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Staff:	Jim Baskin
Staff Report:	November 3, 2006
Hearing Date:	November 15, 2006
Commission Action:	

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

APPEAL NO.:	A-1-TRN-06-042
APPLICANT:	U.S. Cellular Corporation
AGENT:	PWM, Inc., Attn: Thomas J. McMurray Jr.
LOCAL GOVERNMENT:	City of Trinidad
DECISION:	Approval with Conditions
PROJECT LOCATION:	Within the 60-foot by 40-foot leased telecommunications facilities enclosure near the summit of Trinidad Head, Trinidad, Humboldt County; APN 42-121-06.
PROJECT DESCRIPTION:	Install two one-foot-wide by six-foot-long by one-foot wide panel antennae on two existing \pm 20-foot poles and erection of a five-foot by 20-foot equipment cabinet.
APPELLANTS:	Friends of Trinidad Head.
SUBSTANTIVE FILE: DOCUMENTS	1) City of Trinidad Coastal Development and Conditional Use Permit, and Design Review Approval Nos. 7-1996/97, 2000/09, 2001-15, 2003-05, and 2005-13a;

- 2) City of Trinidad Coastal Development and Conditional Use Permit, and Design Review Appeal No. 2006-10; and
- 2) City of Trinidad Local Coastal Program.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after conducting a public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission open and continue the *de novo* portion of the appeal hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified LCP.

On June 21, 2006, the City of Trinidad Planning Commission approval-with-conditions a coastal development use permit for the installation of two roughly one-foot-wide by six-foot-long cellular telephone panel antennae and related electronic equipment cabinets site within an existing fenced and paved municipally-owned and leased telecommunications facilities area near the summit of Trinidad Head within the City of Trinidad, Humboldt County. On September 14, 2006, the Trinidad City Council denied a local appeal of the Planning Commission's approval.

Although much of the verbiage of the appeal presents background information regarding the terms under which the federal government transferred Trinidad Head to the City of Trinidad, critiques the permitting actions of the City with regard to its past authorizations of telecommunications facilities developments on the landform, and expounds on the nonconforming nature of the communication telecommunications facilities at the site, the appeal can be read as expressing five sets of contentions with respect to the City's approval of the subject U.S. Cellular development. The appellants contend that the approved project is inconsistent with the City's LCP policies pertaining to: (1) conformance with limitations on the types and intensities of new development within the Open Space (OS) land use designation and the permissibility of the development as an accessory structure, a conditional use within the OS zoning districts; (2) compliance with the maximum height standards of the OS zone; (3) impacts to visual resources of Trinidad Head; (4) exempting environmental review of the development; and (5) compliance with the Coastal Zone Management Act.

Staff recommends that the Commission find that a substantial issue is raised with respect to the approved development's conformance with the LCP policies and standards for the Open Space land use and zoning designations as applied to Trinidad Head. Upon its annexation in 1985, the City adopted and the Commission certified an LCP amendment to apply the Open Space land use designation to the portion of Trinidad Head transferred from the federal government to the municipality. The Open Space land use designation declares that, due to natural constraints such as unstable slopes, the presence or proximity of environmentally sensitive areas, and public recreational use, development must be carefully controlled in open space areas. Limited timber harvesting and recreational use are the sole identified potentially appropriate uses enumerated for Open Space

designations. In addition, a text amendment to Policy 66 of the Land Use plan was certified which directed that Trinidad Head “be kept in its natural state with hiking trails and vista points.”

Staff further notes that the City approved the project as a conditional use, namely as a form of “Structures accessory to uses and buildings existing within the open space zone at the time the [zoning] ordinance codified in this title is adopted” [Parenthetical added.] However, no cellular telephone communications reception, transmission or relay facilities were in existence on Trinidad Head in 1985 when the OS zoning designation was adopted for the project site. Accordingly, as the land use plan and zoning code place stringent limitations on the types and amount of new structural development envisioned as appropriate for, or specifically allowed as principally or conditionally permitted uses within such designated lands, respectively, a substantial issue is raised as to the consistency of the approved new telecommunication facilities with the LCP’s policies and standards for development within Open Space designated lands. Moreover, given that no primary telecommunication facilities for which the new antennae, electronic control equipment, and cabinet might arguably be appurtenant existed on the site in 1985, and the independent nature of the approved facilities with regard to the requirement that they be subordinate and incidental to a primary telecommunication apparatus, a substantial issue is raised with regard to whether the development qualifies for being permitted as an “accessory structure.”

Staff also recommends that the Commission find that a substantial issue is raised with regard to the approved development’s consistency with the LCP’s limitations on the 15-foot maximum height of structures within the Open Space zoning district. As approved, the 1-foot-wide by 6-foot long panel antennae would be attached, one each, near the top of two existing approximately 20-foot-high poles, extending the overall height of the pole and antennae array by approximately two feet to roughly 22 feet in overall height. In approving this deviation from the height standard, the City invoked an exception to height regulations that is provided for architectural features and mechanical appurtenances, such as chimneys, vents, flagpoles, conventional television reception antennas, ventilating and air conditioning equipment, and parapet walls. Staff believes this height exception does not apply to the approved cellular telephone transmission facilities as these facilities are functionally independent and not appurtenant to any existing facilities at the site.

Staff also recommends that the Commission find that the appeal raises a substantial issue with regard to the approved development’s consistency with the LCP’s visual resource policies and standards. Although both the appendix to the land use plan and the City’s coastal zoning regulations contain specific design review criteria that must be met, including consideration of the siting of new development and imposition of height restrictions such that the structure’s visual obtrusiveness is minimized, especially from beaches, public trails in open space areas, and from the Trinidad Harbor, the City’s findings for approval do not directly explain how the approved development conforms with the criteria. Instead, the findings emphasize the historical public support for such development in the past and the comparative minor cumulative impact the approved

project would have relative to that of existing telecommunications and environmental monitoring equipment in place on Trinidad Head.

Other contentions of the appeal are based on invalid grounds in that they do not raise allegations that the development does not conform to the policies and standards of the certified LCP and the public access policies of the Coastal Act. Staff recommends that the Commission find that the contention that the project was approved and findings adopted without environmental review pursuant to the California Environmental Quality Act (CEQA) having been conducted is not founded on the basis that the approved development is inconsistent with the policies and standards of the City's LCP. Similarly, staff recommends that the Commission find that the contention regarding the alleged failure of the Bureau of Land Management to seek consistency determination for its findings of conformance of the appealed development as well as those for past telecommunication facilities development on Trinidad Head with the management plan upon which the patent to Trinidad Head was based, is an invalid basis for appeal as it is founded on alleged nonconformance with the Coastal Zone Management Act rather than the approved development's consistency with the policies and standards of the City's LCP.

Staff further recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient information from the applicant to determine if the current project can be found consistent with the environmental protection policies of the certified LCP.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 6.

STAFF NOTES:

1. Appeal Process.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within one hundred feet of a wetland or stream or three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments constituting major public works or major energy facilities may be appealed whether approved or denied by the city or county. The grounds for an

appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if development is located between the first public road and the sea¹, the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to both Section 30603(a)(1) and (2) of the Coastal Act because it is: (a) situated on a site that lies between the first public road and the sea; and (b) located within 300 feet of the seaward face of a blufftop.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellants and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is located between the first public road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

2. Filing of Appeal.

¹ Per Section 13011 of the California Code of Regulations, the “first public road paralleling the sea” means that road nearest to the sea, as defined in Section 30115 of the Public Resources Code, which: (a) Is lawfully open to uninterrupted public use and is suitable for such use; (b) Is publicly maintained; (c) Is an improved, all-weather road open to motor vehicle traffic in at least one direction; (d) Is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and (e) Does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

One appeal was filed by Friends of Trinidad Head (see Exhibit No. 6). The appeal to the Commission was filed in a timely manner on October 4, 2006, within 10 working days of receipt by the Commission on September 20, 2006 of the City's Notice of Final Local Action.²

3. Transalliteration of Zoning Code Citations.

Throughout the City of Trinidad's *Notice of Final Local Action* (see Exhibit No. 5) and the *Appeal from Coastal Permit Decision of Local Government* filed by Friends of Trinidad Head (see Exhibit No. 6), references to various coastal zoning ordinance provisions are stated in terms of the numeration system of the Trinidad Municipal Code (i.e., Title 17, §§17.04.010 – 17.76.050) instead of the numeration of the City's certified zoning regulations (i.e., Ordinance No. 166, §§1.01 – 7.23 and Appendix A). With the exception of the differences in the numbering schema and the order in which the various zoning standards and development regulations appear in these two documents, the provisions of the zoning ordinance, as certified by the Commission on July 9, 1980, are duplicated verbatim within Title 17 of the municipal code except in rare minor instances. For consistency with the requirements of the Coastal Act that only new development be approved that is consistent with the policies and standards of the certified LCP and that appeals only be based upon alleged inconsistency with the policies and standards of the certified LCP, in quoting the various findings adopted by the City in support of the approved development staff and/or the appellants' contentions, staff has replaced the cited municipal code numbering with the numbering of the certified zoning ordinance formatted as bracket text (i.e., "[ZOTC §6.02.050]").

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION ON SUBSTANTIAL ISSUE:

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-TRN-06-042 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

² Pursuant to 14 CCR §13110, the appeal period commenced on September 21, 2006, the next working day following the receipt of the City's *Notice of Final Local Action* on September 20, 2006, and ran for the 10-working day period (excluding weekends) from September 21, 2006 through October 4, 2006.

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-TRN-06-042 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal from Friends of Trinidad Head.

Much of the verbiage of the appeal filed by Friends of Trinidad Head provides background information that addresses: (a) the history of the development site, including the conditional acquisition of portions of Trinidad Head from the federal government in the 1980s and past approvals of similar telecommunication facilities by the City; (b) presents arguments as to the legality of these past approvals; and (c) questions the status of the permitted facilities as accessory structures rather than nonconforming uses. Nonetheless, the appeal raises five sets of contentions alleging that the project as approved is inconsistent with the policies and standards of the certified LCP. The appellants contend that the project as approved by the City does not conform with the LCP policies concerning allowable development within the Open Space land use and zoning designated lands that encompass Trinidad Head. Furthermore, the appellants contend that the approved project is inconsistent with the LCP's limitations on the height of structures. In addition, the appellants raise contentions alleging inconsistency of the local action with the City's LCP policies regarding the protection of the visual resources of Trinidad Head. Furthermore the appellants assert that the development was approved as a conditional use inconsistent with an LCP requirement that environmental review be conducted pursuant to the California Environmental Quality Act. Finally, the appellants question the approved developments conformance with the requirements of the Coastal Zone Management Act

The appellants' contentions are summarized below; the full text of the appeal is included in Exhibit No. 6.

1. Development within Open Space land Use Designations and Zoning Districts.

The appellants contend that the development as approved by the City is inconsistent with LCP policies regulating proposed uses within the Open Space (OS) land use and zoning designated areas on Trinidad Head. This contention is presented in several sub-points as follows:

- The Land Use Plan directs that Trinidad Head be kept in its natural state with hiking trails and vista points, and new development is strictly limited to these types of minimal recreational amenities. As the proposed telecommunications facilities would not keep Trinidad Head in its natural state and do not consist of trail or vista point improvements, the approved development is inconsistent with the Land Use Plan;
- The approval by the City of new telecommunications transmission and reception facilities as an accessory structure pursuant to provisions within the Open Space (OS) zoning district standards is inconsistent with the City's zoning regulations insofar as: (a) the approved new telecommunications equipment would be fully and independently operational and would not be functionally subservient, ancillary, or accessory any other similar equipment at the site; and (b) no primary cellular telecommunication facilities were in place on Trinidad Head at the time when the site's OS zoning designation was adopted in 1985 to qualify the new facilities to be authorized as an accessory structure;
- Notwithstanding the arguable qualifications of the project as an accessory structure permissible within the OS zone, the requisite findings for issuing a conditional use permit were not made with respect to the approved development's compliance with the applicable provisions of the zoning ordinance, its consistency with the policies and programs of the general plan, and the necessity, desirability, and compatibility of the size, intensity, and location of the approved development with the neighborhood or community.

The appellants assert that, given: (a) the strict restrictions on the types and intensities of development to be authorized on Trinidad Head as directed in the Land Use Plan; (b) the stated intentions of the Open Space land use and zoning district designations to primarily keep such designated areas in a protected natural state with very limited allowance for new development beyond trails, vista points, related passive outdoor recreational uses, limited vegetation removal, and wildlife management temporary structures; and (c) the new telecommunication facilities not qualifying as one of these limited types of permissible developments, the development as approved by the City is inconsistent with the policies and standards of the certified LCP governing proposed uses on Trinidad Head and within OS land use and/or zoning designated areas.

2. Conformance with Height Regulations.

The appellants also contend that the project as approved by the City does not conform to the height limitations for buildings and other structures within the Open Space zoning district. The appellants note that as the panel antennae are proposed to be attached near the top of existing roughly 20-foot monopoles with a resulting overall height of approximately 22 to 23 feet, the development would exceed the 15-foot height maximum established for the Open Space zoning district in which the antennae would be erected. The appellants assert that the City's rationale for approving the structure's height, as based on a series of findings, first declaring the telecommunications facilities as not comprising a "building" subject to the OS zone 15-foot height limit, then observing that the overall height of the arrays would nonetheless comply with the 25-foot height limit of the Special Environment (SE) zoning district, interpreted as incorporated by reference into the OS zoning standards as "other requirements" and thus superseding the 15-foot height limit of the Open Space zone, and then finally invoking an exception within the zoning ordinances definition of height limitations, based on the panel antennae being "mechanical appurtenances," mischaracterized both the nature of the development in terms of its structural primacy as well as the relevant height standard applicable to the approved development (i.e., 15 feet or less). Accordingly, the appellants conclude that the development as approved by the City is inconsistent with the height limitations of the City's certified zoning regulations.

3. Impacts to Visual Resources.

The appellants also contend that the approved project would cumulatively impact the visual resources of the area, especially as viewed from public vantage points along the hiking trails on Trinidad Head in vicinity to the facility, and from beach and harbor areas. The appellants assert that considerations for designing and locating new development to minimize its visual obtrusiveness were not duly examined.

4. Environmental Review.

The appellants further assert that the development as approved by the City is inconsistent with the required findings set forth in the zoning ordinance for the approval of conditional uses. These findings stipulate that any approved conditional uses or features be found to have no significant adverse environmental impact, that no feasible alternatives exist, and that feasible mitigation measures, "as provided in the California Environmental Quality Act" (CEQA), which would substantially lessen any significant adverse impact that the development may have on the environment have been included. The appellants note that as the City categorically exempted the project from CEQA review, its approval is inconsistent with the policies and standards of the certified LCP regarding the authorization of conditional uses.

5. Conformance with the Coastal Zone Management Act.

Finally, the appellants contend that the approved project is inconsistent with the Coastal Zone Management Act. The appellants note that the development was approved by the City following the issuance of a consistency determination having been issued by the

Bureau of Land Management (BLM) finding the new telecommunication facilities to be in conformity with the management plan development in association with the land patent transfer of portions of Trinidad Head from the federal government to the municipality of Trinidad. The appellants assert that development of the management plan and the determination of the cellular telephone facilities conformity with the management plan by the BLM both constitute federal “actions” for which a state coastal program consistency determination should have been submitted to and reviewed by the Coastal Commission.

B. LOCAL GOVERNMENT ACTION

On November 15, 2005, the City of Trinidad accepted for filing Design Review, Coastal Development Permit, and Conditional Use Permit Application No. 2005-13 from PWM, Inc., agent for U.S. Cellular Corporation, to establish a new approximately 20-foot by 50-foot telecommunications facility be located adjacent to the 40-foot by 60-foot fenced telecommunications facilities lease area near the summit of Trinidad Head in the City of Trinidad in west-central Humboldt County. The purpose of the proposed telecommunications installation is to provide facilities for providing adequate cellular telephone “code division multiple access” (CDMA) coverage within U.S. Cellular Corporation’s coverage, especially to areas currently experiencing topographic signal interference from the company’s facilities on inland commercial timberlands further to the northeast of the City. The facility was to include a 50-foot wooden pole onto which two sets of cellular panel antennae were to be attached. In addition, a 12-foot by 12-foot equipment shelter would be erected on a concrete slab. The facilities were proposed to be enclosed with a green vinyl slatted fence topped with barbed wire.

In reviewing the application, the City’s contract planning staff determined that the same procedure it had employed with previous telecommunication projects undertaken on the municipally-owned portions of Trinidad Head would be appropriate for processing the current proposal, namely to recognize the development as an accessory structure (see City of Trinidad Coastal Development Permit Nos. 7-1996/97, 2000/09, 2001-15, 2003-05). Accessory structures to uses which existed at the time of the adoption of the zoning ordinance are identified as a conditional use within the Open Space (OS) zoning district in which the project site is located.

Following a public hearing on the project at its January 18, 2006 meeting, the City Planning Commission denied the project. The applicant subsequently appealed the permit denial to the City Council on January 31, 2006.

On April 27, 2006, the City of Trinidad received an amended completed coastal development permit application for the installation of two approximately one-foot-wide by six-foot-long panel antennae, one each onto two existing roughly 20-foot monopole stanchions within the enclosed lease site (see Exhibit No. 4). As the amended project differed markedly from that previously denied, the Council remanded the application back to its planning commission for further consideration, renumbering the permit application as DR/CDP/CUP 2005-13a.

Following completion of the planning staff's review of the project, the preparation of a staff report, and requisite circulation of a public hearing notice, City staff set the coastal development and use permits for a hearing before the Planning Commission for June 21, 2006.

On June 21, 2006, the City Planning Commission approved with conditions Coastal Development Permit No. CDP-2005-13a for the subject development (see Exhibit No. 6). The Council attached seven special conditions requiring that: (1) the applicant reimburse the City for all costs associated with processing the development application; (2) set a one-year limit on the design review be imposed on the project, requiring extension thereto if construction is not commenced within the review term; (3) recommendations of the City Building Official be met as part of any associated building permit review; (4) any equipment authorized by the permit that may become unserviceable or unused be removed at the applicant's expense; (5) erosion control measures be taken during and after construction to minimize soil loss and runoff; (6) the telecommunications be designed in such a manner so that no net increase over existing ambient levels result; and (7) construction of the approved facilities not commence until the City received verification from the Bureau of Land Management (BLM) that the project is consistent with the land transfer agreement, or until after 90 days from the end of the appeal period has passed if no response is received from the BLM.

On July 6, 2006, the City received written correspondence from Stan and Kim Binnie, on behalf of the Friends of Trinidad Head, of their intent to appeal the Planning Commission decision on CDP No. 2005-13a to the City Council.

On September 14, 2006, the City Council denied CDP Appeal No. 2006-10, reinstating the coastal development permit approved by its Planning Commission on June 21, 2006 with no changes to the seven project conditions. In addition, though specifically recommended by the Planning Commission during its review of the subject development permit as a separate action item related to telecommunication facilities on Trinidad Head, the City Council took no action to: (1) approve the development only for the remaining period of the City's primary lease of the site; (2) impose a moratorium on the approval of any additional telecommunication facilities on Trinidad Head be imposed; (3) consider a management plan for Trinidad Head to be included within its General Plan update; (4) not renew the primary lease to the telecommunication concerns; and (5) require the community and cellular telephone service providers to identify alternative locations for cellular telecommunication facilities within Trinidad during the remaining lease period.

The decision of the City Council regarding the conditional approval of the permits for the telecommunication facility improvements was final. The City then issued a Notice of Final Local Action that was received by Commission staff on September 20, 2006. The appellants filed their appeals to the Commission in a timely manner on October 4, 2006, within 10 working days after receipt by the Commission of the Notice of Final Local Action (see Exhibit No. 6).

C. SITE AND PROJECT DESCRIPTION

The project site consists of Assessors Parcel Number 42-121-06, a rectangular 60-foot by 40-foot area owned by the City of Trinidad and leased to Verizon Communications, Inc. for telecommunication facilities use. Several other telecommunication services providers sub-lease portions of the lease area from Verizon for collocation of their facilities. The lease parcel is situated near the summit of Trinidad Head, a roughly 61-acre, 358-foot elevation headland that comprises the southwestern quarter of the City of Trinidad, which together with the recurving rocky coastline to the east form Trinidad Bay (see Exhibit Nos.1-3). The lease area consists of a generally flat, cleared, chain-link fence enclosed area with a gravel and concrete paved surfaces, developed with an assortment of telecommunication antennae arrays, support stanchions, and related electronic equipment cabinet enclosures (see Exhibit No. 5).

A recreational loop trail traverses around Trinidad Head passing approximately 100 feet to the south of the lease parcel. From various points along the trail, views are afforded of the Trinidad townsite, Trinidad Bay, Trinidad State Beach, Pewetole Island, Elk Head, the Trinidad pier and harbor moorages, as well as both nearshore and distant blue-water vistas. On clear days, the ocean and coastline vistas encompasses the area between Point Saint George to Cape Mendocino, nearly fifty miles to the north and south, respectively.

Plant cover on the Head in the vicinity of the lease parcel is dominated by a thick shrub layer comprised of coyotebrush (*Bacharis pilularis*), cascara (*Rhamnus purshiana*), California blackberry (*Rubus ursinus*), evergreen huckleberry (*Vaccinium ovatum*), salal, (*Gautheria shalon*), swordfern (*Polystichum munitum*), bracken fern (*Pteridium aquilinum*), coast silk-tassel (*Garrya elliptica*), with scattered tree layer cover by salt-and wind-stunted Douglas-fir (*Psuedotsuga menziesii*). Several immature incense cedar trees (*Calocedrus decurrens*) have also been planted, apparently for screening the telecommunications complex, along the southside of its fenced enclosure.

The project site is situated within the coastal zone and lies within the incorporated boundaries of the City of Trinidad. The subject property lies completely within the City's certified permitting area. Thus, the development is subject to the policies and standards of the City of Trinidad's certified Local Coastal Program (LCP).

The site is designated in the City's Land Use Plan as "Open Space" (OS), implemented through an "Open Space" (OS) zoning designation. Permissible uses within the OS zoning district are limited primarily to habitat related and low-intensity recreational activities, such as wildlife habitat, public and private open space, beachcombing, hiking, fishing, pedestrian trails, and picnicking, with limited provisions for conditionally authorizing physical developments, such as for new and expanded pedestrian trails, vista points, shoreline revetments to protect and maintain existing scenic and cultural resources, and temporary structures related to wildlife habitat management and scientific research. In addition, "structures accessory to uses and buildings existing within the open space zone at the time this ordinance is adopted" are also allowed with the issuance of a conditional use permit.

Although the City's LCP does not formally designate "highly scenic areas" per se, as noted above, the project site lies within the view corridor of several public vantages, including portions of the Trinidad Head loop trail, the Trinidad pier and harbor areas, Trinidad State Beach, the Memorial Lighthouse, and along segments of the City's main thoroughfares, Edwards, Trinity, and Main Streets.

The approved development consists of a two approximately one-foot-wide by six-foot-long panel cellular telephone transceiver antennae to be attached, one each, to two existing, roughly 20-foot monopole stanchions. In addition, an electronic control equipment would be installed within a five-foot wide by twenty-foot-long equipment cabinet to be erected on the gravel surfaces west side of the enclosure (see Exhibit No. 4).

The approved telecommunication facilities were authorized by the City as a conditionally permitted use, specifically as "structures accessory to uses or buildings existing within the open space zone at the time this ordinance is adopted." Electrical services would be provided to the facility from the existing nearby Pacific Gas and Electric Company power line situated along the access road adjacent to the lease area.

D. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

1. Appellants' Contentions That are Valid Grounds for Appeal.

Three of the five contentions raised in the appeal present potentially valid grounds for appeal in that they allege the approved project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the City is inconsistent with LCP provisions regarding: (1) permissible development on Trinidad Head and/or within Open Space land use or zoning designated areas; (2) limitations on the height of structures; and (3) impacts to visual resources.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Title 14, Section 13115(b), California Code of Regulations.) In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government's decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations concerning the consistency of the project as approved with the provisions of the LCP regarding: (1) permissible development on Trinidad Head and/or within Open Space land use or zoning designated areas; (2) limitations on the height of structures; and (3) impacts to visual resources, the appeal raises a substantial issue with regard to the approved project's conformance with the certified City of Trinidad LCP.

a. Allegations Raising Substantial Issue

1. Development within Open Space Land Use Designations and Zoning Districts.

Appellants' Contentions:

The appellants state the following with regard to their contention that the approved project lacks consistency with LUP policies regarding permissible development either on Trinidad Head, proper, or within Open Space land use or zoning designated areas:

Trinidad Head is: an important coastal resource, a state designated historical landmark (No. 146), listed in California's register of historic

resources, and a sacred site to the Yurok and Tsurai peoples. In 1985, upon the City's annexation of Trinidad Head, Cox Cable Company had a limited TV transmission facility on Trinidad Head, which became a nonconforming use once the City's certified Local Coastal Program (LCP) was amended designating its portion of Trinidad Head 'Open Space.' The Commission has not reviewed the City's application of its LCP in relation to commercial uses they have approved on Trinidad Head. [Parenthetics is original.]

There is no mention in [Policy 20] of utilizing Trinidad Head for commercial communication transmission facilities, let alone allowing for the expansion of such facilities that may have existed at the time this policy or of this Ordinance was adopted...

The City has created a de-facto Commercial Zone in the Open Space Zone on Trinidad Head. The City has perpetuated and expanded the non-conforming cellular communications facilities at the proposed project site. The creation of this de-facto Commercial Zone conflicts in several ways with the primary use of the site for passive recreation, i.e. vehicular traffic on recreational pathways, obstructed and degraded vistas, and increases in noise levels from additional cooling fans, which ruin the serenity and tranquility of Trinidad Head. In its most recent approval, the City claims that by virtue of issuing a CUP, it has now rendered this non-conforming use a conforming in the Open Space Zone. This is an amazing feat given that the Open Space district still does not list commercial use as an allowable use. However, the City saying it is so, does not make it so, according to its LCP... It is clear from [Policy 20] that the LCP finds the expansion of land uses that do not conform to land use designation to be undesirable. Yet since 1997, the City has allowed commercial cellular facilities on Trinidad Head to expand four times, the most recent being the decision that is the subject of this appeal...

[Policy 66] is explicit: 'Trinidad Head will be kept in its natural state...' In-fact in the Ordinance adopted by the City in 1984 to amend this policy it specifically states that the word 'should' was replaced with the word 'will' regarding keeping the area in its natural state with trails and vista points. Therefore, all future land use decisions by the City, which may affect Trinidad Head, had a clear guidance policy. Approval of proposed development that does not maintain the natural state of Trinidad Head is clearly in violation of this policy... [Parenthetic substituted, emphasis in original.]

In 1985, the City annexed the project area and placed the area in the Open Space Zone. In 1985, the following structures were present at the project site: one or two 21 foot high towers (9 inches diameter wooden pole), one 12 foot TV broadcast (microwave) dish, an 8 foot by 10 foot wooden

building that stood 7 feet tall, with electric service at the site, and an 8 foot by 8 foot concrete pad (see Table 1). [ZOTC 4.2.B.5] describes structures accessory to uses and buildings as those that were existing at the time the ordinance was adopted (Ord. 166 Section 4.02 (B), 1979). In order for any future structures at this site to be legal they must be accessory to the use and structures that existed at the time of annexation in 1985. In 1994, this site ceased to be used for TV broadcasting use. The City claims that the proposed project is for an accessory use. The proposed project, a cellular transmission use cannot be accessory to a different use which no longer exists. Even if the cellular transmission facility was considered a legal nonconforming use then the proposed project certainly cannot be an accessory as it is for the same use... [Emphasis in original.]

The City's approval of the proposed project, which expands the number and density of cellular transmission structures, is in direct conflict with maximizing the preservation and protection of the natural and scenic character of Trinidad Head, wildlife habitat, and cultural resources...

The City's approval of the proposed project, a cellular transmission facility, is for a use that is not principally permitted in the Open Space Zone... [ZOTC §4.02.B.1] limits the issuance of a use permit for improvements to the existing pedestrian trail or vista point facilities, not cellular transmission uses. ZOTC §4.02.B. 5] allows the issuance of a use permit for structures accessory to uses and buildings existing within the Open Space Zone at the time the ordinance codified in this title is adopted (Ord. 166 Section 4.02 (B), 1979). In 1985, the City annexed the project area and placed the area in the Open Space Zone. In 1985, there was one or two 21 foot high towers; one 12 foot TV broadcast dish, and a wooden building at the site of the proposed project. The proposed project is neither a supplementary nor subsidiary (accessory) use to TV broadcasting as such use ceased in 1994, therefore the proposed project cannot be accessory to a use which no longer exists. Since 1997, in approving cellular transmission facilities on Trinidad Head, including its most recent approval, the city claims that its approvals are for an accessory use, but fails to identify the primary use. In fact the proposed use has replaced the former nonconforming use which had ceased at this site and is the new primary use... [Emphasis in original.]

The City, in its recent decision was limited to issuing a CUP only for uses listed as conditional in the Open Space Zone. Commercial uses such as the cellular transmission facilities are not listed as a conditional use in the Open Space Zone. The City claims that the proposed project only involves the construction and installation of accessory structures. [ZOTC §7.12.B.1] defines an accessory structure or building as being "detached" and a "subordinate building or structure, the use of which is incidental to that of a main building or use on that lot." There is no "main" building or

structure to which the cellular transmission facilities are accessory; this facility and its structures are the main use of this site, and they are nonconforming as per uses allowed in the Open Space zone. [ZOTC §4.02.B.5] of the Open Space Zone allows a CUP to be granted for structures accessory to uses and buildings existing within the open space zone at the time the ordinance codified in this title is adopted. In 1985, there was one or two 21 foot high towers (9 inches diameter wooden pole), one 12 foot TV broadcast (microwave) dish, and an 8 foot by 10 foot wooden building that stood 7 feet tall, with electric service at the site of the proposed project. The proposed project [two panel antennas 71 inches long by 11 inches wide to be placed at the top of 21-foot tall poles, metal equipment building 15 feet wide by 3 feet deep and 6 feet tall with cooling fans on a new concrete slab, with cabling and scaffolding wire carriers] is neither supplementary nor subsidiary (accessory) to commercial TV broadcasting which ceased in 1994. Therefore, the proposed project cannot be accessory to a use which no longer exists. The existing and proposed structures are not accessory to anything. In fact, they now constitute the main buildings and structures at this site of which the main use is providing cellular transmission. The CUP was issued for a use that is not allowed in the Open Space Zone even under the guise of an accessory structure to a lawful nonconforming use, which it is not... [Emphases and parenthetics in original.]

The proposed use and present intensity of use, combined with the existing and proposed developments located on Trinidad Head, are not desirable because it/they do not conform to land uses allowed in the Open Space district (General Plan Policy 20). Because of the noise generated by cooling fans in the existing and proposed equipment buildings as well as from a back-up generator, and visual blight created by the towers with multiple antennas, the existing and proposed uses are not compatible with the community. In particular, the proposed use is not compatible with use of the area by members of the Yurok Tribe, particularly the Tsurai who revere Trinidad Head as the first place the creator gave rise to the Yurok people who have used Trinidad Head for centuries to sustain their spiritual existence. The City's finding that its approval was in conformity with the LCP is, therefore, not supported by these facts which were presented to the City during the public hearings on the proposed project... [Parenthetic in original.]

The proposed use and development that the City approved are not consistent with the following LCP elements: General Plan Policies 20, 21, and 66, Appendix A Open Space District, Appendix B Design Considerations and Zoning Ordinance regulations [ZOTC §6.02], [ZOTC §6.19.D], [ZOTC §6.20], [ZOTC §3.01], [ZOTC §3.02], [ZOTC §3.03], [ZOTC §7.09], and [ZOTC §7.12]... Because the proposed use and development fails to conform to so many General Plan Policies and

Zoning Ordinance regulations, the Commission should find that the City's actions are not in conformity with Trinidad's Coastal Program.

Applicable LCP Policies and Standards:

Policy 17 of the Biological Resources chapter of the City of Trinidad General Plan, the land use plan (LUP) component of the City's certified LCP, states:

Development of Trinidad Head should be kept to a minimum to protect the mammals and rare plants located there. The location of rare plants should be considered in the development of any trails.

Policy 20 of the LUP's Existing Land Use chapter states:

Some existing uses are not placed in an appropriate land use category because of their isolated location and the undesirability of providing for expansion of similar uses in the immediate area. Rather it is intended that the immediate site be placed in a compatible zone to allow the use to continue as a conforming use – but not allow for expansion onto adjacent lands.

Existing Land Use LUP Policy 21 continues on to direct:

Where uses are incompatible they are not recognized in the Land Use Map and it is intended that they be treated as non-conforming uses and not given zoning preference. Existing zoning, the attitudes of local property owners and the judgment of the Planning Commission should be the basis for distinguishing between uses that are compatible and those that are non-compatible.

Policy 66 of the LUP's Recreation chapter goes on to direct:

Trinidad Head will be kept in its natural state with hiking trails and vista points. Public vehicular access should only be allowed as far as the existing harbor overlook

The LUP defined the "Open Space" land use designation of the project site as follows:

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

uses. Public open space and park lands are also included in the Open Space category. [Emphasis added.]

Section 4.02 of the Zoning Ordinance of the City of Trinidad (ZOCT) states the following with regard to the intent of the Open Space (OS) zoning district:

The open space zone is intended to be applied to areas designated open space in the Trinidad General Plan. The purpose of this zone is to maximize preservation of the natural and scenic character of these areas including protection of important wildlife habitat and cultural resources, and to ensure that the health and safety of the public is ensured through careful regulations of development in areas affected by geologic instability, steep slopes, tsunami and flood hazards. [Emphasis added.]

Among the “uses permitted with a use permit” in the OS zoning district, ZOTC Section 4.02.B.5 enumerates the following:

Structures accessory to uses and buildings existing within the open space zone at the time this ordinance is adopted. [Emphasis added.]

ZOTC Appendix A – Supplementary Definitions defines “accessory structures” as follows:

A detached building or structure, other than a sign, the use of which is accessory to the use of the lot. [Emphasis added.]

The Zoning Ordinance Appendix further defines “accessory use” as follows:

A subordinate use which is customarily incidental to the primary use of the premises, and which does not alter or change the character of the premises. [Emphases added.]

Sub-section C3 ZOTC Section 4.03 provides:

3. *Requirements for development of non-dwelling structures: Structures, septic disposal systems, driveways, parking areas, pedestrian trails and other improvements permitted in the OS zone shall only be permitted on lands designated as ‘unstable’ or of ‘questional (sic) stability’ on Plate 3 of the General Plan if analysis by a registered geologist or engineering geologist, at the applicant's expense, demonstrates to the satisfaction of the Planning Commission that construction of the development will not significantly increase erosion and slope instability. The geologist's report shall include but not be limited to impacts from construction activities such as grading, drainage (from septic leachfields, on-site water use, increased runoff from impervious surfaces), roadways, and vegetation disturbance.*

In addition to satisfying the above requirements structures proposed within the OS zone shall also satisfy the applicable requirements in Sections 4.03 C (4), (5), (6), (7), (8), (10).

Sub-section C10 ZOTC Section 4.03 provides:

10. Determination of Development Feasibility: A report by a registered geologist or a certified engineering geologist shall be provided at the applicant's expense as part of an application for a permanent structure , septic disposal system, driveway, parking area, or other use permitted in the SE zone within the unstable and questionable stability areas shown on Plate 3 of the General Plan. Before the Planning Commission approves a development, it shall determine that the proposed development will not significantly increase erosion and slope instability and that any potential adverse impacts have been mitigated to the maximum extent feasible.

a) The report shall be based on an on-site inspection in addition to a review of the general character of the area using a currently acceptable engineering stability analysis method. The report shall take into consideration all potential impacts, including but not limited to impacts from construction activities such as grading, drainage (from septic leach fields , on-site water use, increased runoff from impervious surfaces), roadways, and vegetation disturbance.

b) The report shall contain a professional opinion stating the following:

- 1. The area covered in the report is sufficient to demonstrate the geotechnical hazards of the site consistent with the geologic, seismic, hydrologic and soil conditions at the site;*
- 2. The extent of potential damage that might be incurred by the development during all foreseeable normal and unusual conditions, including ground saturation and shaking caused by the maximum credible earthquake;*
- 3. The effect the project could have on the stability of the bluff;*
- 4. How the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability through the lifespan of the project;*
- 5. A description of the degree of uncertainty of analytical results due to assumptions and unknowns.*

Discussion:

The appellants contend that the development as approved by the City is inconsistent with LCP policies regulating development within the Open Space (OS) land use and zoning designated areas on Trinidad Head. This contention is presented in several sub-points as follows:

- The Land Use Plan directs that Trinidad Head be kept in its natural state with hiking trails and vista points, and new development is strictly limited to these types of minimal recreational amenities. As the proposed telecommunications facilities would not keep Trinidad Head in its natural state and do not consist of trail or vista point improvements, the approved development is inconsistent with the Land Use Plan;
- The approval by the City of new telecommunications transmission and reception facilities as an accessory structure pursuant to provisions within the Open Space (OS) zoning district standards is inconsistent with the City's zoning regulations insofar as: (a) the approved new telecommunications equipment would be fully and independently operational and would not be functionally subservient, ancillary, or accessory any other similar equipment at the site; and (b) no primary cellular telecommunication facilities were in place on Trinidad Head at the time when the site's OS zoning designation was adopted in 1985 to qualify the new facilities to be authorized as an accessory structure; and
- Notwithstanding the arguable qualifications of the project as an accessory structure permissible within the OS zone, the requisite findings for issuing a conditional use permit were not made with respect to the approved development's compliance with the applicable provisions of the zoning ordinance, its consistency with the policies and programs of the general plan, and the necessity, desirability, and compatibility of the size, intensity, and location of the approved development with the neighborhood or community.

The appellants assert that, given: (a) the strict restrictions on the types and intensities of development to be authorized on Trinidad Head as directed in the Land Use Plan; (b) the stated intentions of the Open Space land use and zoning district designations to primarily keep such designated areas in a protected natural state with very limited allowance for new development beyond trails, vista points, related passive outdoor recreational uses, limited vegetation removal, and wildlife management temporary structures; and (c) the new telecommunication facilities do not qualify as one of these limited types of permissible developments, the development as approved by the City is inconsistent with the policies and standards of the certified LCP governing development on Trinidad Head and within OS land use and/or zoning designated areas.

In its actions both in approving the permit application and in denying the local appeal, the Trinidad Planning Commission and City Council, respectively, relied heavily on the precedent that the preceding telecommunication facilities had been approved as accessory structures, and as these permits were not timely and successfully appealed, continuing this practice forward in considering the U.S. Cellular proposal would be an appropriate interpretation of the LCP. In addition, the City reiterated at several points the perspective that the permissibility of the subject new telecommunications were in keeping with pattern of telecommunications and telemetry-based development on Trinidad Head that has evolved over the past several decades, as pursued by both private commercial

concerns, federal environmental monitoring agencies, and academic institutions. Moreover, the City justified the denial of the local appeal in part on received correspondence from the Bureau of Land Management indicating that the U.S. Cellular development would be in conformance with the 1983 development/management plan adopted by the BLM as a condition of transferring portions of Trinidad Head to the City.

With specific regard to the provision of ZOTC Section 4.02.B.5 for authorizing “accessory structures” as a conditional use within the Open Space zone, the Commission notes that two prerequisites apply to the stipulation:

- A primary use or “building” (i.e., “structure”) for which the new accessory structure is appurtenant, ancillary, or subservient thereto must exist.
- The preceding primary use or building must have been existence within the Open Space Zone at the time the zoning designation was “adopted.”

Ordinance No. 166, which enacted the City’s zoning regulations, was “codified” on October 24, 1979, and for purposes of issuance of coastal development permits was “adopted” on July 9, 1980, upon the Commission’s effective certification of the City’s LCP and related transfer of coastal development permitting jurisdiction to the City. On May 22, 1985, the Commission certified Local Coastal Program Amendment No. 1-85 applying an Open Space land use and zoning designation to Trinidad Head. Therefore, for the subject development to have been authorized pursuant to ZOTC Section 4.02.B.5, primary telecommunications facilities for which the new U.S. Cellular development would serve in an accessory manner must have been in existence within the Trinidad Head OS zoning district on May 22, 1985.

Based upon information within the management plan prepared by the Bureau of Land Management, developed in 1983 in conjunction with efforts to transfer portions of Trinidad Head from the U.S. Government to the City, in addition to the aforementioned U.S. Coast Guard facilities, the sole private telecommunication equipment identified as being in place at this site was a satellite television reception facility owned and leased to Cox Communications, Inc. Use of this facility was subsequently terminated in 1994 upon the completion of fiber-optic cable television conduit in the Trinidad service area.

Thus, substantial issue exists as to whether: (a) commercial telecommunication facilities existed May 22, 1985 at this site for which additional future accessory structures could be authorized pursuant to Section 4.02.B.5; and (b) the U.S. Cellular facilities are independently functional and have any operative dependence upon other telecommunication facilities in place on Trinidad Head now or in 1985. In addition, the biological, visual, public access, and recreational resources at Trinidad Head potentially affected by the development are of great significance given its unique form and setting. Therefore, the Commission find that a substantial issue has been raised with respect to the consistency of the approved development with the allowable use regulations of the Open Space zoning district for the approval of conditional and accessory uses.

The City's findings for approval acknowledge that: (a) the approved development would not fully comport with the LUP directive for keeping Trinidad Head in a natural state; (b) some ground disturbance would result from the project that could potentially impact rare plants; and (c) the approved development would be visible from public vantage points and would differ in color and texture from that of the natural surroundings. Yet, the development was approved in the absence of conducting various special investigations called for in ZOTC Sections 4.02.C.3 and 4.02.C.10 and other sections of the LCP for development within Open Space land use and zoning designations, including geologic stability analysis, rare plant biological assessments, visual impact analysis, and, for conditional uses, environmental impact analyses. Therefore, there is not a high degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP.

2. Conformance with Height Regulations

Appellants' Contentions:

The appellants state the following with regard to their contention that the approved project lacks consistency with LUP policies regarding height limitations:

The proposed project includes installing two panel antennas 71 inches long by 11 inches wide on top of two 21 foot tall poles, and extending 2 feet higher. In the Open Space Zone, the maximum building height is 15 feet or less if necessary to accomplish the purposes of [ZOTC §4.02.C.3] and [ZOTC §4.02.C.4] (Ord. 166 Section 4.02(C)(4), 1979). [ZOTC §4.02.C.4] states that structures proposed within the Open Space Zone shall also satisfy the applicable requirements in [ZOTC §4.03.C.3] through [ZOTC §4.03.C.10] (Ord. 166 Section 4.02(C)(3), 1979). In an attempt to protect the scenic attributes of coastal bluffs, [ZOTC §4.03.C.5] states that no structure shall be placed on a bluff, except that the following structures may be placed on the bluff face and alterations made there to subject to obtaining a use permit: stairways, fences, and shoreline protection structures. Despite the 15-foot maximum height limitation, the City approved the placement of structures at the proposed project site that are higher than 15 feet. Further, the City approved the placement of structures on Trinidad Head that are not permitted on an ocean bluff as per [ZOTC §4.03.C.5]...

The City has relied on [ZOTC §6.10] to claim that the project does not exceed any height limitations because it is in the class of excluded type structures. On the contrary, what is different about the excluded type of structures and this project is that excluded structures are all accessory to the primary structure on a lot whereas the project's structures, 21 foot poles and antennas are the primary structures. The City incorrectly cites this section to find that the project does not exceed the City's height limitation standards.

Applicable LCP Policies and Standards:

Section 4.02.C.4 of the Zoning Ordinance of the City of Trinidad (ZOTC) establishes the following height limitation for buildings erected in the Open Space (OS) zoning District:

Maximum building height: 15 feet except that the design assistance committee may require a lesser height if necessary to accomplish the purposes of Subsection C3...

With regard to the distinction between “buildings” and other structures, ZOTC Section 2.02 directs:

Unless the context otherwise requires, the definitions set forth or otherwise provided for in this article shall be used in the interpretation and construction of this ordinance. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word ‘building’ shall include the word ‘structure,’ and the word ‘shall’ is mandatory. [Emphasis added.]

ZOTC Appendix A – Definitions goes on to define “structure” as follows:

Anything constructed, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground.

ZOTC Section 6.10 states:

Heights of buildings and structures shall be measured vertically from the average ground level of the ground covered by the building to the highest point of the roof. Chimneys, vents, flagpoles, conventional television reception antennas, ventilating and air-conditioning equipment, parapet walls and similar architectural and mechanical appurtenances shall be excluded in making such measurement.

Sub-section C3 ZOTC Section 4.03 provides:

3. Requirements for development of non-dwelling structures: Structures, septic disposal systems, driveways, parking areas, pedestrian trails and other improvements permitted in the OS zone shall only be permitted on lands designated as ‘unstable’ or of ‘questional (sic) stability’ on Plate 3 of the General Plan if analysis by a registered geologist or engineering geologist, at the applicant's expense, demonstrates to the satisfaction of the Planning Commission that construction of the development will not significantly increase erosion and slope instability. The geologist's report shall include but not be limited to

impacts from construction activities such as grading, drainage (from septic leachfields, on-site water use, increased runoff from impervious surfaces), roadways, and vegetation disturbance.

In addition to satisfying the above requirements structures proposed within the OS zone shall also satisfy the applicable requirements in Sections 4.03 C (4), (5), (6), (7), (8), (10).

ZOTC Sections 4.03.C.4, 5, 6, 7, 8, and 10, incorporated-by-reference into the Open Space zoning district regulations by ZOTC Section 4.02.C.3, set forth the following development review requirements for development within both the Open Space and Special Environment zoning districts applicable to the project site:³

6. *Requirements for development on slopes and near bluffs:*

a) *No building shall be located closer than 30 feet from any point on the bluff edge provided that a bluff setback in excess of 30 feet may be required by the Planning Commission following evaluation of geologic and soil reports.*

b) *Grading and excavation shall be the minimum necessary to complete the proposed development consistent with the following requirements:*

1) *The building site shall be graded to direct surface water away from the top of the bluff , or alternatively, drainage shall be handled in a manner satisfactory to the city which will prevent damage to the bluff by surface and percolating water.*

2) *No excavation, grading or deposition of natural materials shall be permitted on the beach or the face of the bluff.*

c) *No development shall be allowed on the portions of a lot with a slope of 20% or greater if such development would require:*

1) *An access road which requires cuts or fills in an area of slope greater than 20%; or*

2) *A side slope road in areas of slope greater than 20%. The construction of slab foundations shall not be allowed on slopes of 15% or more.*

d) *The construction site including access to the building site shall be defined in the use permit and staked on the construction site. Removal of vegetation, compaction of soil and grading shall be minimized. No earth movement, stockpiling, traffic, or clearing is allowed outside of the construction site boundary. Excavated materials and construction*

³ Sub-sections 4, 5, 7, and 8 of ZOTC Section 4.03.C. relate to development within tsunami zones, on ocean bluffs, stream protection areas, the Tsurai Study Area, and within the open space yard areas of established lots, respectively. None of these standards are applicable to the subject development site.

materials shall be stored within the perimeter of the construction site boundary or be removed.

e) There shall be no excavation on the site before the Planning Commission has approved the location of the stakeout of the drives, parking sites, building sites and other areas to be graded or filled. Underground utilities shall be confined to a single utility corridor whenever possible to minimize the area of disturbance.

f) Access roads and parking areas shall be constructed prior to any stockpiling of building materials or building construction. All subsequent vehicle travel on the site shall be limited to these areas except for completion of approved earthwork. Stockpiling of building materials shall also be confined to these surfaced areas.

g) Vegetation which is not to be disturbed shall be protected from mechanical damage and undesirable changes in water table, subsurface aeration, surface or subsurface drainage, or other adverse environmental conditions.

h) The siting of dwellings and appurtenant uses (including garden, lawn, orchard and outdoor storage areas) shall minimize the removal of vegetation, minimize alteration of natural landforms and adverse impacts on the scenic qualities of the area including minimizing the degree of visibility from beaches, shorelines, stream corridors, and other public viewpoints...

10. Determination of Development Feasibility: A report by a registered geologist or a certified engineering geologist shall be provided at the applicant's expense as part of an application for a permanent structure, septic disposal system, driveway, parking area, or other use permitted in the SE zone within the unstable and questionable stability areas shown on Plate 3 of the General Plan. Before the Planning Commission approves a development, it shall determine that the proposed development will not significantly increase erosion and slope instability and that any potential adverse impacts have been mitigated to the maximum extent feasible.

a) The report shall be based on an on-site inspection in addition to a review of the general character of the area using a currently acceptable engineering stability analysis method. The report shall take into consideration all potential impacts, including but not limited to impacts from construction activities such as grading, drainage (from septic leach fields, on-site water use, increased runoff from impervious surfaces), roadways, and vegetation disturbance.

b) The report shall contain a professional opinion stating the following:

- 1. The area covered in the report is sufficient to demonstrate the geotechnical hazards of the site consistent with the geologic, seismic, hydrologic and soil conditions at the site;*

2. *The extent of potential damage that might be incurred by the development during all foreseeable normal and unusual conditions, including ground saturation and shaking caused by the maximum credible earthquake;*
3. *The effect the project could have on the stability of the bluff;*
4. *How the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability through the lifespan of the project;*
5. *A description of the degree of uncertainty of analytical results due to assumptions and unknowns.*

Discussion:

The appellants contend that the project as approved by the City, notwithstanding its apparent lack of status as a permissible type of development either on Trinidad Head, within Open Space designated areas, or as an accessory structure, does not conform to the height limitations for buildings and other structures within the Open Space zoning district. The appellants note that as the panel antennae are proposed to be attached near the top of existing roughly 20-foot monopoles with a resulting overall height of approximately 22 to 23 feet, the development would exceed the 15-foot height maximum established for the Open Space zoning district in which the antennae would be erected.

The appellants assert that the City's rationale for approving the structure's height, as based on series of findings, in which it first declaring the telecommunications facilities as not comprising a "building" subject to the OS zone 15-foot height limit, then concluding that the overall height of the arrays would nonetheless comply with the 25-foot height limit of the Special Environment (SE) zoning district, interpreted as incorporated by reference into the OS zoning standards as "other requirements" and thus superseding the 15-foot height limit of the Open Space zone, and then finally invoking an exception within the zoning ordinances definition of height limitations, based on the panel antennae being "mechanical appurtenances," mischaracterized both the nature of the development in terms of its structural primacy as well as the relevant height standard applicable to the approved development (i.e., 15 feet or less). Accordingly, the appellants conclude that the development as approved by the City is inconsistent with the height limitations of the City's certified zoning regulations.

In reviewing the local record for the project, the Commission finds that a substantial issue is raised concerning the City analysis as to the permissibility of the approved development's height in three respects. First, with respect to the applicability of the OS zone's 15-foot height limitation, the City states:

The maximum building height within the OS zone is 15', which the equipment cabinets will meet. The antenna is not a 'building' subject to this limitation.

This interpretation does not take into account the definitions section of the zoning ordinance at Section 2.02, which indicates that the word “structure” is set as synonymous with the word “building.” Therefore as the subject panel antennae are “structures” in that they are an article “*which requires permanent location on the ground, or attachment to something having a permanent location on the ground,*” the 15-foot height maximum of ZOTC Section 4.02 is not inapplicable as the City concluded.

Secondly, with regard to its analysis of the purported applicability of the Special Environment 25-foot height standard as superseding the Open Space 15-foot maximum, the City states:

However, zoning ordinance §17.16.060 states that all structures allowed in the OS zone must also meet the requirements of the Special Environment regulations, §17.20.060 - 17.20.130. Section 17.20.060 restricts building heights to 25 feet.

With regard to this analysis, the Commission finds that the Special Environment’s height limit is not applicable to the development. As noted in Staff Note 3, the code provision cited by the City is that as enumerated within Title 17 of the City of Trinidad’s municipal code. Although formally adopted by the City, the zoning regulations set forth in Title 17 have not been submitted to the Commission for certification as part of the Implementation Program component of its LCP. Accordingly, the language within the certified zoning code, as set forth in City Ordinance No. 166, contain the legally binding zoning provisions for the City. Thus, while the municipal code provisions incorporate the Special Environment zoning district height standards by reference at Section 17.16.060, the certified equivalent Ordinance 166 Section 4.03 --- the Open Space Zoning District “other regulations” provisions --- does not similarly include the 25-foot standard as superseding the 15-foot standard of the OS zone. Accordingly, the City’s discussion regarding the possible compliance with a superseding provision within the Special Environment zoning district is not based upon the approved development’s conformance with the policies and standards of the certified LCP.

Finally, with regard to the invoking of other provisions within the zoning ordinance for exempting or modifying height restrictions, the City states:

ZOTC §6.10] provides further guidance on measuring height. This section reads: ‘*Heights of buildings and structures shall be measured vertically from the average ground level of the ground covered by the building to the highest point of the roof. Chimneys, vents, flagpoles, conventional television reception antennas, ventilating and air conditioning equipment, parapet walls and similar architectural and mechanical appurtenances shall be excluded in making such measurement.*’ The transmission antenna could be considered to fit in to the second section as a ‘mechanical appurtenance’ or similar to a flagpole or T.V. antenna.

The Commission notes that while the LCP does not establish a statutory definition for “appurtenance,” the common language definition of the term, as well as that of its root adjective “appurtenant” and the intransitive verb “appertain,” identifies as a central characteristic functional or physical subordination to a primary article:

‘To belong or be connected as a rightful part or attribute.’ – Merriam-Webster Collegiate Dictionary

‘Something added to another, more important thing; an appendage.’ – American Heritage Dictionary

‘That which belongs to something else; an adjunct; an appendage. Something annexed to another thing more worthy as principal, and which passes an incidental to it...’ – Black’s Law Dictionary

Unlike a chimney, ventilation equipment, or television reception antennae design to serve the building to which it is attached, the approved U.S. Cellular facilities are functional independent from the other facilities installed within the lease area. Therefore, the Commission finds that a substantial issue is raised as to whether the approved facilities are “appurtenances” to the other facilities installed in the lease area and whether the exception of ZOTC Section 6.10 apply to the project and would allow the approved development to exceed the Open Space zone’s 15-foot height limitation.

Given the relatively low degree of factual and legal support for the local government's decision, the Commission finds that a substantial issue is raised as to the approved development’s consistency with the certified LCP with respect to the height limitations on new development.

3. Impacts to Visual Resources

Appellants’ Contentions:

The appellants state the following with regard to their contention that the approved project lacks consistency with LUP policies regarding the protection of visual resources:

Neither the existing structures nor the proposed expansion of the cellular transmission facilities are constructed or proposed to be constructed from materials that reproduce natural colors or textures...

The existing structures and the proposed expansion of the cellular transmission facilities are visible from the beach and are visually obtrusive from the beach, bay, ocean, and city. Complying with this consideration is impossible as the project is anchored to the location of a former nonconforming use and structure from 1985. Clearly the proposed project cannot comply with this consideration...

The existing structures do not blend with the natural visual form of Trinidad Head. Many of these structures extend significantly above the natural silhouette of Trinidad Head. In 1985, the height of the single TV transmission pole was 21 feet. Today two cell towers are 41 feet high and one whip antenna reaches 51 feet in height...

The existing and proposed structures are visually very obtrusive when viewing Trinidad Head; the profile of the Head has, and will be, particularly degraded by existing and proposed structures because they are being allowed to be placed in excess of the 15 foot maximum height limit applicable in the Open Space zone. Depending on where from Trinidad Head the public attempts to view of the bay and coastline the existing and proposed structures also block and degrades ones view of the bay, ocean, and coastline...

The Friends have provided the City with photographs, and the public testified during the public hearing held on this proposed project that the existing cellular transmission facility and the proposed developments will further degrade the public's view of the bay, Trinidad Head, and the coastline (see Figure 2). The City's finding that its approval was in conformity with the LCP is, therefore, not supported by these facts.

Applicable LCP Policies and Standards:

Policy 79 of the Land Use Plan's Community Design chapter directs:

The design assistance committee should ensure that any proposed development does not detract from these historical sites and structures.⁴

LUP Appendix B – Community Design Considerations sets forth the following policies to be considered in reviewing the potential impacts of new development on the visual resources of the coastal portions of Trinidad west of Highway 101:

1. *Structures in, or adjacent to, open space areas should be constructed of materials that reproduce natural colors and textures as closely as possible*
2. *Where possible, structures on sites visible from the beach should be set back as far as possible to make the structure as visually unobtrusive as possible.*
3. *Except for necessary public safety facilities, structures should blend with the natural visual form of the area and not*

⁴

The 1775 Heceta expedition landing cross on Trinidad Head, the Tsurai Indian Village site, the Trinidad Cemetery on Stagecoach Road, the Holy Trinity Church at Parker and Hector Streets, the Memorial Lighthouse at the foot of Trinity Street, the MacGregor House on Main Street, the Caldwell House on Edwards Street, and the Underwood House north of the HSU Marine Lab.

unnecessarily extend above the natural silhouette or the silhouette of existing structures in the area...

11. *Whenever possible, new development should include underground service connections. When above ground facilities are the only alternative they should follow the least visible route (e.g., tree rows, ravines), cross ridgelines at the most visually unobtrusive locations, be well designed, simple and unobtrusive in appearance, have a minimum of bulk and make use of compatible colors and materials.*

The above design review policies applicable to the project site are set forth as required criteria in Section 6.19.C of the Zoning Ordinance as follows:

1. *The alteration of natural land forms caused by cutting, filling and grading shall be minimal. Structures should be designed to fit the site rather than altering the land form to accommodate the structure.*
2. *Structures in, or adjacent to, open space areas should be constructed of materials that reproduce natural colors and textures as closely as possible...*
6. *New development should include underground utility service connections. When above ground facilities are the only alternative, they should follow the least visible route, be well designed, simple and unobtrusive in appearance, have a minimum of bulk, and make use of compatible colors and materials.*

ZOTC Section 6.09.D continues on to establish the following applicable view protection standards:

1. *Structures visible from the beach or a public trail in an open space area should be made as visually unobtrusive as possible.*
2. *Structures, including fences over three feet high and signs, and landscaping of new development, shall not be allowed to significantly block views of the harbor, Little Trinidad Head, Trinidad Head or the ocean from public roads, trails, and vista points...*

Discussion:

The appellants contend that the approved project would cumulatively impact the visual resources of the area, especially as viewed from public vantage points along the hiking trails on Trinidad Head in vicinity to the facility, and from beach and harbor areas. The

appellants assert that considerations for designing and locating new development to minimize its visual obtrusiveness were not duly examined.

In its analysis of the approved development's consistency with the policies and standards of the LCP regarding visual resource protection, the City provides a one-to-one response to the enumerated design considerations and view preservation findings within the LCP regarding the development's effects on coastal views as follows:

Structures in, or adjacent to open space areas should be constructed of materials that reproduce natural colors and textures as closely as possible. Response: The project is located in an open space area, but improvements will be located within the existing, fenced communication facility, screening it from view. The antennas are consistent with existing development...

Plant materials should be used to integrate the manmade and natural environments to screen or soften the visual impact of new development, and to provide diversity in developed areas. Attractive vegetation common to the area shall be used. Response: The proposed project will not be readily visible from public trails and vista points any more than the existing facilities. Several large trees and shrubs are adjacent to the site and have been retained to help screen it and the existing facilities. The applicant has not proposed additional landscaping, and it can be found to be unnecessary for this project...

New development should include underground utility service connections. When above ground facilities are the only alternative, they should follow the least visible route, be well designed, simple and unobtrusive in appearance, have a minimum of bulk and make use of compatible colors and materials. Response: The proposed improvements will utilize the existing electrical connection to the existing site from the pole across the access road...

When reviewing the design of commercial or residential buildings, the committee shall ensure that the scale, bulk, orientation, architectural character of the structure and related improvements are compatible with the rural, uncrowded, rustic, unsophisticated, small, casual open character of the community. In particular:

- 1. Residences of more than two thousand square feet in floor area and multiple family dwellings or commercial buildings of more than four thousand square feet in floor area shall be considered out of scale with the community unless they are designed and situated in such a way that their bulk is not obtrusive.*
- 2. Residential and commercial developments involving multiple dwelling or business units should utilize clusters of smaller structures with sufficient open space between them instead of a consolidated*

structure. Response: Only small equipment cabinets and antennas on existing poles are proposed...

Structures visible from the beach or a public trail in an open space area should be made as visually unobtrusive as possible. Response: The project is located within an open space area, but will be located within the existing fenced facility and, will not be readily visible from public trails and vista points as it will be screened by existing development. The applicant has proposed the improvements within the existing fenced facility in order to minimize impacts...

Structures, including fences over three feet high and signs, and landscaping of new development, shall not be allowed to significantly block views of the harbor, Little Trinidad Head, Trinidad Head or the ocean from public roads, trails, and vista points, except as provided in subdivision 3 of this subsection. Response: The proposed improvements will not significantly block views...

In reviewing the public record for the new development, the Commission finds that several of the aspects of visual resource protection identified as review criteria within the LCP were not substantively addressed. These attributes include: (a) consideration of the cumulative effects the subject development and future similar development approved under the precedent established by this and preceding permit actions with regard to visual resource impact thresholds; (b) the direct, indirect, and cumulative effects the approved development has on the recreational aesthetics of utilizing the trails and vista points on Trinidad Head and relating to the introduction of new anthropogenic features into area viewsheds, especially visitor-intensive locales such as the harbor, pier, downtown area thoroughfares, and designated historical sites and structures, such as the Heceta landing memorial cross; (c) color or surficial treatments, or additional landscaping that could render the approved development less noticeable from public vantage points; and (d) the feasibility of undergrounding the electrical utility lines servicing the leased telecommunications facility.

Thus, in the absence of full consideration of the potential ways the approved development might further be rendered less visually obtrusive, questions arise as to the development's conformance with the City's provisions for protecting visual resources. Therefore, based upon the degree of factual and legal support for the local government's decision, the significance of the coastal resources affected by the decision, the Commission finds that a substantial issue is raised with respect to the approved development's consistency with the policies and standards of the LCP with respect to community design and view preservation.

2. Appellants' Contentions That Are Not Valid Grounds for Appeal

The appellants raise two contentions that are not valid grounds for appeal. As discussed below, the two contentions raised regarding the adequacy of the CEQA documentation

and an alleged violation of the /Coastal Zone Management Act by the Bureau of Land Management for not submitting a consistency determination for development of the Trinidad Head management plan do not present potentially valid grounds for appeal in that they do not allege that the approved project is inconsistent with the LCP or the public access policies of the Coastal Act.

a. CEQA Process

As discussed below, the appellants' allegations regarding environmental review pursuant to the California Environmental Quality Act (CEQA) is valid insofar as it is not based on a provision of the City's certified LCP or the access provisions of the Coastal Act.

Appellants' Contentions:

Since 1997, each time the City has approved an expansion of the nonconforming use on Trinidad Head, including this recent approval, it has failed to comply with the California Environmental Quality Act (CEQA). The City illegally used a Categorical Exemption (CE) when there are clearly exceptions to its use that apply (PRC Sections 21084 (b), 21084.1 and CCR 15300.2). The City's recent approval, which is the subject of this appeal, again, expands this use in an area of critical concern and adds to several existing adverse impacts (coastal resources, noise, recreational use, and aesthetics) associated with this facility on Trinidad Head. If an environmental analysis had been conducted, it would have been evident that several thresholds of significance had been exceeded long ago, and the City should not have approved this project or allowed any previous installations... [Parenthetics and citations is original.]

Since 1997, each time the City has approved an expansion of the nonconforming use on Trinidad Head, including this recent approval, it has failed to comply with the California Environmental Quality Act (CEQA). The City illegally used a Categorical Exemption (CE) when there are clearly exceptions to its use that apply (PRC Sections 21084 (b), 21084.1 and CCR 15300.2). The City's recent approval, which is the subject of this appeal, again, expands this use in an area of critical concern and adds to several existing adverse impacts (coastal resources, noise, recreational use, and aesthetics) associated with this facility on Trinidad Head. If an environmental analysis had been conducted, it would have been evident that several thresholds of significance had been exceeded long ago, and the City should not have approved this project or allowed any previous installations...

As stated earlier in this appeal, the City has failed to: conduct any environmental analysis of previous projects or the proposed project. In spite of this, the City determined that project related cumulative impacts had not reached a significant level. The City cannot make this

determination without first conducting the necessary environmental impact studies pursuant to CEQA. The City made determinations that these projects were exempt as per CCR Section 15301 “Class 1-Existing Facilities.” The State Legislature charged California’s Resources Agency with identifying classes of activities that were not likely to cause significant adverse physical changes to the environment and would be CE from further environmental review under CEQA (PRC Section 21080 (b)(9), and Section 21084 (a)). However, it is important to note that the Legislature recognized that these classes of environmentally benign activities could result in significant environmental damage when such projects are located in areas of critical concern or result in cumulative effects. That is why there are exceptions to the use of a CE (PRC Section 21084(b), Section 21084.1, and CCR Section 15300.2). Areas of critical concern can be scenic coastal resources, historical resources (PRC Section 21084 (e)) or cultural resources.

Trinidad Head is: a renowned scenic coastal area, a state-designated historical landmark (No. 146), listed in California’s register of historic resources, an important cultural resource, and a sacred site to the Yurok and Tsurai peoples. One consequence of the City approving the proposed development, the fifth (1997, 2000, 2001/02, 2003, and 2006), is that the cumulative effect of expanding the number of structures over time has exceeded a level that is acceptable to the public who desire to experience and enjoy Trinidad Head, an area with significant scenic, historical, and cultural resources. The Legislature was clear in its intent regarding using C.E. *“No project which may result in damage to scenic resources”... “shall be exempted”* (PRC Section 21084 (b)).

The City and the Friends correctly identified that cumulative impacts from the proposed project are an issue, but the City failed to recognize these impacts as one of the Legislature’s exceptions prohibiting the use of a CE. While the City focused on cumulative impacts as a consequence of whether the developed footprint is being increased, the Friends instead focused on the cumulative impacts (noise, height, and bulk) of five developments that expanded the use at this site, such as height and bulk of site Culminating with the City’s recent approval, all of the developments at this site have expanded the number of structures and the intensity of use, causing significant cumulative impact to the scenic, coastal, historical, or cultural setting of Trinidad Head. This fact should have precluded the City from using a CE (CCR Section 15300.2(b)).

On June 21st the Planning Commission erred when it approved the U.S. Cellular project, because it used a form of environmental impact analysis to generate the proposed mitigation measures which were developed outside the procedures described in the CEQA. Addressing this very issue, the courts have held that *“an agency should not be permitted to evade standards governing the preparation of a mitigated negative*

declaration by evaluating proposed mitigation measures in connection with the significant effect exception to a categorical exemption” (Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997) 52 Cal.App.4th 1165). In support of the Friends’ appeal to the City Council, the Planning Commission’s findings (06/23/06) actually rely on future actions by the City Council to reverse the significant cumulative effects it identifies as a consequence of its approval of U.S.Cellular’s project. Again, the courts have held that “An activity that may have a significant effect on the environment cannot be Categorically Exempt” (Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal.4th 105). Also the Guidelines state that a CE shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances (Section15300.2 (c)); in this case, the fact that the project is located on Trinidad Head, an area of critical concern, and because the proposed use and structures are nonconforming in the City’s Coastal Open Space Zone. It is undisputed that the project is located in an area of critical concern by way of Trinidad Head’s multiple designations. The only question is whether the project “may impact” this environmental resource or the public’s use and enjoyment of these resources. The court has held in regards to using a CE that “it is the possibility of a significant effect...which is at issue, not a determination of the actual effect, which would be the subject of a negative declaration or an EIR” (Azusa, supra).

Lastly, the City’s use of a CE was illegal, because the exceptions to using a CE applied. The City failed to comply with CEQA and its LCP and conducted no environmental assessment of the proposed project’s cumulative effects to scenic coastal resources, historical resources, and cultural resources residing in Trinidad Head, an area of critical concern. The City’s approval based on conformity with the LCP is, therefore, not supported by these facts. [Parenthetics and emphases in original.]

Discussion:

As set forth in the Coastal Act provisions cited above, after certification of its local coastal program, an appeal of a local government-issued coastal development permit is limited to allegations made on the grounds that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act.

The above appeal allegation is not based on grounds of an alleged inconsistency of the project as approved by the City with a standard of the LCP or the access policies of the Coastal Act. The City of Trinidad’s certified land use plan and coastal zoning ordinance contain no provisions specifically requiring compliance with the California Environmental Quality Act (CEQA) for any development subject to its permitting jurisdiction. Rather, the only applicable mention of CEQA regards the requisite

avoidance or reduction of environmental impacts through, among other means, inclusion of mitigation measures, and demonstration that no feasible less environmental damaging alternative exists to a given approved conditional use. Given the lack of such LCP policies and standards, the Commission finds that the contention point enumerated above is not a valid ground for an appeal.

b. No CZMA Consistency Determination for Management Plan

A second contention made by the appellants is similarly not based on valid grounds for appeal. This contention regards an alleged violation of the Coastal Zone Management Act by the Bureau of Land Management (BLM) with regard to that agency not submitting for a consistency determination for review by the Commission of the consistency of the 1983 development/management plan prepared as part of the land patent transfer of a roughly 47-acre portion of Trinidad Head from the federal government to the City of Trinidad with California coastal program. In addition, the appellants claim the CZMA was subsequently and repeatedly violated by the BLM through its failure to submit to the Commission for a CZMA consistency determination concurrence or objection the various conformance review determinations BLM has conducted regarding the City's leasing and permitting portions of the patented land for development of telecommunication facilities.

As set forth in the Coastal Act provisions cited above, after certification of its local coastal program, an appeal of a local government-issued coastal development permit is limited to allegations made on the grounds that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act.

The above appeal allegation is not based on grounds of an alleged inconsistency of the project as approved by the City with a standard of the LCP or the access policies of the Coastal Act. The City of Trinidad's certified land use plan and coastal zoning ordinance contain no provisions requiring compliance with the Coastal Zone Management Act for any development subject to its permitting jurisdiction. Nor does the LCP set forth any policies or standards specifically addressing the Trinidad Head management/development plan approved by the BLM and/or how any land patent conformance reviews that agency might conduct would bear on consideration of a development proposal on Trinidad Head. Given the lack of such LCP policies and standards, the Commission finds that the contention point enumerated above is not a valid ground for an appeal.

3. Conclusion.

All of the various foregoing contentions have been evaluated against the claim that they raise a substantial issue of conformance of the local approval with the certified LCP. The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to the conformance of the approved project with the policies of the LCP regarding: (1) permissible development within the Open Space designated areas of Trinidad Head; (2) limitations on the height of structures; and (3) impacts to visual resources.

E. INFORMATION/ACTION NEEDED FOR *DE NOVO* REVIEW OF APPLICATION

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent date. The *de novo* portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine how development can be approved consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. Following is a discussion of the information needed to evaluate the development.

1. Alternatives Analysis

Under ZOTC Section 7.09, the authorizing agency must show that, in approving conditional use or development feature, there are no feasible alternatives which would have less environmentally damaging effects on the environment. To assure compliance with this requirement, preparation of an alternatives analysis is necessary. The analysis should identify any feasible alternative locations and designs for, and viable technical options to the subject telecommunications facilities which would result in less overall impacts to the environment, especially with regard to the open space and recreational amenities of Trinidad Head, and the visual resources of the Trinidad area.

2. Geotechnical Analysis

For conformance with ZOTC Section 4.03.C.10, a geo-technical analysis is needed for the proposed development. In addition to site stability and structure integrity analysis, the report should also identify mitigation measures to prevent geologic instability related impacts, including construction phase and long-term erosional runoff and siltation best management practices.

3. Biological Assessment

To assure the development's consistency with LCP provision regarding the protection of the biological resources of Trinidad Head, a biological assessment of the flora and fauna of the area surrounding the project site is needed. The assessment should identify any

rare, threatened, endangered, or special status plant and animal species that are found in or utilize as habitat the area within a 250 radius of the project site. The report should also identify mitigation measures to avoid or lessen any concluded significant adverse impacts on these species.

III. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Humboldt County Assessor's Map No. 42-12
4. Project Site Aerial
5. Approved Site Plan
6. Notice of Final Local Action
7. Appeal, filed October 4, 2006 (Friends of Trinidad Head)
8. Applicant's Correspondence
9. Photographs Submitted by Applicant
10. General Correspondence

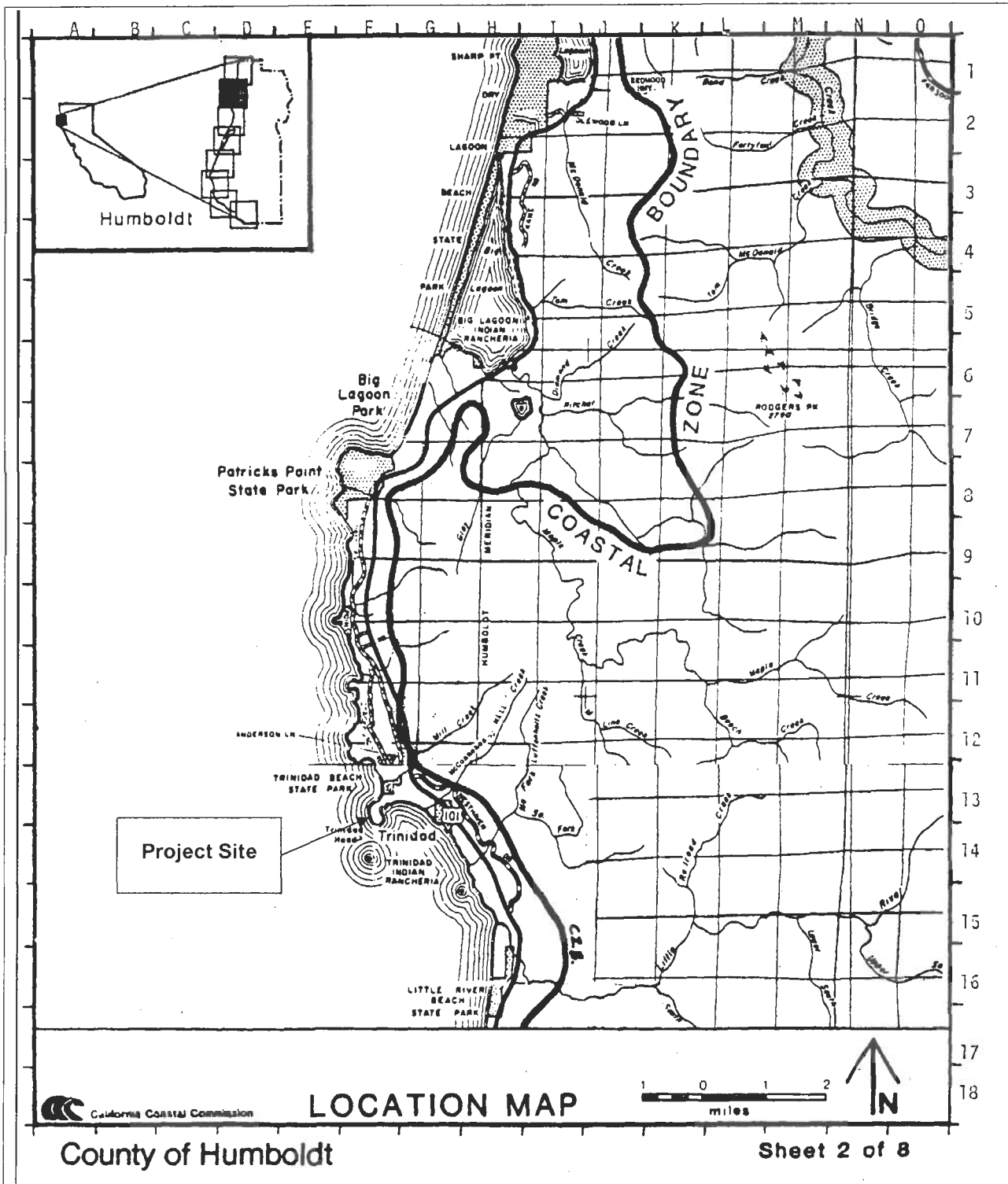


EXHIBIT NO. 1

APPEAL NO.

A-1-TRN-06-042

U.S. CELLULAR CORPORATION

REGIONAL LOCATION MAP

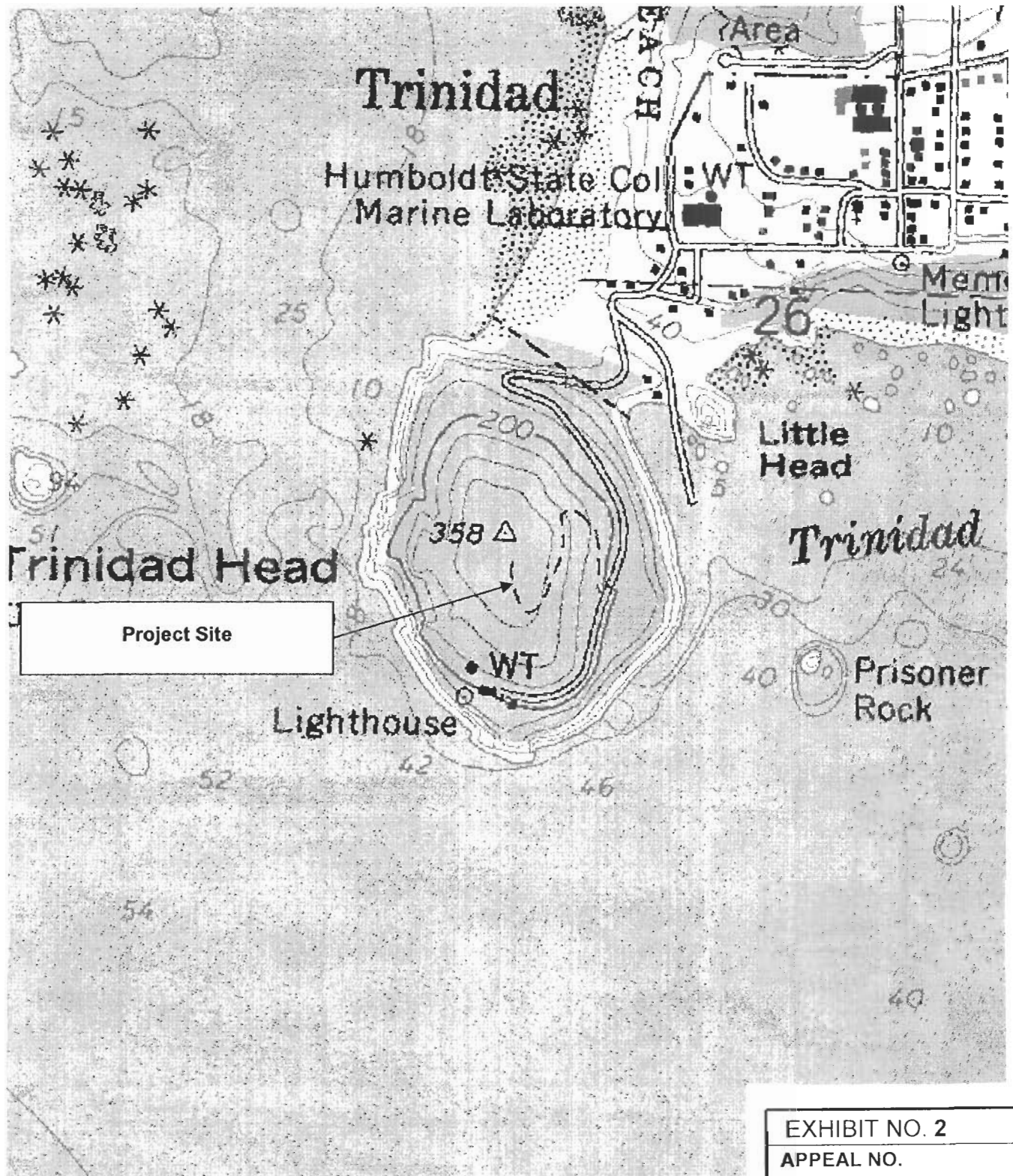


EXHIBIT NO. 2

APPEAL NO.

A-1-TRN-06-042

U.S. CELLULAR CORPORATION

VICINITY MAP

SCALE IN 1/10 OF AN INCH



1-800-345-7334

42-12

TOWN OF TRINIDAD - POR. SEC. 26 T 8N, R 1W H B & M

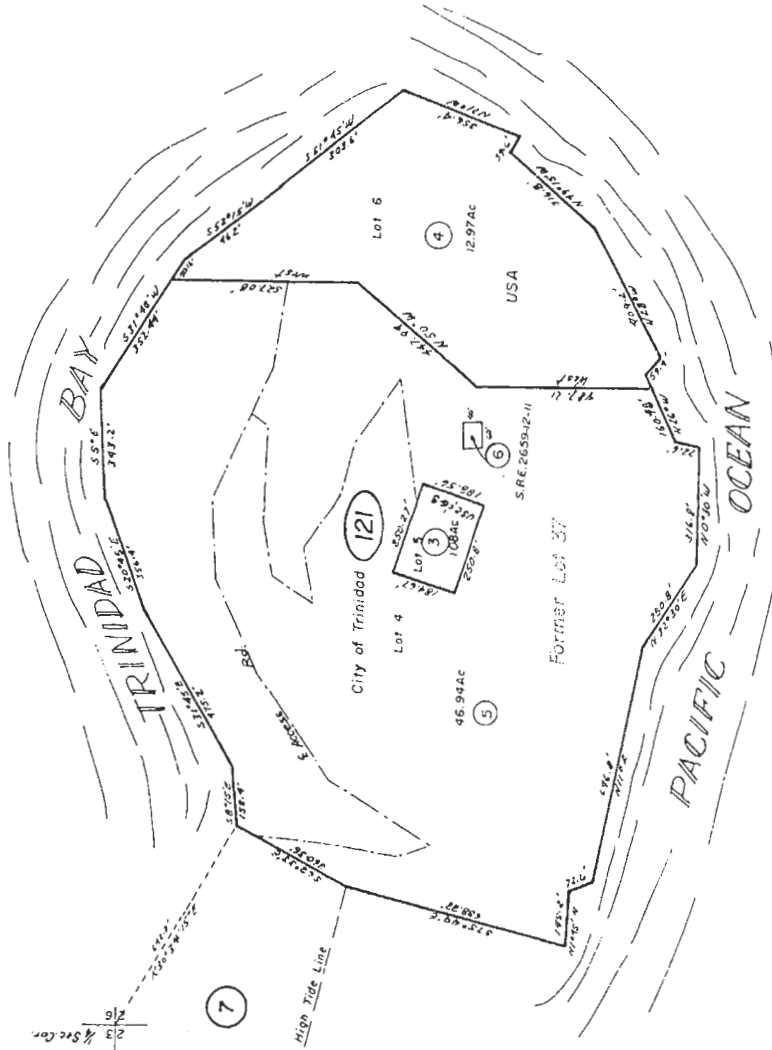


EXHIBIT NO. 3

APPEAL NO.

A-1-TRN-06-042

U.S. CELLULAR CORPORATION

HUMBOLDT COUNTY

ASSESSOR'S MAP NO. 42-12

NOV 05 1998

Assessor's Maps Bk. 42, Pg. 12
County of Humboldt, Calif.

22
1/2 NOV 11 1998

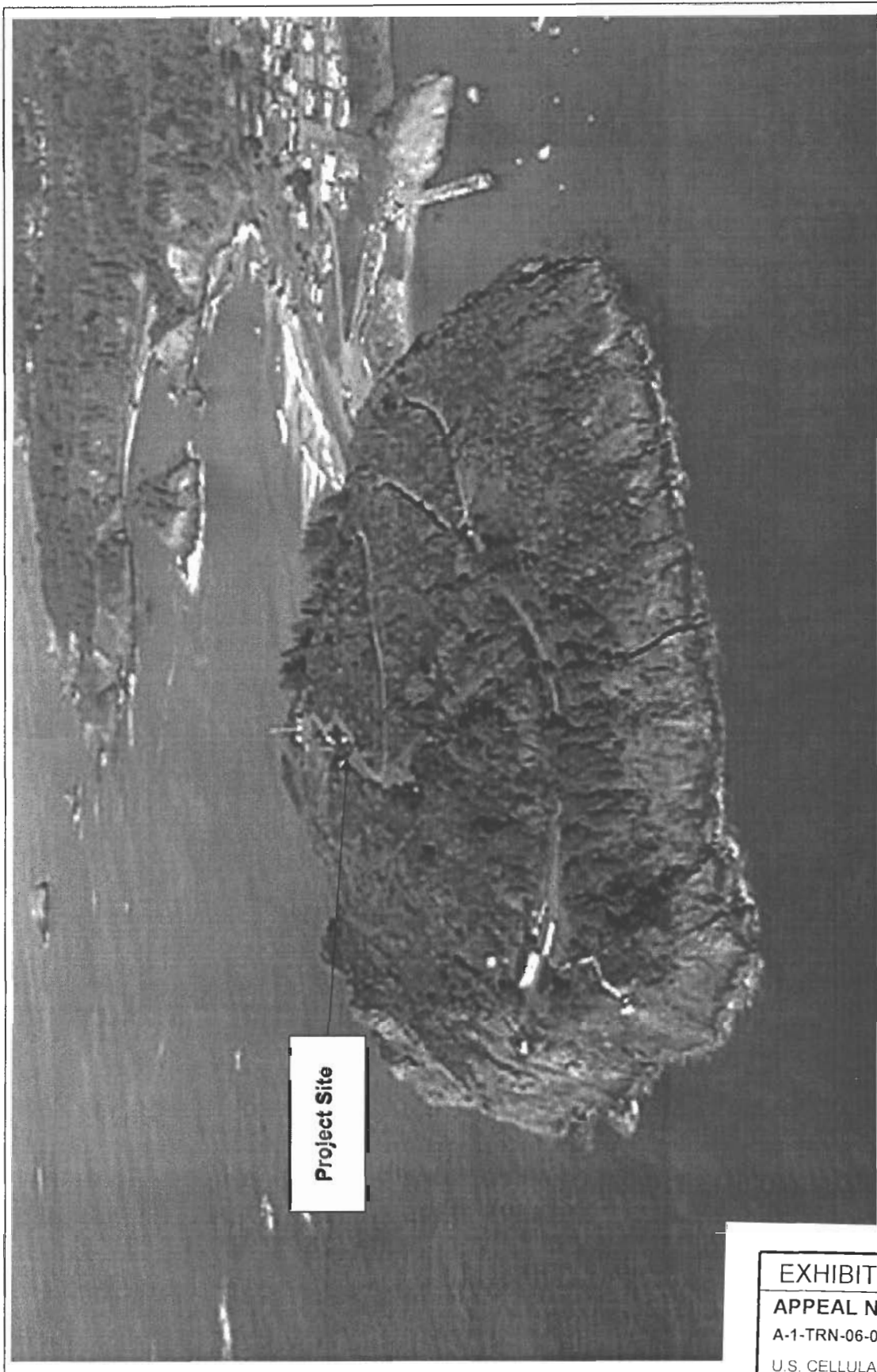


EXHIBIT NO. 4

APPEAL NO.

A-1-TRN-06-042

U.S. CELLULAR CORPORATION

PROJECT SITE AERIAL

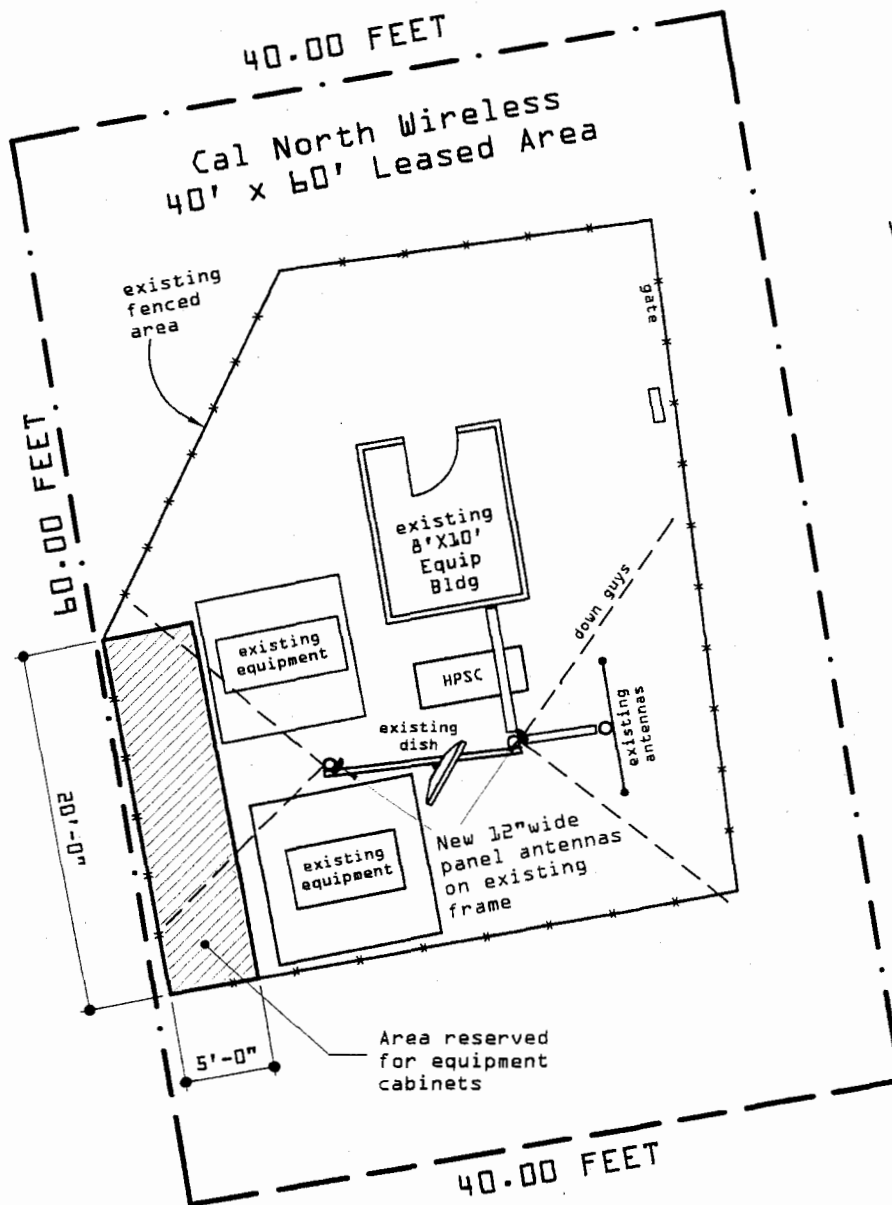
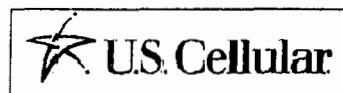


EXHIBIT NO. 5
APPEAL NO.
A-1-TRN-06-042
U.S. CELLULAR CORPORATION
APPROVED SITE PLAN

Actual site areas may vary slightly in both square footage and shape from what is shown.

SCALE
1' = 10 FT.



PROPOSED SITE AREA
AT THE EXISTING
TRINIDAD HEAD SITE

April 27, 2006

FROM: CITY OF TRINIDAD, PO BOX 390, TRINIDAD, CA 95570



TO: CALIFORNIA COASTAL COMMISSION
APPELLANT & APPLICANT

RECEIVED

SEP 20 2006

CALIFORNIA
COASTAL COMMISSION

NOTICE OF ACTION TAKEN

LOCAL PERMIT # 2006-10

APPLICANT: Friends of Trinidad Head
C/O Kim & Stan Binnie; P.O. Box 1037, Trinidad, CA 95570

AGENT: NA

AP # 042-121-05

PROJECT LOCATION: Trinidad Head

THE CITY COUNCIL TOOK ACTION FOR THE FOLLOWING PROJECT AT THEIR
SPECIALLY SCHEDULED MEETING OF SEPTEMBER 14, 2006:

Friends of Trinidad Head 2006-10: Appeal of Planning Commission approval of application #2005-13a (US Cellular 2005-13a: Design Review, Coastal Development Permit and Conditional Use Permit to Permit to install two new antennas on existing 20' poles. New equipment cabinets will be installed within the existing fenced area on a concrete pad on the southwest portion of the site.) on the basis that the existing cellular site, and therefore this project, is illegal under City regulations and that there is no verifiable need for the project.

THE CITY _____

_____X_____

APPROVED
CONDITIONALLY APPROVED
DENIED (upholding Planning Commission action)

The final staff report, required findings, maps and any conditions placed on the project approval are attached as needed.

City Council action on a Coastal Development Permit, Design Review, Conditional Use Permit or a Variance will become final 10 working days after the date that the Coastal Commission receives this "Notice of Action Taken" from the City, unless an appeal to the Coastal Commission is filed within the time.

Furthermore, this project is X / is not _____ appealable to the Coastal Commission per the requirements of Section 30603 of the Coastal Act.

TREVER PARKER
CITY PLANNER, CITY OF TRINIDAD
DATE: September 18, 2006

EXHIBIT NO. 6

APPEAL NO.

A-1-TRN-06-042

U.S. CELLULAR CORPORATION

NOTICE OF FINAL LOCAL
ACTION (1 of 24)

APPEAL STAFF REPORT

APPELLANT: Friends of Trinidad Head

APPEAL:

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

APPEAL DATE: July 6, 2006

ORIGINAL PROJECT DESCRIPTION:

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

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

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

STAFF REPORT:

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

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

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

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

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

Background

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

Response to Appeal

Staff's approach

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

There is no need or public benefit

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

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

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

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

Inconsistency between original proposal citing the need for an additional site and the current proposal of co-locating.

This has been cited as one of the major concerns for Friends. However, the above scenario is quite common; applicants often redesign their project after a public hearing where significant objections are expressed. For example, in 2002 and 2004, unrelated applications were completely withdrawn and redesigned based on neighbor comments. In

general, the community expressed gratitude for the considerations that were given to their comments. Probably $\frac{1}{2}$ to $\frac{1}{3}$ of the applications for additions and remodels within the view areas of town are continued for at least one month and alterations made to the original design. Since there had never been any public opposition to the cellular facility, US Cellular had no reason to believe that their proposal would meet with such objection, and therefore, there was no need to make the additional effort to co-locate, since the site is near capacity. With public opposition, US Cellular made that extra effort and succeeded in getting permission to co-locate their new equipment. This may have been due to more diligent effort on the part of US Cellular. Or, it could have been because between the time of the original application and the revision, Verizon took over ownership of the site, and may have different policies from Cal-North, making co-location easier. In either case, the situation shows that US Cellular has made concessions to address community concerns.

The nonconforming use was abandoned for more than a year, requiring it to be discontinued indefinitely.

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

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

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

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

Any change of a nonconforming use shall be to a conforming use and there shall be no expansion of nonconforming uses:

This provision comes from the same Zoning Ordinance section as the previous discussion (§ 17.64.010.C). Friends argue that the conversion of the site from television to cellular constitutes a change of use and that subsequent projects expanded the nonconforming use contrary to the above provision. Staff does not consider the change from a cable television broadcasting site to a cellular communications site a change of use. This is supported by the City's management plan adopted for Trinidad Head, that was accepted by BLM and certified by the CA Coastal Commission, which stated that: *"The City will continue to coordinate with the Cable T.V. company and any future, similar-type users that provide a public service"* (emphasis added), *and where use does not conflict with the primary purposes of open space and public recreation."*

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

Accessory structures and uses

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

Appurtenances and height regulations.

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

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

Open Space regulations

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

Open Space Zoning does not apply to the Federal land.

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

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

Site Characteristics – Ground Disturbance.

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

Selective citing

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

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

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

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

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

CEQA (CA Environmental Quality Act) Review

Friends argue that the current proposal and previous cellular approvals were not properly reviewed under CEQA. The following explanation shows that the City has correctly and appropriately applied CEQA provisions. However, it should also be noted that there is a maximum 180 day statute of limitation to file a lawsuit for CEQA determinations, and therefore previous approvals are not challengeable. Notwithstanding that, I will still respond to the issues raised. Two different Categorical Exemptions (CEQA Guidelines §15300-15332) have been used for the current and previous cellular projects: 1) §15301 – Existing Facilities – *Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination;* and 2) §15303 – New Construction or Conversion of Small Structures – *Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from use to another where only minor modifications are made in the exterior of the structures.* Both of these exemptions are followed by several examples of the types of projects that would fall under them. These two exemptions are the most commonly used

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

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

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

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

Findings

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

Appeal Process

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

Summary

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

Filed: November 15, 2005
Staff: Trevor Parker
Staff Report: December 2, 2005
Hearing Date: December 14, 2005
Commission Action: Denied
Appealed: January 31, 2006
Project Revised: April 27, 2006
2nd Hearing Date: June 21, 2006
Commission Action:

STAFF REPORT: CITY OF TRINIDAD

APPLICATION NO: 2005-13a
APPLICANT (S): US Cellular
AGENT: Thomas McMurray
PROJECT LOCATION: Trinidad Head
Trinidad, CA 95570
PROJECT DESCRIPTION: Design Review, Coastal Development Permit and Conditional Use Permit to install two antennas on existing 20' poles; new equipment cabinets will be installed within the existing fenced area.
ASSESSOR'S PARCEL NUMBER: 042-121-05
ZONING: OS – Open Space
GENERAL PLAN DESIGNATION: OS – Open Space
ENVIRONMENTAL REVIEW: Categorically Exempt from CEQA per § 15301 of the CEQA Guidelines exempting alteration of and minor additions to existing facilities.
APPEAL STATUS:

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

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SITE CHARACTERISTICS:

Trinidad Head is zoned OS – Open Space with a variety of roads, trails, benches, signs and vista points. Other existing improvements include the communication facility, the Coast Guard Lighthouse and NOAA air monitoring sites. This project involves the addition of antennas on existing poles and installation of new equipment cabinets within the existing, fenced communication site. The existing communication facility was originally installed by Cox Cable prior to 1983. It was redeveloped by Cal-North Cellular in 1997, with additions in 1999, 2000 and 2001 and 2003 for use as a cellular service facility. Previously it had been a cable television transmission site. There is currently a 41' pole (original 21' pole with 20' extension) and a 21' pole (part of original cable facility) and a 50' pole added in 2001, a small equipment shed and two transmitter cabinets. There is also a 6' fence, topped with barbed wire, with two separate gates, that surrounds the site. Cal-North (recently purchased by Verizon) has a lease with the City of Trinidad, and Cal-North subleases the site to other communication companies (Sprint and Edge Wireless). The NOAA weather station site is located approximately 40' north of the existing communication site and contains a trailer and several other structures, including the large Coast Guard tower, and a variety of weather monitoring equipment,. The Federal site also appears to be utilized by other entities as well (i.e. Scripps Institute). This revised project will require no new access, utilities or ground disturbance.

STAFF COMMENTS:

Several alternatives have been submitted for this project. Originally a new cellular site was proposed adjacent to the existing one with a new, 50' pole. A couple of alternative locations were proposed to staff prior to the first Planning Commission hearing, but City staff decided that a location slightly north west of the existing site would have the least visual and ground disturbing impacts, and that is the site that was discussed at the December 14, 2005 and January 18, 2006 public hearings. At the Commission hearings, the applicant's agent presented a couple of alternatives, including reducing the height of the pole, and decreasing the size of the equipment building. The hearing was continued from December to January, and the Commission denied the project at their January 18, 2006 w/out prejudice, which allows the applicant to propose a new alternative without waiting a year to submit a new application. That decision was appealed to the City Council by the applicant on January 31, 2006, within the appeal period. Because of workloads and scheduling conflicts, the appeal hearing was not scheduled until mid-May. On April 27, 2006 the applicant submitted a new alternative that eliminated the need for a new or expanded cellular facility. The currently proposed project will add the two necessary antennas to existing poles and the equipment cabinets will be installed within the existing fenced site. Although, according to City Ordinances, the Council could have made a decision on the revised project, On May 9, 2006 the Council decided to send the revised project back to the Planning Commission for public hearing. The Council felt that the project had been altered substantially, so that the best procedure would be for it to go through the Planning Commission, and to obtain the Commission's and the public's input on the project.

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The City Council has given their approval as the landowner only to submit the application, which is not an endorsement of the project. The applicant has provided a site plan and elevations detailing the altered project as well as a written description. The applicant has also placed mock-ups of the proposed antennas for viewing by the public. The applicant has provided additional information in response to comments received on the project thus far. This includes a radio frequency analysis of the Trinidad Head site, and information on Federal permit requirements. This facility is subject to Federal environmental and historic preservation laws (webpage attached), but those procedures can not be completed until the applicant has a lease for the facility. The scaled down project currently being proposed is much simpler than the previous project, not only in terms of the physical aspects, but also for the permit processing. Some of the concerns discussed at previous hearings are not applicable to this project, and the regulations governing this version of the project are much clearer.

Referrals for the previous project were sent to the City Engineer, Building Official and Coastal Commission. The Engineer did not have any specific comments on the project at this level of review, but noted that he could respond to any specific concerns. The Building Official noted that a building permit would be required for the equipment shelter, but would not be required in this case if they total less than 100 sq. ft. The Coastal Commission submitted a letter commenting on the previous version of this project, some of which still apply, and my memo in response addresses those concerns. Coastal Commission staff have concerns about cumulative impacts on aesthetics and coastal resources as well as past interpretations of the City's Local Coastal Plan (LCP). They acknowledge that some of the zoning ordinance provisions are open to interpretation, so that even the previous proposal could be allowable, but they urge the City to prepare an overall management plan for communication facilities on the Head prior to approving any more projects. Staff agrees that a management plan for Trinidad Head is appropriate, and it can be included as part of an upcoming General Plan update.

Because of its location and topography, Trinidad Head is an ideal location for the construction of these types of facilities, and more proposals could be expected in the future. Trinidad Head is an important coastal, aesthetic, and cultural resource and has been slated for low-intensity recreation and open space by regulating agencies. The current lease agreement that the City has with Cal-North Cellular requires them to allow co-location for other communication service providers whenever feasible, but the opportunities for this are running out. Based on staff recommendation, the Planning Commission made an official recommendation to the City Council that they create a detailed development / management plan for communication facilities on the Head prior to any further development outside of the existing site.

Between the time of the original Planning Commission decision and now, at least two letters have been sent to the Bureau of Land Management (BLM), who managed the land prior to transferring it to the City of Trinidad in 1985. These letters allege that the City has been mismanaging Trinidad Head in conflict with the transfer agreement with BLM and with its own ordinances. These allegations, if true, would mean that the original redevelopment of the site in 1997 and subsequent approvals were illegal. However, none

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of these decisions were challenged or questioned in the past, and almost 10 years later, and without any substantiation, staff must presume that the existing site is legal, and process the permit application under that assumption. This puts the Planning Commission in a difficult position. The City Council and the City Attorney are currently researching the validity of the allegations against the City. The Planning Commission does not have the same information as the City Council because they are not privy to the confidential correspondence and closed session discussions of the Council. However, staff sees this larger issue as something separate from the proposal before the Commission now. The City has not yet received a response from BLM, and there is no indication of when one might be forthcoming. Staff must analyze this application on its merits in terms of the City's Local Coastal Plan (General Plan and Zoning Ordinance). The City Attorney has advised staff that approving this application would not place the City in a worse position than it is now if the existing site were to be determined to be illegal. The applicants should be aware of the situation and will have to proceed at their own risk if this project is approved. In order to address the concerns over this potential conflict and to minimize the risk to both the City and the applicant, a condition of approval has been proposed that the applicant must hold off construction until the City receives either a consistency determination for the existing communication site, or an indication that such a determination is outside of their jurisdiction or otherwise will not be made.

Background

Trinidad Head was transferred to the City in 1983 from the Bureau of Land Management (BLM). That transfer included several commitments by the City. One was *"to develop and manage the lands for recreational purposes in accordance with the approved program of utilization that includes (1) a plan of development, and (2) a plan of management."* The City's development plan, according the BLM staff report *"proposes non-intensive recreational use of the Head, including hiking, viewing, picnicking, and associated day-use activities."* The entire consistency analysis for the transfer was based on this management plan. The documents also include a provision that *"the property would revert to the U.S. Government if the City did not use the property for its approved and intended use, tried to transfer title to another party..."*; this includes any subdivision. There is a provision in the City's management plan that was submitted to the BLM that states: *"The City will continue to coordinate with the Cable T.V. company and any future, similar-type users that provide a public service, and where use does not conflict with the primary purposes of open space and public recreation."* This, along with General Plan policies and Open Space zoning regulations, gives the Planning Commission some standards and basis for approval of this project, and should a part of the findings used to make a decision on this project.

Based on file information, it appears that the existing communication site was developed as a cable television site prior to the annexation of the Head in 1983; the weather station was also partially developed at that time. I am lacking information on what occurred between the time of annexation and the 1997 Cal North Cellular pole approval. The staff report for the 1997 project describes an existing pole and equipment building on the site at the time, presumably associated with the cable facility. Further additions to the existing site (in the form of new equipment) were approved in 2000, 2002 and 2003. Cal North

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subleases for co-located facilities on their site with Sprint and Edge Wireless. Originally, the applicant had determined that there was not enough space on the existing site to accommodate the desired project, therefore, an additional site was proposed. Since that time, and due to public and City concerns, the applicant has scaled down the project and, working with the primary lease holder, has found a way to accommodate new antennas on existing poles. Associated equipment will also be located within the fencing of the existing cellular facility. The applicant has stated that U.S. Cellular's current service in the Trinidad area is inadequate, and these new antennas will help alleviate those shortcomings.

ZONING ORDINANCE/GENERAL PLAN CONSISTANCY:

The proposed facility falls under the City's, and Coastal Act's definition of development, but would normally fall under the permit exemptions except that it is located in an Open Space Zone, where none of the exemptions apply. Therefore it needs a Coastal Development Permit and Design Review. Because the Head is zoned Open Space, a use permit is also required, and conditional use permit findings per §17.72.040 need to be made. The purpose of the Open Space zone is to: *"maximize preservation of the natural and scenic character of these areas including protection of important wildlife habitat and cultural resources, and to ensure that the health and safety of the public is ensured through careful regulations of development in areas affected by geologic instability, steep slopes, tsunامي and flood hazards."* Principally permitted uses in the OS zone include low intensity recreation such as hiking and picnicking and removal of hazardous vegetation, but no structural development. Uses permitted with a use permit include trails and vista points, wildlife habitat management, scientific research, removal of vegetation and shoreline protection structures. Applicable to this project, conditionally permitted uses also include: *"Structures accessory to uses and buildings existing within the open space zone at the time the ordinance codified in this title is adopted."* As noted above, the communication and weather sites were established in some form prior to the annexation of the property into the City of Trinidad. Based on past project approvals, this provision has been interpreted to mean the use of the site in general by communication facilities that provide a public service. This was fairly straightforward in the four most recent approvals because they were all contained within the fenced area of the existing site. This case is exactly the same as those previous proposals as it is only proposing to place new antennas on existing poles and additional equipment cabinets within the fenced area.

Minimum lot size does not apply to this project; subdivisions are not allowed in Open Space zones. Density restrictions also do not apply to this project, and no new dwellings are allowed in an Open Space area. The maximum building height within the OS zone is 15', which the equipment cabinets will meet. The antenna is not a "building" subject to this limitation. However, zoning ordinance §17.16.060 states that all structures allowed in the OS zone must also meet the requirements of the Special Environment regulations, §17.20.060 – 17.20.130. Section 17.20.060 restricts building heights to 25 feet. As mentioned above, the pole is not a building, but the OS zone §17.16.060 refers other structures to this section, implying that it may be a height limit for any structures. Section 17.56.100 of the zoning ordinance provides further guidance on measuring height. This section reads: *"Heights of buildings and structures shall be measured vertically from the*

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average ground level of the ground covered by the building to the highest point of the roof. Chimneys, vents, flagpoles, conventional television reception antennas, ventilating and air conditioning equipment, parapet walls and similar architectural and mechanical appurtenances shall be excluded in making such measurement." The transmission antenna could be considered to fit in to the second section as a 'mechanical appurtenance' or similar to a flagpole or T.V. antenna. As far as the other applicable SE zone regulations, the project is not within the tsunami hazard area, not on an ocean bluff, not on a slope near a bluff, not in a stream protection area and not within the Tsurai Study Area. Section 17.20.120 requires that portions of a SE zoned lot not within a construction area be protected by an open space easement between the landowner and the City. In this case, the property is already protected through the open space zoning and the City owns the property, so this section is not applicable. Section 17.20.130 outlines requirements for development on lands designated as unstable or of questionable stability; which this project is not.

Zoning Ordinance §17.16.080 protects cultural resources and applies to Open Space areas within the Tsurai Study Area. Although this project is not within the specified area, another cultural protection provision applies. The transfer of the Trinidad Head property included a condition regarding survey and protection of archeological resources. However, this project will not involve any new ground disturbance and therefore does not have the potential to impact unknown archeological resources.

The General Plan Policy 17 (p. 15) encourages minimizing development on Trinidad Head in order to protect rare plants and animals that exist there. Trinidad Head has been identified in General Plan background documents as being habitat for the Western Lily (*Lilium occidentalis*), and possibly other rare plants as well. However, since this project will not involve any new ground disturbance, this concern is not an issue. Policy 66 (p. 39) states that: *"Trinidad Head will be kept in its natural state with hiking trails and vista points."* This project is not fully consistent with this policy, but neither are any of the Federal facilities. The Cox Cable site was already in existence when this policy was adopted. Based on the City's management plan for the Head, which includes the provision that: *"The City will continue to coordinate with the Cable T.V. company and any future, similar-type users that provide a public service, and where use does not conflict with the primary purposes of open space and public recreation;"* and considering other development on the Head, this project can be approved.

Finding: The proposed use provides a public service and meets a public need. The proposed use does not conflict with the primary purposes of open space and public recreational use of the Head. The project is consistent with the City's Local Coastal Program, including the Zoning Ordinance and General Plan.

SLOPE STABILITY

The property where the proposed project is located is outside of any areas designated as unstable or questionable stability based on Plate 3 of the Trinidad General Plan. Standard

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erosion control and drainage best management practices will be required during construction.

SEWAGE DISPOSAL

There is no sewage disposal associated with this project.

USE PERMIT FINDINGS:

Section 17.72.040 requires written findings to be adopted in approval of a use permit. The following findings can be made based on the responses provided:

- A. The proposed use at the site and intensity contemplated and the proposed location will provide a development that is necessary or desirable for and compatible with the neighborhood or the community. *Response: Trinidad Head is undeveloped except for the Coast Guard facilities, a weather monitoring station, the existing communications site and public trails, benches and vista points. The proposed project is within the fenced area that is already developed and will provide a public service. It will not be any more visible than existing improvements and will not interfere with public recreational uses.*
- B. Such use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity or injurious to property improvements or potential development in the vicinity with respect to aspects including but not limited to the following:
 - 1. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures; *Response: The proposed project will not alter the size or shape of the existing site.*
 - 2. The accessibility of the traffic pattern for persons and vehicles, and the type and volume of such traffic, and the adequacy of proposed off-street parking and loading; *Response: Vehicular access on the Head is restricted for the general public and the site already has ample access and parking. The new antennas and new provider will require four inspections per year once the construction is complete. The only additional traffic would be in case of a system failure, which would add approximately two additional vehicle trips per year.*
 - 3. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor; *Response: The proposed improvements, as conditioned, will not result in any offensive emissions, including noise, glare, dust and odor. Some dust may result from construction activities, but this will only be temporary. The mechanical equipment will be required to be contained within the proposed building, which will be designed to minimize any noise impacts. The applicant is responsible for assuring that equipment noise not leave the site and increase existing ambient noise levels.*

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4. Treatment given, as appropriate, to such aspects as landscaping, screening, open space, parking and loading areas, service areas, lighting and signs; *Response: The applicant has stated that the site will not require landscaping or screening because it is already existing. If the Commission finds that landscaping is necessary, it should be of native species that are normally found on the Head. Traffic is addressed above. The project does not include any lighting or signs.*
- C. That such use or feature as proposed will comply with the applicable provisions of this title, will be consistent with the policies and programs of the general plan and will assist in carrying out and be in conformity with the Trinidad coastal program. *Response: As described above in "Zoning Ordinance/General Plan Consistency," the proposed project can be found to be consistent with both the Zoning Ordinance, General Plan and the City's management plan for the Head, and will carry out policies, consistent with the Trinidad Coastal Program.*
- D. That the proposed use or feature will have no significant adverse environmental impact or there are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available which would substantially lessen any significant adverse impact that the actions allowed by the conditional use permit may have on the environment. *Response: The proposed improvements will be within a small area. Conditions of approval have been included in order to minimize potential impacts. The project is exempt from CEQA per §15301, exempting minor alterations of and additions to existing facilities.*
- E. When the subject property is located between the sea and the first public road paralleling the sea or within three hundred feet of the inland extent of any beach or of the mean high tide line where there is no beach, whichever is the greater, that:
1. The development provides adequate physical access or public or private commercial use and does not interfere with such uses; *Response: The project will utilized existing access roads and will not impact public access to the shore or to the existing trail system.*
 2. The development adequately protects public views from any public road or from a recreational area to, and along, the coast; *Response: The new antennas will not be substantially more visible than other existing improvements and will not interfere with public views. Although the entire Head is open for public access other than the Federal facilities, the site is not adjacent to an officially designated public road or trail.*
 3. The development is compatible with the established physical scale of the area; *Response: The project will be located within the existing, fenced communication site.*

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4. The development does not significantly alter existing natural landform;
Response: The project will not alter any landforms.
5. The development complies with shoreline erosion and geologic setback requirements. *Response: Trinidad Head is not an area mapped as being unstable or questionably stable on Plate 3 of the General Plan. The project will not be near the edge of bluff; the proposed improvements will not contribute to instability.*

DESIGN REVIEW/VIEW PRESERVATION FINDINGS:

This project is subject to the Design Review and View Preservation criteria set by Zoning Ordinance Section 17.60. The following findings can be made based on the responses provided.

Design Criteria

- A. The alterations of natural land forms caused by cutting, filling and grading shall be minimal. Structures should be designed to fit the site rather than altering the land form to accommodate the structure. *Response: Only minor disturbance of the soil will be required to construct the proposed improvements.*
- B. Structures in, or adjacent to open space areas should be constructed of materials that reproduce natural colors and textures as closely as possible. *Response: The project is located in an open space area, but improvements will be located within the existing, fenced communication facility, screening it from view. The antennas are consistent with existing development.*
- C. Materials and colors used in construction shall be selected for compatibility both with the structural system of the building and with the appearance of the building's natural and manmade surroundings. Preset architectural styles (e.g. standard fast food restaurant designs) shall be avoided. *Response: The proposed improvements are consistent with existing development on the site.*
- D. Plant materials should be used to integrate the manmade and natural environments to screen or soften the visual impact of new development, and to provide diversity in developed areas. Attractive vegetation common to the area shall be used. *Response: The proposed project will not be readily visible from public trails and vista points any more than the existing facilities. Several large trees and shrubs are adjacent to the site and have been retained to help screen it and the existing facilities. The applicant has not proposed additional landscaping, and it can be found to be unnecessary for this project.*
- E. On-premises signs should be designed as an integral part of the structure and should complement or enhance the appearance of the surrounding area. *Response: The project does not include any on-premise signs.*

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- F. New development should include underground utility service connections. When above ground facilities are the only alternative, they should follow the least visible route, be well designed, simple and unobtrusive in appearance, have a minimum of bulk and make use of compatible colors and materials. *Response: The proposed improvements will utilize the existing electrical connection to the existing site from the pole across the access road.*
- G. Off-premise signs needed to direct visitors to commercial establishments, as allowed herein, should be well designed and be clustered at appropriate locations. Sign clusters should have a single design theme. *Response: No off-premise signs are proposed as part of this project.*
- H. When reviewing the design of commercial or residential buildings, the committee shall ensure that the scale, bulk, orientation, architectural character of the structure and related improvements are compatible with the rural, uncrowded, rustic, unsophisticated, small, casual open character of the community. In particular:
1. Residences of more than two thousand square feet in floor area and multiple family dwellings or commercial buildings of more than four thousand square feet in floor area shall be considered out of scale with the community unless they are designed and situated in such a way that their bulk is not obtrusive.
 2. Residential and commercial developments involving multiple dwelling or business units should utilize clusters of smaller structures with sufficient open space between them instead of a consolidated structure.
- Response: Only small equipment cabinets and antennas on existing poles are proposed.*

View Protection Criteria

- A. Structures visible from the beach or a public trail in an open space area should be made as visually unobtrusive as possible. *Response: The project is located within an open space area, but will be located within the existing fenced facility and, will not be readily visible from public trails and vista points as it will be screened by existing development. The applicant has proposed the improvements within the existing fenced facility in order to minimize impacts.*
- B. Structures, including fences over three feet high and signs, and landscaping of new development, shall not be allowed to significantly block views of the harbor, Little Trinidad Head, Trinidad Head or the ocean from public roads, trails, and vista points, except as provided in subdivision 3 of this subsection. *Response: The proposed improvements will not significantly block views.*
- C. The committee shall recognize that owners of vacant lots in the SR and UR zones, which are otherwise suitable for construction of a residence, are entitled to construct a residence of at least fifteen feet in height and one thousand five hundred square feet in floor area, residences of greater height as permitted in the applicable zone, or

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greater floor area shall not be allowed if such residence would significantly block views identified in subdivision 2 of this subsection. Regardless of the height or floor area of the residence, the committee, in order to avoid significant obstruction of the important views, may require, where feasible, that the residence be limited to one story; be located anywhere on the lot even if this involves the reduction or elimination of required yards or the pumping of septic tank wastewater to an uphill leach field, or the use of some other type of wastewater treatment facility; and adjust the length-width-height relationship and orientation of the structure so that it prevents the least possible view obstruction. *Response: There is no residence proposed as part of this project.*

- D. If a residence is removed or destroyed by fire or other means on a lot that is otherwise usable, the owner shall be entitled to construct a residence in the same location with an exterior profile not exceeding that of the previous residence even if such a structure would again significantly obstruct public views of important scenes, provided any other nonconforming conditions are corrected. *Response: There is no residence proposed as part of this project.*
- E. The Tsurai Village site, the Trinidad Cemetery, the Holy Trinity Church and the Memorial Lighthouse are important historic resources. Any landform alterations or structural construction within one hundred feet of the Tsurai Study Area, as defined in the Trinidad general plan, or within one hundred feet of the lots on which identified historical resources are located shall be reviewed to ensure that public views are not obstructed and that development does not crowd them and thereby reduce their distinctiveness or subject them to abuse or hazards. *Response: The proposed improvements are not within 100' of the Tsurai Village Site, Trinidad Cemetery, Holy Trinity Church or the Memorial Lighthouse.*

STAFF RECOMMENDATION:

The project is consistent with the City's Zoning Ordinance and General Plan and the necessary findings for granting approval of the project can be made. Should the Planning Commission find that the Use Permit and Design Review/View Protection Findings can be made, then staff recommends that the Planning Commission approve the project with a motion similar to the following:

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 and approve the project as submitted and as conditioned below.

Alternative Motion for Denial

If the Commission does not agree with staff's analysis, or if the public presents evidence that conflicts with the findings contained in this staff report, the Commission may choose to deny the project. If the Commission does decide to deny the project, the denial should be based on specific findings that can not be made. The Commissioners should specifically

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state the reasons for denial and which finding(s) can not be made. A motion could be similar to the following:

Based on public testimony and information included in the application, I find that Use Permit/Design Review/View Protection Finding(s) "---" can not be made because ---, and I move to deny the project.

CONDITIONS OF APPROVAL

1. The applicant is responsible for reimbursing the City for all costs associated with processing the application. *Responsibility: City Clerk prior to building permits being issued.*
2. Based on the findings that community values may change in a year's time, design review approval is for a one-year period starting at the effective date and expiring thereafter if construction has not been started, unless an extension is requested from the Planning Commission prior to that time. *Responsibility: City Clerk prior to building permits being issued.*
3. Recommended conditions of the City Building Official shall be required to be met as part of the building permit application submittal. *Responsibility: Building Official prior to building permits being issued.*
4. If any equipment installed as part of this project becomes unserviceable or unused, it must be removed at the applicant's expense. *Responsibility: City Planner or Building Inspector to enforce should conditions warrant.*
6. Erosion control measures shall be taken during and after construction to minimize soil loss and runoff. *Responsibility: Building Official to confirm during inspection(s)*
7. The applicant shall design the equipment building and any other noise generating sources so that noise levels are not above pre-project ambient noise levels as measured at the southern boundary of the existing Cal-North Cellular site. *Responsibility: City Planner to verify after site is in operation and periodically as necessary.*
8. Construction shall not occur until after the City receives verification from BLM that the existing communications site, and therefore this project, is consistent with the land transfer agreement for Trinidad Head or until after the City receives information that BLM will not make such a determination. *Responsibility: Building Official prior to building permits being issued.*

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CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Friends of Trinidad Head, c/o Stan and Kim Binnie

Mailing Address: P.O. Box 1037

City: Trinidad, CA

Zip Code: 95570

Phone: 707-677-9078

SECTION II. Decision Being Appealed

1. Name of local/port government:

Trinidad City Council

2. Brief description of development being appealed:

Expansion of cellular transmission facilities on Trinidad Head by erecting two 6 foot tall panel antennas on existing 21 tall poles, construction of a concrete slab and 15 linear feet of 6 foot tall metal equipments cabinets with cooling fans, and installation of an electric feed.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

City of Trinidad property on Trinidad Head. From bottom of Edwards Street proceed up service road to top of Trinidad Head. AP 42-121-21

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

RECEIVED

OCT 04 2006

CALIFORNIA
COASTAL COMMISSION**EXHIBIT NO. 7****APPEAL NO.**

A-1-TRN-06-042

U.S. CELLULAR CORPORATION

APPEAL, FILED OCTOBER 4,
2006 (FRIENDS OF TRINIDAD
HEAD) (1 of 35)

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-1-TRN-06-042

DATE FILED:

10/4/06

DISTRICT:

North Coast

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
- ☒ City Council/Board of Supervisors
- ☐ Planning Commission
- ☐ Other

6. Date of local government's decision: September 14, 2006

7. Local government's file number (if any): 2006-10

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

PWM Inc.
Attention: Thomas J. McMurray, Jr.
P.O. Box 1032
2039 Williams Street
Eureka, CA 95502

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Yurok Tribe, c/o Tom Gates
190 Klamath Boulevard
P.O. Box 1027
Klamath, CA 95548

(2) Tsurai Ancestral Society, c/o Axel Lindgren
P.O. Box 390
Trinidad, CA 95570

(3) Trinidad Rancheria, c/o Greg Nesty
P.O. Box 630
Trinidad, CA 95570

(4) SEE ATTACHED MAILING LIST

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly ***your reasons for this appeal***. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

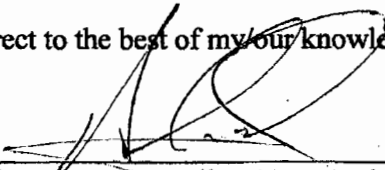
See attached document (10/04/06) prepared by Aldaron Laird, an Environmental Planning consultant stating reasons for appeal. Mr. Laird is representing the Friends of Trinidad Head in this appeal.

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



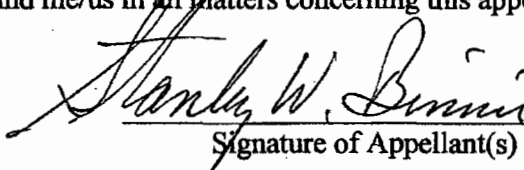
Signature of Appellant(s) or Authorized Agent

Date: 10/04/06

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize Aldaron Laird
to act as my/our representative and to bind me/us in all matters concerning this appeal.



Signature of Appellant(s)

Date: 10/04/06

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Yurok Tribe / Tom Gates
190 Klamath Boulevard
P.O. Box 1027
Klamath, CA 95548

Axel Lindgren
Tsurai Ancestral Society
P.O. Box 390
Trinidad, CA 95570

Trinidad Rancheria
Attn: Greg Nesty
P.O. Box 630
Trinidad, CA 95570

Streamline Planning Consultants
Attn: Trevor Parker
1062 G Street
Arcata, CA 95521

Cal-One Cellular L.P.
Attn: Network Real Estate
180 Washington Valley Rd.
Bedminster, NJ 07921

Verizon Wireless
180 Washington Valley Rd.
Bedminster, NJ 07921

HSU Telonicher Marine Lab
Attn: Michael Ives / NOAA
P.O. Box 690 / 570 Ewing St.
Trinidad, CA 95570

Verizon Communications
Corporate Headquarters
140 West Street
New York, NY 10007

Friends of Trinidad Head
c/o Stan and Kim Binnie
P.O. Box 1037
Trinidad, CA 95570

Thomas McMurray
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Eureka, CA 95502

Lynda Roush
Bureau of Land Management
Arcata Field Office
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Arcata, CA 95521

Jeffrey Guttero
1018 Seventh Street
Eureka, CA 95501

Kathy Bhardwaj
P.O. Box 394
Trinidad, CA 95570

Steven C. Mitchell
Geary, Shea, O'Donnell, Grattan &
Mitchell, P.C.
37 Old Courthouse Square, 4th Floor
Santa Rosa, CA 95404

Scripps Inst. of Oceanography
University of California, San Diego
La Jolla, CA 92093-0220

California Coastal Commission
Attn: Jim Baskin
710 E Street, Suite 200
Eureka, CA 95501

U.S. Coast Guard
Group Air Stn. Humboldt Bay
1001 Lycoming
McKinleyville, CA

Aldaron Laird
Environmental Planner
980 Seventh Street, Suite K
Arcata, CA 95521

Jennifer Kalt / Conserv. Chair
North Coast Chapter - CNPS
P.O. Box 1067
Arcata, CA 95518

Brad Twoomey
P.O. Box 972
Trinidad, CA 95570

City of Trinidad
Trinidad City Clerk
P.O. Box 390
Trinidad, CA 95570

Joe & Cindy Lindgren
P.O. Box 276
Trinidad, CA 95570

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Section IV. Reasons Supporting This Appeal

Introduction

On September 20, 2006 the Eureka office of the California Coastal Commission (Commission) received notice of action taken by the City of Trinidad (City) to approve a development (2006-10) between the sea and the first public road paralleling the sea. The City's decision is appealable to the Commission (Public Resource Code (PRC) Section 30603 (a)). The Friends of Trinidad Head (Friends) are an "aggrieved party" as they have testified and provided testimony to the City each time that public hearings were held on this project. They have exhausted their administrative remedies by appealing the Planning Commission's decision to approve this project to the City Council (California Code of Regulations (CCR) Section 13111(a)). The Friends are now appealing the City Council's approval of a project to expand the cellular transmission facility on Trinidad Head to the Commission.

Trinidad Head is: an important coastal resource, a state designated historical landmark (No. 146), listed in California's register of historic resources, and a sacred site to the Yurok and Tsurai peoples. In 1985, upon the City's annexation of Trinidad Head, Cox Cable Company had a limited TV transmission facility on Trinidad Head, which became a nonconforming use once the City's certified Local Coastal Program (LCP) was amended designating its portion of Trinidad Head "Open Space." The Commission has not reviewed the City's application of its LCP in relation to commercial uses they have approved on Trinidad Head. The grounds for this appeal are that the City's approval of a Conditional Use and Coastal Development permits (CUP/CDP) do not rely on, or, conform to standards set forth in the City's LCP (PRC Section 30603(b)). This appeal is also being filed because the development that was approved does not conform to the City's LCP (PRC Section 30604 (b)).

Nonconforming uses, such as the TV transmission facility cannot be: converted, expanded, or re-instated if abandoned. Starting in 1997, the City re-instated as well as converted a prior nonconforming use that had been abandoned in 1994 by Cox when the installation of a fiber optics infrastructure system made use of the TV transmission facility on Trinidad Head obsolete. The City determined that this change in use was not to a different nonconforming use. However, the City did not rely on its certified LCP to make this finding; rather it relies on a provision (Item 6) in a 1983 development plan for Trinidad Head prepared by the City as part of a process of transferring property ownership from the Bureau of Land Management (BLM) to the City.

"The City will continue to coordinate with the Cable TV company and any future, similar-type users that provide a public service, and where use does not conflict with the primary purposes of open space and public recreation."

Each time (1997, 2000, 2001/02, 2003, and 2006) the City has approved an expansion of cellular transmission facilities on Trinidad Head it justifies its finding that it is not a new nonconforming use by alleging that the Commission, in 1983, approved this use, as per the provision quoted above, via its approval of a Consistency Determination (CD) (CD-006-83) that BLM prepared as part of the property transfer from the federal government to the City. However, staff with the Commission's federal consistency division in San Francisco, state that the Commission's review and approval of BLM's consistency determination was limited to the proposed transfer of federal property (patent) and not the City's development plan for Trinidad Head. Further, according to Commission staff in the Eureka office, the 1983 development/management plan as well as

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provision 6 quoted above, are not part of the City's certified LCP. Therefore, the City relied on an un-certified plan, as per BLM's failure to secure the required federal consistency review, rather than on its certified LCP, to determine whether this use is nonconforming. This is clearly not consistent with the California Coastal Act (Act), or with the City's certified LCP.

Since 1997, each time the City has approved an expansion of the nonconforming use on Trinidad Head, including this recent approval, it has failed to comply with the California Environmental Quality Act (CEQA). The City illegally used a Categorical Exemption (CE) when there are clearly exceptions to its use that apply (PRC Sections 21084 (b), 21084.1 and CCR 15300.2). The City's recent approval, which is the subject of this appeal, again, expands this use in an area of critical concern and adds to several existing adverse impacts (coastal resources, noise, recreational use, and aesthetics) associated with this facility on Trinidad Head. If an environmental analysis had been conducted, it would have been evident that several thresholds of significance had been exceeded long ago, and the City should not have approved this project or allowed any previous installations.

This appeal also provides the Commission with an opportunity to evaluate a significant violation of the Act that has affected the public's use of Trinidad Head. Since 1983, BLM has conducted four compliance examinations of the City's use of Trinidad Head (the property it received via a federal patent) to determine if the City is adhering to the approved development/management plan consistent with its patent. BLM's most recent determination was released on July 3, 2006. Since 1983, BLM has repeatedly found that the City's approval of commercial uses and their expansion on Trinidad Head does not conflict with the purposes for which the patent was issued. However, pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), BLM is required to comply with the Act's consistency provisions when their proposed action can affect uses and natural resources in the Coastal Zone. According to the Commission's federal consistency staff, BLM's compliance determinations can affect the coastal zone and they are required to submit a CD, or a Negative Declaration (ND) of impact to coastal resources to the Commission for review and approval. BLM has never submitted a CD or ND for its compliance determinations to the Commission's federal consistency staff. As the City relied heavily on BLM's determinations (09/14/06 City Council Appeal Hearing DVD) for its approval of cellular transmission facilities on Trinidad Head, BLM's determinations have facilitated the negative effects of the City's approval of nonconforming uses on Trinidad Head. Hence, the City's reliance on BLM determinations to justify its approvals and not rely on its LCP is a clear violation of the Act.

Lastly, the Commission has an opportunity with this appeal to determine if the City made a specific finding that this development conforms with the public recreation policies of Chapter 3 of the Act (PRC Section 30604 (c)).

The specific grounds for this appeal are the City's approval of CUP and CDP, as well as the proposed development project do not rely on, or conform to Trinidad's certified LCP and are not consistent with the Act.

The City's certified LCP is composed of the City's Zoning Ordinance, which is subordinate to and must be consistent with the policies, programs, and land-use designations of the Trinidad General Plan (Ch. 17.04 Section 040, Ord. 166 Section 1.04, 1979). This appeal will, therefore, first discuss the applicable LCP policies to which the City's approval of the proposed project fail to conform and, second, the zoning regulations relevant to this appeal.

General Plan Policies

Chapter III Development Options and Preferences

Policy 66 "The portion of Trinidad Head not needed by the Coast Guard should be transferred to the City of Trinidad. The area should be kept in its natural state with hiking trails and vista points. (Certified LCP)" ~~"The portion of Trinidad Head not needed by the Coast Guard should be transferred to the City of Trinidad. The area should [Trinidad Head will] be kept in its natural state with hiking trails and vista points."~~ (Amended Ordinance 166 12/12/1984)

There is no mention in this policy of utilizing Trinidad Head for commercial communication transmission facilities, let alone allowing for the expansion of such facilities that may have existed at the time this policy or of this Ordinance was adopted.

This policy is explicit: "Trinidad Head will be kept in its natural state..." In-fact in the Ordinance adopted by the City in 1984 to amend this policy it specifically states that the word "should" was replaced with the word "will" regarding keeping the area in its natural state with trails and vista points. Therefore, all future land use decisions by the City, which may affect Trinidad Head, had a clear guidance policy. Approval of proposed development that does not maintain the natural state of Trinidad Head is clearly in violation of this policy. Since 1985, the City has repeatedly failed (the most recent failure being the subject of this appeal) to comply with this policy in approving requests to expand the non-conforming use and structures on Trinidad Head. The City's incremental approvals over time, culminating with the approvals under appeal have failed to maintain the natural state of Trinidad Head at the time this policy was adopted or in 1985 when this policy was amended by ordinance.

Appendix A, Land Use Categories and Zoning Conformance

Land Use Categories, Open Space "Special site investigations should precede any environmental disturbance in order to minimize adverse impacts."

The City decided not to conduct or require any site investigations before approving the proposed project. The City in fact determined that they would forgo any environmental investigations by utilizing a CE pursuant to the CEQA, even after receiving written and oral testimony that there were several exceptions to the use of a CE that applied in this case and advise given to the City that it is required to prepare an environmental review under CEQA (A. Laird Sept. 14, 2006). The appellant's consultant (Laird) repeatedly requested that the City return the project to the Planning Commission for proper environmental impact studies before making a decision. The City rejected these requests. The cumulative effect of the project will cause adverse impacts to the public from increases in noise levels and degraded scenic views. Such impacts compromise the ability of the public to fully enjoy the coastal, historical, and cultural setting of Trinidad Head.

Chapter II Existing Land Use

Policy 21 "Where uses are incompatible they are not recognized in the Land Use Map and it is intended that they be treated as non-conforming uses and not be given zoning preference."

The City has created a de-facto Commercial Zone in the Open Space Zone on Trinidad Head. The City has perpetuated and expanded the non-conforming cellular communications facilities at

the proposed project site. The creation of this de-facto Commercial Zone conflicts in several ways with the primary use of the site for passive recreation, i.e. vehicular traffic on recreational pathways, obstructed and degraded vistas, and increases in noise levels from additional cooling fans, which ruin the serenity and tranquility of Trinidad Head. In its most recent approval, the City claims that by virtue of issuing a CUP, it has now rendered this non-conforming use a conforming in the Open Space Zone. This is an amazing feat given that the Open Space district still does not list commercial use as an allowable use. However, the City saying it is so, does not make it so, according to its LCP.

Policy 20 "Some existing uses are not placed in an appropriate land use category because of their isolated location and the undesirability of providing for expansion of similar uses in the immediate area."

It is clear from this policy that the LCP finds the expansion of land uses that do not conform to land use designation to be undesirable. Yet since 1997, the City has allowed commercial cellular facilities on Trinidad Head to expand four times, the most recent being the decision that is the subject of this appeal.

Appendix B, Community Design Considerations

1. *"Structures in, or adjacent to, open space areas should be constructed of materials that reproduce natural colors and textures as closely as possible."*
2. *"Where possible, structures on sites visible from the beach should be set back as far as possible to make the structure as visually unobtrusive as possible."*
3. *"Except for necessary public safety facilities, structures should blend with the natural visual form of the area and not unnecessarily extend above the natural silhouette or the silhouette of existing structures in the area."*

1) Neither the existing structures nor the proposed expansion of the cellular transmission facilities are constructed or proposed to be constructed from materials that reproduce natural colors or textures.

2) The existing structures and the proposed expansion of the cellular transmission facilities are visible from the beach and are visually obtrusive from the beach, bay, ocean, and city. Complying with this consideration is impossible as the project is anchored to the location of a former nonconforming use and structure from 1985. Clearly the proposed project cannot comply with this consideration.

3) In 1981, Trinidad could not get TV service without putting a receiver dish on Trinidad Head. Use of this site for TV transmission ceased in 1994. The cellular transmission structures and their proposed expansion are not necessary public safety facilities; land-line telephone service is presently available throughout the area, as is cellular phone service from 4 service providers—Verizon, Edge, Sprint and U.S. Cellular. The project applicant testified that the expansion of facilities is intended to increase the strength of their signal to allow for the expansion of cellular coverage for in-building usage, as an alternative service to land-line phone service. However, U.S. Cellular has adequate cell phone service from its nearby facility on Walker Mountain, as many customers who live or work in the area have testified.

The existing structures do not blend with the natural visual form of Trinidad Head. Many of these structures extend significantly above the natural silhouette of Trinidad Head. In 1985, the

height of the single TV transmission pole was 21 feet. Today two cell towers are 41 feet high and one whip antenna reaches 51 feet in height.

Zoning Ordinance Regulations

This appeal will first address the “controlling” regulations set forth in Sections 17.56 through 17.64 that are applicable to City’s decision to approve the proposed project and then address the remaining regulations with which the city has not complied.

Chapter 17.56 Specific Use Regulations

Section 010 Applicability “The following specific regulations are intended to provide for the location and control of certain special and accessory uses and to provide supplementary regulations pertaining to yards, buildings, parking and nonconforming uses which apply to several zones or uses. The following regulations shall apply in all zones. Where the provisions of this chapter conflict with the provisions of any zone, the provisions of this chapter shall apply.” (Ord. 166 Section 6.01, 1979.)

Section 020 Accessory Uses “Accessory uses, as defined herein, shall be permitted as appurtenant to any permitted use, without the necessity of securing a use permit, unless particularly provided in this chapter....” (Ord. 166 Section 6.02, 1979)

In 1985, the City annexed the project area and placed the area in the Open Space Zone. In 1985, the following structures were present at the project site: one or two 21 foot high towers (9 inches diameter wooden pole), one 12 foot TV broadcast (microwave) dish, an 8 foot by 10 foot wooden building that stood 7 feet tall, with electric service at the site, and an 8 foot by 8 foot concrete pad (see Table 1). Section 17.16.030 (E) of the Open Space Zone Chapter describes structures accessory to uses and buildings as those that were existing at the time the ordinance was adopted (Ord. 166 Section 4.02 (B), 1979). In order for any future structures at this site to be legal they must be accessory to the use and structures that existed at the time of annexation in 1985. In 1994, this site ceased to be used for TV broadcasting use. The City claims that the proposed project is for an accessory use. The proposed project, a cellular transmission use cannot be accessory to a different use which no longer exists. Even if the cellular transmission facility was considered a legal nonconforming use then the proposed project certainly cannot be an accessory as it is for the same use.

Since 1997, and most recently in the decision that is being appealed herein, the City relied on the issuance of a use permit to legitimize its approval and expansion of the cellular transmission facilities on Trinidad Head. However, as per this section, the City’s issuance of a use permit cannot be for an accessory use because such use does not require a use permit.

Section 090 Accessory Structures ... “Accessory structures shall not be more than fifteen feet in height in the SR and UR zones and shall comply with the maximum building height limitation in other zones. (Ord. 166 Section 6.09, 1979) ...

The proposed project includes installing two panel antennas 71 inches long by 11 inches wide on top of two 21 foot tall poles, and extending 2 feet higher. In the Open Space Zone, the maximum building height is 15 feet or less if necessary to accomplish the purposes of Sections 17.16.060 and 17.16.080 (Ord. 166 Section 4.02(C)(4), 1979) . Section 17.16.080 states that structures proposed within the Open Space Zone shall also satisfy the applicable requirements in Sections

17.20.060 through 17.20.130 (Ord. 166 Section 4.02(C)(3), 1979). In an attempt to protect the scenic attributes of coastal bluffs, Section 17.20.080 states that no structure shall be placed on a bluff, except that the following structures may be placed on the bluff face and alterations made there to subject to obtaining a use permit: stairways, fences, and shoreline protection structures. Despite the 15 foot maximum height limitation, the City approved the placement of structures at the proposed project site that are higher than 15 feet. Further, the City approved the placement of structures on Trinidad Head that are not permitted on an ocean bluff as per Section 17.20.080.

Section 100 Height limitations and modifications. Heights of buildings and structures shall be measured vertically from the average ground level of the ground covered by the building to the highest point of the roof. Chimneys, vents, flagpoles, conventional television reception antennas, ventilating and air conditioning equipment, parapet walls and similar architectural and mechanical appurtenances shall be excluded in making such measurement. (Ord. 166 §6.10, 1979)...

The City has relied on this section to claim that the project does not exceed any height limitations because it is in the class of excluded type structures. On the contrary, what is different about the excluded type of structures and this project is that excluded structures are all accessory to the primary structure on a lot whereas the project's structures, 21 foot poles and antennas are the primary structures. The City incorrectly cites this section to find that the project does not exceed the City's height limitation standards.

Chapter 17.60 Design Review and View Preservation

Section 050 View Protection Criteria "The design assistance committee shall be guided by the following criteria when evaluating the impact of new development on public and private vistas of important scenic attractions:

A. Structures visible from the beach or a public trail in an open space area should be made as visually unobtrusive as possible.

B. Structures, including fences over three feet high and signs, and landscaping of new development, shall not be allowed to significantly block views of the harbor, Little Trinidad Head, Trinidad Head or the ocean from public roads, trails, and vista points"...

The existing and proposed structures are visually very obtrusive when viewing Trinidad Head; the profile of the Head has, and will be, particularly degraded by existing and proposed structures because they are being allowed to be placed in excess of the 15 foot maximum height limit applicable in the Open Space zone. Depending on where from Trinidad Head the public attempts to view of the bay and coastline the existing and proposed structures also block and degrades ones view of the bay, ocean, and coastline (see Figure 1).

Structures present in 1985	
Structure	Quantity
21' tall wooden pole- 9" diameter	2
12' tall dish antenna	1
8' x 10' x 7' tall wooden building	1
8' x 8' concrete slab	1
Electric services feed	1
TOTAL ¹ minus fans	6
Structures present in 2006	
Structure	Quantity
21' tall wooden pole- 9" diameter	2
41' tall metal poles-15" diameter	2
8' x 10' x 7' tall wooden building	1
8' x 3' x 9' tall building	1
3' x 8' x 6' building	1
4' x 4' x 4' building	1
4.5' x 2' x 6' tall building	1
6' dish antenna	1
2' dish antenna	1
46-60" x 12" panel antenna	8
10' whip antenna	3
Multiple cooling fans	?
"genset" motor and generator	1
concrete pad	5
horizontal metal pole bracing	4
30' x 2' metal scaffolding	1
10' tall metal poles	7
electric service feeds	3
139' of 6' tall cyclone fence with 2 gates and 6 signs	1
TOTAL ¹ minus fans/genset	40
Structures proposed	
Structure	Quantity
72" x 11" panel antenna	2
15' x 3' x 6' tall building	1
Multiple cooling fans	?
concrete slab	1
Electric services feed	1
TOTAL ¹ minus fans	5

Table 1. Commercial use structures located on Trinidad Head

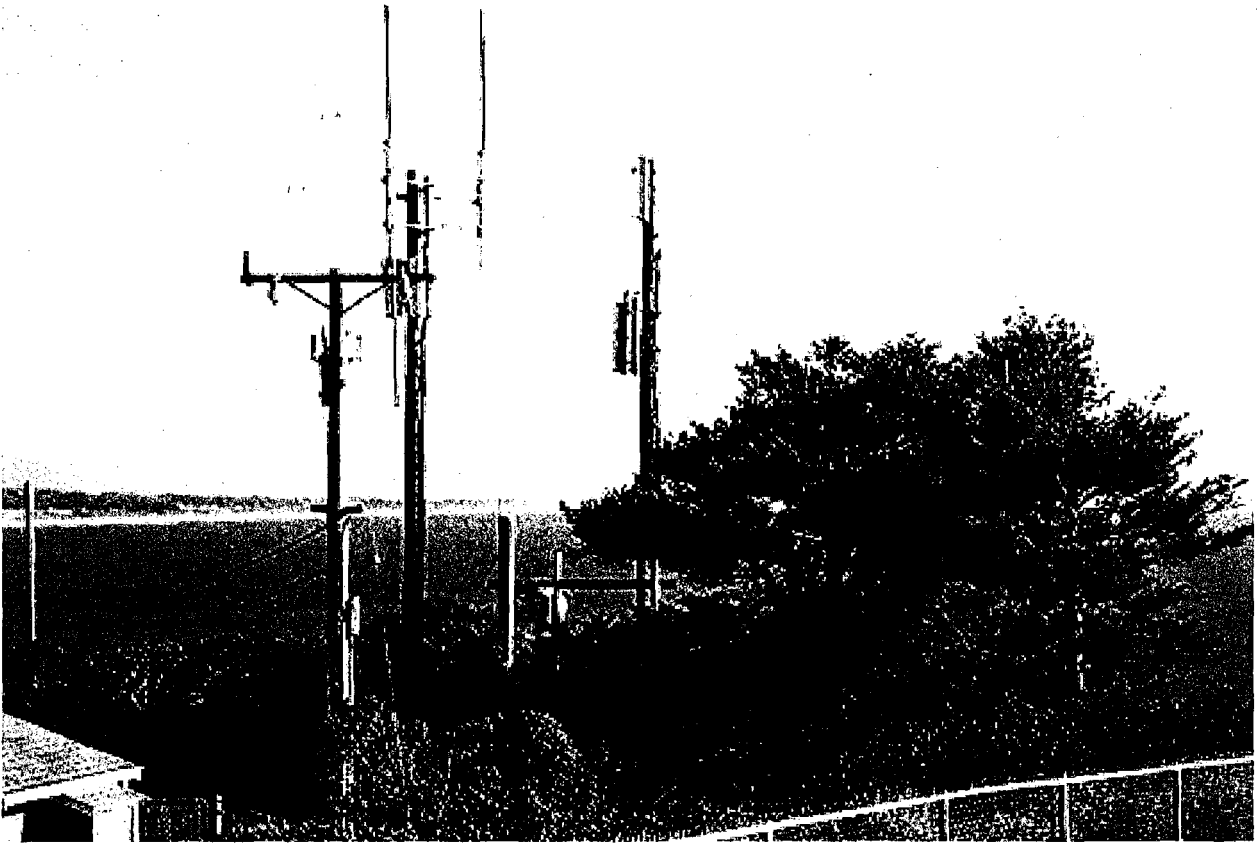


Figure 1. Degraded vista of the coastline from Trinidad Head.

Chapter 17.64 Nonconforming Uses and Structures

Section 010 Nonconforming Uses and Structures "The lawful use of lands or structures existing on the effective date of the regulations codified in this title, although such use or structure does not conform to the regulations applied to such property or structure, may be continued, except as provided as follows:" ...

A. Any structure conforming as to use but not conforming as to lot area, yards, height or other requirements herein at the effective date of the ordinance codified in this title may be altered, repaired or extended provided that such alteration, repair, or extension shall not increase the existing degree of nonconformance.

C. Any change of a nonconforming use shall be to a conforming use, and a nonconforming use which has been discontinued for a period of one year or more shall not be re-established. A nonconforming use of a part of a lot or a structure shall not be extended throughout the lot or structure.

D. Any use for which a use permit is required by these regulations shall be considered a nonconforming use until a use permit is obtained."

A. In 1985, when the City applied the open Space designation to the property on Trinidad Head, there were one or two 21 foot high pole(s) and one 12 foot TV broadcast dish at the site of the proposed project. This TV transmission facility became a nonconforming use in the Open

Space Zone upon annexation. The transmission facility's structures were also nonconforming because they exceed the maximum height limit, were visually obtrusive, and extended above the natural silhouette of the area. Each approval to expand the nonconforming use, including this recent decision has increased the degree of nonconformity (see Table 1).

C. On July 1, 1994, Cox Cable Company stopped meeting the terms of its lease when it ceased making annual payments to the City for use of Trinidad Head. In 1997, the City changed the use of the site from the former TV transmission facility to a cellular transmission facility, another nonconforming use when it issued Cal North CUP and CDP. As a consequence of issuing these permits the City failed to conform to this policy because it re-installed a nonconforming use that had been discontinued for more than a year. In 1997, the City also failed to conform to this policy because it did not change the use of this site to an allowable use. The City with its most recent decision again approved a change in use, when compared to the original nonconforming use of 1985, to a use that is nonconforming in the Open Space zone.

D. Lastly, the City in its recent decision, relied upon the issuance of a use permit to render a nonconforming use conforming which not withstanding section 17.064.010 (D) directly conflicts with the City's general plan as per:

Policy 20 which states that it is undesirable to provide for the expansion of a nonconforming use, Policy 21 states that the General Plan intends that uses that are incompatible be treated as non-conforming uses,

Policy 66 states that the portion of Trinidad Head the City acquired in 1985 be kept in its natural state.

In the matter of conformity with the General Plan, Section 17.04.040 of the Zoning Ordinance states that the Ordinance and any amendment to it shall be consistent with the policies and land use designations of the Trinidad General Plan. The use in this situation is nonconforming because it is not allowed in the Open Space Zone, not because a permit has not been issued. Conditionally permitted uses that occur without first securing a use permit are nonconforming until they do receive a use permit. A permit cannot be used to make a de facto amendment to the LCP and legitimize a nonconforming use.

The following are the remaining Zoning regulations that are applicable to City's recent decision to approve the proposed project which is the subject of this appeal.

Chapter 17.08 Definitions

Section 200 Development ... "placement or erection of any solid material" ... "or extraction of any materials" ... "construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility" ...

The proposed project is a development as defined here and is subject to the City's LCP.

Section 500 Nonconforming ... "means a structure and/or land use which was lawfully established but which does not now conform with the land use, yard, height, or other requirements and conditions of this chapter."

It is not known if prior to 1985 the original TV broadcast transmission facility complied with federal law, so we cannot ascertain in 1985 upon annexation whether the nonconforming use was lawful. The Friends have challenged the lawfulness of the current nonconforming use, as the

original use ceased in 1994, and the current nonconforming use was approved by the City in 1997. The fact is that the existing cellular transmission facilities are nonconforming uses in the Open Space Zone, and the cellular facilities structures are nonconforming structures at a minimum as to height and visibility.

Section 680 Structure ... "means anything constructed, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground."

The existing cellular transmission facilities and proposed facilities are structures, as they have foundations that fix them permanently as per their excavated footings for poles, concrete pads for equipment buildings, and fencing.

Section 710 Accessory Use ... "means a subordinate use which is customarily incidental to the primary use of the premises, and which does not alter or change the character of the premises."

The existing cellular transmission use of Trinidad Head is not subordinate to any allowable Open Space uses. In fact the cellular transmission use is the primary use at the project site but it is still a nonconforming use in the Open Space Zone. The existing and proposed cellular transmission facility use does adversely alter and change, in fact degrade the character of Trinidad Head.

Chapter 17.12 Establishment and Designation of Zones

Section 010 Use Restrictions... "No building or part thereof or other structure shall be erected, altered, added to or enlarged, nor shall any land, water, building, structure or premises be used, designated or intended to be used for any purpose or in any manner other than is included among the uses hereinafter listed as permitted in the zone in which such land, water, building or premises is located."

In 1985, when this site was annexed it was being used for a nonconforming use, a TV broadcast transmission facility. In 1997, the City re-instated another nonconforming use, a cellular transmission facility. The City's Open Space district does not permit cellular transmission use or structures. Since 1997, up to the recent approval which is the subject of this appeal, the City has illegally permitted the erection, alteration, addition to, and enlargement of cellular transmission structures on Trinidad Head in the Open Space Zone.

Chapter 17.16 Open Space Zone

Section 010 Established Purpose... "The open space zone is intended to be applied to areas designated open space in the Trinidad general plan. The purpose of this zone is to maximize preservation of the natural and scenic character of these areas including protection of important wildlife habitat and cultural resources" ... "The following regulations in this chapter shall apply in all open space zones. (Ord. 166 Section 4.02 (part), 1979)."

The City's approval of the proposed project, which expands the number and density of cellular transmission structures, is in direct conflict with maximizing the preservation and protection of the natural and scenic character of Trinidad Head, wildlife habitat, and cultural resources.

Section 020 Principal Permitted Uses "Principal permitted uses in the OS zone are:

- A. Public and private open space, wildlife habitat;
- B. Low-intensity recreation on publicly controlled lands" ...
- C. Pedestrian travel" ...

D. *Removal of vegetation posing an imminent hazard to structures or people if approved by City engineer;*

E. *Picnicking on public lands designated for such use. (Ord. 166 Section 4.02 (A), 1979)"*

The City's approval of the proposed project, a cellular transmission facility, is for a use that is not principally permitted in the Open Space Zone..

Section 030 Uses Permitted with a Use Permit "Uses permitted in the OS zone with a use permit are:

A. *Pedestrian trails, vista points, including improvements to existing facilities;*

E. *Structures accessory to uses and buildings existing within the open space zone at the time the ordinance codified in this title is adopted;"*

Section 030 (A) limits the issuance of a use permit for improvements to the existing pedestrian trail or vista point facilities, not cellular transmission uses. Section 030 (E) allows the issuance of a use permit for structures accessory to uses and buildings existing within the Open Space Zone **at the time** the ordinance codified in this title is adopted (Ord. 166 Section 4.02 (B), 1979). In 1985, the City annexed the project area and placed the area in the Open Space Zone. In 1985, there was one or two 21 foot high towers; one 12 foot TV broadcast dish, and a wooden building at the site of the proposed project. The proposed project is neither a supplementary nor subsidiary (accessory) use to TV broadcasting as such use ceased in 1994, therefore the proposed project cannot be accessory to a use which no longer exists. Since 1997, in approving cellular transmission facilities on Trinidad Head, including its most recent approval, the city claims that its approvals are for an accessory use, but fails to identify the primary use. In fact the proposed use has replaced the former nonconforming use which had ceased at this site and is the new primary use.

Chapter 17.72 Variances, Conditional Use Permits and Design Review

Section 040 Conditional Use Permit Findings "A conditional use permit may be granted for any use listed as a conditional use in the applicable zone if the facts establish and written findings are adopted showing:

A. *That the proposed use at the size and intensity contemplated, and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community;*

C. *That such use or feature as proposed will comply with the applicable provisions of this title, will be consistent with the policies and programs of the general plan and will assist in carrying out and be in conformity with the Trinidad coastal program;*

D. *That the proposed use or feature will have no significant adverse environmental impact or there are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available which would substantially lessen any significant adverse impact that the actions allowed by the conditional use permit may have on the environment ;*

E. *When the subject property is located between the sea and the first public road paralleling the sea or within three hundred feet of the inland extent of any beach or of the mean high tide line where there is no beach, whichever is the greater, that:*

2. *The development adequately protects public views from any public road or from a recreational area to, and along, the coast."*

The City, in its recent decision was limited to issuing a CUP only for uses listed as conditional in the Open Space Zone. Commercial uses such as the cellular transmission facilities are not listed as a conditional use in the Open Space Zone. The City claims that the proposed project only involves the construction and installation of accessory structures. Chapter 17.72 Section 070 defines an accessory structure or building as being "detached" and a "subordinate building or structure, the use of which is incidental to that of a main building or use on that lot." There is no "main" building or structure to which the cellular transmission facilities are accessory; this facility and its structures are the main use of this site, and they are nonconforming as per uses allowed in the Open Space zone. Section 17.16.030 (E)) of the Open Space Zone allows a CUP to be granted for structures accessory to uses and buildings existing within the open space zone at the time the ordinance codified in this title is adopted. In 1985, there was one or two 21 foot high towers (9 inches diameter wooden pole), one 12 foot TV broadcast (microwave) dish, and an 8 foot by 10 foot wooden building that stood 7 feet tall, with electric service at the site of the proposed project. The proposed project [two panel antennas 71 inches long by 11 inches wide to be placed at the top of 21-foot tall poles, metal equipment building 15 feet wide by 3 feet deep and 6 feet tall with cooling fans on a new concrete slab, with cabling and scaffolding wire carriers] is neither supplementary nor subsidiary (accessory) to commercial TV broadcasting which ceased in 1994. Therefore, the proposed project cannot be accessory to a use which no longer exists. The existing and proposed structures are not accessory to anything. In fact, they now constitute the main buildings and structures at this site of which the main use is providing cellular transmission. The CUP was issued for a use that is not allowed in the Open Space Zone even under the guise of an accessory structure to a lawful nonconforming use, which it is not.

A. The proposed use and present intensity of use, combined with the existing and proposed developments located on Trinidad Head, are not desirable because it/they do not conform to land uses allowed in the Open Space district (General Plan Policy 20). Because of the noise generated by cooling fans in the existing and proposed equipment buildings as well as from a back-up generator, and visual blight created by the towers with multiple antennas, the existing and proposed uses are not compatible with the community. In particular, the proposed use is not compatible with use of the area by members of the Yurok Tribe, particularly the Tsurai who revere Trinidad Head as the first place the creator gave rise to the Yurok people who have used Trinidad Head for centuries to sustain their spiritual existence. The City's finding that its approval was in conformity with the LCP is, therefore, not supported by these facts which were presented to the City during the public hearings on the proposed project.

C. The proposed use and development that the City approved are not consistent with the following LCP elements: General Plan Policies 20, 21, and 66, Appendix A Open Space District, Appendix B Design Considerations and Zoning Ordinance regulations 17.56.020, 17.60.050, 17.64.010, 17.12.010, 17.12.020, 17.12.030, 17.72.040, and 17.72.070. Please refer to previous discussions of the City's approval of the Conditional Use Permit that are not consistent with each of these policies and regulations contained in this appeal. Because the proposed use and development fails to conform to so many General Plan Policies and Zoning Ordinance regulations, the Commission should find that the City's actions are not in conformity with Trinidad's Coastal Program.

D. As stated earlier in this appeal, the City has failed to: conduct any environmental analysis of previous projects or the proposed project. In spite of this, the City determined that project related cumulative impacts had not reached a significant level. The City cannot make this

determination without first conducting the necessary environmental impact studies pursuant to CEQA. The City made determinations that these projects were exempt as per CCR Section 15301 "Class 1-Existing Facilities." The State Legislature charged California's Resources Agency with identifying classes of activities that were not likely to cause significant adverse physical changes to the environment and would be CE from further environmental review under CEQA (PRC Section 21080 (b)(9), and Section 21084 (a)). However, it is important to note that the Legislature recognized that these classes of environmentally benign activities could result in significant environmental damage when such projects are located in areas of critical concern or result in cumulative effects. That is why there are exceptions to the use of a CE (PRC Section 21084(b), Section 21084.1, and CCR Section 15300.2). Areas of critical concern can be scenic coastal resources, historical resources (PRC Section 21084 (e)) or cultural resources.

Trinidad Head is: a renowned scenic coastal area, a state-designated historical landmark (No. 146), listed in California's register of historic resources, an important cultural resource, and a sacred site to the Yurok and Tsurai peoples. One consequence of the City approving the proposed development, the fifth (1997, 2000, 2001/02, 2003, and 2006), is that the cumulative effect of expanding the number of structures over time has exceeded a level that is acceptable to the public who desire to experience and enjoy Trinidad Head, an area with significant scenic, historical, and cultural resources. The Legislature was clear in its intent regarding using C.E. *"No project which may result in damage to scenic resources" ... "shall be exempted"* (PRC Section 21084 (b)).

The City and the Friends correctly identified that cumulative impacts from the proposed project are an issue, but the City failed to recognize these impacts as one of the Legislature's exceptions prohibiting the use of a CE. While the City focused on cumulative impacts as a consequence of whether the developed footprint is being increased, the Friends instead focused on the cumulative impacts (noise, height, and bulk) of five developments that expanded the use at this site, such as height and bulk of site Culminating with the City's recent approval, all of the developments at this site have expanded the number of structures and the intensity of use, causing significant cumulative impact to the scenic, coastal, historical, or cultural setting of Trinidad Head. This fact should have precluded the City from using a CE (CCR Section 15300.2(b)).

On June 21st the Planning Commission erred when it approved the U.S. Cellular project, because it used a form of environmental impact analysis to generate the proposed mitigation measures which were developed outside the procedures described in the CEQA. Addressing this very issue, the courts have held that *"an agency should not be permitted to evade standards governing the preparation of a mitigated negative declaration by evaluating proposed mitigation measures in connection with the significant effect exception to a categorical exemption"* (Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997) 52 Cal.App.4th 1165). In support of the Friends' appeal to the City Council, the Planning Commission's findings (06/23/06) actually rely on future actions by the City Council to reverse the significant cumulative effects it identifies as a consequence of its approval of U.S. Cellular's project. Again, the courts have held that *"An activity that may have a significant effect on the environment cannot be Categorical Exempt"* (Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal.4th 105). Also the Guidelines state that a CE shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances (Section 15300.2 (c)); in this case, the fact that the project is located on

Trinidad Head, an area of critical concern, and because the proposed use and structures are nonconforming in the City's Coastal Open Space Zone. It is undisputed that the project is located in an area of critical concern by way of Trinidad Head's multiple designations. The only question is whether the project "may impact" this environmental resource or the public's use and enjoyment of these resources. The court has held in regards to using a CE that "it is the possibility of a significant effect...which is at issue, not a determination of the actual effect, which would be the subject of a negative declaration or an EIR" (Azusa, supra).

Lastly, the City's use of a CE was illegal, because the exceptions to using a CE applied. The City failed to comply with CEQA and its LCP and conducted no environmental assessment of the proposed project's cumulative effects to scenic coastal resources, historical resources, and cultural resources residing in Trinidad Head, an area of critical concern. The City's approval based on conformity with the LCP is, therefore, not supported by these facts.

E. The Friends have provided the City with photographs, and the public testified during the public hearing held on this proposed project that the existing cellular transmission facility and the proposed developments will further degrade the public's view of the bay, Trinidad Head, and the coastline (see Figure 2). The City's finding that its approval was in conformity with the LCP is, therefore, not supported by these facts.

Section 070 Coastal development permits.

B. *Except in the area identified in the map proposed as Appendix B, areas not included in exemptions to coastal development permit, the following categories of development shall not require a coastal development permit:*

2. *"Accessory structure or building" means a detached and subordinate building or structure other than a sign, the use of which is incidental to that of a main building or use on that lot.*

The City approved a CDP for the proposed use and development. Therefore, the City must have determined that the proposed use and development were not accessory to the existing uses, buildings, and structures. The City's finding that its approval of the proposed construction and erection of accessory structures was in conformity with the LCP is contradicted by these facts.

References

California Coastal Commission. 1983. Consistency Determination No. CD-6-83 (Bureau of Land Management). May, 1, 1983.

Friends of Trinidad Head. 2006. City of Trinidad City Council Friends of Trinidad Head Appeal Hearing (DVD). September 14, 2006.

Laird, Aldaron. 2006. Testimony submitted to City of Trinidad City Council for the Friends of Trinidad Head Appeal Hearing. September 14, 2006.

Parker, Trever. 2006. Memorandum to Trinidad City Council transmitting Planning Commission Decision on US Cellular Application. June 23, 2006.

May

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

Consistency Determination
No. CD-6-83
(Bureau of Land Management)
45th Day: May 1, 1983

Federal
Agency:

BUREAU OF LAND MANAGEMENT

Development
Location:

Trinidad Head, immediately southwest of the City of
Trinidad, Humboldt County. (Exhibit 1)

Development
Description:

Transfer of 47 acres of Federal property to the City of
Trinidad for public recreation. (Exhibits 2 and 3)

SUBSTANTIVE FILE DOCUMENTS:

1. Environmental Assessment/Land Report on City of Trinidad application for acquisition of Trinidad Head, by Bureau of Land Management (BLM), December 21, 1982 (Serial No. EA #512).
2. Letter from John W. Lahr (BLM Eureka Resource Area Manager) to Richard G. Rayburn (North Coast District Director, Coastal Commission), March 16, 1983, containing BLM's consistency determination for Trinidad Head property transfer, including application by City of Trinidad to require ownership of Trinidad Head, November, 1982.
3. Land Use Plan for the Trinidad segment of the Humboldt County LCP (certified in part by the Coastal Commission in October, 1982).
4. Certified LCP for City of Trinidad.

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STAFF SUMMARY AND RECOMMENDATION

I. Staff Summary

A. Project Description. The Bureau of Land Management (BLM), an agency in the U.S. Department of Interior, proposes to transfer 47 acres of federal land at Trinidad head to the City of Trinidad (Exhibit 2). The City intends to annex the property and manage it as a recreational area for hiking and other low-intensity recreational uses. About 14 acres of Trinidad Head will remain under federal ownership for the existing U.S. Coast Guard facility. The Coast Guard maintains a light beacon, fog horn, radio antennas, and residence for staff on the southern end of the Head.

BLM's proposed transfer is pursuant to the Recreation and Public Purposes Act (43 USC § 869 et.seq.) and relevant federal regulations (43 CFR Part 2740). These regulations specify the procedure for sale or lease of land by the Secretary of Interior, and limit uses and further transfer of title by grantees. The City of Trinidad applied to BLM in November, 1982, to acquire Trinidad Head for non-intensive recreational use. The stated purpose of the City's acquisition is "to make available to the people forever, for their inspiration and enjoyment, in a condition of unimpaired ecological integrity, the majestic headland known as Trinidad head, together with all related scenic, historic, scientific, and recreational values and resources of the area."

In recommending approval of the City's application, BLM's District Manager made several findings required under the Recreation and Public Purposes Act (item V.B. in Environmental Assessment/Land Report):

- (1) The lands have been found to be suitable for recreation and public purposes.
- (2) The land is not of national significance and not essential to any Bureau of Land Management program.
- (3) The proposed use will have no known significant effect on the human and national environment.
- (4) Patenting the above described lands will serve the public interest.
- (5) The [City's] land use plan is proposed for amendment to allow for the proposed use.

The approval recommendation also includes a patent reservation and stipulations for use of the property to be transferred to the City. A right-of-way across the property will be reserved by the federal government for access and utilities to the retained property to be managed by the Coast Guard. Two stipulations would be binding upon the City:

- (1) Waterbars, outsloping and rock barriers should be used, where appropriate, to reduce erosion, runoff and trail maintenance.

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- (2) After the vegetation is removed and prior to any construction [primarily trails and vista points], those areas not previously surveyed for cultural values shall be surveyed by a qualified archaeologist. If cultural resources are discovered during any phase of construction, the holder shall immediately notify the Authorized Officer at 555 Leslie Street, Ukiah, California 95482. The holder shall not disturb such resources except as may be subsequently authorized by the Authorized Officer. The Authorized Officer will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect cultural resources discovered.

The patent reservation and the stipulations would be part of BLM's patent deed to the City, and are considered to be part of BLM's project for the purposes of the Commission's federal consistency review. The patent deed would also include a reversionary clause, stating that the property would revert to the U.S. government if the grantee (City) did not use the property for its approved and intended use, tried to transfer title to another party, or otherwise violates the conveyance agreement. Any subdivision of the property would constitute a significant change in the project for purposes of the Commission's consistency review.

The City's development plan proposes non-intensive recreational use of the Head, including hiking, viewing, picnicking, and associated day-use activities. The plan calls for new foot trails, to be constructed as much as possible along natural contours to avoid soil and vegetation disturbance. Picnic areas and observation points would be sited in level areas where opportunities for observing scenic and biological resources are maximized (Exhibit 3). Only Coast Guard vehicles would be allowed on the parcel. Public parking would be available on an adjacent parcel north of the Head. Local citizen groups and local government agencies will develop and maintain the proposed improvements, scheduled to be completed in 1985.

It is important to precisely identify the project that is the subject of the Commission's federal consistency review in this instance. BLM's consistency determination addresses both the proposed transfer of federal property and the specific development plan proposed by the City. This is because federal regulations require the preparation of a development plan by the grantee as a condition of transfer. BLM must approve the plan and monitor its implementation; failure to carry out the approved plan can cause title to revert to the federal government. However, the Commission should only review BLM's consistency determination as it concerns the proposed transfer of federal property to a particular party (the City of Trinidad) for a particular use (low-intensity recreational use). This is what is meant by "the project" in the following description and recommended findings. The City, not BLM, will administer and manage the property after the transfer. The City's development plan, while necessary to obtaining title from the federal government, is more fittingly reviewed for conformity with the Coastal Act in the coastal permit process, either at the same time or following Commission review of BLM's consistency determination.

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B. Site Description. Trinidad Head is a rocky headland near the City of Trinidad, about 17 miles north of Eureka in Humboldt County (Exhibit 1). The shoreline in this portion of the County is magnificent, including rocky points, offshore rocks, sea stacks and islands, narrow rocky beaches on rock reefs, and small sand and gravel pocket beaches below high bluffs. The shoreline is generally accessible only by steep and occasionally hazardous trails. The Head is immediately southwest of Trinidad, an incorporated city with a population of about 380 (Exhibit 2). The local economy is based on timber, fishing, and tourism. Trinidad harbor and pier, east of the Head, attracts a sizeable number of commercial and recreational fishermen during the salmon season (May through July). Several nearby parks provide recreation opportunities for residents and visitors, including Patricks Point State Park (6 miles north), Little River State Beach (4 miles south), and Trinidad State Beach (only about 1/2 mile north of the Head).

Trinidad Head itself is connected to the mainland by a neck of land. A gravel road provides access for the U.S. Coast Guard Station on the southern end of the Head (Exhibit 3). The Coast Guard maintains a fog horn, light beacon, staff housing, and radio antennas on the Head. A cable TV antenna is also located on the Head. Most of the Head is covered in dense vegetation, including coyote brush, California blackberry, ceanothus, brush monkey flower, cow parsnip, and salal. The dense brush provides habitat for foxes, raccoons, skunks, rabbits, rodents, salamanders, and reptiles. The Head is also a good viewing point to watch marine mammals such as California and Stellar sea lions, elephant seals, and gray whales during their migration. Consultation with local Indians, the Yuroks, reveals that the Head is and was of cultural significance, although a limited archaeological survey did not find any cultural resources.

C. Federal Consistency Determination. The Bureau of Land Management has prepared a consistency determination for the proposed transfer of federal land to the City for non-intensive recreational use (March 16, 1983, letter from BLM Area Manager John W. Lahr to Richard Rayburn). Federal regulations identify acquisition, utilization, or disposal of land or water resources as a federal development project, for which a consistency determination must be prepared (15 CFR 930.31(b), emphasis added). BLM's consistency determination addresses both the action transferring federal land and the City's development plan for the property. Strictly speaking, the Commission is reviewing at this time only the proposed transfer action, including the receiving agency and the proposed use, with regard to consistency with California's coastal management program. The City's development plan can then be reviewed as a coastal development permit application.

The consistency determination states that the project is consistent with the access and recreation policies of the Coastal Act. It states that the project will have no effect on marine resources or environmentally sensitive habitat. It notes that the project is consistent with Section 30250 regarding new development, since no buildings are proposed and the recreational use has priority under the Coastal Act. It states that views of the harbor, ocean, and shoreline will be enhanced by the project. It concludes that the project is fully consistent with the California coastal management program (including the certified LCP for most of the adjacent City of Trinidad).

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II. Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

The Commission hereby concurs with the consistency determination made by the Bureau of Land Management for this project, that the proposed transfer of federal land (including the proposed grantee and use) is consistent to the maximum extent practicable with the California Coastal Management Program.

III. Findings and Declarations

The Commission finds and declares as follows:

A. Public Access. The primary access points in the Trinidad area are at Trinidad State Beach to the north, Trinidad harbor and pier, Indian Beach east of the pier along the Trinidad Bay shore, and a small beach north of Bay Street. A trail system in the City links the harbor and bluff areas to several vertical access trails further south of Trinidad. The harbor area is heavily used by fishermen in the summer season. The transfer of land to the City for recreational use will increase public access to a highly scenic coastal headland and will represent a major expansion of access opportunities in this area. Several Coastal Act policies address access. Section 30210 states that maximum public access to the sea must be provided. Section 30211 prevents new development from interfering with existing public accessways. Section 30212 requires that access to and along the coast be provided in new development projects. Because of the project's emphasis on providing new access, it is consistent with these sections. Access at Trinidad Head should emphasize trails and view points rather than shoreline access, due to the steep terrain, heavy vegetation, and related public safety and erosion considerations.

Visitor parking for the project could be inadequate, depending on the level of use by the public. Two privately-owned parking areas are now available in the site vicinity -- along Bay Street (about 60 cars) and northwest of Bay Street (about 40 cars). The first area is sometimes full during the summer months, due to the influx of fishermen. Cars and boat trailers congest the parking area and local streets. The second area is further from the harbor area but is used by beachgoers to some extent. Section 30212.5 encourages parking and other public facilities to be distributed throughout an area to avoid impacts of overcrowding and overuse. Policy 56 of the certified City of Trinidad LCP reserves a portion of the second parking area for non-harbor users. This would be the primary parking area for project users, since steep slopes, heavy vegetation, and visual constraints would preclude the development of any significant on-site parking. A coastal trail northeast and southeast of the Head is designated in the City's LCP. To the southeast, an existing trail follows the shoreline to Parker Creek; to the northeast, the trail system is being extended to the College Cove area of Trinidad State Beach. These trails would provide visitors an alternative to nearby parking. Demand for parking will depend on the project's popularity and improvements. However, at nearby Trinidad State Beach, the 90-car lot is usually less than half-full in the summer. Parking for the project should be adequate, given the low-intensity recreational uses proposed and the above-noted LCP provisions. Specific demand projections and provisions for parking should be part of the City's coastal development permit application.

B. Recreation. There are several existing recreational facilities in the Trinidad Area. Patricks Point State Park is 6 miles north, Little River State Beach is 4 miles south, and Trinidad State Beach is about 1/2 mile north of Trinidad Head. Trinidad harbor, including a fishing pier, parking area, bait shop, restaurant, and boat launch facility, is located immediately north-east of the project. Section 30213 of the Coastal Act promotes lower-cost visitor and recreational facilities. Section 30221 gives priority to recreational uses on oceanfront land, unless already provided for in the area. The project is intended to provide new recreational opportunities at Trinidad Head, including trails, vista points, and picnic areas. Given this overall intent, the project is consistent with Sections 30213 and 30221.

C. Marine Resources. The shoreline in the vicinity of Trinidad is very rugged, and includes rocky points, offshore rocks, sea stacks and islands, narrow rocky beaches, rock reefs, and small sand or gravel beaches below high bluffs. Offshore rocks provide nesting areas for birds, and the rocky beaches are noted for prolific tidepool communities of significant scientific value. The sea stacks serve as haul-out areas for California and Stellar sea lions. Harbor seals, elephant seals, and gray whales can be observed from the Head. The project will not interfere with these valuable marine resources, and is thus consistent with Section 30230 and 30233 of the Coastal Act.

Section 30231 requires that developments maintain biological productivity and water quality. Trail construction and other improvements have the potential to increase erosion rates. To minimize potential erosion effects, BLM will stipulate, in its conveyance of the property, that erosion control measures are to be used in constructing project improvements. Given this mitigation measure and the low intensity of use proposed, the project is consistent with Section 30231.

D. Environmentally Sensitive Habitat Areas. Vegetation on Trinidad Head belongs to the north coastal scrub community. Commonly found plants include coyote brush, California blackberry, ceanothus, and brush monkey flower. The dense brush on the Head provides habitat for foxes, raccoons, skunks, rabbits, other rodents, salamanders, and reptiles. BLM's environmental assessment notes two potentially rare plant species -- black crowberry (*Empetrum hermaphroditum*) and bird rock goldfields (*Lasthenia minor*, ssp. *maritima*) could occur on the site, but have not been identified. Black crowberry is listed as "rare" by the Native Plant Society but is not on any state or federal species list. The second plant was recently removed from all plant species lists due to its wide range. Section 30240 of the Coastal Act protects sensitive habitat areas against any significant disruption of habitat value. Because no environmentally sensitive habitat has been identified on the project site and because the project will have minimal effects on site habitat, the project is consistent with Section 30240.

E. New Development. Trinidad Head borders Trinidad's city limits. The City provides water service in and adjacent to its incorporated area, although it usually makes annexation a condition of providing service. On-site septic systems are the prevalent method of wastewater disposal. Water, electricity, and phone lines connect the Coast Guard facility on Trinidad Head to the town.

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Vehicular access is along a gravelled road branching off Bay Street. The City has stated its intention to annex the Head if BLM transfers the property.

Both the City's LCP and the Trinidad Area segment of Humboldt County's LCP propose recreational use for the Head if it is no longer needed by the federal government. Policy 66 of the City's General Plan states: "The portion of Trinidad Head not needed by the Coast Guard should be transferred to the City of Trinidad. The area should be kept in its natural state with hiking trails and vista points. Public vehicular access should only be allowed as far as the existing harbor overlook." The public recreation and access policies of the County LCP segment provide similar guidance.

Section 30250 of the Coastal Act requires new residential, commercial, or industrial development to be located in or near existing developed areas or in areas with adequate public services if it will have no adverse effects on coastal resources. The proposed project is a recreational and open space use and thus is not subject to the above requirement of Section 30250. Adequate public services are available to serve the project, and it is consistent with the provisions of both LCPs that have a bearing on the property.

F. Archeological Resources. Trinidad Head is within the territory of the Coast Yurok Indians, and was and is of cultural significance. The Head was used for spiritual purposes and as a burial ground for the old people. The peninsula itself supported a village called Tsurai, which means "Mountains by the Sea". The Head is not currently used for traditional purposes, however. Archeological surveys on the Head in 1976 and 1982 did not reveal any archeological resources or sites. However, only about 20% of the site was surveyed, due to the dense underbrush away from the existing roads and paths. It is possible that such resources could be encountered during construction of improvements such as trails and picnic areas.

Section 30244 of the Coastal Act states that reasonable mitigation measures shall be required where development would adversely impact archeological or paleontological resources. BLM will include a stipulation in its patent deed to the City to address the possibility of encountering archeological resources during construction. It provides that unsurveyed areas shall be surveyed by a qualified archeologist after vegetation removal and prior to construction. If cultural resources are found during the survey or during construction, a qualified BLM official will evaluate these resources and require mitigation measures to protect them, if necessary. With this mitigation measure, the project is consistent with Section 30244.

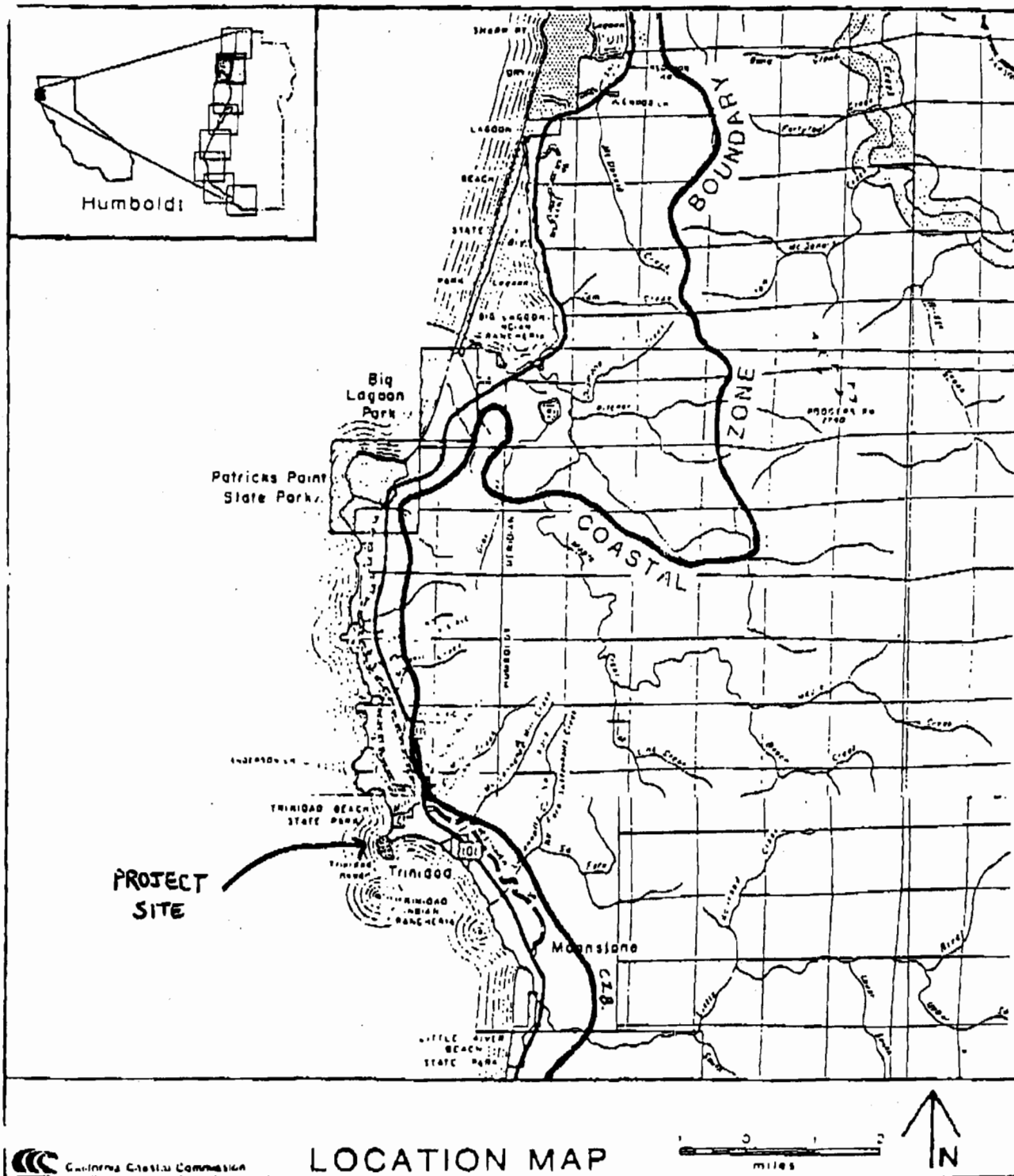
G. Visual Resources. The visual setting in Trinidad includes rugged coastal headlands and islands, beaches and surf, the vast expanse of ocean, the small harbor with fishermen unloading their catch, and homes climbing up the hillside. Low-density residential development patterns preserve a small town character. Trinidad Head is prominent in the view from town, the harbor, and coastal trails. Conversely, the Head affords an excellent view back at the harbor, ocean, and the rocky shoreline. From the Head, sightseers can observe marine resources, including seals, whales, shorebirds, and other wildlife. Project improvements for low-intensity recreation, such as trails, picnic areas, and vista areas, will have little or no visual impact.

Section 30251 of the Coastal Act protects the scenic and visual qualities of coastal areas, requiring that new development be sited to protect ocean and coastal views. Because of the low intensity of the project and the heavy undergrowth on the Head, project improvements such as trails and vista points can be designed to be unobtrusive and thus consistent with Section 30251. The project will enhance and augment public views of this highly-scenic coastal area, by providing new vista points and improving access to the Head.

IV. Exhibits

1. Location Map
2. Project Vicinity
3. City of Trinidad Development Plan

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County of Humboldt

Sheet 2 of 8

EXHIBIT 1

28435



- Lot 4 To be transferred to City
- Lot 5 Retained for Coast Guard (radio antenna)
- Lot 6 Retained for Coast Guard (foghorn, light, housing)

EXHIBIT 2
PROJECT VICINITY

29435

PRELIMINARY PROPOSAL: PUBLIC ACCESS TRAILS
CITY OF TRINIDAD

TRINIDAD HEAD
TRINIDAD, CALIF.

SCALE: 1" = 200'
6 OCTOBER 1982 - SM

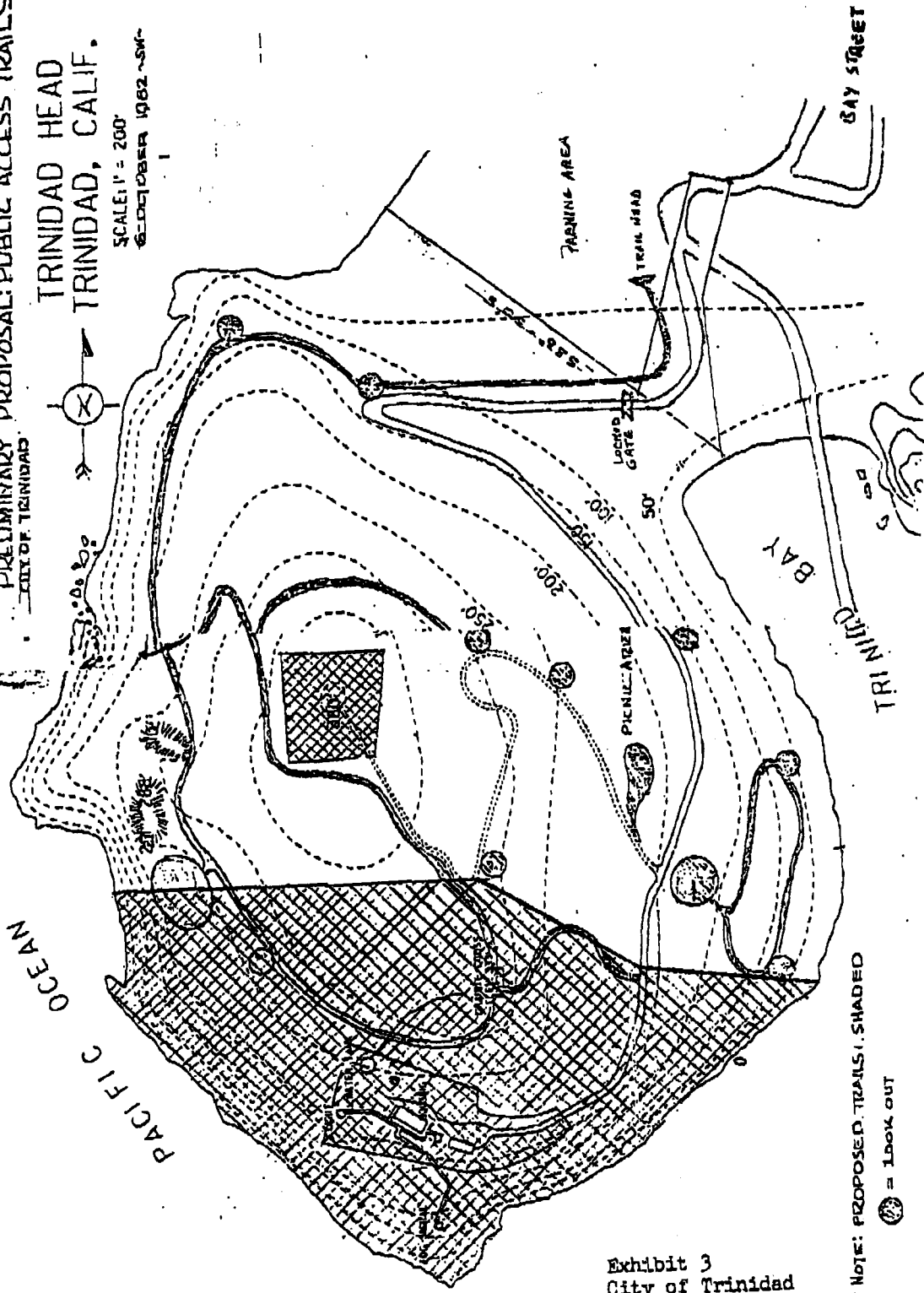


Exhibit 3
City of Trinidad
Development Plan

NOTE: PROPOSED TRAILS, SHADED

● = LOOK OUT

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Aldaron Laird

Environmental Planner

www.riverplanner.com

September 14th, 2006

Mayor Heyenga
Council Members Bowman, Chi-Wei Lin, Cuthbertson, and Marlow
City of Trinidad
409 Trinity Street
Trinidad, CA 95570

Dear Mayor and City Council Members,

My name is Aldaron Laird; I am an environmental planning consultant, and a Planning Commissioner with the City of Arcata. I am here tonight representing the Friends of Trinidad Head (Friends) in the matter of their appeal of the City of Trinidad's Planning Commission June 21st 2006 decision to approve US Cellular's application for a Conditional Use Permit and Coastal Development Permit (CUP and CDP) (No. 2005-13a).

I will focus my comments on the Planning Commission's failure to comply with: the California Environmental Quality Act (CEQA), and Trinidad's Local Coastal Program when they approved US Cellular's project.

California Environmental Quality Act

According to the City's Staff Reports the Planning Commission made its determination that this project, pursuant to the CEQA, was exempt as per §15301 of the California Code of Regulations (Guidelines) "Class 1-Existing Facilities." The state legislature charged California's Resources Agency with identifying classes of activities that were not likely to cause significant adverse physical changes to the environment which would be "Categorically Exempt" (CE) from further environmental review under CEQA (PRC § 21080 (b)(9), and § 21084 (a)). However, it is important to note that the Legislature recognized that these classes of environmentally benign activities could result in significant environmental damage when such projects are located in areas of critical concern, or result in cumulative effects; that is why there are exceptions to the use of a CE (PRC § 21084(b), § 21084.1, and Guidelines § 15300.2). Areas of critical concern can be scenic coastal resources, historical resources (PRC § 21084 (e)), or cultural resources. A recent court case, germane to the Planning Commission's use of a CE and this appeal, found that *"mitigation measures developed in the course of an environmental review pursuant to CEQA may support a negative declaration but are premature if proposed to support a CE"* (Salmon Protection & Watershed Network v. County of Marin (2004) 125 Cal.App.4th 343). I intend to show that the Planning Commission's finding that a CE applied in this case is contrary to the evidence in the administrative record, not just because it failed to consider the entire range of exceptions to the use of a CE, but because it also relied on mitigation measures to determine that the project is CE.

Trinidad Head is: a renowned scenic coastal area, a state designated historical landmark (No. 146), listed in California's register of historic resources, and an important cultural resource to the Yurok

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people as well as the people living on the north coast today. One consequence of the Planning Commission approving the proposed development, the sixth (1997, 1999, 2000, 2001, 2002, and 2006), is that the cumulative effect of expanding the number of structures over time has reached a level which degrades the public's ability to use and enjoy Trinidad Head, an area with significant scenic, historical, and cultural resources. The legislature was clear in its intent regarding using C.E. "No project which may result in damage to scenic resources" ... "shall be exempted" (PRC § 21084 (b)).

On June 21st, the Planning Commission erred when it approved the US Cellular project because it used a form of environmental impact analysis to generate the proposed mitigation measures which was developed outside the procedures described in the CEQA. Addressing this very issue, the courts have held that "*an agency should not be permitted to evade standards governing the preparation of a mitigated negative declaration by evaluating proposed mitigation measures in connection with the significant effect exception to a categorical exemption*" (Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997) 52 Cal.App.4th 1165). In support of the Friends' appeal, the Planning Commission's findings actually rely on future actions by the City Council to reverse the significant cumulative effects it identifies as a consequence of its approval of US Cellular's project. Again, the courts have held that "*An activity that may have a significant effect on the environment cannot be Categorical Exempt*" (Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal.4th 105). Also the Guidelines state that a CE shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances (§15300.2 (c)), in this case the fact that the project is located on Trinidad Head, an area of critical concern, and because the proposed use and structures are non-conforming in the City's Coastal Open Space Zone. It is undisputed that the project is located in an area of critical concern by way of Trinidad Head's multiple designations; the only question is whether the project "may impact" this environmental resource or the public's use and enjoyment of these resources. The court has held in regards to using a CE that "*it is the possibility of a significant effect...which is at issue, not a determination of the actual effect, which would be the subject of a negative declaration or an EIR*" (Azusa, supra).

The Appeal Staff Report, as do the Friends prior testimony, correctly identify that cumulative impacts from the proposed project are an issue which, as one of the legislature's exceptions, prohibit the use of a CE. While the Staff Report focused on cumulative impacts as a consequence of whether the developed footprint is being increased, the Friends instead focused on the additive impacts of six developments that expanded the use at this site to the scenic, coastal, historical, and cultural setting of Trinidad Head. In fact, the Planning Commission's decision contains several recommendations to the City Council that supports the Friends position that the cellular facilities' lease should not be renewed and that all of the facilities should be removed including the structures just approved. Culminating with the Planning Commission's recent approval, all of the developments at this site have expanded the number of structures and the intensity of use causing a significant cumulative impact to the scenic, coastal, historical, or cultural setting of Trinidad Head. This fact should have precluded the Planning Commission from using a CE (Guidelines § 15300.2(b)).

The facts that I have presented to you are sufficient to conclude that because the Planning Commission failed to consider and make express findings on exceptions prohibiting the use of a CE, the City Council should either overturn the Planning Commission's decision or remand the

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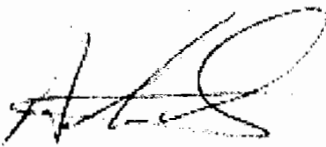
project back to the Planning Commission so that the City can prepare appropriate environmental documents that fully disclose the effects of the project and comply with the CEQA before reaching a decision on whether to approve the proposed project.

Local Coastal Program Consistency; General Plan-Zoning Ordinance.

During its review of the US Cellular project, the Planning Commission should have focused on the facts that the proposed project is not consistent with City General Plan Policy 66 "*Trinidad Head will be kept in its natural state with hiking trails and vista points*" and that the proposed use conflicts with the primary purpose of the City's Coastal Open Space Zone to "*maximize preservation of the natural and scenic character of these areas including protection of important wildlife habitat and cultural resources.*" The City of Trinidad allows lawful uses that pre-date the application of its Zoning Ordinance, or in the case of this project pre-date annexation, to continue although such use or structures do not conform to the regulations applied to such property, provided that certain exceptions do not apply (Ch. 17 § 64.010). However, the applicable exception only authorizes the alteration, repair, or extension of structures that conform as to use as long as the existing degree of non-conformity is not increased (Ch. 17. § 64.010(B)). US Cellular proposes to put in place two new antennas, construct a concrete pad, and install new equipment buildings; these proposed actions will increase the number of structures that do not conform as to use in the City's Coastal Open Space Zone. The Planning Commission's approval of US Cellular to install additional structures that do not conform to use in the Coastal Open Space Zone would therefore expand the degree of non-conformity at this site.

The facts that I have presented are sufficient to find that, because the Planning Commission failed to adequately evaluate the increase in the degree of non-conformity, its approval of US Cellular's project is not consistent with the City's Local Coastal Program including the Zoning Ordinance and General Plan. The City Council should overturn the Planning Commission's June 21st decision to approve US Cellular's project.

Sincerely,



Aldaron Laird

cc: Friends of Trinidad Head

330435



MEMORANDUM

TO: Trinidad City Council
FROM: Trever Parker, City Planner
DATE: June 23, 2006
RE: Planning Commission Decision on US Cellular Application

US Cellular 2005-13a: FINAL PLANNING COMMISSION ACTION

Based on application materials, information and findings included in this Staff Report, and with the additional finding, based on public testimony, that any additional cellular equipment on Trinidad Head, beyond this project, will interfere with the primary purposes of the open space and public recreation, the motion was made to adopt the information and findings in this staff report and approve the project as submitted and as conditioned below. This motion was approved 4-1.

As part of their motion, the Planning Commission made a strong recommendation to the City Council to follow through with the following:

1. That this project only be allowed only until the term of the primary lease has ended;
2. That a moratorium be placed on the construction or placement of any new cellular equipment or facilities on Trinidad Head;
3. That the City Council consider developing a management plan for Trinidad Head, possibly to be included in a General Plan update;
4. To not renew the primary lease when it runs out and have the cellular facilities removed at that time;
5. Between now and the termination of the lease, work with the community and cellular providers to locate an alternative location for cellular facilities within Trinidad.

CONDITIONS OF APPROVAL

1. The applicant is responsible for reimbursing the City for all costs associated with processing the application. *Responsibility: City Clerk prior to building permits being issued.*
2. Based on the findings that community values may change in a year's time, design review approval is for a one-year period starting at the effective date and

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expiring thereafter if construction has not been started, unless an extension is requested from the Planning Commission prior to that time. *Responsibility: City Clerk prior to building permits being issued.*

3. Recommended conditions of the City Building Official shall be required to be met as part of the building permit application submittal. *Responsibility: Building Official prior to building permits being issued.*
4. If any equipment installed as part of this project becomes unserviceable or unused, it must be removed at the applicant's expense. *Responsibility: City Planner or Building Inspector to enforce should conditions warrant.*
6. Erosion control measures shall be taken during and after construction to ~~minimize soil loss and runoff~~. *Responsibility: Building Official to confirm during inspection(s)*
7. The applicant shall design the equipment building and any other noise generating sources so that noise levels are not above pre-project ambient noise levels as measured at the southern boundary of the existing Cal-North Cellular site. *Responsibility: City Planner to verify after site is in operation and periodically as necessary.*
8. Construction shall not occur until after the City receives verification from BLM that the existing communications site, and therefore this project, is consistent with the land transfer agreement for Trinidad Head or until after 90 days from the date of the end of the appeal period if the City has not gotten a response from BLM. *Responsibility: Building Official prior to building permits being issued.*

35 0435

PWM INC.

P.O. Box 1032 2039 Williams Street, Eureka, CA. 95502 Phone: (707) 442-8420 Fax: (707) 442-8499

October 17, 2006

Mr. Jim Baskin, Coastal Planner
California Coastal Commission
North Coast District Office
P.O. Box 4908 710 E Street, Suite 200
Eureka, California

Re: U.S. Cellular - Trinidad Head

RECEIVED

OCT 19 2006

CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 8

APPEAL NO.

A-1-TRN-06-042

U.S. CELLULAR CORPORATION

APPLICANT'S

CORRESPONDENCE (1 of 41)

Dear Mr. Baskin:

This letter is in response to the Friends of Trinidad Head (Friends) appeal of United States Cellular's (USC) proposed communication facility at the above captioned location. Table number 1, page 7 of their document is an inaccurate representation of the existing facilities and what is proposed:

1. The one 8' x 10' x 7' tall building on the site that was present in 1985 still exists.
2. There are no other buildings on the site. Friends have listed the outdoor communication cabinets as buildings.
3. U.S. Cellular is not proposing a building, only cabinets as described and pictured herein.
4. There is no generator at the Cellular communication site.
5. Friends have counted every pipe, support and cable as a commercial facility. Some of these components existed at the time the Cellular facility was constructed.
6. Friends have shown a telephone pole in their Photo on page 8. This was an existing pole prior to the Cellular facility.
7. USC is not constructing a new tower.

I have submitted to you the binder that was presented to the City of Trinidad during the permit process for this proposed facility that presents background information discussed in this letter.

U.S. Cellular (USC) is proposing 3 cabinets mounted on a 7' x 15' concrete pad. These cabinets are shown in the attached photo. The cabinets are all approximately 30 inches wide by 36" in width. One cabinet is approximately 57 inches in height and the other two are approximately 72 inches in height. These cabinets would be placed inside the fenced area and would be barely visible, if at all.

The photo on page 8 of their appeal, we believe, was taken within the fenced area on Federal property behind the cellular communication facility. The photo we have enclosed shows the approximate location where the photo was taken. There are unobstructed views of the coastline on the road in front of the site, outside the fenced area.

Initially U.S. Cellular proposed another, new, taller pole as it was suggested to us that the facility should be designed for future co-location facilities. Because of opposition USC is proposing

Mr. Jim Baskin, Coastal Planner
California Coastal Commission
October 17, 2006
Page two

locating one antenna on each of the existing (installed late 1980's) 21 foot poles, inside the graveled fenced area, with no need to construct new roads, disturb vegetation, add new power lines, etc. (see enclosed picture, Tab # 3 in Binder). One cannot see these two proposed antennas unless one is at the top of the Head. We believe that the use of the existing Coastal Zoned site has far less environmental impact than the construction of a new Coastal Zoned site.

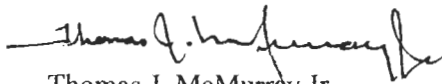
We have included pictures that present a view of all the facilities that are located on the Head including the co-located cellular site. The Cellular site is the first one on the left as one comes up the road, located amongst the trees. All the Cities and Counties that USC has worked with have required the industry to co-locate wherever possible.

U.S. Cellular has communication facilities on the Walker Ridge tower, north and east of Trinidad, and on the McKinleyville tower. These alternate sites do cover portions of Trinidad, but do not provide the digital coverage required in the many shadowed, out of line of site areas in the Trinidad area. Cal North (now Verizon) and U.S. Cellular are both on the McKinleyville and the Walker Ridge Tower. Cal North discovered that coverage from those sites was inadequate and decided to locate on Trinidad Head. Also, Edge and Sprint are located on the McKinleyville Tower and apparently chose not to locate on Walker Ridge because the coverage from those sites was inadequate and instead chose to locate on Trinidad Head. (see Binder information)

U.S. Cellular is a Public Utility, regulated under the Rules of the California Public Utilities Commission. USC constructs cellular facilities based upon its responsibility to provide its customers reasonable, dependable service and adequate coverage for their public safety. Thank you for your consideration.

Respectfully,

PWM Inc.



Thomas J. McMurray Jr.
President
for U.S. Cellular

TJM/tjm

enclosures

COMMUNICATIONS
Tower Development & Site Management

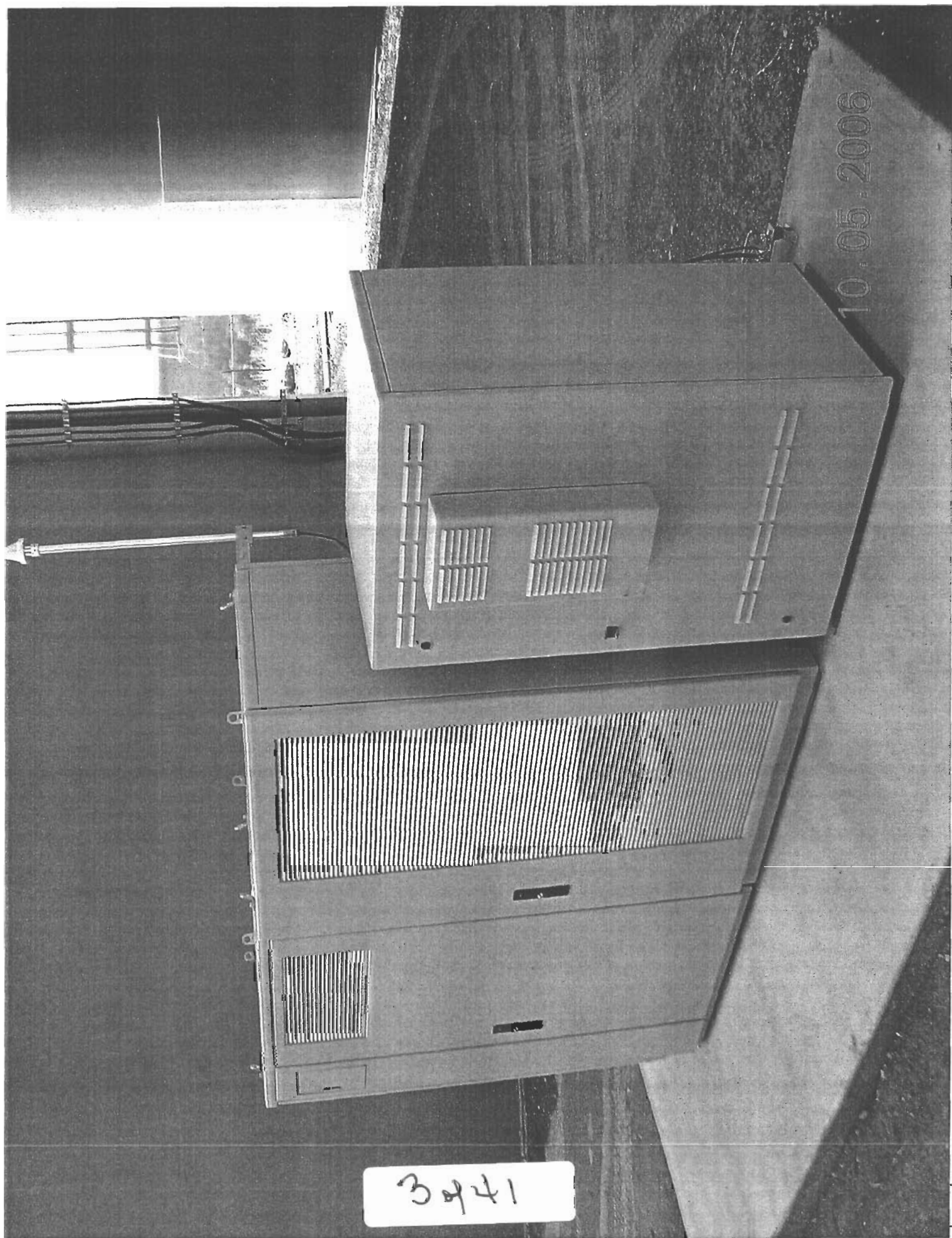
REAL ESTATE
Consulting, Development and Management

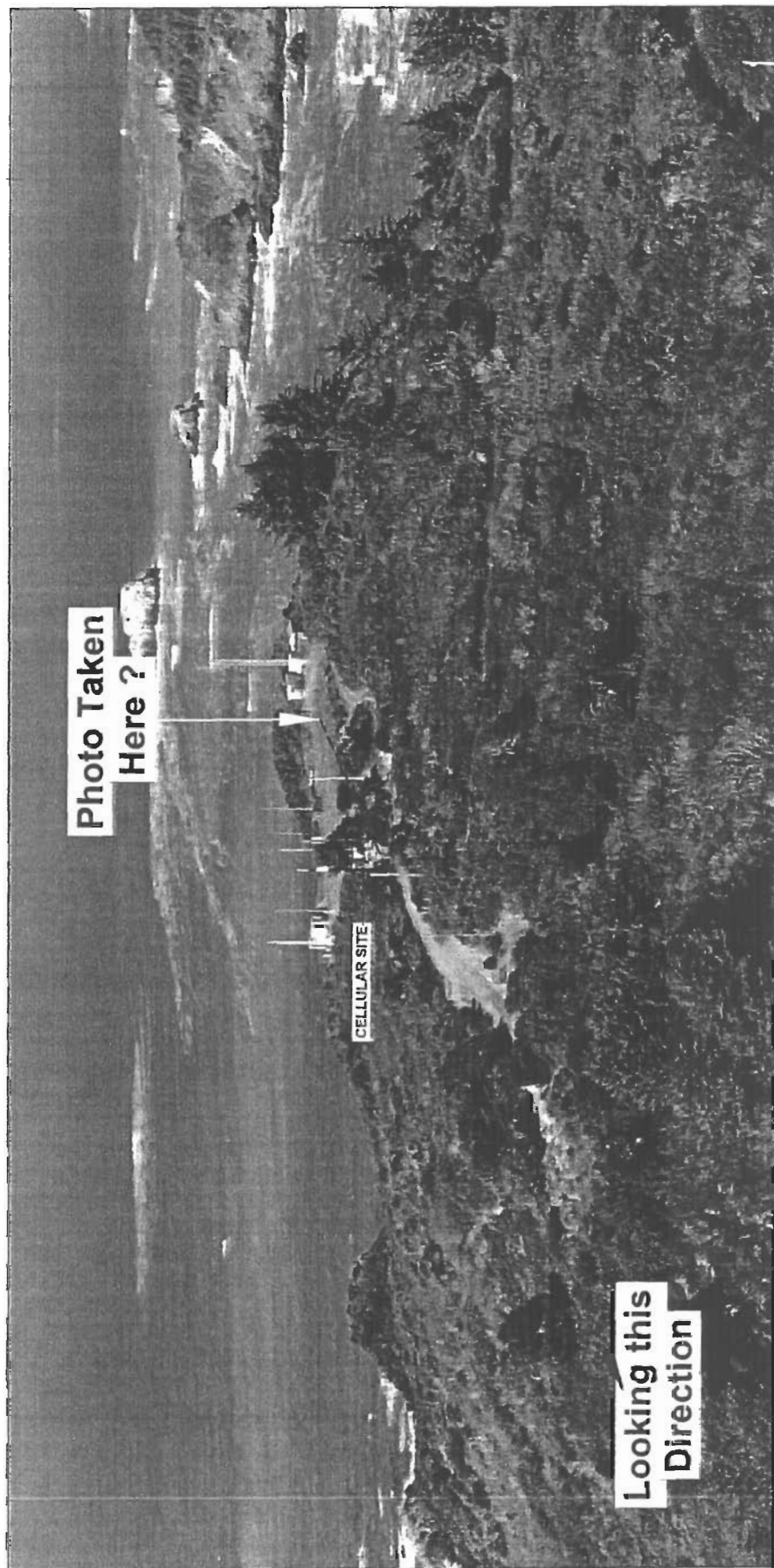
CONSTRUCTION
Materials & Project Management

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3241

10.05.2006





U.S. Cellular
TRINIDAD HEAD SITE
10/18/2006

4941

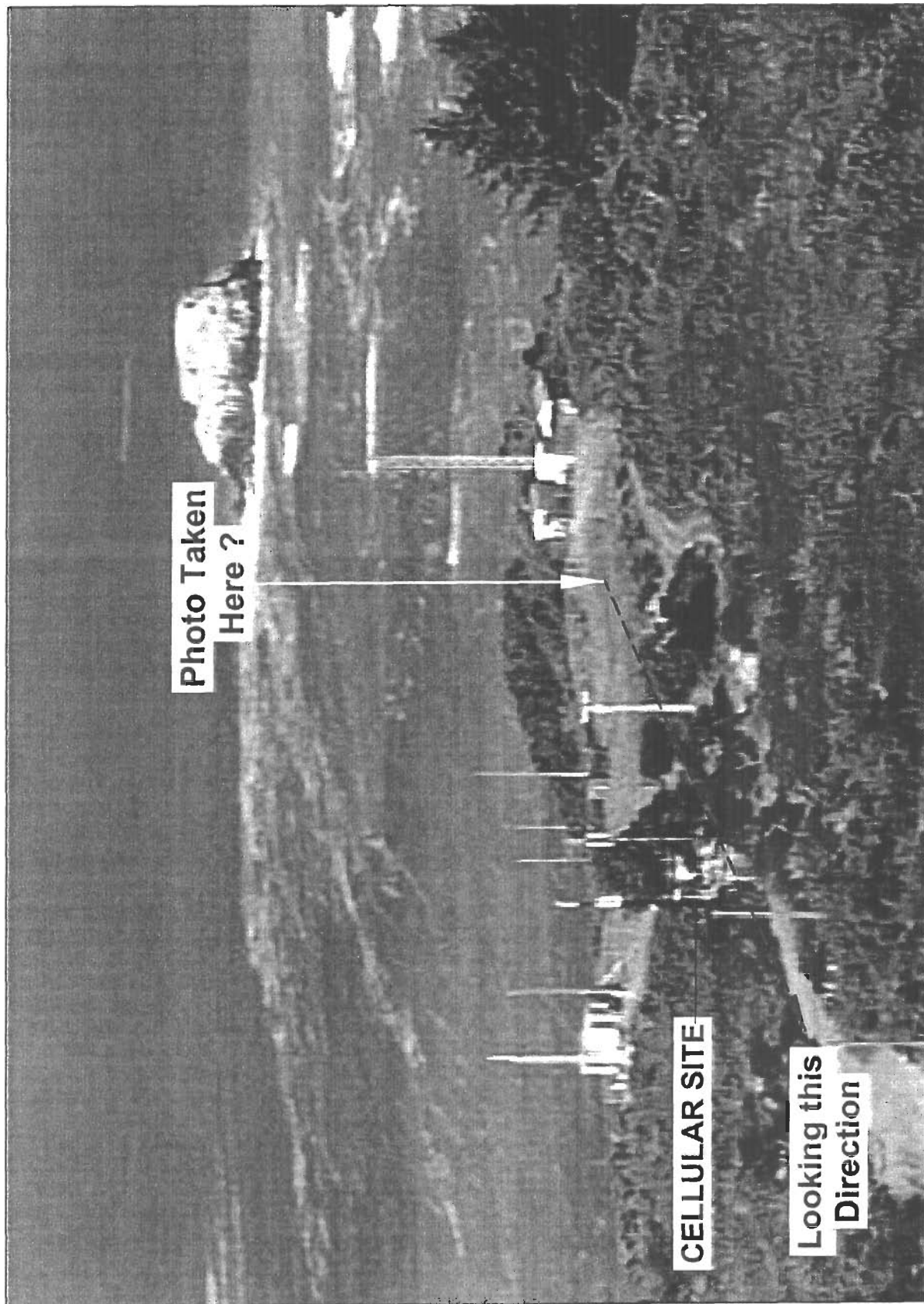


Photo Taken
Here ?

CELLULAR SITE

Looking this
Direction

U.S. Cellular
TRINIDAD HEAD SITE
10/18/2006

5241

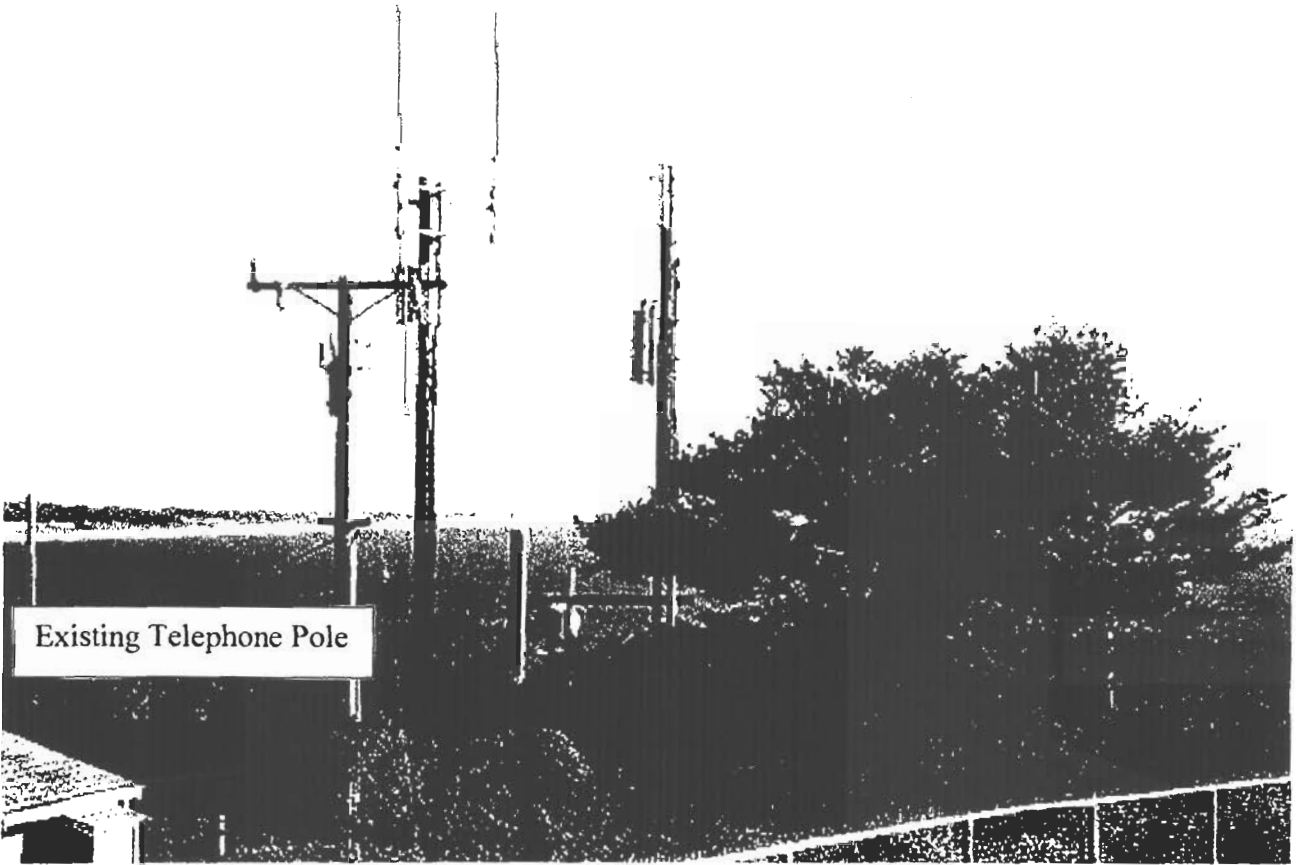


Figure 1. Degraded vista of the coastline from Trinidad Head.

Chapter 17.64 Nonconforming Uses and Structures

Section 010 Nonconforming Uses and Structures "The lawful use of lands or structures existing on the effective date of the regulations codified in this title, although such use or structure does not conform to the regulations applied to such property or structure, may be continued, except as provided as follows:" ...

A. Any structure conforming as to use but not conforming as to lot area, yards, height or other requirements herein at the effective date of the ordinance codified in this title may be altered, repaired or extended provided that such alteration, repair, or extension shall not increase the existing degree of nonconformance.

C. Any change of a nonconforming use shall be to a conforming use, and a nonconforming use which has been discontinued for a period of one year or more shall not be re-established. A nonconforming use of a part of a lot or a structure shall not be extended throughout the lot or structure.

D. Any use for which a use permit is required by these regulations shall be considered a nonconforming use until a use permit is obtained."

A. In 1985, when the City applied the open Space designation to the property on Trinidad Head, there were one or two 21 foot high pole(s) and one 12 foot TV broadcast dish at the site of the proposed project. This TV transmission facility became a nonconforming use in the Open

PWM INC.

P.O. Box 1032 2039 Williams Street, Eureka, CA. 95502 Phone: (707) 442-8420 Fax: (707) 442-8499

September 14, 2006

Mayor Dean Heyenga and Council Members
City of Trinidad
P.O. Box 390
Trinidad, California 95570

Re: United States Cellular-Trinidad Head Cellular Site
Friends of Trinidad Head Appeal

RECEIVED

OCT 19 2006

CALIFORNIA
COASTAL COMMISSION

Dear Mayor and Council:

The above captioned appeal is based upon two claims:

1. That the Cellular facilities that presently exist on the Head are illegal
2. That U.S. Cellular has presented no verifiable information that they have a problem with cellular telephone service in the area.

The claim that the Cellular Facilities are illegal is a City of Trinidad issue. However, these ordinances were reviewed by the City and their legal representatives on at least four applications and were found to be legal. These determinations allowed Cox Cable, Cal North Cellular, Ubiquitel (Sprint) and Edge Wireless facilities to be constructed within the present site.

The Second Claim that U.S. Cellular has not presented verifiable information that they have a problem with cellular telephone service in the area is not based upon substantial information presented by the appellants. In fact, their claim is based upon a random sampling of cellular coverage at various locations in and around the City of Trinidad where they could show there was coverage. The Friends concluded that U.S. Cellular has the best overall coverage and locating on the Head is not necessary to provide adequate coverage to the Trinidad area. Their testing did not meet a reasonable standard for cellular services and is defective due to the following reasons:

1. Did not test holding the call while continuing to drive.
2. Did not test or present areas where there is no coverage.
3. Did not test for new, digital services that are being offered.
4. Did not test for E911 potential at locations throughout the Trinidad area.

The Trinidad area is serviced by two towers, one located at McKinleyville and one located at Walker Ridge, north and west of Trinidad. The first tower constructed that provided coverage to the Trinidad Area was McKinleyville and is currently occupied by Verizon, U.S.Cellular, Edge Wireless and Sprint. The second tower that provides coverage to this area is Walker Ridge. This tower is occupied by Verizon and U.S. Cellular.

When Cal North (Verizon) constructed and occupied the towers at McKinleyville and Walker Ridge, the coverage in Trinidad and the surrounding areas was inadequate. As a result, Cal North filed an application and received a building permit for a new facility on the existing communication site on Trinidad Head.

7941

Mayor Dean Heyenga and Council Members
City of Trinidad
September 14, 2006
Page two

Later, Ubiquitel (Sprint) and Edge Wireless received Planning and Building permits for a facility there..

If Cal North and their customers were satisfied with the coverage from McKinleyville and Walker Ridge there would have been no need to construct the facility on Trinidad Head. The same is true for U.S. Cellular. The comparison is clear. Both Cal North and U.S. Cellular occupy the same sites and are using the same basic frequencies. Cal North and their customers were not receiving adequate coverage from these two sites and therefore constructed the Trinidad Head Site. Also, Sprint and Edge concluded that McKinleyville was inadequate for Trinidad area coverage, chose not to locate on Walker Ridge and constructed their facility on Trinidad Head.

Denying U.S. Cellular the right to occupy the same site as the other carriers discriminates against this carrier and prevents U.S. Cellular customers from having reliable coverage and new services now being offered.

We have provided for you in our binder and power point presentation, expanded information showing the need for additional coverage in the Trinidad Area.

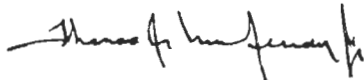
1. A drive test study conducted by U.S. Cellular Technicians.
2. A line of site study from the McKinleyville, Walker Ridge, the proposed Trinidad sites and a combined map assuming all three sites in operation. New services rely increasingly on line of site transmission.
3. Information on the test conducted by the Friends of Trinidad Head.

The Planning Commission determined that the U.S. Cellular Facility conformed to the City Ordinances and General Plan. They adopted various conditions for approval. Those conditions are acceptable and will be incorporated into the project. The findings made by the Planning Commission for approval of this project are part of the record.

We believe that the current Staff report represents accurately the description of our project and the need for this increased coverage.

We have also included a portion of the information that is currently in your file from previous hearings and ask that all materials contained in the official City files on this project be included as part of the overall project record

Respectfully,



Thomas J. McMurray Jr.
for United States Cellular

Enclosures:

cc: Ms. Trever Parker, Streamline Planning

COMMUNICATIONS
Tower Development & Site Management

REAL ESTATE
Consulting, Development and Management

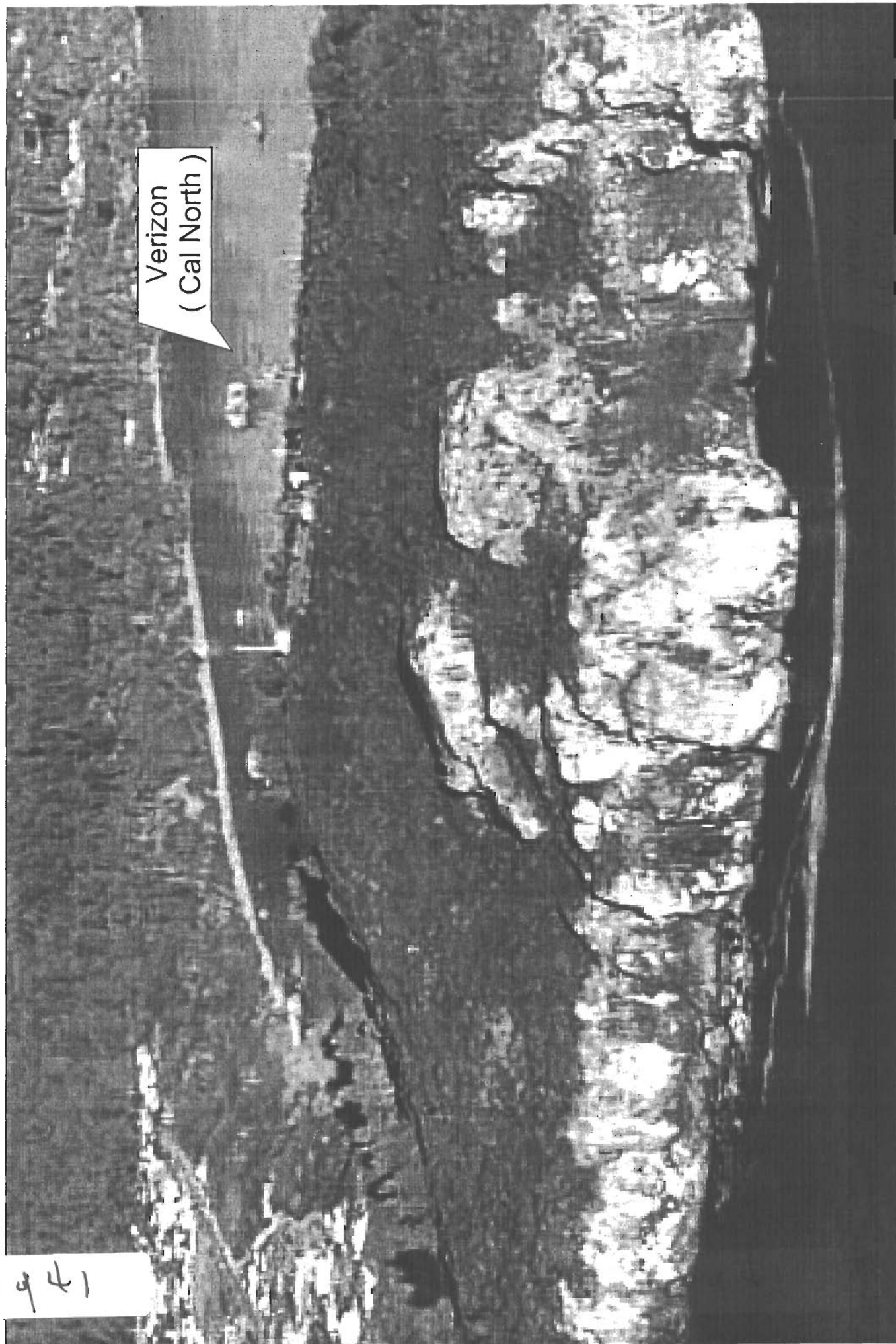
CONSTRUCTION
Materials & Project Management

8941

1	View of Trinidad Head Communication Site
2	Drive Test Area Existing
3	Cellular Facilities US Cellular Site Plan
4	Walker Mt. Line of Site Study
5	McKinleyville Line of Site Study
6	Trinidad Head Line of Site Study
7	Combined Line of Site Data
8	Existing Indoor Coverage in Trinidad New Indoor Coverage in Trinidad
9	Combined New and Existing Coverage
10	Drive Test Area Existing Drive Test Area with Trinidad Head
11	Drive Test Downtown Existing Drive Test Downtown with Trinidad
12	Drive Test Westhaven Existing Drive Test Westhaven w/Trinidad Friends of Trinidad Study RF Study

10941

Verizon
(Cal North)



AREA
EXISTING

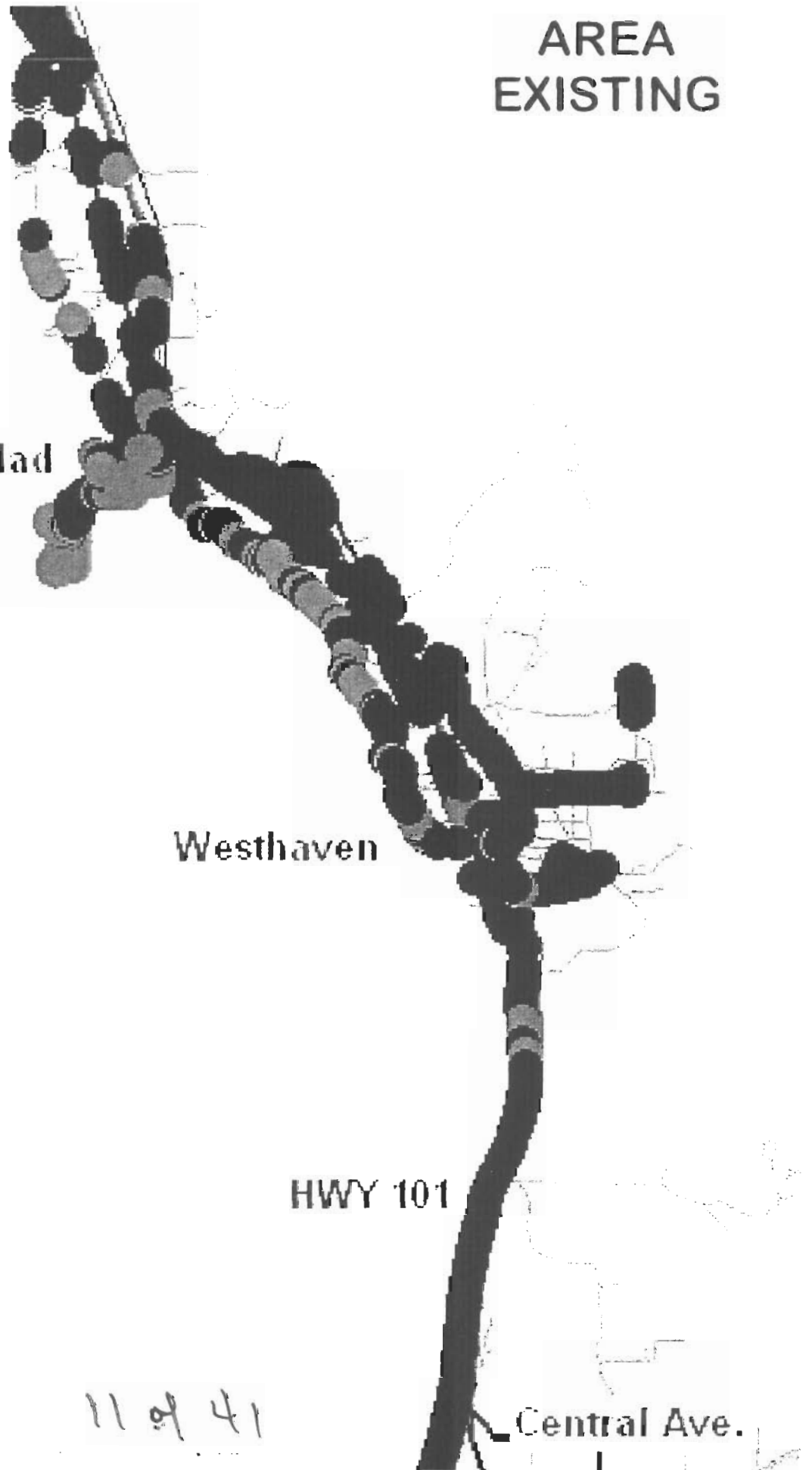
Trinidad

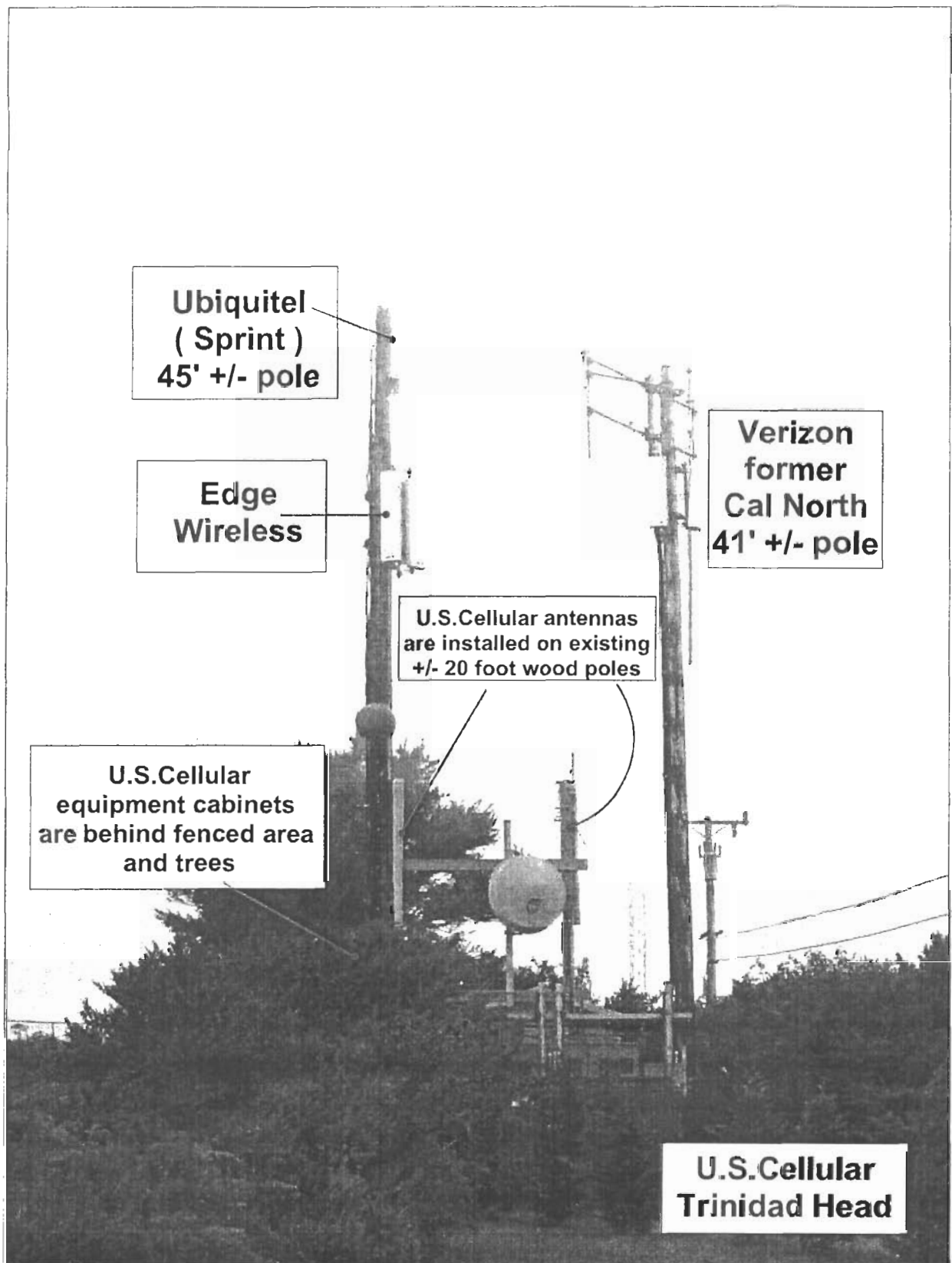
Westhaven

HWY 101

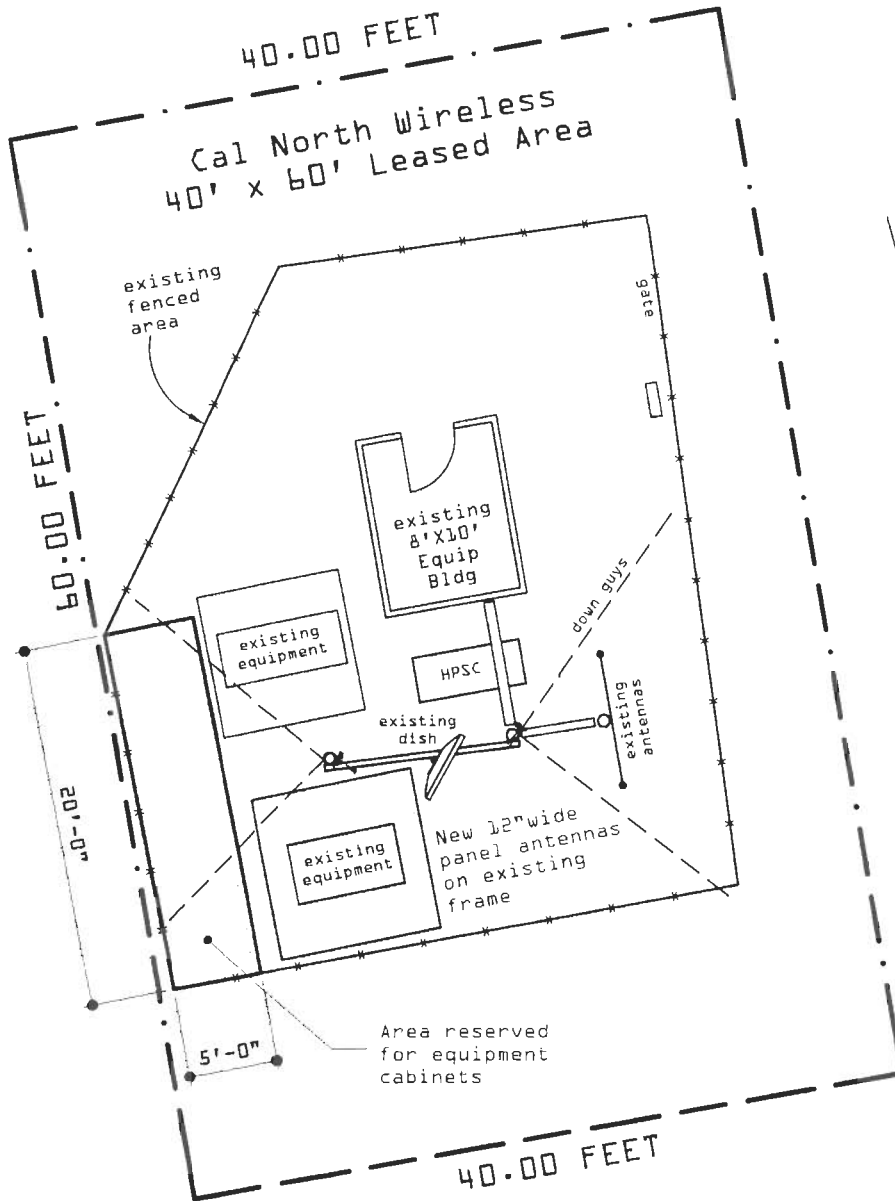
Central Ave.

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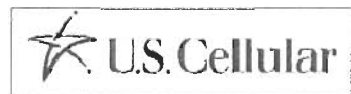
12 of 41



EXISTING 10' ROADWAY

Actual site areas may vary slightly in both square footage and shape from what is shown.

SCALE
1' = 10 FT.



PROPOSED SITE AREA
AT THE EXISTING
TRINIDAD HEAD SITE

April 27, 2006

13941

Walker Mt Line of Site Study



Grid: or_ca_h30m_pnet_elev_trim_trinid

Viewshed method

- ☒ Simple calculation (classified grid: visible / invisible)
- ☐ Complex calculation (+/- height to make JUST visible)

Viewing parameters

Looking From: Z: (409975.54962233198, 4534974.3590864306)

Viewpoint height: 50,3000 metres

Viewshed offset: 2,0000 metres

Viewing radius: 29,326.5652 Meters

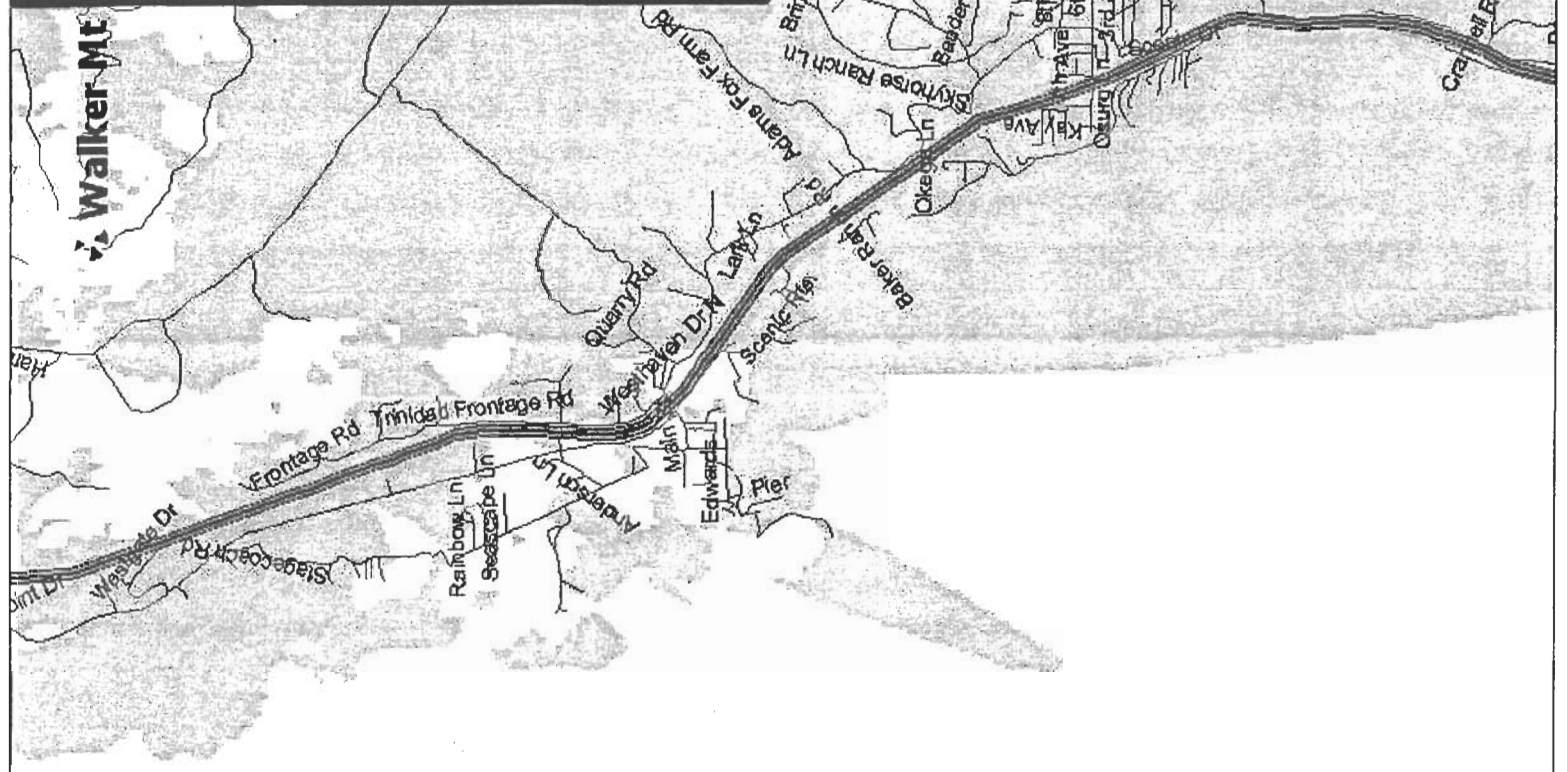
Earth curvature: [Normal Earth Correction]

Description: Walker Mt line of site study

File name: C:\Planet_Projects\Geodata\OR_CA\Terrain\or_c Browse...

OK

Cancel



17241

McKinleyville Line of Site Study



Grid: [or_ca_h30m_pnet_elev_trim_trinid >]

Viewshed method

- ☒ Simple calculation (classified grid: visible / invisible)
- ☐ Complex calculation (+/- height to make JUST visible)

Viewing parameters

Looking From: X: (409975.54962233198, 4534974.3590864306) >

Viewpoint height: 65.59000 metres

Viewshed offset: 2.0000 metres

Viewing radius: 29,326.5652 Meters

Earth curvature: [Normal Earth Correction >]

Description: [McKinleyville los study]

File name: [C:\Planet_Projects\Geodata\OR_CA\Terrain\or_c Browse...]

OK

Cancel



15941



Simple calculation (classified grid: visible / invisible)

Complex calculation (+/- height to make JUST visible)

Viewing parameters

metres

metres

Meters

Description:

Browse...

Cancel

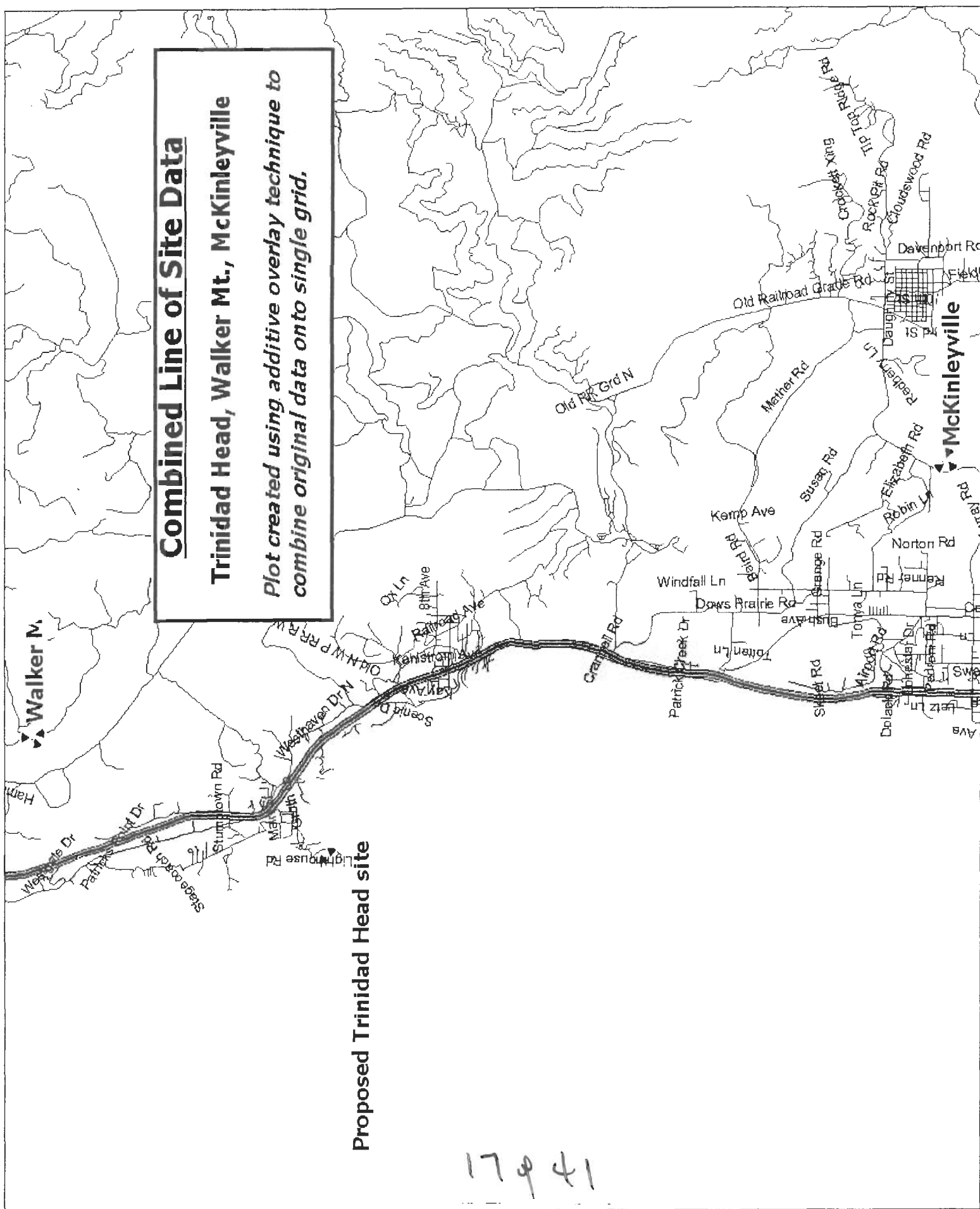
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Combined Line of Site Data

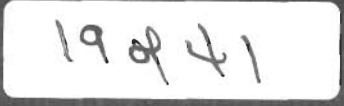
Trinidad Head, Walker Mt., McKinleyville

*Plot created using additive overlay technique to
combine original data onto single grid.*

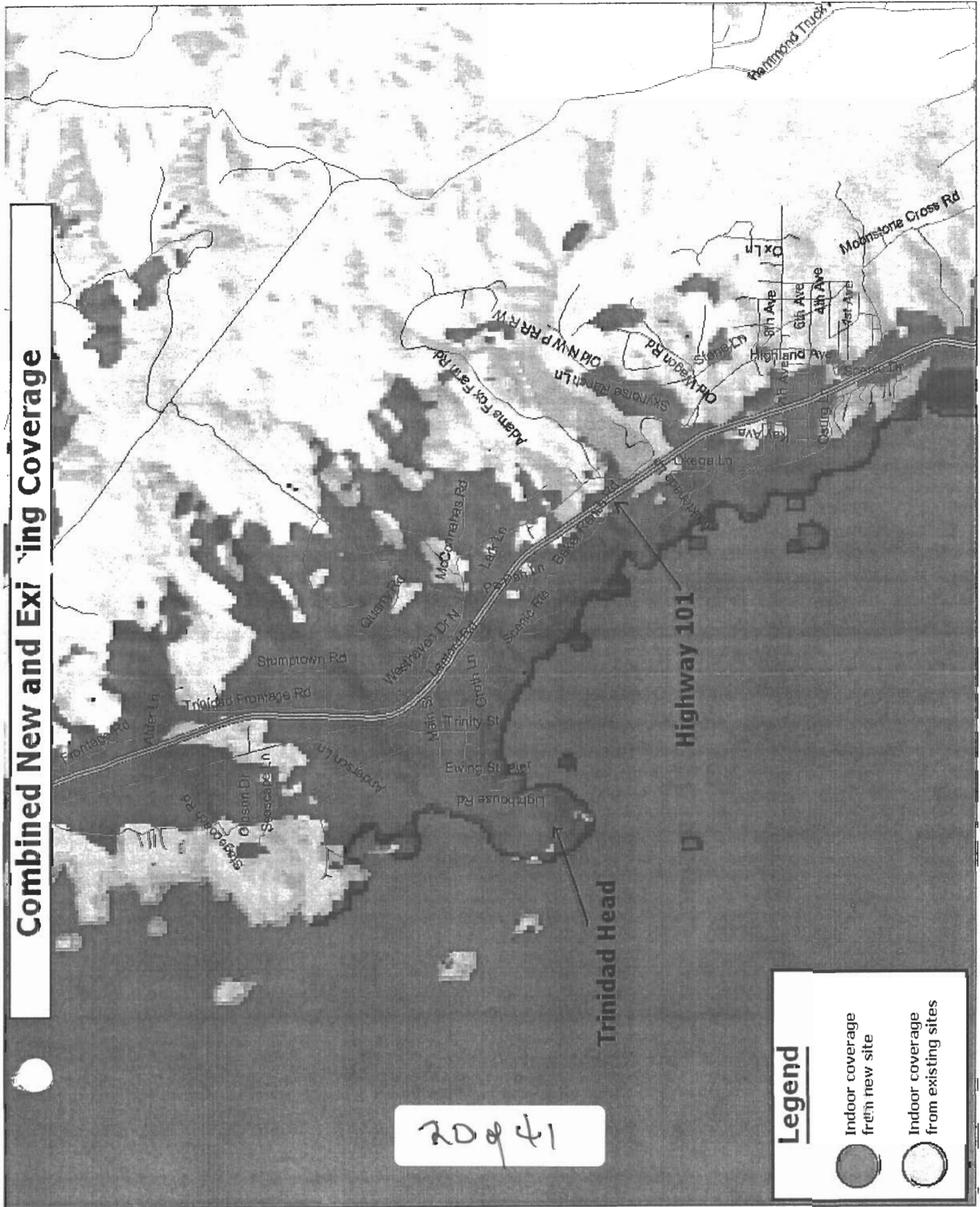
Proposed Trinidad Head site



17941



Combined New and Existing Coverage



20941

Legend

- Indoor coverage from new site
- Indoor coverage from existing sites

AREA
EXISTING

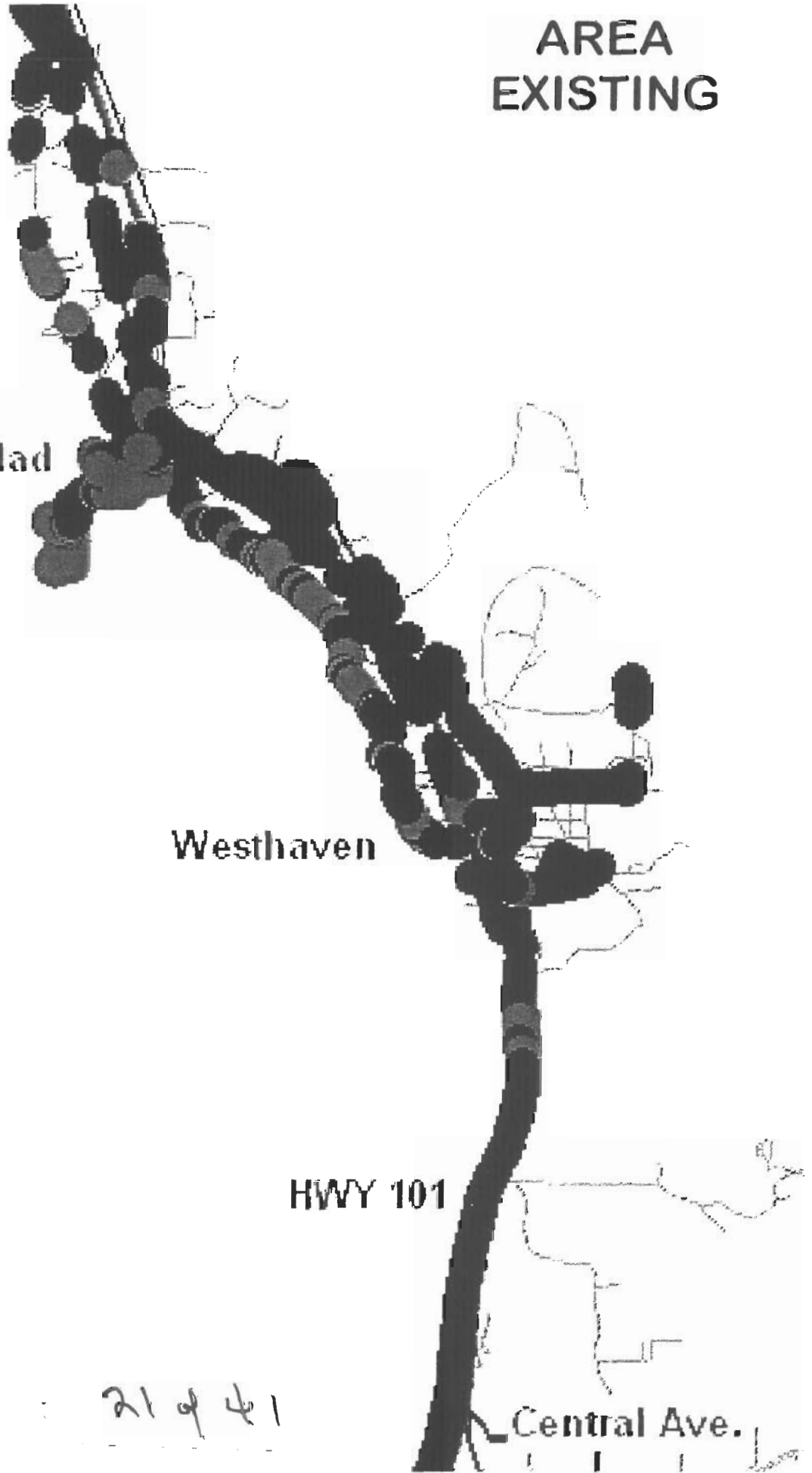
Trinidad

Westhaven

HWY 101

Central Ave.

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AREA WITH TRINIDAD HEAD

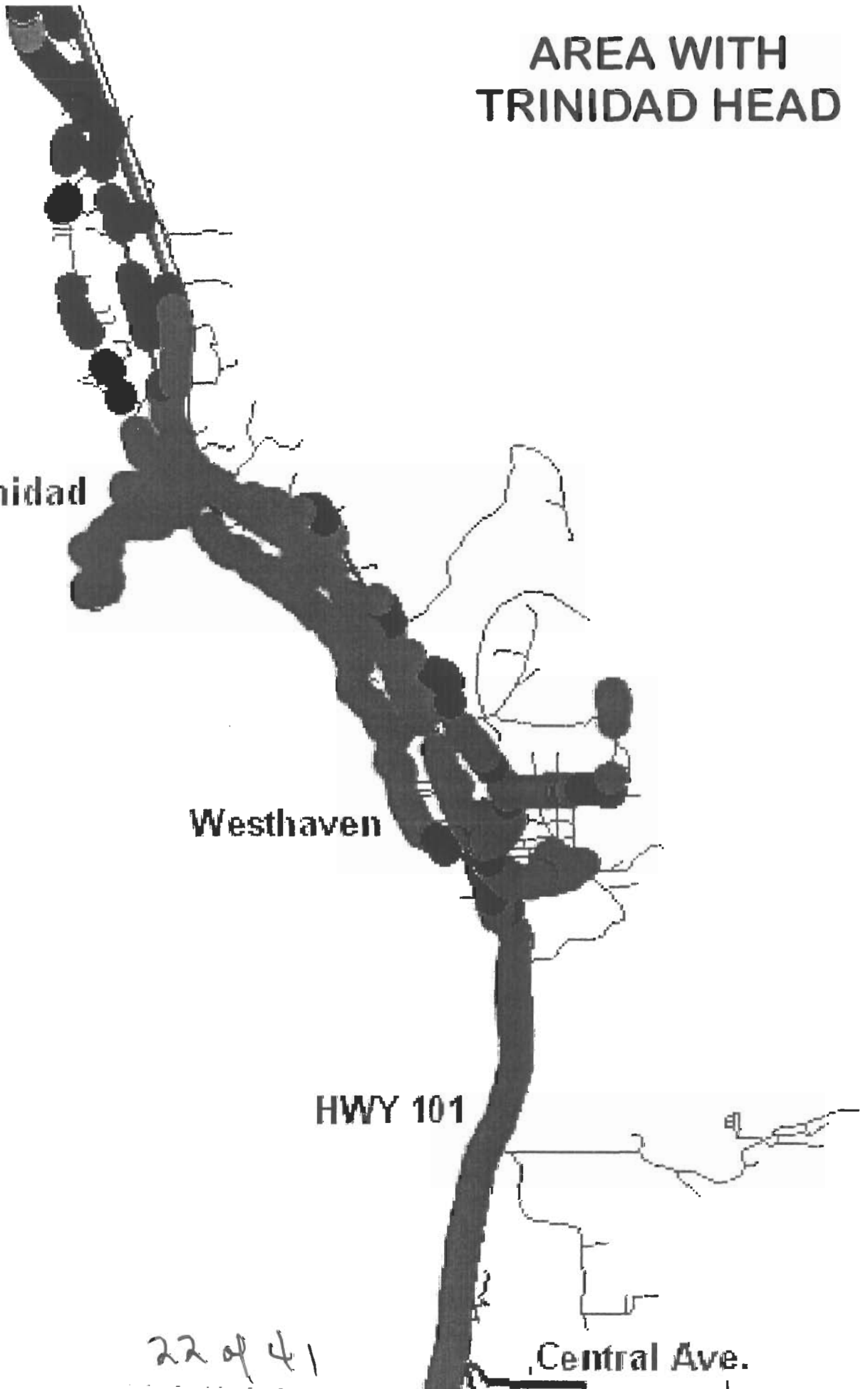
Trinidad

Westhaven

HWY 101

Central Ave.

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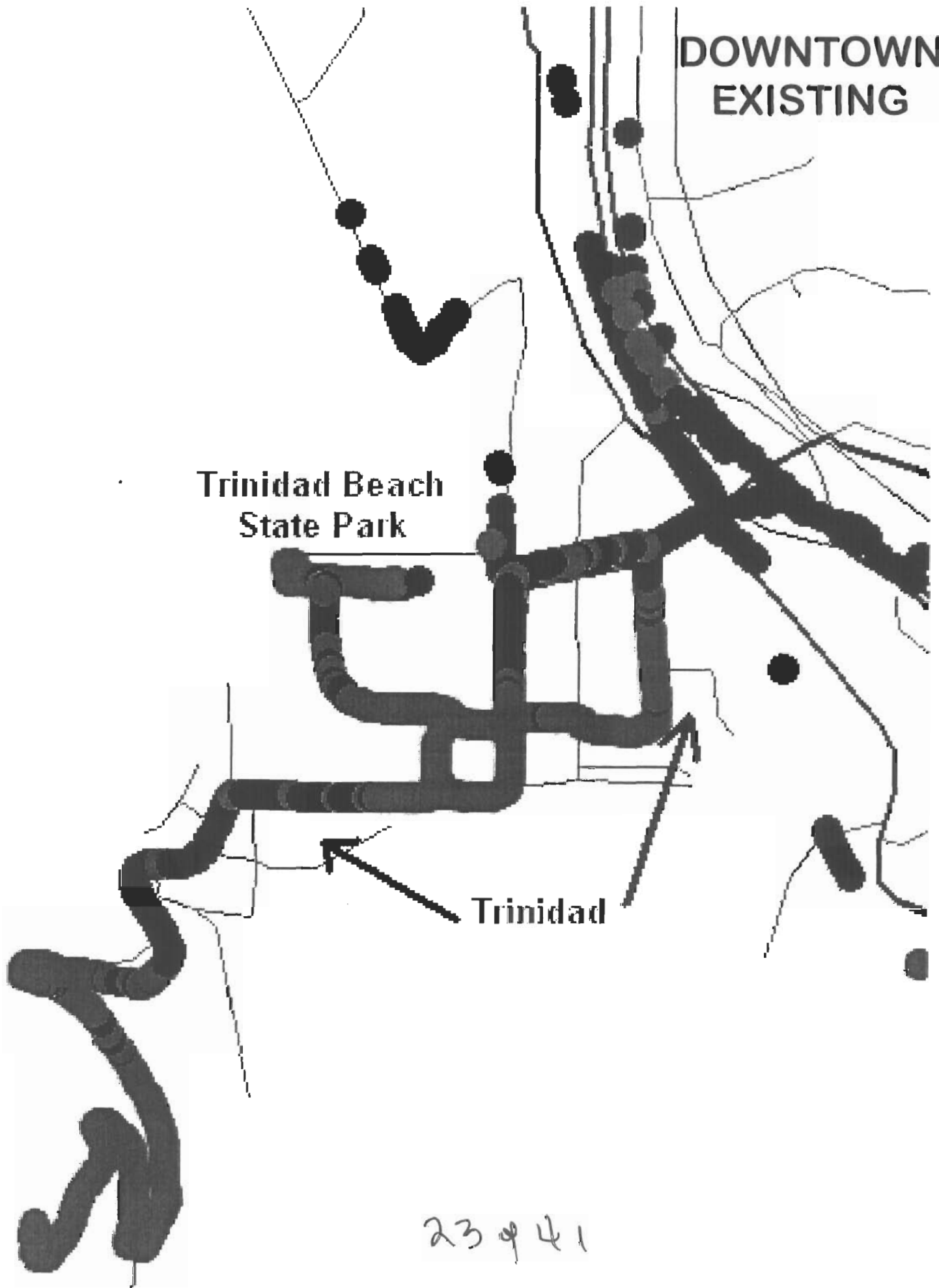


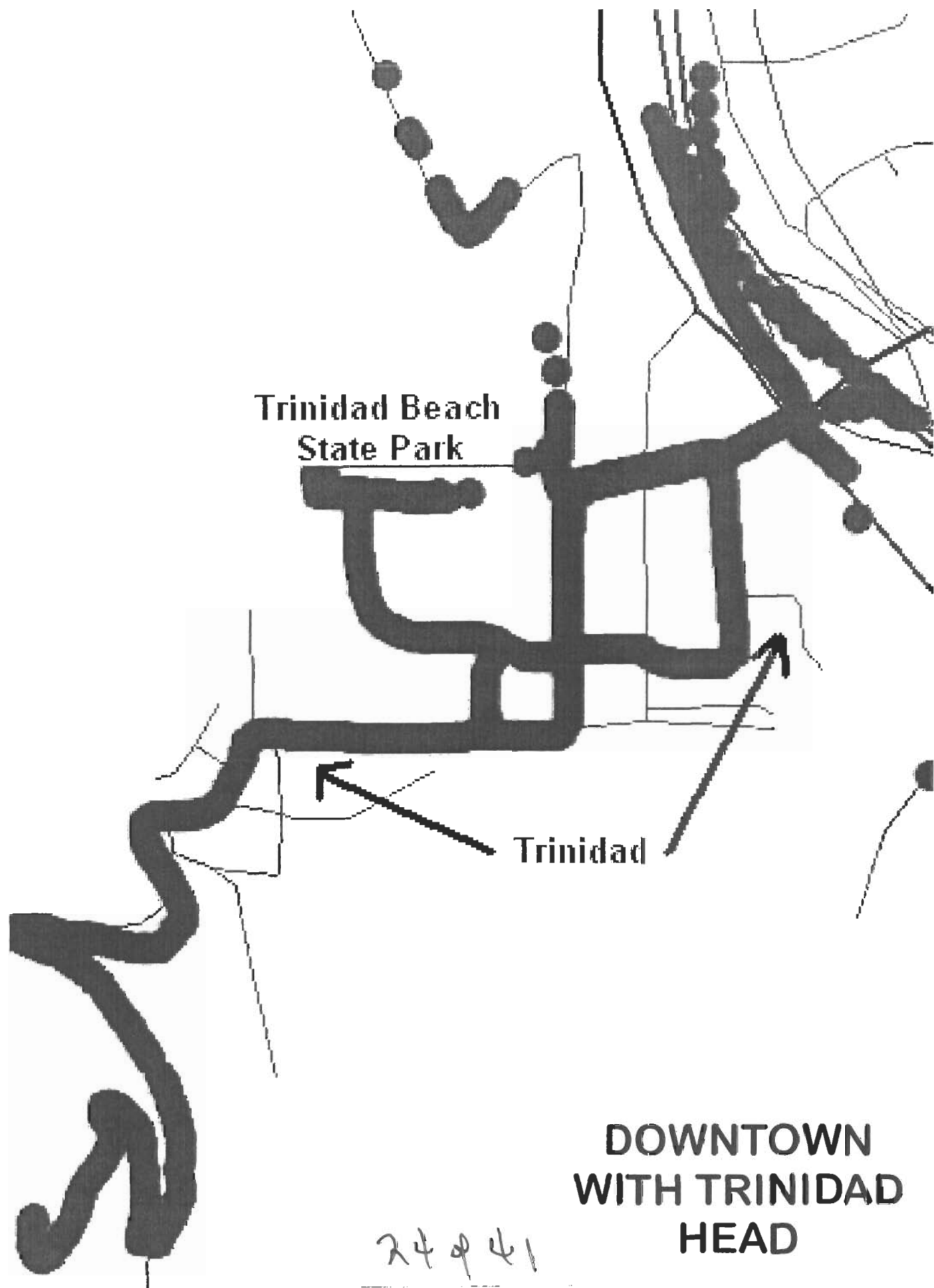
**DOWNTOWN
EXISTING**

**Trinidad Beach
State Park**

Trinidad

23941





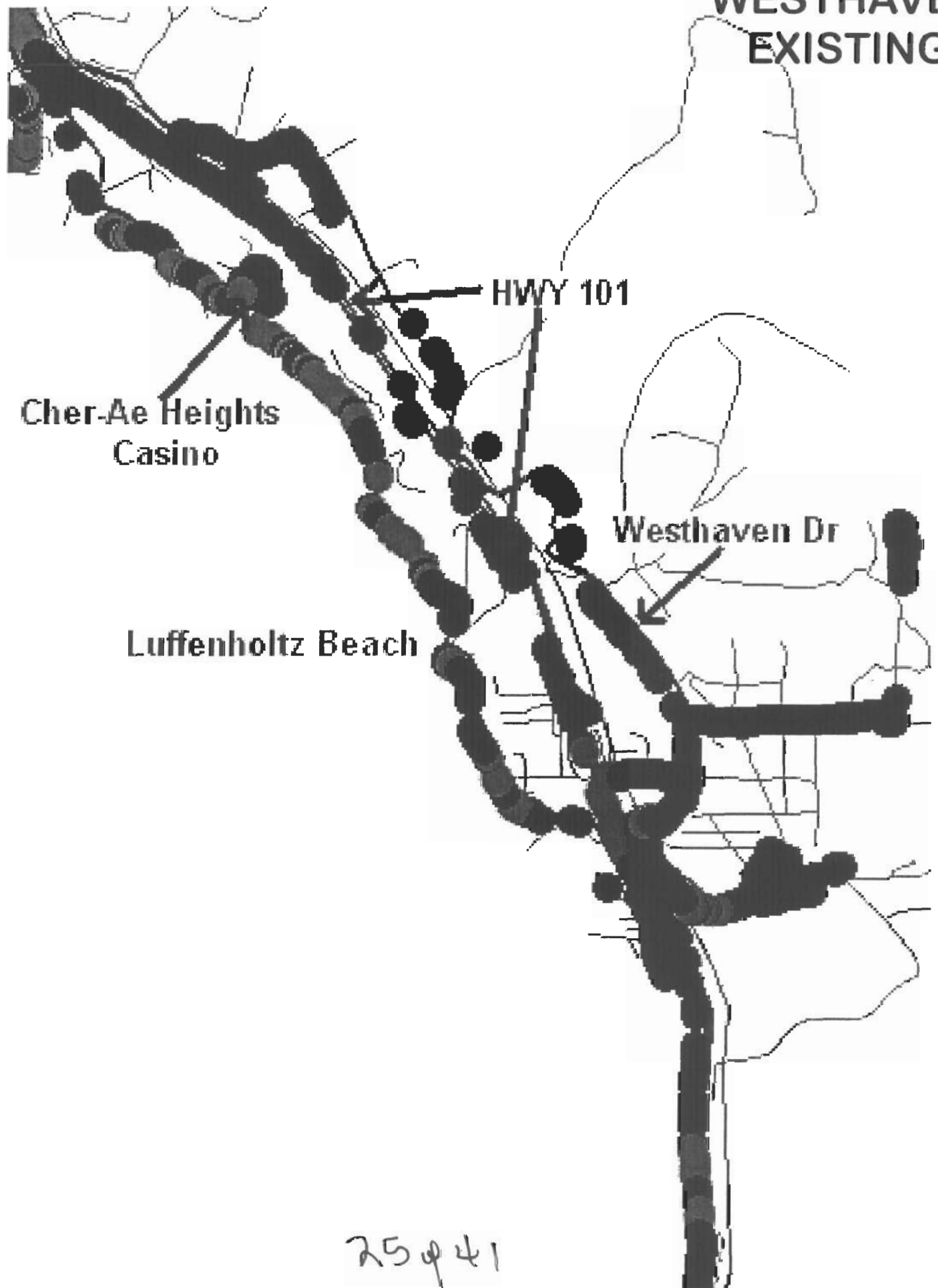
Trinidad Beach
State Park

Trinidad

DOWNTOWN
WITH TRINIDAD
HEAD

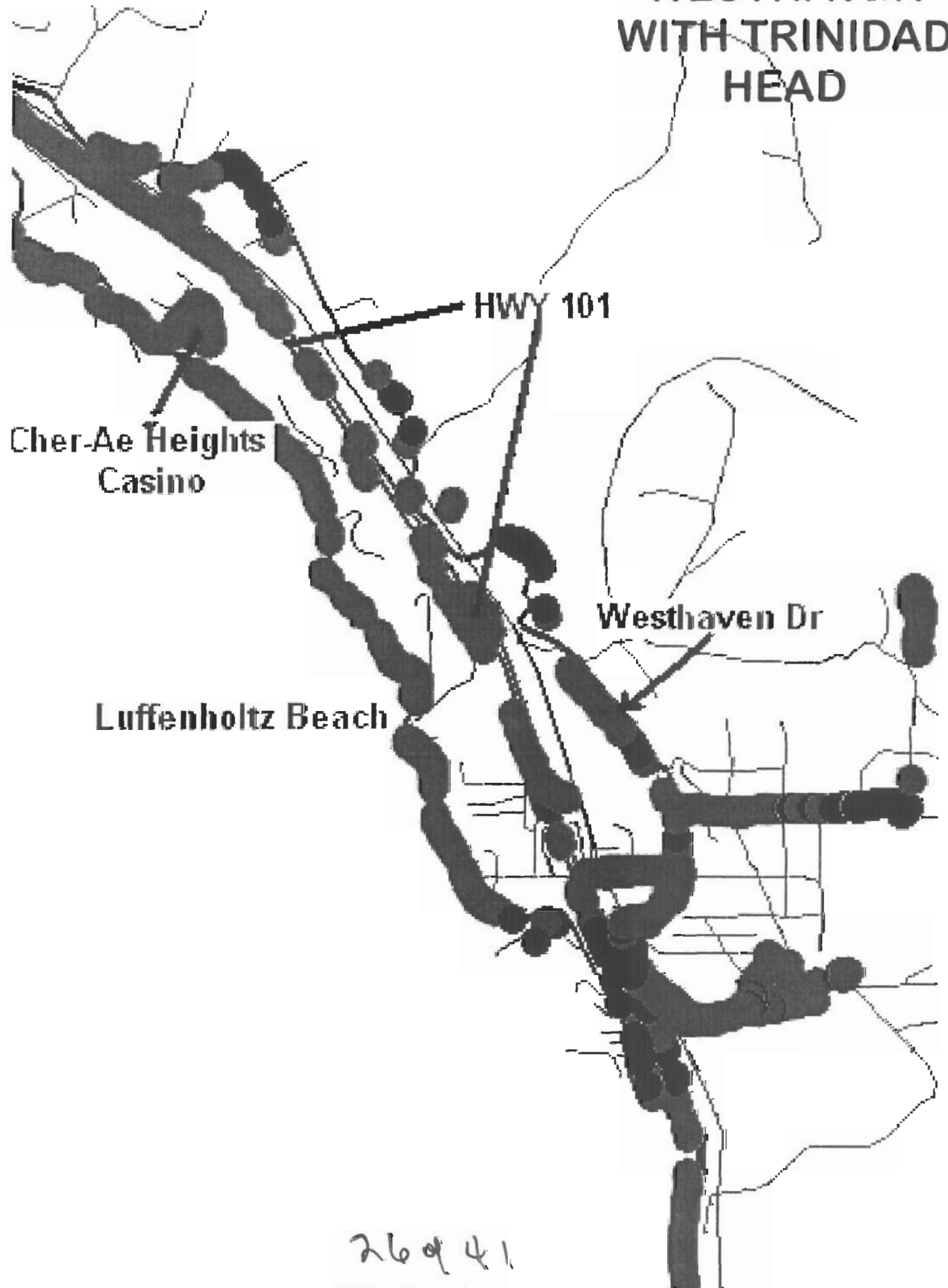
24941

**WESTHAVEN
EXISTING**



25441

WESTHAVEN WITH TRINIDAD HEAD



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Patrick's Point State
Park

Trinidad [1018]

288

300

294

1765 Patrick's Point Dr.

753 Patrick's Point Dr
Emerald Forest Trailer Park

128 Himalaya Dr

School and Town Hall

Scenic and
Langford

Westhaven Post Office

4th St

2206 Scenic Dr.

27941



Global RF SolutionsSM

RF Engineering Consultants

"Serving The Wireless Industries Needs"

1990 N. Alma School Road #122
Chandler, AZ 85224
(480) 814-1393

Evaluation of Human Exposure to Radio Frequency Emissions



Analysis of 568437 - Trinidad
Trinidad, CA

28941

LIMITED WARRANTY

Global RF Solutions warrants that this analysis was performed using substantially the methods that are referenced and described in this report and based entirely upon the information on the antenna site that was provided by US Cellular. Global RF Solutions disclaims all other warranties either expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose.

In no event will Global RF Solutions be liable to you or by any other person for damages, including any loss of profits, lost savings, or other special, exemplary, punitive, incidental or consequential damages arising out of your use or inability to use the analysis whether such claim is based on breach of warranty, contract, tort or other legal theory and regardless of the causes of such loss or damages. In no event shall Global RF Solutions entire liability to you under this Agreement exceed an amount equal to the price paid to for the analysis.

29041

TABLE OF CONTENTS

1. INTRODUCTION

2. SITE DESCRIPTION

3. ANALYSIS

4. RESULTS

5. CONCLUSIONS AND RECOMMENDATIONS

APPENDIX A – LIMITS FOR MAXIMUM PERMISSIBLE EXPOSURE (MPE)

30941

1. Introduction

An analysis of this Communications Facility has been completed to determine if it will be compliant with guidelines set forth by the Federal Communications Commission (FCC) with regards to maximum human exposure limits. This site was surveyed on Thursday, April 13, 2006 at 16:30. This determination of FCC Compliance is **ONLY** applicable to US Cellular transmitting equipment. This has been accomplished with the use of predictive modeling software and measurements performed with a Narda 8715 meter serial #10003 and a shaped A8742D probe serial #01151. The meter and probe are properly calibrated until August of 2006. The Narda survey has been done to measure current conditions.

The Radio Frequency Power Density predictions have been done using 100% transmitter duty cycle. This will predict a worst-case scenario for safety reasons. The predictive software tool utilizes a cylindrical model that provides spatially averaged power density that is calculated in one square foot increments (pixels). The composite RF fields are displayed as a percentage of the exposure limit. The software tool utilized for predictive analysis is RoofView®, a product developed by Richard Tell Associates, Inc. The FCC recognizes this software tool as a valid means of determining Maximum Permissible Exposure levels (MPE).

31941

2. SITE DESCRIPTION

Site ID: 568437		Site Name: Trinidad			
Date of Evaluation	4/13/2006	Site Evaluator (name): Harry Young			
Site Type	Building	Tower/Monopole	XX	Water Tower	
Address: End of Lighthouse Rd, Trinidad, CA					
GPS NAD83	N 41 3 14.01	W 127 9 2.07	Structure Height AGL	22'	
Access Restricted	Yes				

This communications site will be located on two monopoles inside a locked compound. The antennas can be accessed by climbing the monopoles. The service providers will restrict the access to the antennas. Access is not restricted to EME Awareness trained personnel and an RF Safety plan is not in place.

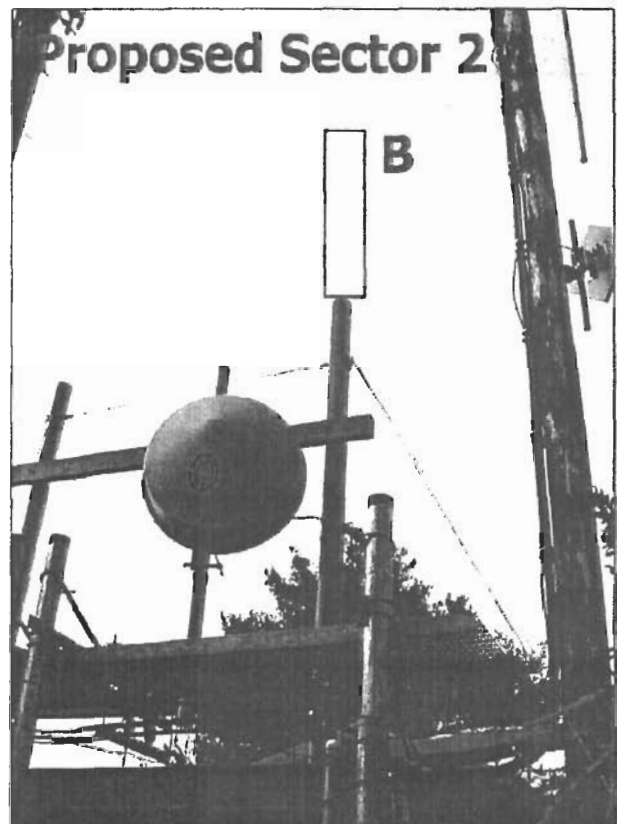
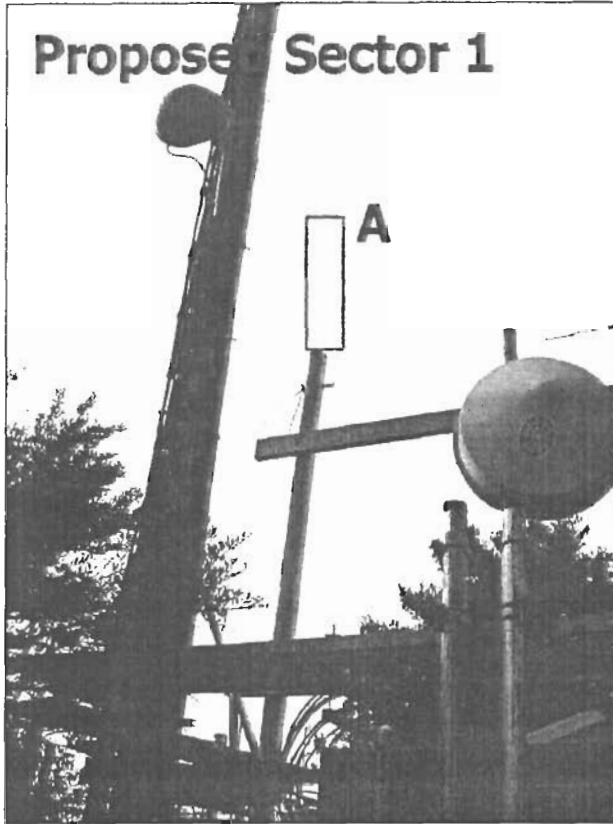
These are photographs of the 568437 Trinidad site:



32441

2. SITE DESCRIPTION (continued)

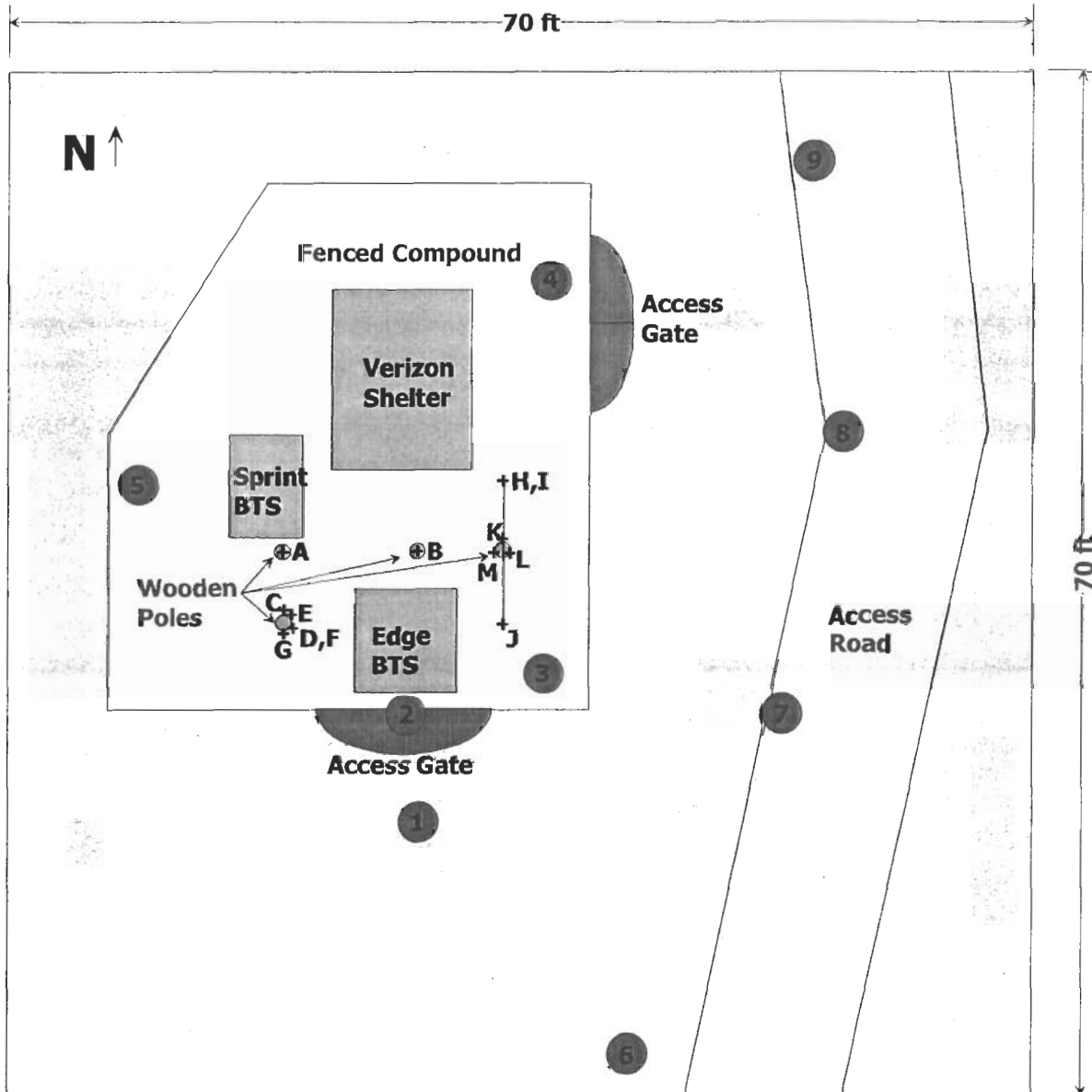
These are photographs of the 568437 Trinidad site:



33 of 41

2. SITE DESCRIPTION (continued)

This drawing depicts the layout of the 568437 Trinidad communications facility. The antenna legend is on page 8.



34 of 41

2. SITE DESCRIPTION (continued)

This is the antenna legend for the drawing on page 7.

Antenna ID	Owner	Frequency	Antenna Manufacturer	Antenna Model
A	US Cellular	875.00000	Antel	RWA-80015
B	US Cellular	875.00000	Antel	RWA-80015
C	Edge Wireless	1965.00000	EMS	RR90-17-00
cc	Edge Wireless	1970.00000	EMS	RR90-17-00
D	Edge Wireless	1965.00000	EMS	RR65-18-02
dd	Edge Wireless	1970.00000	EMS	RR65-18-02
E	Sprint	1930.00000	EMS	Panel
F	Sprint	1930.00000	EMS	Panel
G	Sprint	1930.00000	EMS	Panel
H	Verizon	885.00000	Decibel	Omni
I	Verizon	885.00000	Decibel	Omni
J	Verizon	885.00000	Decibel	Omni
K	Verizon	885.00000	EMS	Panel
L	Verizon	885.00000	EMS	Panel
M	Verizon	885.00000	EMS	Panel

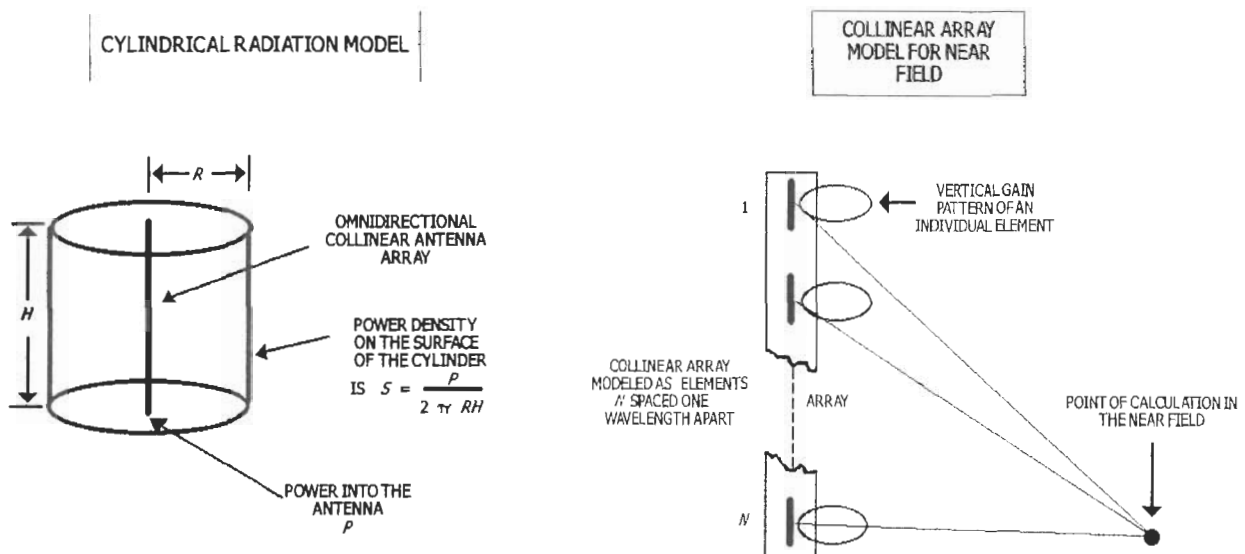
35941

3. ANALYSIS

Site Modeling:

Electromagnetic energy (EME) exposure situations have been modeled at this site by using the following techniques. A cylindrical model in the near field of a vertical collinear antenna is run through a computer calculation engine. This model was used to compute the average power density on the surface of an imaginary cylinder, with a height equal to the antenna's aperture, and a radius equal to the distance of interest.

The collinear antenna model estimates the number of elements in the array and in the gain pattern of each element. The power density in the near field of the antenna is calculated by combining the contributions from each element in the array. The completed calculations of these models are plotted in the RESULTS section. The software tool utilized for predictive analysis is RoofView®, a product of Richard Tell Associates, Inc.



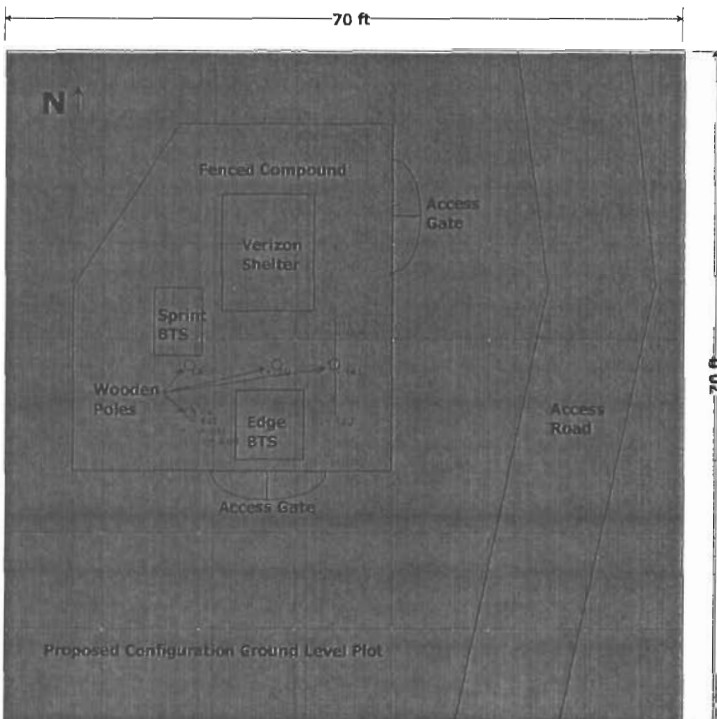
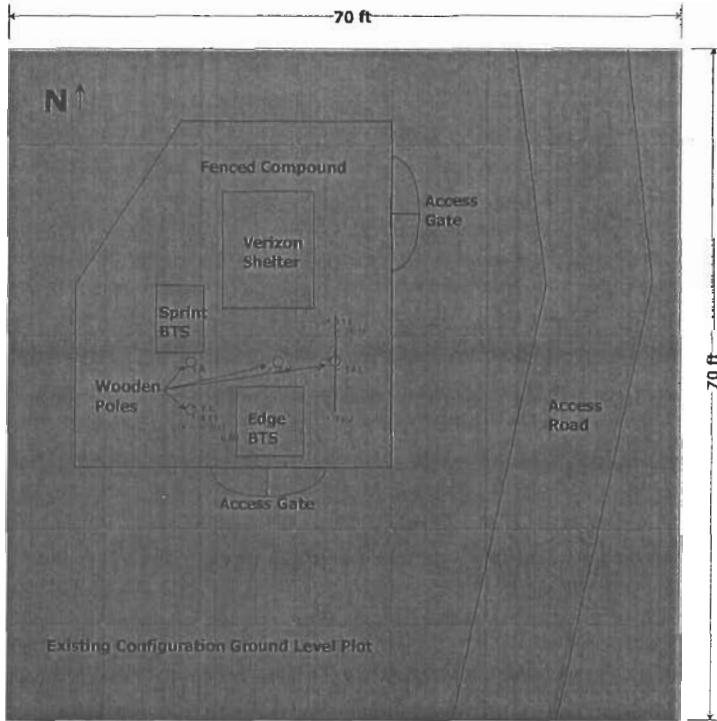
RF Survey:

The field survey validates modeling results and defines exclusion areas at the site. Electromagnetic energy (EME) fields were assessed through direct measurement at the transmitter site, using properly calibrated field probes. Due to the possibility that EME fields may exist over a wide frequency range within which the exposure limits vary, field measurements were performed with a meter equipped with a frequency shaped probe that can automatically weigh each field contribution in accordance with it's frequency.

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4. RESULTS

This is the predicted software plot using the FCC PUBLIC and FCC OCCUPATIONAL standard. The grid is in 10-foot increments. This shows that the MPE limits cannot be exceeded at this site currently and with the proposed addition of US Cellular antennas.

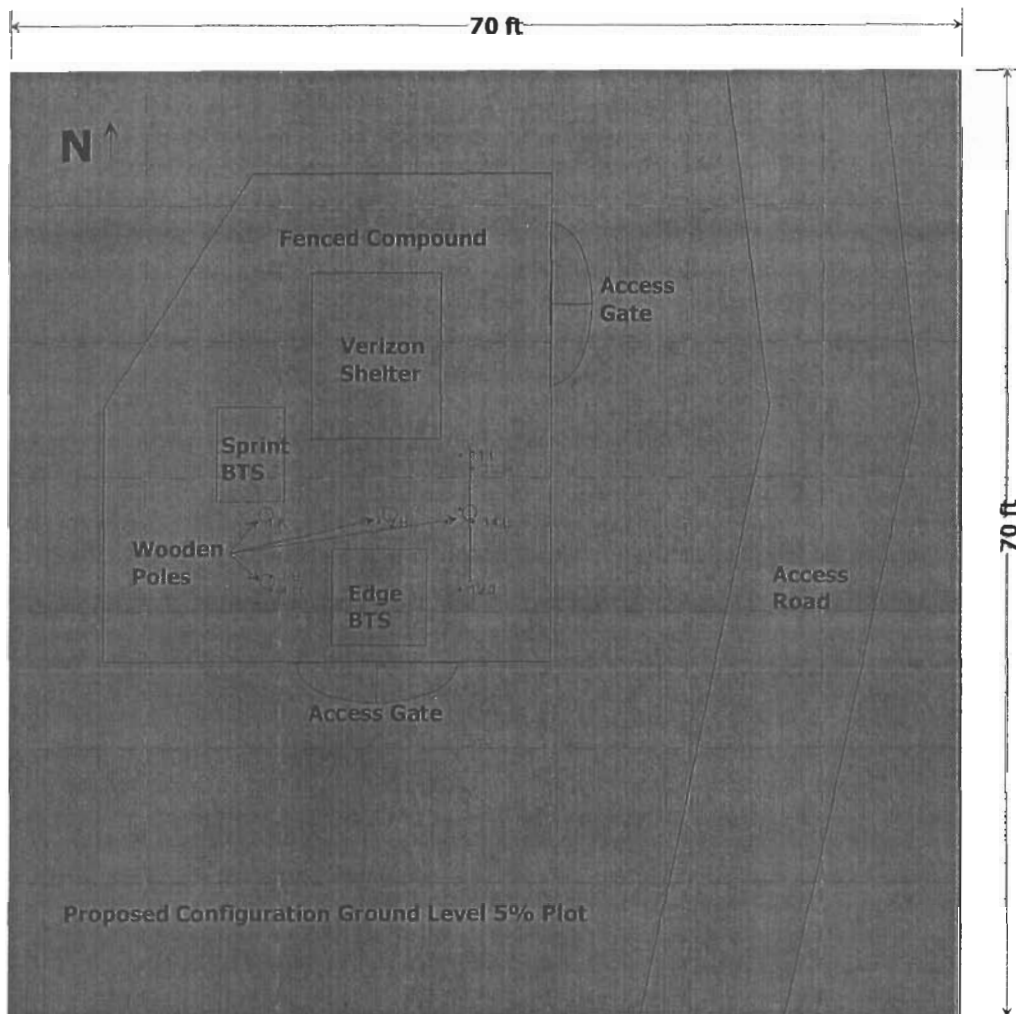


**FCC OCCUPATIONAL
MPE %
UPTIME = 100%**

GREEN = <20%
BLUE = 20% - 100%
YELLOW = 100%-1000%
RED = >1000%

4. RESULTS (continued)

This is the predicted software plot with the threshold set to 5% of the FCC PUBLIC Standard for the US Cellular antennas only. All other antennas are turned off! The grid is in 10-foot increments.



UPTIME = 100%

GREEN = < 5% FCC
Public Standard

PURPLE = > 5% FCC
Public Standards

4. RESULTS (continued)

Narda meter survey results for the existing configuration are referenced on the site drawing (page 7). The measured results are listed in the accompanied table.

Reference Point	Spatial Maximum % FCC Occupational MPE Limit	Spatial Average % FCC Occupational MPE Limit	Distance in feet indicated RF field decreases below General Public MPE Limit (Spatial Average)	US Cellular Antenna
1	4%	<1%	N/A	N/A
2	3.7%	<1%	N/A	N/A
3	4%	<1%	N/A	N/A
4	4%	<1%	N/A	N/A
5	3.7%	<1%	N/A	N/A
6	3.8%	<1%	N/A	N/A
7	3.7%	<1%	N/A	N/A
8	3.6%	<1%	N/A	N/A
9	3%	<1%	N/A	N/A

NOTE: US Cellular antenna RF field indications above represent measurements obtained in accessible regions near the antennas. Antenna mounting height and/or location may prevent RF field measurements of specific antennas.

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5. CONCLUSIONS AND RECOMMENDATIONS

Conclusion:

The predicted software analysis has shown that US Cellular cannot exceed maximum permissible exposure levels for the FCC Public or FCC Occupational standards at this proposed site. Narda survey measurements confirm that the existing configuration of service providers also does not exceed levels. US Cellular has properly proposed their equipment to be compliant with FCC guidelines concerning MPE issues. US Cellular will be compliant with FCC Guidelines.

Recommendations:

US Cellular will be compliant with FCC Guidelines at this site as proposed. Site access is restricted and not controlled by an RF safety plan. US Cellular is not required to perform additional mitigation procedures.

The use of a "Notice" sign is recommended as well as a "10-Site guidelines" sign. These signs should be posted at the gates used to access the compound.

Landlord must ensure that US Cellular antenna access will be restricted to personnel that have been authorized by US Cellular (EME Awareness trained personnel only). This would include all maintenance personnel and contractors accessing the antenna area.

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APPENDIX A- LIMITS FOR MAXIMUM PERMISSIBLE EXPOSURE (MPE)

(REFERENCE= TABLE 1. Title 47 CFR)

(A) Limits for Occupational/Controlled Exposure

Frequency Range (MHz)	Electric Field Strength (E) (V/m)	Magnetic Field Strength (H) (A/m)	Power Density (S) (mW/cm ²)	Averaging Time E ² , H ² or S (minutes)
0.3-3.0	614	1.63	(100)*	6
3.0-30	1842/f	4.89/f	(900/f ²)*	6
30-300	61.4	0.163	1.0	6
300-1500	--	--	f/300	6
1500-100,000	--	--	5	6

(B) Limits for General Population/Uncontrolled Exposure

Frequency Range (MHz)	Electric Field Strength (E) (V/m)	Magnetic Field Strength (H) (A/m)	Power Density (S) (mW/cm ²)	Averaging Time E ² , H ² or S (minutes)
0.3-1.34	614	1.63	(100)*	30
1.34-30	824/f	2.19/f	(180/f ²)*	30
30-300	27.5	0.073	0.2	30
300-1500	--	--	f/1500	30
1500-100,000	--	--	1.0	30

f = frequency in MHz*Plane-wave equivalent power density

NOTE 1: **Occupational/controlled** limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure. Limits for occupational/controlled exposure also apply in situations when an individual is transient through a location where occupational/controlled limits apply provided he or she is made aware of the potential for exposure.

NOTE 2: **General population/uncontrolled** exposures apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or can not exercise control over their exposure.

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6-16-93

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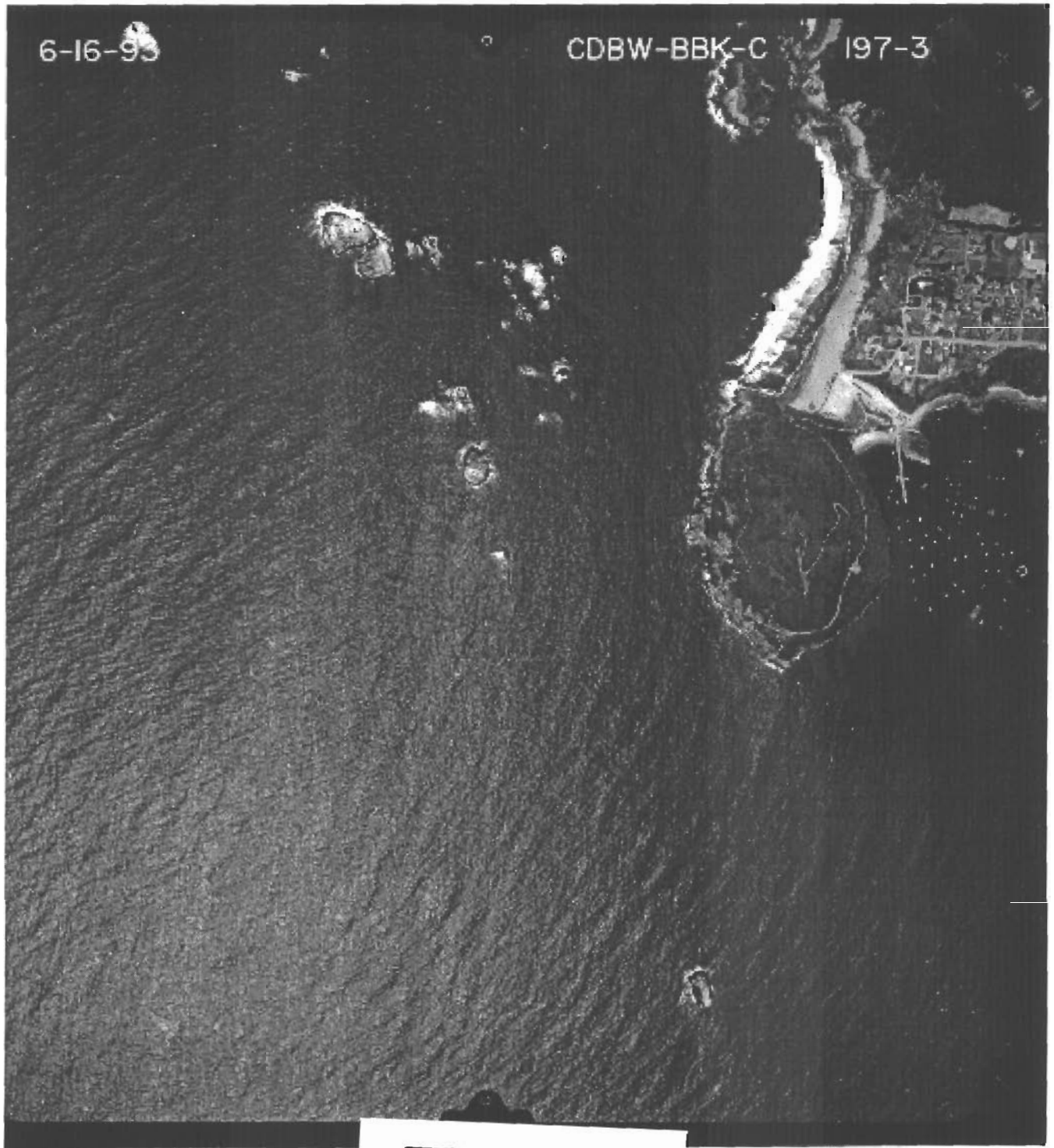


EXHIBIT NO. 9

APPEAL NO.

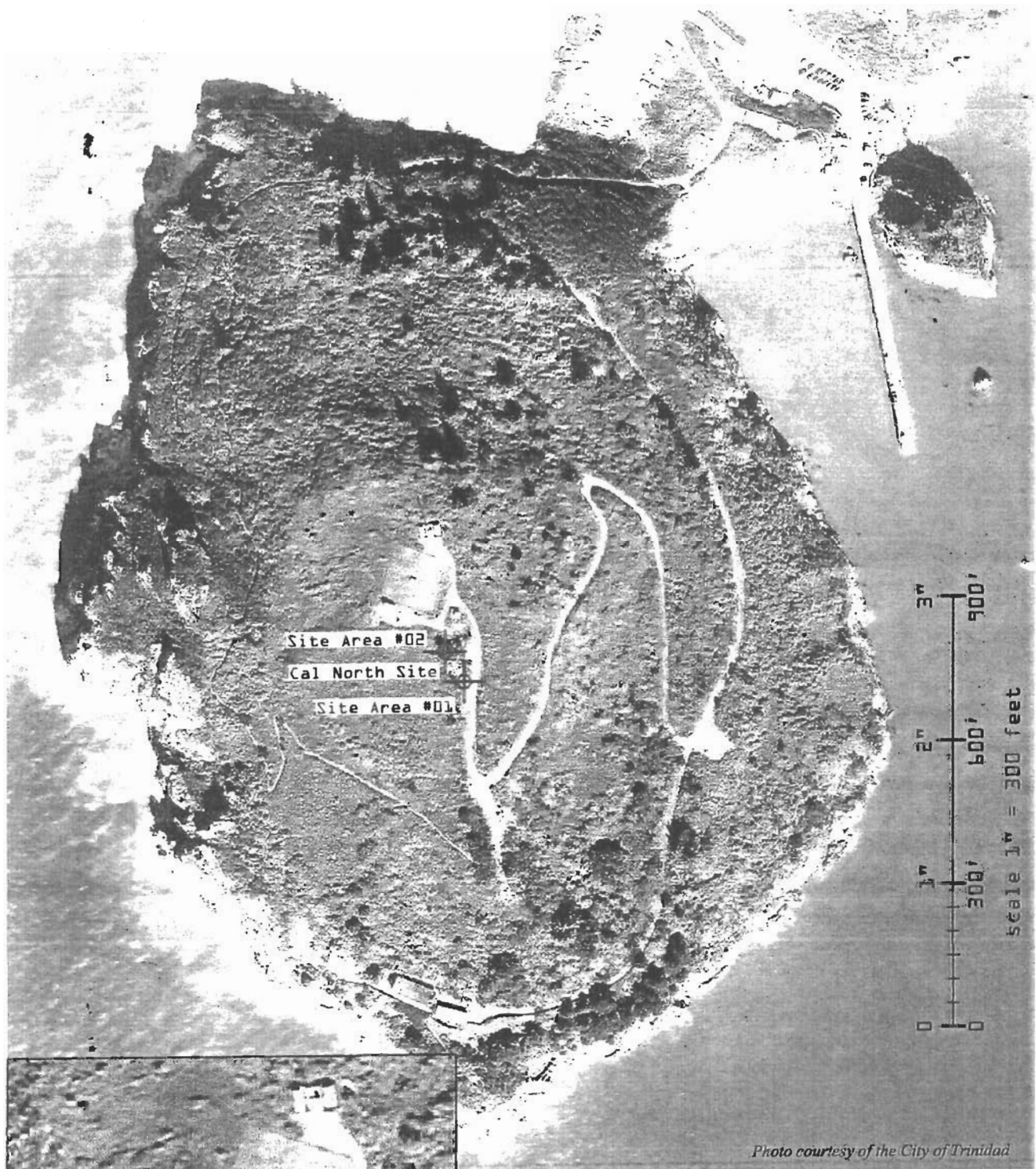
A-1-TRN-06-042

U.S. CELLULAR CORPORATION


SITE PHOTOGRAPHS

SUBMITTED BY APPLICANT

(1 of 5)



Detail = 2X scale

 **U.S. Cellular**

**PROPOSED
TRINIDAD HEAD SITE**

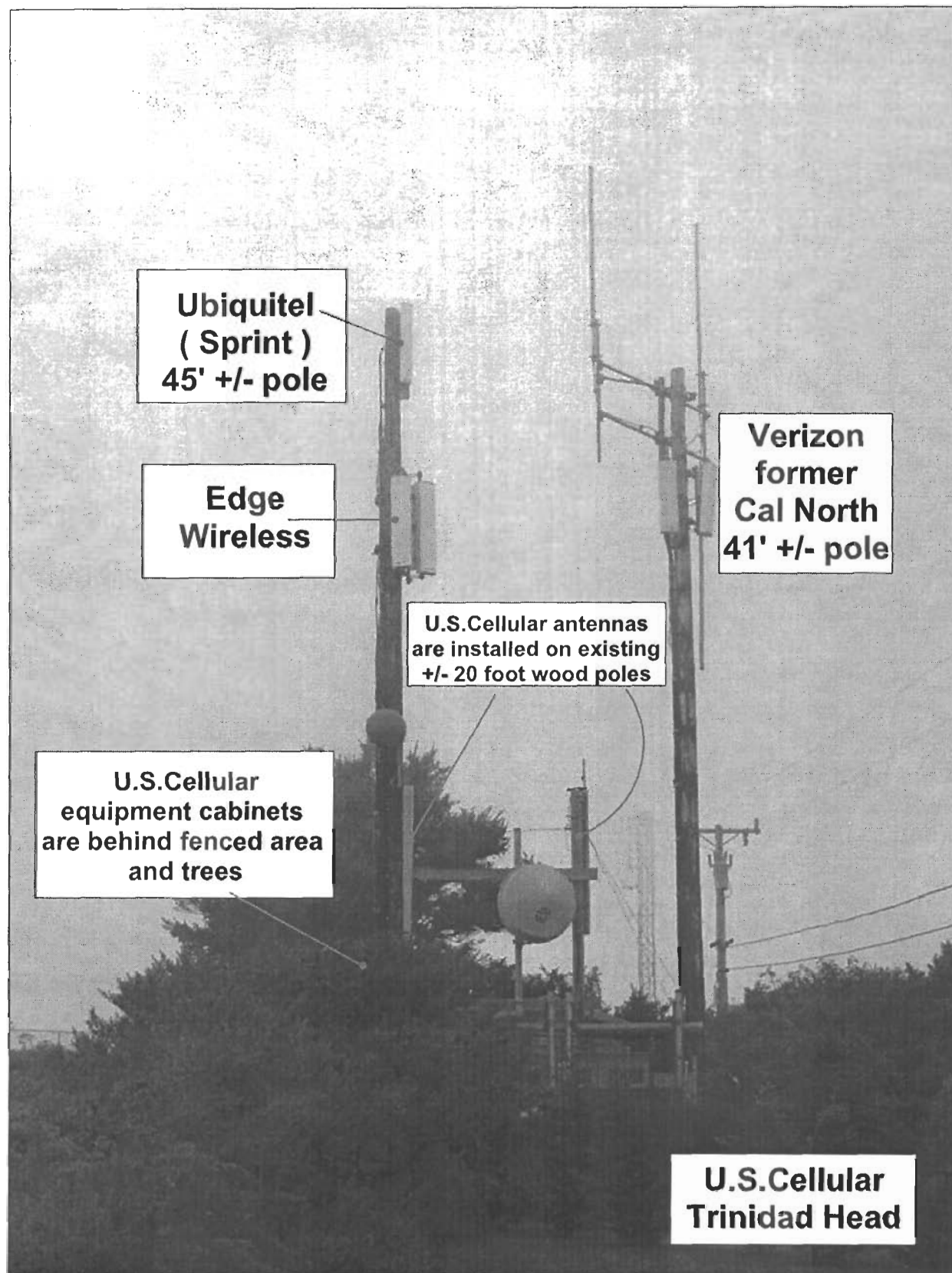
295



3 of 5



495



**Ubiquitel
(Sprint)
45' +/- pole**

**Edge
Wireless**

**Verizon
former
Cal North
41' +/- pole**

**U.S.Cellular antennas
are installed on existing
+/- 20 foot wood poles**

**U.S.Cellular
equipment cabinets
are behind fenced area
and trees**

**U.S.Cellular
Trinidad Head**

545

Tsurai Ancestral Society

**P.O. Box 62
Trinidad Ca. 95570**

From: Axel Lindgren III Chairman of the Tsurai Ancestral Society.

To: Jim Baskin

Subject: Support The Appeal Of The "Friends Of The Trinidad Head"

RECEIVED
OCT 17 2006
**CALIFORNIA
COASTAL COMMISSION**

Mr. Jim Baskin,

I would like to write a letter of support for "The Friends Of The Trinidad Head." I learned that Trinidad, (as a pilot program) was appointed as its own Coastal Commission. Thus empowering Trinidad to approve its own projects, my feeling is this was the beginning of a huge mistake. So when I look at all the wrong doings that has been pointed out by The Friends, I believe what they are saying. I truly believe that the Coastal Commission was kept in the dark for so many years that it would be an embarrassment to go back and look at projects that were completed with out their knowledge. I realize it will be difficult to right the wrongs of the past, but we have to start some where...

Sincerely yours,

Axel Lindgren III

EXHIBIT NO. 10
APPEAL NO.
A-1-TRN-06-042
U.S. CELLULAR CORPORATION
GENERAL
CORRESPONDENCE (1 of 8)

RECEIVED

OCT 10 2006

CALIFORNIA
COASTAL COMMISSION

California Native Plant Society

North Coast Chapter
P.O. Box 1067
Arcata, CA 95518
October 10, 2006

Jim Baskin
California Coastal Commission
North Coast District Office
710 E street, suite 200
Eureka, CA 95501

**Re: Support for Appeal by Friends of Trinidad Head of City of Trinidad's Decision
re: Cellular Transmission Facilities**

Dear Mr. Baskin,

I am writing this letter on behalf of the North Coast Chapter of the California Native Plant Society (CNPS). CNPS is a nonprofit organization of nearly 10,000 amateurs and professionals dedicated to the preservation of California's diverse native flora. CNPS conducts a variety of conservation efforts focused on long-term protection and preservation of native flora in its natural habitat, and is the foremost non-governmental organization working to protect rare, threatened, and endangered plants in California. The North Coast Chapter is based in Arcata and represents approximately 300 members, many of whom enjoying the trails, scenic views, and natural environment of Trinidad Head on a regular basis.

CNPS supports the Friends of Trinidad Head appeal of the local government decision regarding U.S. Cellular's revised Application No. 2005-13a to place wireless communications equipment on City property on Trinidad Head. CNPS believes that the project is in conflict with numerous local, state, and federal regulations, including the Trinidad General Plan and Local Coastal Plan, the California Environmental Quality Act (CEQA), the Coastal Zone Management Act, and the National Environmental Policy Act (NEPA). These concerns are described in detail below.

Lack of Botanical Scoping and Surveys for the Project Area

The most glaring inadequacy of the proposal with regard to botanical resources is the failure to conduct surveys for the federally endangered western lily (*Lilium occidentale*). According to the Trinidad City General Plan, suitable habitat for the western lily and other rare plants has been identified on Trinidad Head. This oversight was raised in the Friends of Trinidad Head letter dated August 21, 2006, but was not addressed in the City's Appeal Response. It was summarily dismissed at the City's appeal hearing by the City Planning staff as well as the mayor of Trinidad, both of whom decided that botanical



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Dedicated to the preservation of California native Flora

surveys were unnecessary. Such an arbitrary decision—in the absence of consultation with a botanical expert—is unacceptable and inappropriate.

Failure to conduct seasonally appropriate surveys is a violation of state and federal laws. The lack of surveys also violates the U.S. Fish and Wildlife Service's *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants* (1996).

The proposal also fails to include basic information on rare plants that could occur within the area and that qualify for protection under 15380(d) of CEQA. Environmental assessment of such a project should include a list of plants from the California Natural Diversity Database and California Native Plant Society's *Inventory of Rare and Endangered Plants of California* to disclose sensitive species which have the potential to occur in the plan area (CNDDDB Nov. 2002; CNPS 2001).

Botanical surveys should be conducted in all suitable habitat that will be impacted by the proposed project. The City's appeal response dated September 8, 2006 states that:

It is clear that some soil disturbance will need to occur in order to place the proposed equipment cabinets...

Botanical scoping should be conducted to determine which sensitive species are known from the project area. These species qualify for consideration under 14 Cal. Code Reg. § 15380. Botanical surveys should be conducted by botanists with knowledge of the local flora, taxonomy and identification of all local taxa, including grasses and graminoids, and experience with project-related impacts and feasible mitigations to protect sensitive plant species from those impacts. Botanical surveys should include an inventory of all species present within the plan area, as described in the DFG Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities (CDFG 2000).

The City of Trinidad's Staff Report states on page 6 that:

The General Plan Policy 17 (p. 15) encourages minimizing development on Trinidad Head in order to protect rare plants and animals that exist there. Trinidad Head has been identified in General Plan background documents as being habitat for the Western Lily (*Lilium occidentale*), and possibly other rare plants as well. However, since this project will not involve any new ground disturbance, this concern is not an issue.

Page 6 of the City of Trinidad's Staff Report states that "This project is not fully consistent with this policy." CNPS believes that this inconsistency is grounds for denial of the project. If it is approved, the General Plan's consistency with the Local Coastal Plan and the Coastal Zone Management Act will be in question.

Not only is the project in conflict with the Trinidad General Plan, but it is also in conflict with CEQA, which requires that sufficient information be provided to allow the lead agency, trustee agencies, and the public to evaluate potentially significant adverse effects and to disclose to the public the reasons why the action was approved [14 CCR § 897(b)(3), 898.2(c), 1034 (w), § 15003, 15091, 15126.2, 15126.4; PRC § 21082.2]. This is most clearly stated in 14 CCR § 15002, which lists the basic purposes of CEQA.

3 of 8

Two of these basic purposes are 1) to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities and 2) disclose to the public the reasons why a governmental agency approved the project in the manner chosen.

Project Would Impact Environmentally Sensitive Habitat Areas (ESHAs)

The Coastal Act defines "environmentally sensitive area" as an area in which plant or animal life or their habitats are either rare or especially valuable because of their nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Cal. Pub. Res. Code § 30107.5.

Trinidad Head would be considered an ESHA under both definitions, since it is defined by City General Plan Policy 17 as rare plant habitat and is also quite likely an area that would be easily disturbed or degraded by human activities. Development within or adjacent to an ESHA is expressly and severely limited. Under the Coastal Act, ESHAs "shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Cal. Pub. Res. Code § 30240(a). Communications facilities are not a coastal dependent use and thus would not be allowed in an ESHA within the Coastal Zone. The statute, by its terms, and as emphasized by the few courts who have considered the issue, restricts development only "to uses dependent on [the] resources" – which would appear to restrict essentially all significant commercial development. See *Sierra Club v. California Coastal Commission* (1993) 12 Cal. 4th 602, 617, and *Bolsa Chica Land Trust v. Superior Court of San Diego* (1999) 71 Cal. App. 4th 493,

Furthermore, the project is likely to impact an adjacent ESHA, the coastal waters surrounding Trinidad Head. Erosion, runoff and non-point source pollution, and other impacts related to the project construction and ongoing maintenance could degrade the adjacent coastal waters and associated fish and wildlife habitat.

Project is Inconsistent with Zoning

The project proposes commercial construction on city property zoned for Open Space. According to the City staff report, Trinidad Head is an important coastal, aesthetic, and cultural resource and has been slated for low-intensity recreation and open space by regulating agencies (page 6 of the City of Trinidad's Staff Report states that "Policy 66 (p. 39) states that: *"Trinidad Head will be kept in its natural state with hiking trails and vista points."*). For these reasons, CNPS believes that commercial construction is inappropriate for the area and the project should be denied unless the area is rezoned for commercial use.

The North Coast Chapter leads field walks to Trinidad Head, and many of our members visit the area to enjoy the solitude, silence, and natural environment. CNPS believes that the noise associated with the proposed project will interfere with the recreation and open space values of the area, to the detriment of our members and people who participate in our field walks. Furthermore, the lack of measurement of pre-project ambient noise as required by Condition #7 of the project approval requires these noise levels to be measured. These measurements should be done, and the results, along with projected increases in noise levels, should be included in the public review process to satisfy the requirements of CEQA.

4 of 8

Alternatives Assessment

Since the project would be subject to regulation by the Federal Communications Commission, it is subject to the National Environmental Policy Act (NEPA) regulations. NEPA requires all Federal agencies to implement procedures to make environmental consideration a necessary part of an agency's decisionmaking process. As a licensing agency, the Commission complies with NEPA by requiring Commission licensees and applicants to review their proposed actions for environmental consequences. FCC rules implementing NEPA are found at Title 47 of the Code of Federal Regulations, Part 1, Subpart I, rule sections 1.1301 to 1.1319. If a licensee's proposed action falls within one of the categories listed in section 1.1307, section 1.1308(a) requires the licensee to consider the potential environmental effects from its construction of antenna facilities or structures, and disclose those effects in an environmental assessment (EA) which is filed with the Commission for review. The Commission solicits public comment on the EAs and assists its licensees in working with the appropriate local, state, and federal agencies to reach agreement on the mitigation of potential adverse effects. The filing of an EA is required when a proposed facility may have an a significant on historic properties such as Trinidad Head.

NEPA requires that agencies:

"Use the NEPA Process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment" (40 CFR § 1500.2 (e))

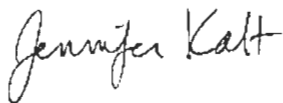
"Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." (§1502.14 (a))

An important alternative to consider is the siting of the proposed project outside the Coastal Zone, in an area not defined as Environmentally Sensitive Habitat Area.

Conclusion

These concerns were all raised in Friends of Trinidad Head comment letter of August 21, 2006 but not responded to in appeal response. CNPS appreciates the opportunity to comment on the appeal of this project and would appreciate responses to all the concerns described herein. According to page 3 of the City's staff report, Coastal Commission staff have concerns about cumulative impacts on aesthetics and coastal resources as well as past interpretations of the City's Local Coastal Plan (LCP). The City's action regarding this proposal is inconsistent with the City's LCP. CNPS recommends that the LCP be reviewed for consistency before further actions are taken in the Coastal Zone within the area covered by the Trinidad LCP.

Respectfully,



Jennifer Kalt, Conservation Chair

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Cc: Friends of Trinidad Head, c/o Stan and Kimberley Binnie
Aldaron Laird, Environmental Planner
Bonnie Neely, Commissoiner, California Coastal Commission
Jill Geist, Fifth District Supervisor, Humboldt County Board of Supervisors

References:

California Department of Fish and Game, Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities. May, 2000.

California Department of Fish and Game, Natural Diversity Database. Nov. 2002. Special Vascular Plants, Bryophytes, and Lichens. Biannual publication, Mimeo. 150 pp.

CNPS. 2001. *Inventory of Rare and Endangered Plants of California* (sixth edition). Rare Plant Scientific Advisory Committee, David P. Tibor, Convening Editor. California Native Plant Society. Sacramento, CA.

Donald H. Weburg v. State Board of Forestry, 12/6/02, Superior Court of California, County of Sacramento.

Tuttle, A. July 2, 1999. *CDF Guidelines for Species Surveys, Avoidance of Significant Impacts and Identified Mitigations*. California Dept. of Forestry, Sacramento, CA.

United States Fish and Wildlife Service. 1996. Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants. Sacramento, CA.

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821 Second Ave.,
Trinidad, CA 95570

RECEIVED

OCT 09 2006

CALIFORNIA
COASTAL COMMISSION

Jim Baskin,
California Coastal Commission,
710 E Street,
Eureka, CA 95501

RE: Appeal of City of Trinidad's approval of expansion of cellular transmission facilities, AP 42-121-21

Dear Jim:

I am writing as a private citizen in regard to the action taken by the City of Trinidad in approving the application by Thomas J. McMurray for a permit to expand the cellular transmission facilities on Trinidad Head. I strongly urge you to consider that this appeal has merit and to recommend that the Coastal Commission hear this appeal. As a private citizen who has studied and practiced the teachings of the Native American Church, and as a long-time practitioner of nature-based religion, I am personally offended that this unique and special place has been desecrated by the commercial uses allowed on Trinidad Head. The facilities currently on Trinidad Head occupy the summit of the Head, from which one would be able to have a spectacular 270 degree view of the ocean, if the commercial facilities were not located there. The commercial facilities include chain fences and generators that create a significant level of noise and create a significant visual blight on one of the most majestic coastal views in all of California. The contemplative enjoyment and the aesthetic value of Trinidad Head are significantly diminished by these commercial activities.

I believe that the City acted in error when they allowed the existing facilities to be constructed on Trinidad Head, and they further erred by approving the expansion of the facilities at various times since 1985, most recently on September 14, 2006. The area where the proposed expansion is to take place is zoned Open Space and the City is allowing commercial endeavors to lease the space and has allowed them to place and expand cellular transmission facilities and their associated equipment lockers and generators in that Open Space zone. The City is violating its own policy and the Coastal Act by approving the expansion of this non-conforming use. The City further erred by using a categorical exemption to approve the expansion and did therefore not assess the impacts of the development.

The Bureau of Land Management issued a Consistency Determination (CD) regarding the transfer of the Head to the City. The Coastal Commission reviewed the CD, and in the staff summary and recommendations (Consistency Determination No. CD-6-83, May 1, 1983), stated "The City, not BLM, will administer and manage the property after the transfer. The City's development plan, while necessary to obtaining title from the federal government, is more fittingly reviewed for conformity with the Coastal Act in the coastal permit process, either at the same time or following Commission review of BLM's consistency determination." However, the City has used BLM's consistency determination to justify the approval of commercial development in an Open Space Zone, rather than relying on the Coastal Act and the Local

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Coastal Plan which has designated Trinidad Head as Open Space. The Coastal Commission review of CD-6-83 further stated that "Section 30251 of the Coastal Act protects the scenic and visual qualities of coastal resources, requiring that new development be sited to protect ocean and coastal views." This section was inserted in response to the proposed siting of trails and vista points, which the review of the Consistency Determination determined could "be designed to be unobtrusive and thus consistent with Section 30251." The development on Trinidad Head mars the scenic and visual qualities of coastal resources as seen from the summit of the Head and as seen when looking at the Head from the center of town. Development has not been sited to protect ocean and coastal views, in violation of Section 30251.

I do believe the City has failed to comply with the Coastal Act in continually approving the expansion of the commercial facilities located on Trinidad Head. Please recommend to the Commission that this appeal has merit and should be heard by the Commission.

Thank-you for considering my request.

Sincerely,

Don Allan,
821 2nd Ave.,
Trinidad, CA 95570

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