continued from the September 20, 2023 meeting.*

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## DISCUSSION / ACTION AGENDA ITEM



Wednesday, October 18, 2023

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**Item:** Policies for Detached Living Spaces: Discussion/ decision regarding modification of the standard conditions for approving detached living spaces as set forth in the policy adopted by the Planning Commission on April 18, 2018. *Continued from the September 20, 2023 meeting.*

### Background

The Planning Commission adopted the Detached Living Space Standard Conditions on April 18, 2018 as the result of a number of difficulties and enforcement issues with detached living spaces being used as or converted to separate dwelling units. While the state requires jurisdictions to allow and even encourage accessory dwelling units (ADUs), they must be carefully regulated in Trinidad due to the increased wastewater load associated with a separate dwelling; creation of an ADU generally requires upgrades to the septic system, or OWTS.

### Update

At the July 19, 2023 meeting, the Planning Commission approved conversion of a portion of a detached garage to living space. Concerns were expressed about #4 of the Standard Conditions for Detached Living Spaces, which requires the *"owner to agree to periodic inspections/walk-throughs by the City Building Inspector with 24-hour notice."* The concerns were related to how often this could/ would occur and whether it could be used as a harassment tactic. Therefore, the Planning Commission wanted to consider revising the condition to add some additional details to define the circumstances under which an inspection would occur and/or how often they could occur.

After the discussion at the September 20 meeting, there was general agreement to rewrite Condition 4 to change the condition to limit inspections to no more than once every 12 months without agreement from the Building Inspector, Zoning Administrator, and City Manager that another inspection is warranted based on the evidence. I have updated the policy with this language for review and possible approval.

Note that I used the phrase "substantial evidence." This is a term commonly used in CEQA and is defined as: *"enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."* This seemed to strike a good balance so that some actual evidence is required, but not setting the bar too high.

As requested by the Planning Commission, I reached out to the new Building Inspector to see if he had any comments or suggestions. He responded that he thought the additional language for condition 4 was reasonable. He also expressed concern that if condition 3 was

timed to be required prior to final inspection, then some applicants might forgo the final inspection. I generally word that condition so that it is required prior to issuance of the building permit, but I added that to condition 3 so that it is explicit.

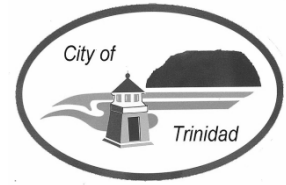
**Staff Recommendation**

Approve the revised Policy on Detached Living Space Standard Conditions or direct staff to make additional changes.

**Attachments**

- Revised Policy on Detached Living Space Standard Conditions (2 pages)

# PLANNING COMMISSION POLICY



## Detached Living Space Standard Conditions

Adopted April 18, 2018; Revised October 18, 2023

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### Purpose

This policy provides guidance to City of Trinidad staff and the Planning Commission for setting standards for improvements to and the use of detached living spaces. It shall be used when reviewing permit applications, checking plans, investigating complaints and inspecting buildings. These guidelines shall be used by all staff in determining whether a detached living space is being used consistent with City regulations and policy.

### Background

The City has a history of allowing existing, detached structures to be converted into living space as an economical alternative to an addition. These spaces can and have been used for a variety of legitimate, single-family, residential uses. However, there are financial incentives, as well as reasons of simple personal convenience, for owners or residents to convert a detached bedroom/living space into its own complete dwelling unit.

Staff, citizens, the Planning Commission, and the Council have spent quite a bit of time in recent years over concerns and disagreements about the difference between a second dwelling unit and a detached living space, and whether any secondary cooking facilities should be allowed on a property that is only authorized to have one dwelling unit. This policy document is just one piece of the larger issue. It is intended to provide consistency and clarity for residents, applicants and staff alike. The standard conditions listed below have been developed for use by the Planning Commission in approving any application for a detached living space. In addition, these standards shall be applied to existing detached living spaces to the extent lawfully allowed.

### Standard Conditions for Detached Living Spaces

1. An accessory living space shall operate as an extension of and be dependent upon the principal use and shall not be a separately functioning dwelling unit.
2. A "kitchen," as defined by Planning Commission Policy, is prohibited within a detached living space that contains a bedroom or full bathroom.
3. Property owner to sign and record a deed restriction prior to issuance of building permits limiting the number of bedrooms and dwelling units on the property to that approved by the City.
4. Owner to agree to periodic inspections/walk-throughs by the City Building Inspector with 24-hour notice. Inspections shall not occur more than once in any 12-

month period without agreement from the Building Inspector, Zoning Administrator, and City Manager that another inspection is warranted based on substantial evidence.

5. Separate mailing addresses are prohibited for a detached living space.
6. Separate utility meters for electricity, water, and other utility services are prohibited for a detached living space.



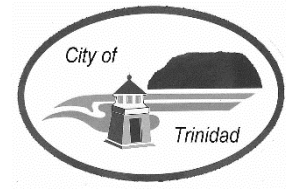


## DISCUSSION AGENDA ITEM #4 SUPPORTING INFORMATION

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4. Policies for After-the-Fact Planning Permits: Discussion/ decision regarding modification of the policies for considering and approving after-the-fact planning permits as set forth in the policy adopted by the Planning Commission on February 17, 2021.

## DISCUSSION / ACTION AGENDA ITEM



Wednesday, October 18, 2023

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**Item:** Policies for Processing After-the-Fact Permits: Discussion/ decision regarding modification of procedures for processing after-the-fact permits as set forth in the policy adopted by the Planning Commission on February 17, 2021.

### **Background**

The Planning Commission adopted the After-the-Fact Permit Processing Policy on February 17, 2021, in order to help applicants and the Planning Commission understand the process and to ensure that it is applied consistently.

As part of the development of this policy, staff researched policies and procedures for after-the-fact permits in other jurisdictions. After-the-fact building permits are much more common than after-the-fact planning permits, since most residential projects other additions and remodels do not require planning approval in most jurisdictions. In addition, the building code itself provides guidance for addressing after-the-fact permits. Therefore, it is common to find formal procedures for dealing with after-the-fact building permits, but not for planning permits. And while building permits always deal with construction, planning permits may deal with unauthorized uses or vegetation removal, which can be more difficult to remediate.

In talking with other planning staff, standard procedure is generally to process the permit as if the construction had not already occurred. Fines are often involved and generally provide the biggest deterrent for not starting work without permits. If work is unpermittable, then it would need to be removed. Even the Coastal Commission does not have a formal policy for processing after-the-fact permits, even though they do it regularly. They often require additional studies and documentation to prove what preexisted the unauthorized construction. And there may be fines associated with enforcement actions (similar to the City's nuisance abatement process). In addition, they charge five times the permit fee for after-the-fact permits. Note though that their permit fees are set charges, where the City's are on a cost-recovery basis (actual cost to the City for staff time and other expenses), so the charges for each permit can vary considerably.

The Planning Commission developed this policy at the February 4 and February 17, 2021 meetings if you want to review the minutes or packets. In addition, based on an after-the-fact permit processed in 2021, the Planning Commission expressed dissatisfaction with standard procedure and condition #3, particularly with the vagueness of the phrase "extenuating circumstances." So, the Planning Commission revisited the issue at the February 16, 2022 meeting. However, no changes were made. It was decided that the wording provided leeway for the Planning Commission to consider a variety of factors and make decisions on a case-by-case basis.

On the other hand, a recent experience with a second after-the-fact permit request from the same property owner prompted the Planning Commission to want to review the policy again. And on that note, during my previous research into the issue, I did find at least one jurisdiction that increased the fine for each subsequent violation, so that could be one option to consider.

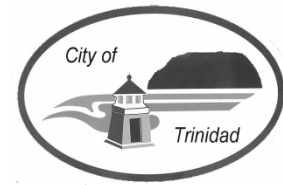
**Staff Recommendation**

Review and discuss the After-the-Fact Permit Processing Policy and direct staff to provide additional information or make changes to the policy.

**Attachments**

- Planning Commission Policy on After-the-Fact Permit Processing (1 page)

# PLANNING COMMISSION POLICY



## After-the-Fact Permit Processing

Adopted February 17, 2021

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### **Purpose**

This policy provides guidance to City of Trinidad staff and the Planning Commission on processing permits for which work has already occurred. The work may be partially or fully completed. These guidelines shall be used by staff and the Planning Commission in reviewing and acting upon an after-the-fact permit application, including design review and/or, grading, use, and coastal development permits, and variances.

### **Background**

For various reasons, sometimes work is started without obtaining necessary permits and approvals. For work that is otherwise or potentially consistent with Trinidad's codes and regulations, the responsible party has the option to apply for the appropriate permits in order to rectify the violation. Such permits are known as after-the-fact permits. This policy in no way affects or supersedes City ordinances dealing with building or land use violations or nuisances.

### **Standard Procedures and Conditions for After-the-Fact Planning Permit Approvals**

1. After-the-Fact approvals will be held to the same standards as if the work had not been completed and will be reviewed according to the standards and regulations in effect at the time of review.
2. Applicants may be required to provide evidence or studies documenting conditions prior to work commencing and/or proof of permits for existing improvements.
3. Work that is not approved through an after-the-fact permit shall be required to be removed and restored to prior conditions.
4. Unless the Planning Commission determines there were extenuating circumstances, after-the-fact approvals will generally be conditioned on the applicant paying double the permit costs, which vary depending on the actual costs to the City for processing the application.
5. Planning Commission decisions, including conditions and fees, may be appealed to the City Council.