



Posted: January 12, 2024

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

The Trinidad Planning Commission will hold a regularly scheduled monthly meeting on
WEDNESDAY JANUARY 17th, 2024, AT 6:00 P.M.

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 meeting. You can email comments before the meeting to 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/81410555764?pwd=sof0Utc41O6fyznZlieMzCilp9PIK2.1>

Password: 668834

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

Please note that live meeting logistics will be prioritized. Connectivity issues on the part of the City may result in the meeting being delayed or rescheduled but technical challenges experienced by individuals will not interrupt or halt progress of the meeting.

The following items will be discussed:
--

- I. ROLL CALL**
- II. APPROVAL OF MINUTES – November 15, 2023**
- III. APPROVAL OF AGENDA**
- IV. ITEMS FROM THE FLOOR**
- V. AGENDA ITEMS**

Public Hearing / Discussion / Decision / Action

1. Trinidad 2023-03: Update on the temporary closure of the ALMT and progress to-date to reopen the trail.
2. Morrison 2023-08: Coastal Development Permit and Lot Line Adjustment between four parcels, ranging from approximately 16,000 sq. ft. to almost 24,000 sq. ft., resulting in three parcels of 13,475 sq. ft., 15,437 sq. ft., and 49,594 sq. ft. The larger of the resulting parcels is developed with a single-family residence. An onsite wastewater treatment evaluation has been prepared for the other two resulting, vacant parcels. Located at: 855 Underwood Drive; APN: 042-031-034.
3. 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. *Continued from the November 15, 2023 meeting.*
4. Introduction to Annexation: Discussion/ presentation of general information regarding the laws and procedures governing annexations and the role of Local Agency Formation Commissions (LAFCo).

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 (added 09/20/23)
- Dealing with cultural resources in project reviews (added 10/18/23)
- Traffic calming (added 11/15/23)

IX. ADJOURNMENT

The meeting packets can be accessed at the following link:

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

**MINUTES OF THE REGULAR MEETING OF THE TRINIDAD PLANNING
COMMISSION WEDNESDAY, NOVEMBER 15, 2023**

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

Commissioners Present: Cole, Hakenen, Hopkins, Johnson, Slay

Commissioners Absent: None

City Planner Staff: Parker

City Staff: Naffah, Souza

II. APPROVAL OF MINUTES - October 18, 2023

Commissioner Cole corrected his statement regarding his experience with after-the-fact permits. In the second sentence of the sixth paragraph on page 6, it should be “the Planning Commission” not “he” was unclear... Commissioner Slay clarified that his request for more information about potential impacts to cultural resources was intended as a future agenda item. Commissioner Hakenen clarified that his reference for “Plan B” in the fourth full paragraph on page 2 was for temporary reopening.

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

III. APPROVAL OF AGENDA

Commissioner Slay questioned whether item #3 (ADUs) should be delayed to the upcoming joint City Council / Planning Commission / STR Committee meeting. Parker stated that it could also be discussed at that meeting, but it would be appropriate for the Planning Commission to discuss it themselves as well. Commissioner Johnson pointed out that HCD has not yet commented on the ordinance.

Motion (Johnson/Slay) to approve the agenda as posted. Passed unanimously (5-0).

IV. ITEMS FROM THE FLOOR

None.

V. AGENDA ITEMS

Public Hearing/ Discussion/ Decision/ Actions

1. Trinidad 2023-03: Update on the temporary closure of the ALMT and progress to-date to reopen the trail.

Staff Report

City Planner Parker provided some background and then informed the Commission that the Tsurai Ancestral Society (TAS) has stated that they will discuss the GHD report

11-15-2023

Planning Commission Meeting Minutes

DRAFT

Page 1 of 6

at their November board meeting and then present the report to the Tsurai Management Team (TMT). Parker also noted that more fencing has recently been added to secure the ALMT. Also, the City Manager will request GHD to provide recommendations for short-term repairs in order to reopen the trail while the reroute is being planned. City Manager Naffah elaborated on the fence repairs.

Commissioner Comments and Questions

Hopkins asked if the TAS could present the GHD report at the next Planning Commission meeting. Naffah will relay the request. Hopkins also asked about funding for the rerouting of the trail. Parker explained that the City would seek grant funds and likely partner with the Coastal Conservancy and TAS.

Commissioner Johnson clarified that the short-term solution to re-open the original trail while the reroute is being planned constructed is not part of the GHD report. Hakenen stressed that the Commission would like a copy of the report and a plan for short-term repairs by the end of the year. Naffah will ask again for a copy of the report, noting that the next TMT meeting is on November 22nd.

Public Comments

None.

Commissioner Discussion

There was no further discussion and no motion.

2. 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. Continued from the October 18 meeting.

Staff Report

City Planner Parker provided background on the After-The-Fact Permit Processing Policy, noting that a recent application prompted the Commission review and modify the policy. She recommended the Commission review and discuss the changes made based on the discussion at the last meeting.

Commissioner Comments and Questions

Johnson asked policies verses ordinances in relation to enforcement and legal implications. Parker explained that it is rare to find regulations for ATF planning

permits. She noted that the nuisance abatement ordinance can be used for enforcement for any unpermitted work. Parker further stated that the policy is appropriate and that any of the recommended conditions could be refuted by the applicant or appealed, and the policy provides more surety and information about the process for both the Commission and applicants.

Hakenen opined that the penalty of double the permit fees seems weak. He shared a similar policy from Placer County that requires a “wet stamp” from an engineer or other credentialed expert on the plans. Parker said that would be standard for after-the-fact building permits, but unusual at the planning permit stage. A discussion followed.

Parker suggested considering an additional condition stating something like: “Applicant may need to show proof that unpermitted work complies with all applicable City codes, standards, and regulations.” Hakenen asked that a wet stamp from a licensed contractor or engineer be included in the verbiage. Parker will do more research and reach out to the Building Inspector, who could potentially offer additional recommendations.

Slay suggested “and certified” to be added to Standard Procedure and Condition #1 after “will be reviewed.” Parker said that seemed ambiguous and suggested separating the planning permits policy from the building permits policy which is dictated by the building codes. She stated that a building permit application could be required at the time of the planning permit application, but pointed out that projects sometimes change at the planning stage.

Public Comments

None.

Commissioner Discussion

There was no further discussion and no motion.

3. ADU Ordinance: Discussion regarding a draft ADU ordinance revised based on discussions with Coastal Commission staff.

Staff Report

City Planner Parker provided a basic overview and background of the ordinance. She noted that she has incorporated Commissioner comments from the previous meeting. She also explained recent changes in State law that may affect residents, particularly the

impact that new height regulations will have on views. Parker pointed out that the ordinance currently states that ADUs cannot be STRs, which is ambiguous about Homeshares and primary residences used as STRs. The State law is unclear and Coastal Commission staff were unsure where the Coastal Commission would stand. Therefore, further input from the Planning Commission is requested.

Commissioner Comments and Questions

Johnson pointed out that the intention of ADUs is to create affordable housing. He noted that if ADUs become STRs it will limit affordable housing in Trinidad, thus contradict State policy. Parker clarified that ADUs would not be allowed to be full-time STRs, but what about a primary residence, or an ADU being a Resident STR or Homeshare.

Hakenen suggested getting input from the STR Committee on this topic. He asked Parker for clarification about height requirement changes. She explained that before January 2023 the limit was 16 feet for detached ADUs and no more than 10% increase in height for an attached ADU. The height requirements are now 18 feet for detached ADUs and 25 feet for attached ADUs. The Coastal Act also does not protect private views, so that can't be the only reason to deviate from State law even though Trinidad has protected views for over forty years. She suggested the possibility of designating Trinidad as "scenic" and bringing in the design review process for ADUs taller than 16 feet to preserve community character. The Coastal Act does protect visual resources, public views, and certain community characteristics.

Slay asked about square footage requirements and limits for ADUs. Parker shared that the ADU ordinance limited the size generally to no more than 50% of the primary structure or 800 square feet, based on the State law.

Commissioner Cole opined that primary units should be allowed to be an STR, because it would give more people opportunities to live in and buy a house in Trinidad. There was discussion about allowing only owner-occupied STRs to reduce investment potential.

Slay asked if there is a cap on JADUs. Parker replied that there isn't because they don't significantly increase water use and are generally not considered development under the Coastal Act (if they meet certain standards).

Hakenen recognized that JADUs are akin to Homeshare, and should be allowed as STRs. Cole noted that a property with an ADU could provide income to a middle-income family. Slay agreed with Cole that an ADU could increase the value of a property, but suggested that it could make the property less affordable for a middle-income family. Parker reminded the Commissioners that STR licenses are non-transferable.

Hakenen reiterated that when affordable housing becomes an STR, which has greater revenue, it's no longer affordable housing. It was pointed out that the STR cap already protects housing stock, and construction of ADUs would not allow new STRs in town. Cole suggested that ADU STRs could require a use permit and therefore come before the Planning Commission. Johnson questioned if that was necessary with the cap on STRs.

There was a discussion about having a joint meeting with the STR Committee to obtain their comments and recommendations regarding STRs, ADUs, JADUs, ministerial permits, administrative permits, and CDP reviews. It would also provide another forum for public input. Slay, who is on the STR Committee, reminded the Commission that the spirit of the law is to increase affordable housing and not all members of the STR Committee have home affordability at the forefront of their minds. Parker reminded the Commission that the Coastal Act protects visitor accommodations and STRs can be more affordable for larger groups.

Hakenen suggested a workshop for affordable housing with the STR Committee and public input. It was suggested that some case examples be presented. Johnson asked Parker to create a matrix prior to the meeting that presents various types of rentals and permit requirements. Cole noted that OWTS requirements also limit ADU potential. Parker has a map showing parcels with larger lot sizes that might be useful. Hakenen asked for clarification of the State Code that prohibits ADUs from being STRs. Johnson asked for additional information on JADUs to be presented at the workshop.

Public Comments

None.

Commissioner Discussion

There was no further discussion and no motion.

VI. COMMISSIONER REPORTS

None

VII. STAFF REPORT

There was a discussion about upcoming meetings and holiday schedules. The Commission decided to cancel the December meeting.

VIII. FUTURE AGENDA ITEMS

- Vegetation regulations
- Signage Master Plan
- Annexation

Slay would like to add traffic calming.

IX. ADJOURNMENT

Adjourned at 7:59 P.M. The next regularly scheduled meeting is January 17, 2024.

Submitted by:

Approved by:

Anton J. Souza
Administrative Assistant

Aaron Hakenen
Planning Commission Chair

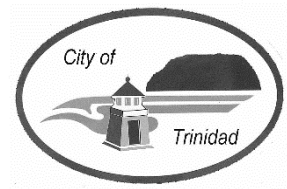


DISCUSSION AGENDA ITEM #1 SUPPORTING INFORMATION

1. Trinidad 2023-03: Update on the temporary closure of the ALMT and progress to-date to reopen the trail.

Supporting documentation follows with: 5 pages

DISCUSSION / ACTION AGENDA ITEM



Wednesday, January 17, 2024

Item: Trinidad 2023-03: Update on the temporary closure of the ALMT and progress to-date to reopen the trail.

Background

At the April 19, 2023, meeting, the Planning Commission approved an emergency CDP (2023-03) to temporarily close the ALMT and Parker Creek Trails 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. An extension for the temporary closure of the ALMT was approved at the October 18 meeting where the Planning Commission made it clear to staff that they expect to see progress made towards a short-term repair to allow reopening of the trail by Memorial Day weekend 2024 while longer-term rerouting of the trail is considered and planned.

Update

At the request of the City Manager, Steve Allen of GHD provided the following recommendations for the minimum work needed to achieve short-term repair and reopening of the ALMT by Memorial weekend:

1. *Leaving the trail closed over the winter and into the spring during winter weather conditions.*
2. *Have public works periodically check the trail to make sure the fencing is secure, and to address any minor drainage or related issues to prevent erosion from rain/runoff.*
3. *Plan now to schedule a crew to install new cable/log steps on the lower portion of the trail to the beach. This is to replace the similar steps that were there, and similar to steps used on other coastal trails in the area.*
4. *Public works crews should plan to conduct maintenance on the rest of the upper trail in the month or so before Memorial Day, likely to include:*
 - a. *Cutting vegetation back,*
 - b. *Repairing or replacing some wooden steps as necessary,*
 - c. *Using a weed-eater or similar to trim the grass and vegetation along the trail,*
 - d. *Remove the upper and lower fence barriers once all repairs are completed.*
5. *Re-evaluate these recommendations in the spring regarding any changed conditions due to rain, erosion, or changed conditions at the toe of the bluff.*
6. *There is a likely potential for the need or desire to add some additional material at the toe of the bluff so that the new cable steps are not placed on a near vertical slope. This will need to be evaluated in the spring. It is not known if there may be sufficient rocks or material nearby at the toe of slope to relocate for this purpose or if some imported material*

would be necessary. Guidance as to if imported material would be allowed would be helpful.

Unfortunately, communication and coordination with the TAS has not progressed since the last meeting. They have not provided the City with the GHD report on the ALMT despite repeated requests. In addition, they seem to have stopped communicating with the City in general since before the holidays. And last week the City received the attached cease and desist letter just before a coastal resiliency planning meeting scheduled with the Tsurai Management Team. Obviously, the City cannot just stop working on all the things listed for an indefinite period of time, and the City Attorney's response is also attached. However, if the TAS continue to maintain this position, it will make repair of the ALMT more difficult. The City has reached out to Coastal Commission staff to schedule a meeting to discuss possible next steps for both the ALMT and Van Wycke Trail. The City will also continue to reach out to the TAS to attempt to maintain open communication and coordination.

Staff Recommendation/Suggested Action(s):

No action needed. Accept the staff report and ask questions or request additional information as needed.

Attachments:

- Cease and desist letter from the TAS attorney (1 page)
- Response letter from the City of Trinidad (2 pages)

GALLEGOS LAW FIRM

931 Third Street
Eureka, California 95501
Telephone: (707) 441-8477
Facsimile: (707) 441-8479

January 08, 2024

City of Trinidad
Managers, Council, and Attorney of Record
409 Trinity Street
Trinidad, CA 95570

Re: REQUEST TO CEASE AND DESIST

To the City of Trinidad:

It has come to our attention that the City of Trinidad has unilaterally continued to direct time and energy into multiple projects and plannings pertaining to the Tsurai Study Area in the midst of litigation on case: City of Trinidad v Tsurai Ancestral Society, et al., #: DR180684, including but not limited to Trail Signage and Maintenance, Grant Acquisition, the Coastal Resiliency Planning Project, and the Historical and Cultural Elements of the General Plan Update.

I am requesting on behalf of my clients, the Tsurai Ancestral Society, that the City of Trinidad immediately cease and desist all work, plannings and projects adjacent to, and within, the Tsurai Study Area until a judgement has been rendered and the case has concluded as jurisdiction and management of the Tsurai Study Area is at issue.

The outcome of pending litigation could reasonably affect current and future work, projects and plans concerning the Tsurai Study Area resulting in a potential burden of time and finances on either Plaintiff or named Defendants in the event that any current and future work, projects and plans that continue to persist throughout litigation need be reversed upon conclusion of above referenced case.

Thank you for your professional courtesy and cooperation with regard to this matter.

Sincerely,

GALLEGOS LAW FIRM

/s/ Paul V. Gallegos

Paul V. Gallegos (CSBN 161408)
paul@gallegoslawsboldt.com
PVG/jb



THE MITCHELL LAW FIRM, LLP

CLIFFORD B. MITCHELL (1927 - 2010)

PAUL A. BRISSE*
RUSSELL S. GANS
NICHOLAS R. KLOEPEL
RYAN T. PLOTZ
AMY A. HUNT
KAREN J. ROEBUCK, Senior Associate
SHAE N. McKNIGHT, Associate

ATTORNEYS AT LAW
426 FIRST STREET
EUREKA, CALIFORNIA 95501

www.mitchelllawfirm.com

Established 1915

TELEPHONE (707) 443-5643
FACSIMILE (707) 444-9586

P.O. DRAWER 1008
EUREKA, CA 95502

WILLIAM F. MITCHELL (Retired)
JOHN M. VRIEZE (Retired)
EMERY F. MITCHELL (1896 - 1991)
WALTER J. CARTER (1949 - 1993)
R.C. DEDEKAM (1929 - 2011)
NANCY K. DELANEY (1950 - 2022)
* Of Counsel

January 11, 2024

Via Regular Mail and Email to: paul@gallegoslawhumboldt.com

Paul Gallegos
Gallegos Law Firm
804 Third Street, Suite C
Eureka, CA 95501

Re: Response to Request to Cease and Desist Letter

Dear Mr. Gallegos:

The City of Trinidad is in receipt of your “Cease and Desist” letter issued on behalf of the Tsurai Ancestral Society (“TAS”). Please note, the City cannot simply stop the planning activities referenced in your correspondence that impact the City and coastal properties within it, of which the Tsurai Study Area (“TSA”) is only one part. Additionally, grant funding sought for coastal protection is time sensitive and future funding opportunities to protect the bluff from further erosion must be pursued.

TAS has been included in the process from the outset. The Trinidad Community Coastal Resilience Planning (“TCTP”) Project has been meeting regularly with the Tsurai Management Team to develop the Coastal Resilience Action Plan and incorporating input from the Tsurai Management Team. This approach has been part of the project since before the City applied for the project funding from Ocean Protection Council. Several projects identified in the planning process potentially add protection(s) to the TSA, including bluff stability and storm water diversion projects on property not within the TSA that would divert storm water from the TSA. The Project Team and TMT members have been working together on the assumption that potential future coastal resilience projects to occur in the study area would be identified and/or discussed by the Tsurai Management Team prior to any implementation, and that process will be followed. However, pursuing the grant funding cannot be put “on hold” without jeopardizing the opportunities for funding.

Likewise, the General Plan Update applies throughout the City, not just to the TSA. The cultural resources element is also being updated with a grant with deadlines. It has already been on hold for more than a year and must move forward. TAS has been requested to comment.

Additionally, planning, coordination and maintenance related to the trails within the TSA can and should continue as contemplated by the Tsurai Management Plan. The TMT has and will continue to be included in all planning.

In short, the City remains committed to seeking protections for the TSA and adjacent coastal properties. TAS will, of course, be included in all planning efforts and encouraged to participate. That stated, City functions cannot simply “stop” for indeterminate periods of time as demanded.

Very truly yours,

THE MITCHELL LAW FIRM, LLP



Russell S. Gans

RSG/kb

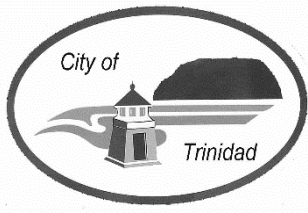
Cc: Eli Naffah, City Manager of the City of Trinidad



DISCUSSION AGENDA ITEM #2 SUPPORTING INFORMATION

2. Morrison 2023-08: Coastal Development Permit and Lot Line Adjustment between four parcels, ranging from approximately 16,000 sq. ft. to almost 24,000 sq. ft., resulting in three parcels of 13,475 sq. ft., 15,437 sq. ft., and 49,594 sq. ft. The larger of the resulting parcels is developed with a single-family residence. An onsite wastewater treatment evaluation has been prepared for the other two resulting, vacant parcels. Located at: 855 Underwood Drive; APN: 042-031-034.

Supporting documentation follows with: 12 pages



Filed: November 10, 2023
Staff: Trever Parker
Staff Report: January 8, 2024
Hearing Date: January 17, 2024
Commission Action:

STAFF REPORT: CITY OF TRINIDAD

APPLICATION NO: 2023-08
APPLICANT (S): Silas F. Morrison Family Trust
AGENT: Mike O'Hearn, Kelly-O'Hearn Associates
PROJECT LOCATION: 855 Underwood Drive

PROJECT DESCRIPTION:

Lot Line Adjustment and Coastal Development Permit between the four parcels, ranging in size from approximately 16,000 sq. ft. to almost 24,000 sq. ft., resulting in three parcels of 13,475 sq. ft., 15,437 sq. ft., and 49,594 sq. ft. The largest of the resulting parcels is developed with a single-family residence. An onsite wastewater treatment evaluation has been prepared for the other two resulting, vacant parcels.

ASSESSOR'S PARCEL NUMBER: 042-031-034

ZONING: UR – Urban Residential

GENERAL PLAN DESIGNATION: UR – Urban Residential

ENVIRONMENTAL REVIEW: Categorically Exempt from CEQA per § 15305 of the CEQA Guidelines exempting minor alterations in land use limitations, including lot line adjustments.

APPEAL STATUS:

Planning Commission action on a Coastal Development Permit, Variance, Use Permit, or Design Review is appealable to the City Council within 10 working days after the date that the Coastal Commission receives a "Notice of Action Taken." Furthermore, this project ~~is~~ **X** is ~~is not~~ appealable to the Coastal Commission per the City's certified LCP and may be appealable per the requirements of Section 30603 of the Coastal Act, and the Planning Commission action will only become effective 10 working days after the local appeal period has run out and no valid appeal has been filed with the Coastal Commission.

SITE CHARACTERISTICS:

The property is located on the west side of Underwood Drive, near its northern terminus. Access to the site is from Underwood Drive. The site is bordered by other residential development to the east, north, and south. Trinidad State Beach property is located to the west. A dedicated trail right-of-way runs east/west just south of the property, providing access from Underwood to Trinidad State Beach trails. Although the parcels have only one Assessor Parcel Number, the property is made up of four separate parcels created as part of the "Ocean Park Addition" (Book 12 of Maps, Page 62) in 1948.

The 1.8-acre (78,506 sq. ft.) site is currently developed with a 2-bedroom residence that crosses the boundary between two of the parcels on the western portion of the property, and the existing leachfield is located partially on a third parcel. A paved driveway provides access to the residence from underwood.

Most of the property is grass that is kept mowed, with some trees, shrubs and other landscaping around the existing residence, along the western property boundary, and along the western half of the southern property boundary (along the trail). The lot slopes towards the southwest, with the eastern portion being mostly flat and increasing slope towards the southwest corner.

STAFF COMMENTS:

Although not stated in the application, it appears that the purpose of the lot line adjustment is to create two vacant, developable parcels, while maintaining a large and private parcel for the existing residence, which was built in the early 1950's. The lot line adjustment does not significantly increase the development potential of the property. Under the current configuration, only one of the four parcels is completely vacant. But it may be possible that the existing leachfield could be relocated off the southern parcel to result in second vacant parcel and still maintain the existing residence. In addition, the existing residence could be demolished and four new homes built on the existing parcels (assuming there is adequate soils for wastewater disposal). Alternatively, the lot line adjustment will result in only three parcels, though two will be immediately marketable. The large lot could potentially be subdivided in the future, but that would require additional approvals and analysis.

Referrals were sent to the City Engineer, Public Works, DEH, the Coastal Commission, and tribal entities. The City Engineer had no concerns or comments at this time. Public Works staff noted that need to review the location of any future water meters when development is proposed. DEH noted that the proposed parcels and septic designs meet their requirements and are appropriate for the site conditions. They noted that an OWTS permit(s) will need to be issued prior to any future development. No other comments were received.

Potential Conflicts of Interest

Commissioner Slay owns property (692 Underwood) that is approximately 400 ft. from the subject property (as the crow flies; the street distance is greater than 500 ft.). There is a presumed material financial conflict of interest due to proximity for owners of property within 500 feet of a project. When there is a presumed conflict of interest, the Commissioner must either recuse themselves, or rebut the presumption by showing that it is not reasonably foreseeable that the decision will have any financial effect on the Commissioner's economic interests. If Commissioner Slay recuses himself, he will need to leave the room for the duration of the hearing.

SUBDIVISION ORDINANCE CONSISTENCY

Chapter 16.24 of the City's Subdivision Ordinance deals with lot line adjustments. The submitted plot plans and application information meets the filing requirements. The map was referred to the City Engineer who must certify in writing, per § 16.24.040 of the Subdivision Ordinance that the lot line adjustment map is technically correct. The City Engineer noted that he is not a licensed surveyor, but he had a surveyor in their office review it. The resulting property descriptions will also be reviewed by the surveyor prior to City Engineer certification as part of the conditions of approval. As the City Engineer, he did not have any concerns or comments about the lot line adjustment. It is just that his Professional Engineer's license does not allow him to legally review lot lines and descriptions, which must be done by a licensed Professional Land Surveyor.

The surveyor provided the following comments:

1. *Draft LLA maps should be signed "draft". Final maps need to be stamped and signed by a California Land Surveyor.*
2. *Include a basis of bearing statement.*
3. *Show all existing boundary/corner monuments. Note that this could lead to parcel areas changing.*
4. *Clarify if the bearings shown match the record, or if they are based on California coordinates.*

The applicant's agent/surveyor provided the following responses:

- *On the map submitted, note number 1 states "the tentative map ...". I think that the statement addresses the "draft" nature of the map.*
- *The other comments refer to survey information. Per note 3 on the map, a boundary survey is in progress.*
- *Following approval of the lot line adjustment, we will complete the boundary survey, file a Record of Survey map and prepare the Notice of Lot Line Adjustment document with an exhibit map. All of the items from the City Engineer will be included in these final documents, but should not be needed on the current map.*

I agree that the surveyor's comments should be addressed in the final documents as a condition of approval and have added them as such.

According to § 16.24.03 the City Planner shall recommend approval of a lot line adjustment where they find that:

1. *The lot line adjustment does not violate existing codes and policies;*
2. *The lot line adjustment will not create difficult or unreasonable access to the parcels;*
3. *The lot line adjustment will not require variances to permit standard development;*
4. *Utilities and public services can be provided to the revised parcels; and*
5. *No street dedications or improvements are required.*

As further described below under Zoning Ordinance / General Plan Consistency, the resulting parcels meet the minimum lot size and other regulatory requirements of City ordinances. The largest parcel with the existing residence provides 25 ft. of frontage on a public street consistent with § 17.56.080. All required setbacks will be met by the existing development and proposed development envelopes. Public utilities and services already exist to the site, and the two new vacant parcels will have ready access to the Underwood right-of-way for future utilities. No street dedications or improvements are proposed or required. Therefore, the above findings can be made.

Section 16.24.050 states that, *"The Planning Commission shall approve, conditionally approve or deny lot line adjustment proposals at its next regularly scheduled meeting after receiving recommendations from the City Engineer and Planner."* The Planning Commission has these recommendations and can take action on the LLA.

Although a public hearing is not necessary for the lot line adjustment, a public hearing has been noticed for this project because it has to be heard at a public meeting anyway, and there is no reason not to take public comment on the project. In addition, the Coastal Development Permit requires a public hearing. For lot line adjustments, the Planning Commission has final approval authority in accordance with Section 16.04.100 (Planning commission – Powers and duties) of the Trinidad Subdivision Ordinance. However, the project action is appealable to the City Council and Coastal Commission.

An earlier determination by the State Attorney General states that, *"A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to local zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment or to facilitate the relocation of existing utilities, infrastructures or easements. No tentative map, parcel map or final map shall be required as a condition to the approval of the lot line adjustment. The lot line adjustment shall be reflected in a deed which shall be recorded."*

ZONING ORDINANCE / GENERAL PLAN CONSISTENCY

The properties involved in the LLA are all zoned UR – Urban Residential. The purpose of this zone is to allow relatively dense residential development; single-family residences are principally permitted (§ 17.32.020). The minimum lot size allowed in the UR zone is 8,000 sq. ft. (§ 17.32.040), and the maximum density is one dwelling per 8,000 sq. ft. (§ 17.32.050). Setbacks are front – 20 ft., rear – 15 ft., and side – 5 ft. (§ 17.32.080). The building envelope for resulting parcel #2 only has a 10-ft. setback from Underwood, where 20 ft. is required. But it also has 10-ft. side setbacks, where only 5 ft. is required. There is still room for a residence and septic system. Setbacks will be more specifically addressed when future development is proposed.

The site is not located in an area mapped as being unstable or of questionable stability, or as having any other hazards or limitations. The LLA will not affect density or parking. And the LLA does not involve any physical changes to the structures or ground disturbance. Therefore, things like grading requirements, height limits, view considerations and architectural design, are generally not issues. They will need to be addressed as part of any future development proposal.

Zoning Ordinance § 17.56.150 requires dedication of a public access easement along shorelines and trails as a condition of approval for new development. A lot line adjustment constitutes development under the Coastal Act. There is a public access trail running from Underwood Drive to Trinidad State Beach trails along the southern boundary of the subject property. However, that is already a dedicated public right-of-way belonging to the City; it was dedicated at the same time as Underwood Drive as part of the Ocean Park Addition that created all the surrounding parcels. Therefore, there is no need for an additional easement.

The City received a letter from a neighbor, included in this packet, concerned about the potential for future development to block views. As noted above, the lot line adjustment itself is not subject to design review, but future development will be. And the Planning Commission must find that the lots meet all the City's regulations and will not require variances to develop. I do not recommend placing any conditions limiting future development on the lot line adjustment, and I do think the findings can be made as proposed. However, I also think the Planning Commission could consider the issue of whether the proposed lot configuration exacerbates the potential for view impacts from future development, such as by limiting the building areas. Keep in mind though, with the current configuration, the owners could tear down the existing house and build four new houses, one on each lot. I have asked the applicant to consider the question of lot configuration options and to be prepared to discuss it. If nothing else, this discussion may provide some guidance or insight to the future owners of the vacant lots.

SLOPE STABILITY:

The property is not in an area mapped as being either 'unstable' or 'questionably stable' on Plate 3 of the Trinidad General Plan. Most of the property is relatively flat with a gentle slope (<10%) towards the southwest. The slope gradient increases somewhat in the southwest corner. The closest point to a bluff edge from the property is approximately 150 ft. northwest of the northwest corner. In front of the parcel, the bluff is generally greater than 200 ft. to the west (based on mapping by SHN in 2022).

SEWAGE DISPOSAL:

The existing residence is served by an existing OWTS consisting of an 800-gallon tank of unknown age and two 50-ft. leachlines installed under a repair permit from DEH in 2019. The property has a valid OWTS Operating Permit for the existing system.

An Onsite Wastewater Treatment Evaluation was prepared by Pacific Watershed Associated for the project. The report provides designs for a reserve leachfield for the existing residence, and new 3-bedroom OWTS for each of the two resulting vacant parcels. In response to a referral, DEH commented that the proposed OWTS for each lot meet the requirements for a primary and reserve leachfield and that the design is appropriate for the site conditions. They noted that OWTS permits from DEH will be required as part of any future development.

LANDSCAPING AND FENCING:

No tree removal is proposed as part of this project; no new fencing or landscaping is proposed at this time.

DESIGN REVIEW / VIEW PROTECTION FINDINGS:

Because the project will not result in the alteration of any existing structures or grades, no Design Review approval is required.

STAFF RECOMMENDATION:

Based on the above analysis, the project can be found to be consistent with the City's Zoning Ordinance, Subdivision Ordinance, General Plan and other applicable policies and regulations, and the necessary findings for granting approval of the project can be made. If the Planning Commission agrees with staff's analysis and findings, the project could be approved with the following motion:

Based on application materials, information and findings included in this staff report, and based on public testimony, I move to adopt the information and required findings in this staff report and approve the lot line adjustment as submitted and as conditioned below.

PLANNING COMMISSION ALTERNATIVES

If the Planning Commission does not agree with staff's analysis, or if information is presented during the hearing that conflicts with the information contained in the staff report, the Planning Commission has several alternatives.

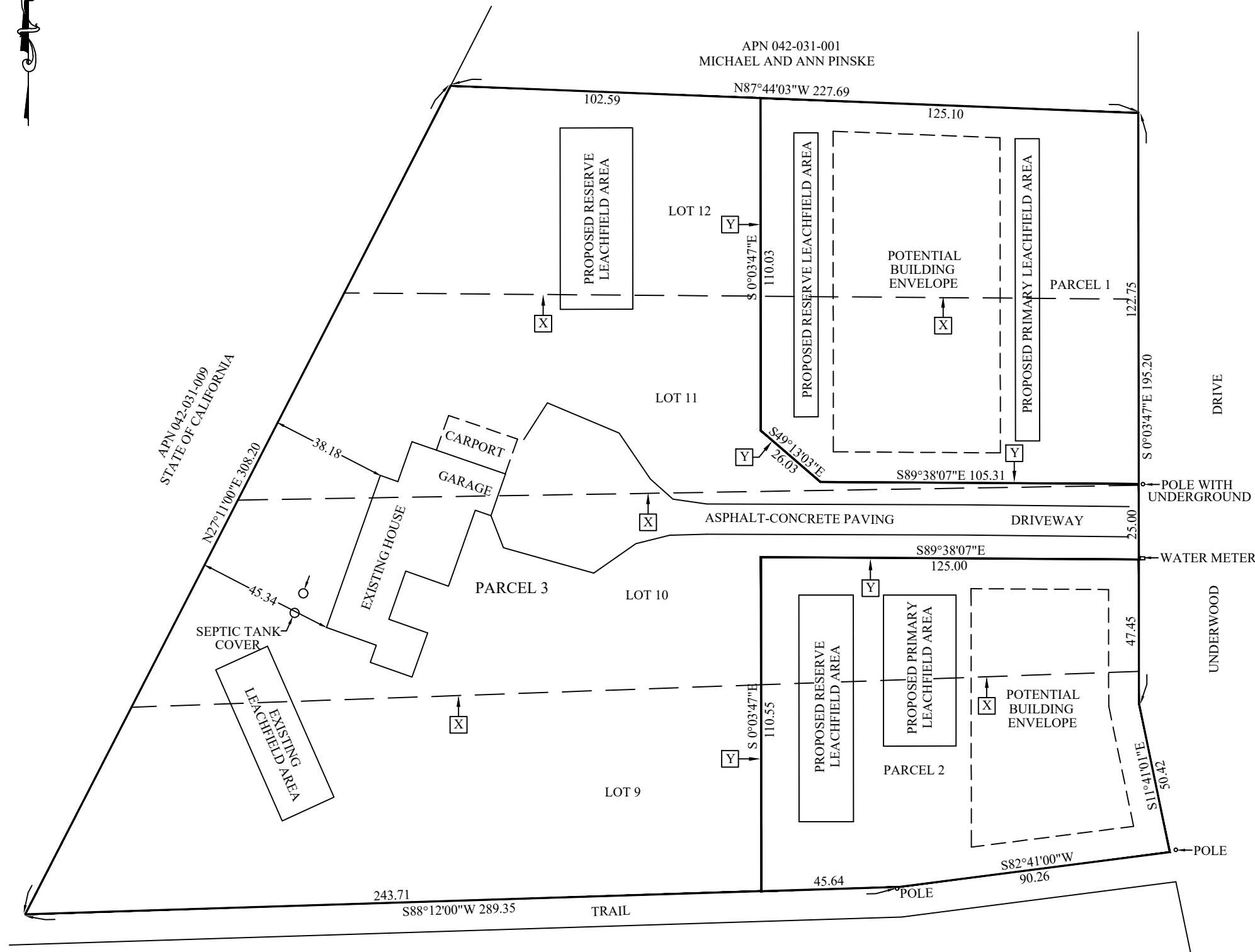
- A. Add conditions of approval to address any specific concerns on the part of the Commission or the public.
- B. Delay action / continue the hearing to obtain further information.
 - In this case, the Planning Commission should specify any additional information required from staff or the applicant and / or suggestions on how to modify the project and / or conditions of approval.
- C. Denial of the project.
 - The Planning Commission should provide a motion that identifies the Finding(s) that cannot be made and gives the reasons for the inability to make said Finding(s).

CONDITIONS OF APPROVAL

1. The applicant is responsible for reimbursing the City for all costs associated with processing the application. *Responsibility: City Clerk to place receipt in conditions compliance folder prior to recordation of the LLA.*
2. The following shall be included on the final LLA map:
 - Abasis of bearing statement.
 - All existing boundary/corner monuments shall be shown.
 - Clarify if the bearings shown match the record, or if they are based on California coordinates.*Responsibility: City Engineer prior to recordation of the LLA.*
3. Upon surveyor review and approval of the map and property descriptions, the City Engineer shall certify the lot line adjustment in writing. *Responsibility: City Engineer prior to recordation of the LLA.*

ATTACHMENTS

- Lot Line Adjustment Map (1 page)
- Letter and photos from neighbor (6 pages)



NOTES

- 1. THIS TENTATIVE MAP PROPOSES A LOT LINE ADJUSTMENT BETWEEN FOUR EXISTING PARCELS, RESULTING IN THREE PARCELS. THE PURPOSE OF THE LOT LINE ADJUSTMENT IS TO ADJUST LINES TO FIT EXISTING IMPROVEMENTS. PROPOSED PARCEL LINES ARE DESIGNED TO FIT THE EXISTING DRIVEWAY AND TESTED LEACH FIELD AREAS.
- 2. WATER - CITY OF TRINIDAD
SEWER - ON-SITE DISPOSAL
- 3. PROPERTY LINE INFORMATION: CALCULATED PROPERTY LINES ARE SHOWN. A BOUNDARY SURVEY IS CURRENTLY IN PROGRESS.
- 4. PARCEL NUMBERS SHOWN HEREON ARE FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT INTENDED TO REPRESENT A SUBDIVISION OF LAND.

LOT LINE ADJUSTMENT SUMMARY

- X LINE TO BE DELETED BY LOT LINE ADJUSTMENT
- Y LINE TO BE ADDED BY LOT LINE ADJUSTMENT

PARCEL	BEFORE LLA AREA	AFTER LLA AREA
LOT 9	23,848 SF +/-	
LOT 10	20,392 SF +/-	
LOT 11	18,219 SF +/-	
LOT 12	16,047 SF +/-	
PARCEL 1		15,437 SF +/-
PARCEL 2		13,475 SF +/-
PARCEL 3		49,594 SF +/-

PARCEL ORIGINS

LOTS 9, 10, 11 AND 12 OF BOOK 12 OF MAPS, PAGES 62 & 63

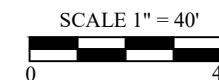
AGENT/SURVEYOR:
MICHAEL J. O'HERN LS 4829
KELLY-O'HERN ASSOCIATES
3240 MOORE AVENUE
EUREKA, CA 95501
(707)442-7283

OWNER/APPLICANT:
SILAS F. MORRISON FAMILY TRUST
C/O SHARON HUNTER
PO BOX 369
TRINIDAD, CA 95570
(707)499-9974

APN 042-031-034
LOT LINE ADJUSTMENT MAP
FOR
SILAS F. MORRISON FAMILY TRUST
IN
SE 1/4 SECTION 23 T8N, R1W, HUMBOLDT MERIDIAN
WITHIN THE LIMITS OF THE CITY OF TRINIDAD
NOVEMBER 2023 SCALE 1" = 40'

HUMBOLDT COUNTY
STATE OF CALIFORNIA

KELLY-O'HERN ASSOCIATES
EUREKA, CALIFORNIA



1/9/2024

Planning Commission of the City of Trinidad,

My name is Gary Wagner. My wife Susan and I live at 826 Underwood Drive. We purchased our home in 2014 and have been living full-time in our home since 2018. Our previous home was in Paradise, CA, and was destroyed by the Camp Fire in 2018.

Last week, we received a Notice of Public Hearing for the January 17, 2024 Planning Commission of the City of Trinidad meeting to discuss the Lot Line Adjustment for the property located at 855 Underwood Drive. The property mentioned is situated directly across the street from our home. The Project Description for the Public Hearing describes the lot line adjustments to four parcels to be converted to three. Two of the three parcels will be located on Underwood Drive, and the addition of water and septic will allow the property to be available for sale and new homes to be built.

Our concern with this project is not the proposed lot adjustments but the building of new homes that would block our ocean view. We purchased this home because of its central Trinidad location and because of its beautiful views of the ocean. Daily, I look out and enjoy the views from our windows, and it is very disheartening to think that this view will be compromised or eliminated by building new homes. My lifelong career has been as a professional photographer and photo artist. I have taken thousands of photographs on local beaches and sincerely appreciate the ocean vistas and landscapes. I am deeply dismayed by this proposed project and the future loss of our ocean view.

The proposed project will affect our view and three additional neighbors located on Underwood Drive. Our four homes have views of Pewetole Island, Flatiron Rock, and Trinidad Head. Petole Island and Trinidad Head are part of the California Coastal Natural Monument, a significant landmark of Trinidad. I have spent countless hours watching the seas, spectacular sunsets, and incoming storms. Every day brings a different and breathtaking view of the seas, and these views are priceless. Also affected by the future building will be countless neighbors, tourists, and walkers who stop at the listed property to view the ocean throughout the day or at sunset. The view from the street at this location is the only ocean viewpoint on this street and is often viewed by the local community due to its fantastic visual access.

Upon review of previous similar issues, it has been verified that the Trinidad Municipal Code contains Code that should prevent these view obstructions from being constructed. Trinidad Municipal Code number 17.60.050, View Protection Criteria states that construction of a new residence may not exceed 15 feet in height or greater than 1500 sq feet in floor area if such residence would significantly block views identified in subsection (B) of this section including the ocean from public roads, trails and vista points.

I realize that the current planning request does not define future building requests, but some mention of future development needs to be addressed with this lot line adjustment to address potential lot buyers' expectations of building structure design considerations before lot sales.

I have attached three photos to this letter to further define our view and potential loss of view with the construction of a one or two story home. The photos attached identify the view from our home's second story windows. Views from street level will be completely blocked from public view regardless of the home height or square footage. Code 17.60.050 (B) states that Structures shall not be allowed to significantly block views of Trinidad Head or the ocean from public roads, trails and vista points.

In conclusion, I ask that this project be considered not only for what is being requested at this time but also for future development that would be designed to block our view and that of our family and neighbors.

Sincerely,

Gary and Susan Wagner

Gary Wagner

826 Underwood Drive

PO Box 766

Trinidad, CA 95570

5305190956

gary@garywagner.com

Current view from 826 Underwood



Two story home construction



Current view from 826 Underwood



One story home construction



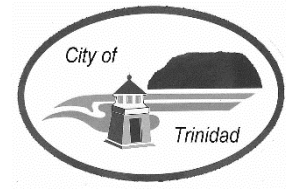


DISCUSSION AGENDA ITEM #3 SUPPORTING INFORMATION

3. 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. *Continued from the November 15, 2023 meeting.*

Supporting documentation follows with: 3 pages

DISCUSSION / ACTION AGENDA ITEM



Wednesday, January 17, 2024

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. *Continued from the November 15, 2023 meeting.*

Background

The Planning Commission adopted the After-the-Fact (ATF) 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. But during on an after-the-fact permit hearing later in 2021, the Planning Commission expressed dissatisfaction with standard procedures and conditions #4 (now #5), particularly with the vagueness of the phrase "extenuating circumstances." However, after an agendized discussion, it was decided to leave the language as adopted in order to leave flexibility for the Planning Commission to determine a monetary penalty on a case-by-case basis.

Then a recent experience with a second after-the-fact permit request from the same property owner prompted the Planning Commission to review the policy again. Therefore, the policy was discussed at the October 18 meeting. During the discussion, the Planning Commission recommended several clarifying statements be added to the narrative and one additional standard procedure and condition added (new #4) specifying that all costs are the responsibility of the applicant. Staff revised the policy based on those recommendations and presented it at the November meeting where the Planning Commission requested input from the City's Building Inspector.

I sent a copy of the policy to the Building Inspector, Dan Dimick, and spoke with him about the building permit process. My understanding of how the building code dictates the process for ATF permits was a little off. Apparently, it essentially just says that construction started without a permit must meet all building code requirements, and it is up to the jurisdiction to make sure that is done. He emphasized that code enforcement / nuisance abatement is the real hammer for ensuring compliance. And the City does have a fairly recent and robust nuisance abatement ordinance (Chapter 8.12 of the Municipal Code).

We talked about requiring plans to be professionally stamped at the planning permit stage and/or requiring a building permit application at the same time as the planning permit application for ATF permits. Dan explained that there are a variety of ways to ensure that already completed construction complies with the building code, and the method(s) used will depend on the situation. It could be by having as-built plans stamped by a professional. It could be by providing photos and other documentation of construction.

And it could require some demolition in order to expose wiring and other features. He did not recommend requiring a building permit application with the planning application, because the building permit cannot be processed until after planning approval anyway. Dan suggested that the City might consider amending its code to include an option for recording a “notice of unpermitted development” on a property that is out of compliance to ensure that any future buyers are aware of the situation. I think that is a good idea for future consideration. But it would not be part of the ATF permit process, because once a permit is issued, it is no longer unpermitted.

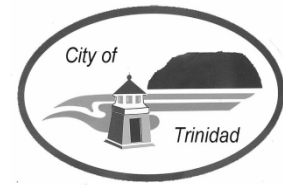
Staff Recommendation

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

Attachments

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

PLANNING COMMISSION POLICY



After-the-Fact Permit Processing

Adopted February 17, 2021; Revised November 15, 2023

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. This policy is intended to protect public health and safety and promote community well-being. 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. The City will endeavor to ensure that permit requirements are readily accessible, but ignorance of the rules is not an excuse for violations. 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 as an alternative to enforcement action on the part of the City. 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. All expenses related to permitting unauthorized work, including but not limited to any fees, studies, plans, remediation, etc. shall be the responsibility of the applicant and/or property owner.
5. 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.
6. Planning Commission decisions, including conditions and fees, may be appealed to the City Council.

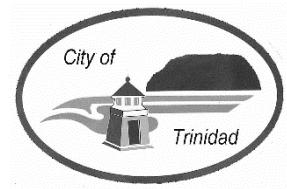


DISCUSSION AGENDA ITEM #4 SUPPORTING INFORMATION

4. Introduction to Annexation: Discussion/presentation of general information regarding the laws and procedures governing annexations and the role of Local Agency Formation Commissions (LAFCo).

Supporting documentation follows with: 29 pages

DISCUSSION / ACTION AGENDA ITEM



Wednesday, January 17, 2024

Item: Introduction to Annexation: Discussion/presentation of general information regarding the laws and procedures governing annexations and the role of Local Agency Formation Commissions (LAFCo).

Background

With the General Plan update and discussions about the future of the City's water system, the issue of annexation has come up in several contexts. The Planning Commission has expressed an interest in learning more about the topic. Annexation refers to the process of adding unincorporated lands into the City. And the Humboldt Local Agency Formation Commission (LAFCo) is the body with the authority to approve or deny annexations (and other boundary and service area determinations).

There are several reasons that the City might consider annexation. Annexation can have several advantages and disadvantages to both the City and the property owners of the annexed land. The City has some grant funding to do some preliminary planning and public outreach to consider the possibility of annexing subarea A of the City's water service area, located along Langford Road. This area essentially forms an island of County land surrounded by the City, the Rancheria and Hwy 101. However, for this meeting, I am not providing information that is specific to Trinidad or any particular area, just an introduction to the topic of annexation.

To that end, I have provided a white paper from the Governor's Office of Planning and Research on LAFCOs, general plans, and annexations.

Staff Recommendation/Suggested Action(s):

No action needed. Review the informational material and ask questions or request additional information as needed.

Attachments:

- OPR report: LAFCOs, General Plans, and City Annexations (28 pages)



LAFCOs, General Plans, and City Annexations

February 7, 2012

STATE OF CALIFORNIA
Edmund G. Brown, Jr,
Governor

GOVERNOR'S OFFICE
OF PLANNING AND
RESEARCH

1400 Tenth Street
Sacramento, CA 95814

P.O. Box 3044
Sacramento, CA 95812

(916) 322-2318

www.opr.ca.gov

This page intentionally left blank

**State of California**

Edmund G. Brown, Jr., Governor

Governor's Office of Planning and Research

Ken Alex, Director

Project Manager

Ben Rubin, OPR

Prepared by

Ken Lee, RSG, Inc

Holly Whatley, Colantuono & Levin, PC

Contributors

Chris Calfee, OPR

Debbie Davis, OPR

Cuauhtémoc Gonzalez, OPR

Michael McCormick, OPR

Advisory Committee

William Chiat, Executive Director, CALAFCo

Carole Cooper, Sonoma LAFCo

Steve Lucas, Butte LAFCo

Lou Ann Texeira, Contra Costa LAFCo

This publication was developed through the support of the California Association of Local Agency Formation Commissions (CALAFCO) (<http://www.calafco.org>)

Please feel free to reproduce all or part of this document. You need not secure permission. We ask that you print it accurately and give credit to the Governor's Office of Planning and Research (OPR).

This page intentionally left blank

Table of Contents

Introduction.....	2
Background: The Role of the LAFCO.....	3
Local Government Role in Planning and Regulating Land Use.....	5
Annexations.....	6
Pre-Application.....	6
Application Filing and Processing.....	6
LAFCO Review and Consideration.....	7
Protest Proceedings.....	7
Final Certification.....	8
Consistent Annexations.....	9
Disadvantaged Unincorporated Communities.....	12
Spheres of Influence and Municipal Service Reviews.....	13
Rezoning.....	16
Environmental Review.....	17
Summary.....	19
Conclusion.....	21
Table of Cases Cited.....	22
Annexation Process Flowchart.....	23

This page intentionally left blank

Introduction

“It is the intent of the Legislature that each commission ... establish written policies and procedures and exercise its powers ... in a manner consistent with those policies and procedures to encourage and provide planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns...Among the purposes of a commission are discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances” (Gov. Code Section 56300 and 56301).

Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, as Amended,
Title 5, Division 3, Part 2, California Government Code

In 2000, the Legislature passed AB 2838 (Chapter 761, Statutes of 2000) making the broadest and most significant set of sweeping changes to local government reorganization law since the creation of Local Agency Formation Commissions (LAFCOs). In addition to renaming the act the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH Act”), AB 2838 affirmed and strengthened the role of LAFCO in helping shape the future physical and economic growth and development of the State, including, once again, the role of LAFCO in annexation proceedings.

To provide a primer on LAFCOs from a land use planning perspective, the Governor’s Office of Planning and Research (OPR), in cooperation with the California Association of Local Agency Formation Commissions (CALAFCO), has prepared this publication about the city annexation process, the California Environmental Quality Act (CEQA) and local general plans. The CKH Act provides opportunities for dovetailing the requirements of the Planning and Zoning, CEQA and annexation laws which, in turn, can promote efficiency in processing applications. OPR and CALAFCO also recognize that early consultation and collaboration between local agencies and LAFCO on annexations is a best practice that is encouraged in this publication, including coordination on CEQA review, general process and procedures, and fiscal issues.

Although the CKH Act addresses district formation, incorporation, and other types of changes of organization, this publication focuses on city annexations. Consequently, it is geared towards the non-LAFCO planner and city official and is not intended to be an in-depth, technical discussion of the CKH Act. OPR and CALAFCO offer best practice tips, relevant to current and emerging trends and topics in California land use law and the CKH Act. This publication is based upon OPR’s and CALAFCO’s reading of current State statute, recent case law, and the General Plan Guidelines, as updated by OPR. References are to the California Government Code unless otherwise indicated.

For a review of the CKH Act as it relates to California planning, zoning, and development laws, please refer to Guide to California Planning, 3rd Edition or Longtin’s California Land Use, 2nd Edition. These general references address planning, zoning, subdivisions, sign controls, and exactions, as well as LAFCO activities. For more general information about the role, structure, and powers of LAFCOs, refer to *It’s Time to Draw the Line: A Citizen’s Guide to LAFCOs* (May 2003).

Background: The Role of the LAFCO

The Knox-Nisbet Act, the Municipal Organization Act (MORGA), and the District Reorganization Act – three separate, but interrelated State laws – authorized local boundary changes and municipal reorganization, such as annexations, incorporations, and the creation of special districts. Long-standing difficulties in implementing and reconciling these distinct, and at times incompatible, laws led the Legislature to adopt the Cortese-Knox Local Government Reorganization Act. The Cortese-Knox Act combined these statutes into a single law, which eliminated duplicate and incompatible sections.

In 2000, the Legislature passed AB 2838 (Hertzberg), which was the most significant and comprehensive legislative reform to local government reorganization law since the 1963 statute that originally created LAFCOs in each county. Development of the legislation resulted from the recommendations of the Commission on Local Governance for the 21st Century. For more information on the Commission, please see their 2000 publication, *Growth Within Bounds*.

AB 2838 (Hertzberg, 2000), recognizes and affirms the important role that LAFCOs play in California in serving as an arm of the State, not only in the oversight of local government boundaries, but in evaluating and guiding the efficient, cost-effective, and reliable delivery of municipal services to California's citizenry. AB 2838 expanded the powers and duties of LAFCO, in its decision-making role in government organization changes, and its examination and guidance of municipal service location and extension timing. The CKH Act provides the framework for proposed city and special district annexations, incorporations/formations, consolidations, and other changes of organization. This law establishes a LAFCO in each county, empowering it to review, approve, or deny proposals for boundary changes and incorporations/formations for cities, counties, and special districts.

LAFCOs are composed of elected officials from the county and local cities, and a member of the general public. As of 2011, 29 of the 58 LAFCOs also have special district representation. In addition, some LAFCOs have special membership pursuant to the CKH Act.

The State delegates each LAFCO the power to review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposed annexations, reorganizations, and incorporations, consistent with written policies, procedures, and guidelines adopted by the commission. In granting these powers, the State has occupied the field of annexation law to the exclusion of local legislation. Therefore, a city or county cannot take actions which hinder or conflict with State annexation procedures. For this reason, a city cannot adopt a local ordinance which would allow city voters to pass sole judgment on proposed annexation proceedings (*Ferrini v. City of San Luis Obispo* (1983) 150 Cal.App.3d 239 and *L.I.F.E. v. City of Lodi* (1989) 213 Cal.App.3d 1139). A city also cannot circumvent annexation law or the LAFCO process and cannot provide new or extended services outside its jurisdictional boundaries unless approved by LAFCO under specified circumstances (Section 56133).

Best Practice Tip #1

If you have a controversial or complicated annexation proposal, talk to the LAFCO executive officer about "Terms and Conditions." LAFCO has broad authority to impose Terms and Conditions on annexations that can guide or influence which agency does what, where, when, and how as part of the annexation. Cities and other stakeholders can work with LAFCO to craft Terms and Conditions that address potential barriers to annexations.

Each LAFCO operates independently of the State and of local government agencies. However, LAFCO is expected to act within a set of State-mandated parameters encouraging "planned, well-ordered, efficient urban development patterns," the preservation of open-space lands, and the discouragement of urban sprawl. The Legislature has taken

care to guide the actions of the LAFCOs by providing Statewide policies and priorities (Section 56301), and by establishing criteria for the delineation of spheres of influence (SOIs) (Section 56425).

Local Government Role in Planning and Regulating Land Use

Local governments have the primary responsibility for planning and regulation of land uses. State law requires each city and county to prepare and adopt a “comprehensive, long-term general plan for the physical development” of the community. This general plan must cover all incorporated territory and should go beyond the city limits to include “any land outside its boundaries which ...bears relation to its planning” (Section 65300).

A city’s general plan is an important statement of the city’s future intent. It allows city officials to indicate to State agencies, local governments, and the public their concerns for the future of surrounding unincorporated lands. Since the general plan is a policy document with a long-term perspective, it may logically include adjacent territory the city ultimately expects to annex or to serve, as well as any area which is of particular interest to the city. The city’s SOI (which is established by the LAFCO) describes its probable physical boundaries and service area and can therefore be used as a benchmark for the maximum extent of the city’s future service area. The city may choose to plan for land uses beyond its SOI when coordinating plans with those of other jurisdictions (2003 General Plan Guidelines).

Through legislation and case law, the general plan has assumed the status of the “constitution for all future development” (*Citizens of Goleta Valley v. Board of Supervisors of the County of Santa Barbara* (1990) 52 Cal.3d 553). As a result, most local land use decision-making now requires consistency with the general plan. The same is true of public works projects (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988) and, in several cases, voter zoning initiatives (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531 and *Goleta*, supra).

Senate Bill 244 (Chapter 514, Statutes 2011, Wolk) amended general plan statutes to include planning for unincorporated disadvantaged communities. Cities, on or before the due date for the next adoption of its housing element, must review and update the land use element of their general plans to include the identification of unincorporated island or fringe communities within the city’s SOI, and to analyze for each identified community: (1) “water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies”; and (2) “benefit assessment districts or other financing alternatives that could make the extension of services to identified communities financially feasible” (Section 65302.10). SB 244 is discussed further in the “Disadvantaged Unincorporated Communities” section of this publication.

Annexations

Annexation is the means by which an existing city extends its corporate boundaries. In its most basic form, annexation can be considered a five-part process. The steps are generally outlined below. Please refer to the flowchart on page 23 for a visual outline of the process.

Pre-Application

An application may be filed with the LAFCO by petition of affected landowners or registered voters, or by resolution from the involved city. Prior to filing, the proponent should meet with the LAFCO executive officer to establish the minimum requirements for processing, and then meet with any affected special districts and agencies to agree upon a taxation scheme and needed property tax transfers. Unless determined to be statutorily or categorically exempt from CEQA, LAFCO's action is considered a "project" that is subject to CEQA review, and an initial study will be required. The CKH Act requires rezoning of the site by the affected city. This usually makes the city the "lead agency" for CEQA documents and the LAFCO a "responsible agency." The city should coordinate with the LAFCO early on in the application process to ensure LAFCO's action on the annexation is adequately covered by the CEQA document. In most cases, the city (or the private proponent) will be responsible for preparing the initial study and the environmental document with LAFCO input.

Best Practice Tip #2

Meet with the LAFCO executive officer as early as possible to discuss the annexation proposal, identify potential political, financial, or procedural "red flags," and understand the local LAFCO's application requirements. Section 56652 gives LAFCO broad authority to require data and information as part of the application. While application requirements vary between LAFCOs, typical application requirements include:

- Application form
- Filing and Processing Fees
- CEQA and rezoning documentation
- Map and metes and bounds legal description
- Plan for providing services (required by Section 56653)
- Property tax exchange resolutions
- Associated SOI amendments, if required

Application Filing and Processing

LAFCO has 30 days to review an annexation application and determine that it is complete for processing, or notify the applicant that the application is not complete. If an annexation application also includes the detachment of territory from a city or annexation to a special district, LAFCO must follow special procedures that provide the detaching city or annexing special district the opportunity to request termination of the proceedings by resolution (Sections 56751 and 56857). LAFCO must honor the request. When a local agency initiates annexation by resolution of application, it must submit a plan for providing services. At a minimum, the plan must address the type, level, range, timing, and financing of services to be extended, including requirements for infrastructure or other public facilities. Before the executive officer issues a certificate of filing, the involved city, county, and affected special districts are required to negotiate the allocation of property tax revenues during a 60-day mandatory negotiation period, unless extended to 90 days (Revenue & Taxation Code Section 99 and 71 Ops.Cal.Atty.Gen. 344 (1988)). If an agreement is not reached, Revenue and Taxation Code Section 99(e)(1) outlines an alternative negotiation, mediation, and arbitration process that is required by statute.

The law does not require they reach agreement at the end of this process. Nonetheless, if the city and county cannot reach an agreement on the exchange of property tax, an impasse will stall or could terminate the process (*Greenwood Addition Homeowners Association v. City of San Marino* (1993) 14 Cal.App.4th 1360). Without an agreement, the executive officer is prohibited from issuing a certificate of filing which is a precondition to LAFCO's consideration of an application for annexation; the application cannot proceed.

Once the application has been accepted as complete, the executive officer will issue a certificate of filing and set the proposal for commission consideration within 90 days. During the application process, LAFCO will work with the applicant and affected agencies to analyze the proposed annexation in light of the commission's State mandated evaluation criteria (Section 56668) and responsibilities, and its own locally adopted policies and procedures.

LAFCO Review and Consideration

LAFCO may approve, conditionally approve, or deny the proposed annexation. LAFCO cannot disapprove an annexation if it meets certain requirements (Section 56375(a)(4), including "island annexations" that are 150 acres or fewer in size (Section 56375.3). However, only in the latter case are protests required to be waived, if all criteria are met. The lead agency, whether it is the LAFCO or the involved city, must comply with CEQA requirements prior to the LAFCO's action. Within 30 days of the LAFCO's resolution, any person or affected agency may file a written request with the executive officer for reconsideration of the annexation proposal based on new or different facts that could not have been presented previously (Section 56895).

Protest Proceedings

Unless waived pursuant to Section 56375.3 as an island annexation, or in cases where landowners have provided written consent (56663)(a)(c) or have not objected after receiving notice of the commission's intent to waive protest proceedings (56663)(d), LAFCO, acting as the "conducting authority" in accordance with the requirements of the CKH Act, will hold a public protest hearing to determine whether the proposed annexation must be terminated, or approved with or without an election, to determine the proposal's outcome.

For annexations of inhabited territory (containing 12 or more registered voters), LAFCO must: 1) Terminate the proceedings if it receives protests from 50 percent or more of the registered voters within the territory; 2) Order the annexation subject to an election if it receives protests from either at least 25 percent, but less than 50 percent, of the registered voters residing in the affected territory or from at least 25 percent of the number of owners of land who also own at least 25 percent of the assessed value of land within the affected territory; or, 3) Order the annexation without an election if it receives protests from less than 25 percent of the registered voters or less than 25 percent of the number of owners of land owning less than 25 percent of the assessed value of land within the affected territory.

For annexations of uninhabited territory (containing fewer than 12 registered voters), the LAFCO must: 1) Terminate

Best Practice Tip #3

Annexation attempts can fail if the affected city and county cannot reach agreement on a property tax split. In the early planning stages, the applicant should ascertain if a master property tax exchange agreement exists between the affected city and the county, and if there are concerns about the likelihood of a property tax exchange agreement. Property tax exchange agreements can be structured to address fiscal and related issues.

Best Practice Tip #4

There are examples around the State of annexations that have involved pre-annexation agreements and development agreements by cities, counties, and landowners/developers that align the timing and structure of the annexation process relative to the city and/or county entitlement and development phasing process.

the proceedings if it receives protests from landowners owning 50 percent or more of the assessed value of the land within the territory; or, 2) Order the change of organization or reorganization if it receives protests from owners of land who own less than 50 percent of the total assessed value of land within the affected territory. If the proposal is terminated, the executive officer will issue a certificate of termination of proceedings and no new annexation may be proposed on the site for at least one year, unless the LAFCO waives the limitation upon finding that the limitation is detrimental to the public interest (Section 57090). When an election is required, registered voters residing within the affected territory are entitled to vote on the issue of annexation (Section 57142).

Final Certification

When the LAFCO executive officer is satisfied that all elements of the CKH Act have been properly addressed, and that all conditions have been met, the executive officer will issue a certificate of completion. The annexation is not complete until it has been certified by the executive officer (Section 57200). The commission may establish an “effective date” for the annexation. Alternatively, the effective date will be the date the certificate of completion is recorded by the County Recorder (Section 57202). Once the annexation is recorded, there is no administrative recourse except by legal challenge.

Consistent Annexations

State law does not mandate that annexations conform to local general plans beyond requiring that “the decision of the [LAFCO] commission with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city” (56375)(a)(7). However, the commission will also consider “consistency with the city or county general and specific plans” when appropriate (Section 56668(g)). Nonetheless, the statutes contain numerous references that attempt to link local land use and open-space policies, including Williamson Act contracts, to the annexation process (Sections 56300, 56375, 56377, 56425). Accordingly, the commission should attempt to harmonize local planning policies with the intent of the State legislation. Where there is a clear conflict, such as incompatibility between city and county general plans, the State precepts should prevail.

The factors that the LAFCO must consider in reviewing annexation proposals include, but are not limited to, the following (Section 56668):

- a) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.
- b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.
- c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.
- d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities in Section 56377.
- e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.
- f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.
- g) A regional transportation plan adopted pursuant to Section 65080, and its consistency with city or county general and specific plans.
- h) The SOI of any local agency which may be applicable to the proposal being reviewed.

Best Practice Tip #5

As of 2008, LAFCOs must consider regional transportation plans and sustainable communities strategies (SB 375, Chapter 728, Statutes of 2008); the timely availability of water supplies; regional housing needs assessment (RHNA) allocations; and the promotion of environmental justice. Check with your LAFCO for local policies and procedures that may exist to address these factors and others listed in Section 56668. It is also good practice to include LAFCO consideration of these factors in the lead agency's CEQA document.

- i) The comments of any affected local agency or other public agency.
- j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.
- k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.
- l) The extent to which the proposal will affect a city or cities, and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.
- m) Any information or comments from the landowner or owners, voters, or residents of the affected territory.
- n) Any information relating to existing land use designations.
- o) The extent to which the proposal will promote environmental justice. As used in this subdivision, “environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.

Island Annexations

Under Government Code Section 56375(a)(4), a LAFCO is required to approve a city’s request to annex land adjacent to its borders when the commission finds that any of the following circumstances exist:

- a) The land is substantially surrounded by the city or the Pacific Ocean, is substantially developed or developing, is not prime agricultural land, is designated for urban growth in the city’s general plan, and is not within the SOI of another city.
- b) The land is located within an urban service area designated by the LAFCO, is not prime agricultural land, and is designated for urban growth in the city’s general plan.
- c) The land meets the criteria for unincorporated islands under Section 56375.3.

Best Practice Tip #6

Before proceeding with a small island annexation, verify the effective sunset date of Section 56375.3. The current sunset date is January 1, 2014.

Best Practice Tip #7

The Attorney General has opined that, for annexations that include protest procedures, such procedures satisfy the voter approval requirements of Proposition 218 where the annexation is conditioned on a tax, assessment or fee being extended to the affected territory (82 Ops.Cal.Atty.Gen. 180 (1999)). To date, however, there has been no Attorney General Opinion or court decision on whether the voter requirements of Proposition 218 apply to small island annexations under Section 56375.3, for which protest proceedings are expressly waived. Before proceeding with a small island annexation, talk to your local LAFCO executive officer about the application of Proposition 218 to your proposal.

Island annexations under Section 56375.3 must be approved by LAFCO, with or without terms and conditions, and protest proceedings must be waived. This special provision was added to the Cortese-Knox Act in 2000 with the passage of AB 1555 (Chapter 921, Statutes of 1999), a bill sponsored by the League of California Cities to streamline

“small island annexations” (islands 150 acres or less) that are in the interest of the public welfare. The bill included a “sunset” date for these special provisions. The sunset date was previously extended by the Legislature. The current sunset date is January 1, 2014.

Best Practice Tip #8

Talk to your local LAFCO executive officer about local policies or procedures the LAFCO may have adopted to address the implementation of legislative changes to the CKH Act, like SB 244 (Wolk, 2011).

Disadvantaged Unincorporated Communities

On October 7, 2011, Governor Edmund G. Brown, Jr. signed SB 244 (Wolk) into law (Chapter 513, Statutes of 2011) making changes to the CKH Act related to “disadvantaged unincorporated communities.” The legislative intent of this law is “to encourage investment in these communities and address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits” within them. A disadvantaged unincorporated community is defined in the CKH Act (Section 56033.5) as “inhabited territory...or as determined by commission policy, that constitutes all or a portion of a disadvantaged community as defined by Section 79505.5 of the Water Code,” which states, “a community with an annual median household income that is less than 80 percent of the Statewide annual median household income.”

SB 244 made several changes to the CKH Act:

1. It prohibits LAFCO from approving an annexation to a city of any territory greater than 10 acres, or as determined by commission policy, where there exists a disadvantaged unincorporated community that is contiguous to the proposed annexation area unless an application to annex the disadvantaged unincorporated community to the subject city has been filed with the LAFCO. However, an application to annex a contiguous disadvantaged unincorporated community is not required if a prior application for annexation of the same community has been made within the preceding five years or if the commission finds that a majority of residents of the community are opposed to annexation.
2. For an update of a sphere of influence of a city or district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection that occurs after July 1, 2012, LAFCO must consider the present and probable need for public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence. The commission may assess the feasibility of governmental reorganization of agencies to further the goals of orderly development and efficient and affordable service delivery.
3. LAFCO must include, in its statement of written determinations of municipal service reviews considerations relating to disadvantaged unincorporated communities within or contiguous to an agency’s sphere of influence.

Spheres of Influence and Municipal Service Reviews

Spheres of Influence

LAFCOs exercise both regulatory and planning functions. While annexations are a regulatory act, LAFCOs' major planning task is the establishment, periodic review, and update of SOIs for the various governmental bodies within their jurisdictions. As described by Section 56076, the SOI is "a plan for the probable physical boundaries and service area of a local government agency as determined by the commission." In establishing, amending, or updating a SOI, a LAFCO must consider and make written determinations with regard to the following factors (Section 56425(e)):

1. The present and planned uses in the area, including agricultural and open-space lands.
2. The present and probable need for public facilities and services in the area.
3. The present capacity of public facilities and the adequacy of public services that the agency provides or is authorized to provide.
4. The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.
5. For an update of a sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection, that occurs on or after July 1, 2012, the present and probable need for those public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence (SB 244 (Chapter 513, Statutes of 2011)).

The SOI is an important benchmark because it defines the primary area within which urban development is to be encouraged (Section 56425). In a 1977 opinion, the California Attorney General stated that an agency's SOI should "serve like general plans, serve as an essential planning tool to combat urban sprawl and provide well planned efficient urban development patterns, giving appropriate consideration to preserving prime agricultural and other open-space lands" (60 Ops.Cal.Atty.Gen. 118). Like general plans, SOIs may be reviewed and updated from time to time, or upon request by any person or local agency. SOIs may also be reviewed and updated following significant changes in regional or State policy that may affect an existing SOI, such as the adoption of a Sustainable Communities Strategy consistent with Senate Bill 375 (Chapter 728, Statutes of 2008). The CKH Act provides that every five years, LAFCO shall, as necessary, review and update each local agency's SOI under LAFCO jurisdiction.

The California Appellate Court holds that SOIs must be adopted before an annexation to the affected city or district can be considered. (*Resource Defense Fund v. LAFCO* (1983) 138 Cal.App.3d 987). Depending on local policy, some LAFCOs consider SOI amendments and associated annexations separately. Section 56427 requires LAFCO to send notice of pending annexation hearings to those affected agencies whose SOIs contain territory within the proposal.

LAFCO has sole responsibility for establishing a city's SOI. For cities with territory in more than one county, the LAFCO in the county having the greater portion of the entire assessed value of all taxable property within the

city has exclusive jurisdiction to determine the city's SOI and conduct municipal service reviews (Placer County LAFCO v. Nevada County LAFCO (2006) 135 Cal.App.4th 793). Further, the LAFCO is not required to establish an SOI that is greater than the city's existing boundaries. LAFCO may take joint action to approve an annexation while at the same time amending the city's SOI. (City of Agoura Hills v. LAFCO (1988) 198 Cal.App.3d 480).

LAFCO officials and local decision-makers recognize the logical assumption that the lands lying within the SOI are those that the city may someday propose to annex. If the city finds that annexing an area outside its SOI would be in the public interest, it should first request that its SOI be amended to include that area.

City-County Coordination in Spheres of Influence

Counties possess sole land use jurisdiction over unincorporated territory whether located outside or inside of a city's SOI. When the Legislature passed AB 2838, it recognized that, as the future service provider of unincorporated land in a city's SOI, the city should have an opportunity to address how land in the SOI is planned for and developed in anticipation of future annexation. This has both physical and fiscal ramifications for cities as future service providers. Before a city submits an application to LAFCO to update its SOI, the city and county shall meet in an effort to reach agreement on the SOI boundaries and the development standards and planning and zoning requirements within the SOI (Section 56425(b)).

Best Practice Tip #9

The CKH Act encourages collaboration among LAFCOs, cities, counties, landowners, and other local agencies to balance the timing and location of development within SOIs, including the establishment of SOIs in concert with long-range land use planning and annexations in concert with development entitlements and the extension of services. This is consistent with the legislative intent of the CKH Act to promote orderly development, discourage urban sprawl, preserve open space and prime agricultural lands, provide housing for persons and families of all incomes, and encourage the efficient extension of governmental services.

Under a separate but related provision of the CKH Act, LAFCO has the authority to review and comment on the extension of services into previously unserved, unincorporated territory, whether inside or outside of a city's SOI, including the creation of new service providers to extend "urban type development" into previously unserved, unincorporated territory (Section 56434). This provision of the CKH Act is scheduled to sunset on January 1, 2013.

Municipal Service Reviews

Another major change to LAFCO law from AB 2838 was the requirement for LAFCO to conduct municipal service reviews (MSRs) before or in conjunction with the establishment or update of SOIs (Section 56430). MSRs are conducted by geographic area or countywide and include a comprehensive review of all agencies that provide the services LAFCO identifies. As part of its review, LAFCO can evaluate alternatives for improving efficiency and affordability of infrastructure and service delivery. LAFCO is required to make seven written determinations for MSRs:

Best Practice Tip #10

If your city is preparing or updating a general plan, housing element, utilities master plan, or major facilities expansion that might affect your city's SOI or service delivery operations, consider coordinating early on with the LAFCO executive officer to share data and analysis related to MSRs.

1. Growth and population projections for the affected area.
2. The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.
3. Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.
4. Financial ability of agencies to provide services.
5. Status of, and opportunities for, shared facilities.
6. Accountability for community service needs, including governmental structure and operational efficiencies.
7. Any other matter related to effective or efficient service delivery, as required by commission policy.

A major benefit of MSRs to local agencies is the creation and maintenance by LAFCO of countywide data as it relates to the seven MSR determinations. For more information about MSRs, please refer to OPR's 2003 publication, *LAFCO Municipal Service Review Guidelines*.

Prezoning

A city must prezone unincorporated territory that the city expects to annex in the future, or present evidence satisfactory to LAFCO that the existing development entitlements on the territory are vested or are already at build-out and are consistent with the city's general plan. The proposed zoning must be consistent with the city general plan and a public hearing must be held. LAFCO may not, however, dictate the specific zoning to be applied by the city.

There are two advantages to prezoning. First, the city will have zoning in effect immediately upon annexation. Local residents will thereby have prior knowledge of the land use regulations that would affect them should annexation occur. Second, prezoning serves as notice to the LAFCO of the city's intentions regarding its adjacent areas. As such, upon annexation of the territory, the city is restricted for a period of two years after the annexation's effective date from amending the general plan designation and zoning for the territory that is a departure from the prezoning. This restriction may be waived if the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitates a departure from the prezoning.

In order to be effective, the prezoning must be consistent with the city general plan. In at least one instance, the Appellate Court upheld a LAFCO's authority to deny an annexation where a city had prezoned a site agricultural, but where the "ultimate intended use" as represented on the general plan was residential and industrial. The conversion to agricultural land had conflicted with adopted LAFCO policy. (*City of Santa Clara v. LAFCO* (1983) 139 Cal. App.3d 923).

Environmental Review

Both case law and the CEQA Guidelines support the applicability of CEQA to annexations and to related SOI amendments. The environmental document should be prepared early in the process and should address all aspects of the project, not merely the annexation.

In 1975, the California Supreme Court held in a Ventura County case that annexations are to be considered projects under CEQA and are subject to environmental analysis. Where the LAFCO had “proceeded as if CEQA did not exist” its decision was enjoined until an EIR could be prepared. The Supreme Court drew similarities between the purposes of CEQA and the annexation laws then in effect, requiring that the LAFCO harmonize these purposes through the preparation of an EIR (*Bozung v. LAFCO* (1975) 13 Cal.3d 263).

The CEQA Guidelines define a project as the whole of an action, not the separate governmental actions that may be necessary to complete it. Ideally, a single environmental document will be prepared to address the annexation as well as all related general plan amendments, rezoning, SOI, or other proposals. The CEQA document should include an evaluation of the environmental effects from future development of the affected annexation territory based on what would be allowed under the existing or proposed general plan and zoning provisions. The document should address,

among other concerns, the policy issues raised in Sections 56301 and 56375. If the EIR identifies one or more significant environmental impacts and the annexation is approved, the LAFCO and the city will be responsible for making findings pursuant to Sections 15091 and 15093 of the CEQA Guidelines justifying their actions.

Best Practice Tip #11

If your project may directly or indirectly trigger the need for future LAFCO approval (e.g., annexations or SOI amendments), coordinate CEQA review early on with the LAFCO executive officer to ensure the CEQA document adequately addresses LAFCO’s requirements as a responsible agency. Future LAFCO actions should be clearly identified in the project description and list of approvals required by other agencies.

The courts have had differing opinions over the application of CEQA to SOI determinations. In *City of Livermore v. LAFCO* (1986) 183 Cal.App.3d 531, the court held that CEQA was invoked when the Alameda County LAFCO changed the guidelines it used for determining SOIs. However, the court in *City of Agoura Hills v. LAFCO* (1988) 198 Cal.App.3d 480 concluded that establishing an SOI was not automatically a project under CEQA. According to *Agoura Hills v. LAFCO*, the Court held that, “the fact that SOIs are recognized as important factors in annexations does not compel the conclusion that they are per se ‘projects’ subject to CEQA.” The Agoura court did not dismiss the possibility that under other circumstances, an SOI determination could be a project.

Environmental documents prepared for annexations should also address all related rezonings or general plan amendments (*Bozung v. LAFCO*, supra; *Pistoresi v. City of Madera* (1982) 138 Cal.App.3d 284). Conversely, when rezoning is proposed the environmental document should discuss the effects of annexation. For example, in *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, the court held that an EIR prepared for a rezoning and general plan amendment was insufficient because it failed to consider the issue of the related annexation that was then in progress. Amending the SOI may also be subject to CEQA if significant effects are possible (63 Ops.Cal.Atty.Gen. 758 (1980)). The city proposing an annexation must provide the LAFCO sufficient information to satisfy the environmental analysis requirements (*City of Santa Clara v. LAFCO*, supra).

When rezoning is proposed as part of an annexation request, the city is deemed the lead agency for CEQA purposes (Section 15051 of the CEQA Guidelines). As lead agency, the city will be responsible for preparing the necessary environmental document.

Local agencies, which can use categorical exemptions under the CEQA Guidelines for annexations, should use them carefully. If the annexation will result in extending utilities beyond the level required to serve existing development, the categorical exemption under CEQA Guidelines Section 15319 cannot be employed (*Pistoresi v. City of Madera*, supra; *City of Santa Clara v. LAFCO*, supra). Use of Section 15319 is limited to when: (1) development already exists at the density allowed by the current zoning or rezoning; (2) the utilities which may be required for the ultimate use will not serve more than the development in existence at the time of annexation; and (3) the annexation consists of individual small parcels of the minimum size for those facilities which are included in Section 15303 of the CEQA Guidelines.

Summary

This summarizes the preceding points:

1. General Plan Consistency

Annexations should be part of the community's comprehensive plan for the community's future. Annexation should occur in an orderly and logical manner, consistent with both the city general plan and with State mandates, regarding service delivery and the conservation of agricultural and open-space lands.

If the annexation area has not been included or addressed in the city general plan, then an amendment to the plan should be considered. When evaluating the proposal for consistency with the plan, special consideration should be given to the annexation's impacts on existing and planned public services, agricultural and open-space lands, city housing supplies for all economic levels, and the adopted SOI.

2. Sphere of Influence

If the area proposed for annexation lies outside of the city's SOI, then a request to amend the city's SOI must occur prior to or concurrent with filing the annexation request with the LAFCO. The SOI proposal should be addressed in the environmental document.

3. Environmental Analysis

The environmental document prepared for the annexation should be comprehensive in scope. That is, necessary rezoning and related applications should be evaluated as part of the project even though they may not be under consideration for some time. It should be possible to use a single environmental document to address the whole project, including any SOI amendments and/or annexations involving cities and/or special districts.

4. Prezoning

Prior to annexation, the site should be prezoned to be consistent with the city general plan. Prezoning hearings can alert the city to opposition or to issues of particular concern prior to the filing of an application with the LAFCO. The prezoning, general plan amendment (if necessary), and comprehensive environmental document should be completed before the annexation proposal is submitted to the LAFCO for consideration. When prezoning is involved, the city is the lead agency for purposes of CEQA.

5. LAFCO Application

When the city initiates an annexation, it should provide the LAFCO with as much information about the project as possible. This would include general plan, prezoning, environmental analysis data, and the plan for providing services. If the environmental document prepared for prezoning or general plan amendment proposal is comprehensive, the LAFCO should be able to use it for the annexation, thereby streamlining the process. Annexation proponents should meet with the LAFCO executive officer prior to filing an application, in order to review the LAFCO application requirements.

6. Public Review

The city should encourage public review and comment at every stage of the process. While the CKH Act provides opportunities for review at the LAFCO and city hearing levels, the general plan and rezoning procedures offer additional opportunities for input. Early public response is helpful in assessing public sentiment and identifying areas of concern.

City hearings should be coordinated if feasible. Addressing more than one topic at each hearing may clarify the intent and the ramifications of the overall project. Candidates for combined city hearings are: rezoning and general plan amendment; and rezoning, general plan, and resolution of application initiating proceedings. Ask the involved LAFCO whether it is possible to combine hearings.

At the same time, both city and LAFCO hearings can be educational. They offer an opportunity to explain annexation procedures and the responsibilities of the city and the LAFCO. For example, residents are sometimes confused about the implications of annexations to property taxes, or the ability of a city, under certain circumstances, to annex territory without an election (Section 56375(d)). When appropriate, invite the LAFCO executive officer to city hearings on annexations or related city actions to address frequently asked questions about the process or effects of annexations.

Conclusion

Both the city and the LAFCO have a responsibility to see that the proposed expansion of corporate limits complies with the procedures laid out in the CKH Act, adopted LAFCO policies, and the two State policies iterated at the beginning of this publication. It is important that the city and the LAFCO coordinate the annexation process through cooperation and mutual discussion. When considering the annexation proposal, both the city and the LAFCO should look beyond the immediate and examine the future impacts of the total project on city services, sources of tax revenue, historic growth trends, and neighboring communities and cities. LAFCOs can provide cities with a great deal of information about the annexation process and the enabling legislation.

Table of Cases Cited

Bozung v. LAFCO
(1975) 13 Cal.3d 263

Citizens of Goleta Valley v. Board of Supervisors of the County of Santa Barbara
(1990) 52 Cal.3d 553

City of Agoura Hills v. LAFCO
(1988) 198 Cal.App.3d 480

City of Livermore v. LAFCO
(1986) 183 Cal.App.3d 531

City of Santa Clara v. LAFCO
(1983) 139 Cal.App.3d 923

Ferrini v. City of San Luis Obispo
(1983) 150 Cal.App.3d 239

Friends of B Street v. City of Hayward
(1980) 106 Cal.App.3d 988

Greenwood Addition Homeowners Association v. City of San Marino
(1993) 14 Cal.App.4th 1360

Leshar Communications, Inc. v. City of Walnut Creek
(1990) 52 Cal.3d 531

L.I.F.E. v. Lodi
(1989) 213 Cal.App.3d 1139

Pistoresi v. City of Madera
(1982) 138 Cal.App.3d 284

Resource Defense Fund v. LAFCO
(1983) 138 Cal.App.3d 987

Rural Landowners Association v. City Council
(1983) 143 Cal.App.3d 1013

OPINIONS OF THE ATTORNEY GENERAL

60 Ops.Cal.Atty.Gen 118 (1977)

63 Ops.Cal.Atty.Gen 758 (1980)

71 Ops.Cal.Atty.Gen 344 (1988)

82 Ops.Cal.Atty.Gen. 180 (1999)

Annexation Process Flowchart

