

**CALIFORNIA COASTAL COMMISSION**

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# F7a

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Hearing Opened: November 15, 2006  
Staff: Jim Baskin  
Staff Report: February 2, 2007  
Hearing Date: February 16, 2007  
Commission Action:

**STAFF REPORT: APPEAL**  
**HEARING *DE NOVO***

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 panel antennae on two existing ±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:**

1. **SUMMARY OF STAFF RECOMMENDATION DE NOVO: DENIAL**

Staff recommends that the Commission **DENY** the coastal development permit for the proposed commercial sales and service development on the basis that the project, as proposed by the applicant, is inconsistent with the City of Trinidad's certified LCP regarding the protection of the open space resources of Trinidad Head.

The applicant seeks authorization for the installation of two roughly one-foot-wide by six-foot-long cellular telephone panel antennae and related electronic equipment cabinetry sited within an existing 60-foot by 40-foot fenced and paved municipally-owned and leased telecommunications facilities area near the summit of Trinidad Head within the City of Trinidad, Humboldt County. The Commission opened the hearing on the appeal at the November 15, 2006 Commission meeting and determined that the appeal raised a substantial issue of conformance with the policies of the certified LCP regarding the protection of the recreational open space, environmentally sensitive areas, and visual resources of Trinidad Head and surrounding areas.

Staff believes that the City's development regulations do not specifically provide for authorization of this class of development either as: (1) one of the principal- or conditionally-permitted uses itemized in the standards for the open space zoning district in which the project would be sited; (2) a principally-permitted accessory use allowable in any zoning district; or (3) a permissible expansion to a non-conforming use or structure. Moreover, staff believes the proposed telecommunications facilities would be in conflict with several LCP policies intended for protecting the significant coastal resources comprising Trinidad Head. Accordingly, the proposed development does not fully conform to the policies and standards of the certified LCP for the following reasons:

First, Commission staff notes that the City of Trinidad Zoning Ordinance does not explicitly identify commercial mobile telephone and wireless device relay facilities, as either a principally or conditionally permitted use within the Open Space zoning district where the project site is located. The closest use type matching the proposed use, "radio and television transmission facilities," appears only as a recognized conditional use within Public and Religious zoning districts, not the Open Space zone in which the facilities would be located. Furthermore, contrary to the position taken when the City approved the development, Commission staff believes the proposed project does not meet the definition of a qualifying "accessory structure," a conditionally permitted use within

the open space zone, because: (a) the new facilities are not subordinate and incidental to a primary use; and (b) no such functionally-related primary use or structure was in existence upon the May 22, 1985 adoption of city zoning over the development site. Staff also believes the development would contribute to the cumulative alteration of or change to the character of the premises, contrary to the objectives of the LCP. Furthermore, staff believes that the City LCP provides no mechanism for approving the project as an "extension" to a nonconforming use, as the LCP specifically prohibits authorizations of any further enlargements that would result in an expansion to the degree of nonconformity of the existing use or structure.

Alternately, because of the independent functionality of the proposed facilities, staff does not believe the project qualifies as a generic "accessory use" permissible in any zoning district, as provided for in other sections of the City's zoning ordinance. In addition, the proposed project would exceed the applicable height standards for this class of development.

Lastly, even if the proposed telecommunication facilities were an approvable use and otherwise conformed with all applicable prescriptive development standards, staff believe the project would not be consistent with the policies of the LCP which emphasize maximized preservation of the natural and scenic character of open areas, such as the Trinidad Head project site, by imposing strict limitations on new development within Open Space-designated areas to afford protection to important plant and wildlife habitat, cultural resources, recreational opportunities, and visual resources located therein. The LCP only recognizes a small number of uses and developments as being appropriate for Trinidad Head, primarily relating to trail hiking and other non-consumptive, passive outdoor recreational pursuits, such as picnicking, fishing, and beachcombing. As the proposed commercial telecommunications facility development would not serve one of these specified very-low-intensity uses would entail the introduction of additional commercial activities within proximity to the existing hiking trails and vista points developed near the project site, and could distract and degrade the natural area recreational experience intended to be provided in such designated lands, staff believes the proposed development is incompatible with the limited permissible open space uses identified in the LCP as well as the open space character of the area. In addition, further intensification of the telecommunication facilities on Trinidad Head would result in significant adverse cumulative effects on these open space amenities by increasing the number of vehicular service trips made along the roadway that functions as a portion of the recreational loop trail system with potential associated increases to soil compaction, erosion, and entrainment of sediment in runoff, adding to electronic equipment cooling fan noise now discernable along portions of the recreational trail, result in an incremental increase in traffic volumes and overdeveloping the viewshed by introducing additional man-made structures into the landscape.

Therefore, staff believes the proposed development is not consistent with the biological resources and public recreation protection policies and standards of Chapters II and III of the Land Use Plan and Articles 4 and 6 of the Zoning Ordinance of the City of Trinidad's certified LCP, including among others, Policies 17, 39, and 66 of the land use plan and

Section 4.02 of the City's zoning ordinance. Therefore, staff recommends that the proposed development must be denied.

**The Motion to adopt the Staff Recommendation of Denial is found on pages 6 and 7.**

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**STAFF NOTES:**

**1. Procedure.**

On November 15, 2006, the Coastal Commission found that the appeal of the City of Trinidad's conditional approval of a coastal development permit for the subject development raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 30625 of the Coastal Act and Section 13115 of Title 14 of the California Code of Regulations. As a result, the City's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the City), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program (LCP) and is within the area between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with the City's certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

**2. Submittal of Additional Information.**

Since the Commission's action on the question of Substantial Issue at its November 15, 2006 meeting, the applicant has responded to the request by staff for several informational items for purposes of a comprehensive review of the project's consistency with the City's LCP for the Commission's hearing *de novo*. On December 27, 2006, the applicant's agent met with Commission staff to discuss the necessary form and content of two of the three requested information items: (1) the alternatives analysis detailing other locations and designs for the subject telecommunication facilities which would result in a reduction to the impacts to the open space resources of Trinidad Head; and (2) the geotechnical analysis evaluating the adequacy of the design of the development to avoid geologic instability, erosion, and runoff related impacts.

During the December 27<sup>th</sup> meeting, the applicant's agent presented to staff the service coverage study prepared for the project detailing the existing areas where stationary reception drop-outs in service between McKinleyville and Patrick's Point State Park from the Walker Mountain relay facilities had been documented, and a projection of how these service area gaps would be filled through installation of the proposed Trinidad Head facilities. As stated in the applicant's January 23, 2007 cover letter accompanying the study, due to the elevation and orientation of the intervening topography and the elevated portions of the Highway 101 corridor, the interruptions in line-of-sight coverage in the

above-specified service area can be remedied only through placement of additional facilities to provide back-fill relay coverage in a more westerly locale, such as on the summit Trinidad Head or on a marine platform (see Exhibit No. 10). Accordingly, the applicant's agent asserts that there are no other feasible locations or designs for the facility that would reduce the impacts to the recreational open space and visual resources of Trinidad Head and meet the primary objective of the project.

The January 23, 2007 transmittal from the applicant's agent also included a short letter-report prepared by a licensed professional engineer concluding that, as the additional surface area associated with installation of the panel antennae would be minimal with respect to wind load forces, the existing wooden stanchion would be adequate to support the antennas. Staff generally agrees that this report would meet the LCP requirements regarding demonstrated feasibility of the project with regard to potential geologic instability.

### **3. Zoning Code Citations.**

Throughout the City of Trinidad's *Notice of Final Local Action* (see Exhibit No. 6) and the *Appeal from Coastal Permit Decision of Local Government* filed by Friends of Trinidad Head (see Exhibit No. 7), 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, the findings replace the cited municipal code numbering with the numbering of the certified zoning ordinance formatted as bracket text (i.e., "[ZOTC §6.02.050]").

### **4. Coastal Zone Management Act.**

Several aspects of the proposed development interrelate with preceding consistency determinations issued by the Commission pursuant to the Coastal Zone Management Act in its review of federal activities undertaken on Trinidad Head for consistency with the State of California's coastal management program, as set forth in the policies and standards of the California Coastal Act. These preceding determinations regard the 1983 transfer of an approximately 47-acre portion of Trinidad Head from the Bureau of Land Management and the 2002 installation of the Trinidad Head Baseline Observatory's atmospheric pollutant and climatological environmental monitoring equipment on the summit of Trinidad Head by the National Oceanographic and Atmospheric

Administration (NOAA). Although the appeal raises questions regarding the continued applicability of those consistency determinations given the history of development activity on Trinidad Head since 1983, or whether CZMA review authority should be asserted over other measures taken by federal agencies with respect to the City's leasing of portions of Trinidad Head and/or permitting the subject commercial telecommunication facilities, these questions do not in any way influence or otherwise alter either the standard of review of the subject appealed development project or the procedures by which the Commission conducts the hearing *de novo*. Any subsequent revisiting of past CZMA consistency determinations or questions regarding assertion of consistency review authority that may be prompted as a result of issues raised by this appeal can be considered by the Commission's Federal Consistency Unit separately from the Commission's consideration of the subject coastal development permit application for the telecommunications facilities development project. Generally speaking, although the Commission asserts federal consistency review over the sale of federal land, it does not assert federal consistency review over subsequent development of land that is no longer federally owned, absent another independent basis for asserting consistency review. Instead, such development, like here, is evaluated through the Coastal Act permit application process.

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**I. MOTION, STAFF RECOMMENDATION DE NOVO, AND RESOLUTION:**

Pursuant to Section 30625 of the Coastal Act and as discussed below, the staff recommends that the Commission determine that the development does not conform to the standards set forth in the certified City of Trinidad Local Coastal Program and the public access policies of the Coastal Act and **deny** the permit. The proper motion is:

**Motion:**

**I move that the Commission approve Coastal Development Permit No. A-1-TRN-06-042 for the development proposed by the applicant.**

**Staff Recommendation of Denial:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve Permit:**

The Commission hereby **denies** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified LCP and the public access policies of the Coastal Act. Approval of the permit would not comply with the California Environmental

Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

## **II. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

### **A. PROJECT BACKGROUND.**

On February 5, 1980, the Commission certified the City of Trinidad's Local Coastal Program (LCP) and the City assumed permit-issuing authority on July 9, 1980. The Trinidad LCP was the first effectively certified LCP in the Coastal Zone.

Concurrently, in the early 1980s, the General Services Administration identified the federal lands comprising the 60-acre coastal landform known as Trinidad Head for listing as surplus government property. The headland had been reserved since 1866 for use by the U.S. Coast Guard and its predecessor agencies to station various aids-to-navigation equipment and personnel, including a light house, fog signals, radio transmission facilities, and dormitory facilities for the light station crews. Forty-seven acres were subsequently identified by the Bureau of Land Management (BLM) as surplus lands with the approximately 12 acres being retained for continued use by the Coast Guard.

On November 15, 1982, the City of Trinidad made application to the BLM for acquisition of the 47 acres of Trinidad Head deemed as surplus federal land for public recreational purposes, pursuant to the Recreation and Public Purposes Act (43 USC §§869 *et seq.*)

On March 16, 1983, the BLM submitted a consistency determination pursuant to the Coastal Zone Management Act to the Commission seeking concurrence for their conclusion that the requested transfer of the surplus portions of Trinidad Head to the City would be consistent with the state's coastal zone management program. Although the Commission's consistency review did not include review of the development plan approved by the BLM, the development plan as approved by the BLM identified development of a series of trail, vista point, and picnic area improvements to be constructed along an ascending route following the natural contours of the headland. Contingencies were also identified to respond to concerns associated with the public safety, erosion and vegetation management, vandalism, the need for additional coastal access support facilities, and vehicular access for physically handicapped visitors.

In addition, the development plan provided for the City to "continue to coordinate with the Cable T.V. company [Trinity Systems] 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." However, the management plan did not similarly provide for expanded or future development of commercial uses on the lands being considered for transfer. The referenced cable television transceiver equipment had been erected in 1981

with the consent of the U.S. Coast Guard, prior to the Commission's review of the transfer of the surplus portions of Trinidad Head to the City. In 1985 Cox Communications Humboldt, Inc. purchased the Trinity Systems facilities and over the next ten years undertook a variety of enhancements to the cable television infrastructure on Trinidad Head, including equipment upgrades and undergrounding aerial lines and cabling. No CZMA consistency determinations were forwarded to the Commission or coastal development permit sought for any of these actions. By 1994, optical fiber cable had been installed in the Trinidad area and in mid-1995, Cox Communications indicated their intent to abandon the site.

On April 14, 1983, through Consistency Determination No. CD-6-83, the Commission unanimously concurred with BLM's consistency determination, finding the acquisition project to be consistent to the maximum extent practicable with the policies and objectives of the state's coastal program (see Exhibit No. 9).

On April 24, 1983, the BLM issued Land Patent No. 04-83-0056 to the City, conditionally granting ownership of 46.94 acres of Trinidad Head for recreational purposes subject to the assurances and covenants contained within the approved development plan. The patent contained a reversion provision evocable in the instance that the City were to be found in nonperformance with the terms of the development plan.

On March 13, 1984, the Humboldt County Local Agency Formation Commission (LAFCo) certified the revised municipal corporation and sphere-of-influence boundaries for the City of Trinidad, authorizing the annexation of the 47-acre portion of Trinidad Head acquired from the federal government. For the next 11 months, the annexed portions of Trinidad Head held the status of an uncertified "white hole" area relative to Coastal Act permitting requirements, with the Commission having jurisdiction over the authorization of development therein.

On May 22, 1985, the Commission certified LCP Amendment No. 1-85 (Major) applying Open Space land use and zoning designations over the whole of the annexed 47-acre area,<sup>1</sup> effecting the transfer of coastal development permitting authority over the 47-acre area to the City. This LCP amendment also revised Land Use Plan Policy No.66 to remove outdated language referencing the potential annexation of the area by the municipality and to adopt a policy keeping Trinidad Head in its natural state with trails

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<sup>1</sup> The Commission notes that within the County of Humboldt's Trinidad Area Plan, the LUP for the project site prior to its municipal annexation and subsequent plan and zone certifications, Trinidad Head was designated as "rural public facility," a planning and zoning category, that, among other activities, allows for development of telecommunication facilities as "utility substations, schools, and other essential public services most appropriately located in rural areas" and "minor generation and distribution facilities." Contrary to the precedent set by the County, when the City adopted its certified LCP, the City chose instead to apply the more restrictive "Open Space" designation rather than the City's more or less analogous "Public and Religious" category.



and vista point amenities and restricting the extension of public vehicular access beyond the harbor parking area.

In 1997, the City issued the first of four coastal development permits for erection of additional telecommunication facilities within a 40-foot by 60-foot area near the summit of Trinidad Head within the 40-foot- by 60-foot site previously leased to Cox Communications Humboldt, Inc. for that firm’s cable television microwave relay equipment. Table One summarizes these permit actions:

**Table One: Local Coastal Development Permits Issued for Telecommunication Facilities on Trinidad Head**

<b>Permit No.</b>	<b>Applicant</b>	<b>Project Description</b>	<b>Date of Local Approval</b>
7-1996/97	Cal-North	Installation of 41’ pole, attachment of a 4’ dish and whip antennae on an existing 21’ pole on APN 042-121-21	June 18, 1997
2000/09	Cal-North	Installation of a 50’ wood pole with two sets of 56” x 12” x 4” cellular panel antennae; construct one 10’ x 10’ concrete slab with one 34” x 96” x 72” outdoor transmission cabinet; erect one 48” x 48” x 48” outdoor cabinet on existing slab on APN 042-121-21	December 6, 2000
2001-15	Cal-North	Install three 1’ x 4.5’ x 0.5’ panel antennae at a 38’ height on an existing communications pole; place a concrete slab outside the existing building for a transmitter cabinet on APN 042-121-05	January 16, 2002
2003-05	Edge Wireless	Construct a 5’ x 6’ concrete slab and 4.5’ x 2’ x 6’ tall equipment cabinet on APN 042-121-05	October 15, 2003

All of the above development proposals were authorized by the City as “structures accessory to uses and buildings existing within the open space zone at the time this [zoning] ordinance is adopted,” the requirements for conditional uses within the Open Space zoning district in which the telecommunications lease area is situated (see Exhibit No. 8). However, as discussed further in Findings Section II.C, below, the City’s findings with respect to these facilities fail to demonstrate how the cellular transmission facilities fully qualify as accessory structures or uses that existed on May 22, 1985, the date the Open Space zoning designation for Trinidad Head was adopted.

None of these four local permit actions were appealed, either locally or to the Commission. Although Commission staff did receive timely notices of final local action, staff did not independently verify at the time that the preceding telecommunication facilities met all of the prerequisite conditions for allowing their authorization as accessory structures. It was not until the currently appealed approval of additional telecommunications facilities as accessory structures that staff fully analyzed the use limitations of the site and determined that the cellular transmission facilities did not conform with the Open Space zoning district's requirement for preexisting primary uses or building being in place on or before May 22, 1985. Notwithstanding the lack of factual evidence to support their approval as conditionally permitted accessory structures, the four preceding development permits are now legally vested.

On June 27, 2002, Commission staff issued Negative Determination No. ND-036-02 to the National Oceanographic and Atmospheric Administration (NOAA) for the installation of mobile trailers, temporary scaffolding and elevated accessways, trenched electrical power service lines, solar power array platform, anemometer tower, and other atmospheric pollution monitoring and meteorological data collection equipment on the crest of the Head, concurring with NOAA determination that proposed development action would have no adverse impact on coastal resources (see Exhibit No. 9). The facilities, known as the Trinidad Head Baseline Atmospheric Observatory, remain in place as an integral part of the Intercontinental Transport and Chemical Transformation (ITCT) program.

## **B. PROJECT HISTORY.**

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 to be located adjacent to the 40-foot by 60-foot fenced telecommunications facilities lease area near the summit of Trinidad Head. The purpose of the proposed telecommunications installation is to provide facilities for providing cellular telephone "code division multiple access" (CDMA) 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 findings the City had adopted for the previous telecommunication projects undertaken on the municipally-owned portions of Trinidad Head would be appropriate for 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 in Exhibit No. 8). 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.

However, 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) 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 the appeal (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; (3) consider a management plan for Trinidad Head to be included within its General Plan update; (4) defer future renewal of the primary lease to the various telecommunication firms; and (5) require the community and cellular telephone service providers to identify alternative locations for cellular telecommunication facilities within Trinidad during the remaining 10 years of the 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).

On November 15, 2006, the Commission found that the project as approved by the City raised a substantial issue of conformance with the City's certified 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 Commission also continued the *de novo* hearing and requested specific information from the applicant to assist the Commission in evaluating the consistency of the project with the LCP, including: (1) an alternatives analysis identifying 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) a geo-stability analysis for the structure on which the antennae would be affixed; and (3) a biological assessment of the flora and fauna within a 250 radius of the project site, identifying any rare, threatened, endangered, or special status plant and animal species that are found in or utilizing the area, and including mitigation measures to avoid or lessen any potential significant adverse impacts on these species.

## **B. PROJECT AND SITE DESCRIPTION.**

### **1. Project Setting**

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 in 1997 for a twenty-year term to Cal-One cellular LP, DBA: Cal North Cellular (now Verizon Communications, Inc.) for telecommunication facilities use. Several other telecommunication services providers sub-lease portions of the lease area from Cal-One 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 Nos. 3 through 5).

The Tsurai Loop Trail traverses around the 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 encompass 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 menzesii*). 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 lease parcel is in a very exposed location relative to precipitation, wind and salt spray. As a result, soil development at the site is generally limited to a depth of less than one foot and is well-drained, with the attending plant cover being generally xeric in character. Accordingly, there is a low likelihood of facultative wetland plants, such as the western lily (*Lilium occidentale*), a federal- and state-listed endangered species known to occur at other locales on Trinidad Head, being present in the immediate vicinity of the project area.

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. Findings Section II.C below, lists the land uses permissible on OS designated lands.

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 project site is also visible from prominent public vantage points outside the City across Trinidad Bay and to the south, such as from Scenic Drive and portions of Highway 101, and the beaches between the hamlet of Moonstone Beach and the Trinidad Rancheria.

## **2. Project Description**

The proposed development consists of the installation of 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, a series of cabinets containing electronic control equipment would be installed within a five-foot wide by twenty-foot-long area within the existing gravel surfaced pad along the west side of the enclosed lease area (see Exhibit No. 4).

The proposed 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.

## **C. Impermissible Use Within Open Space Designated Lands**

### **1. Relevant LCP Provisions**

Section 3.01 of the Zoning Ordinance of the City of Trinidad (ZOCT) states the following with respect to allowable development:

*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 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.* [Emphasis added.]

ZOCT Section 3.06 states the following with respect to new development complying with zoning district prescriptive standards:

*No building or part thereof shall be erected nor shall any existing building be altered, enlarged or moved into any zone in any manner not in compliance with the minimum yards, maximum building height, maximum density and other regulations for the zone in which such building is located, nor shall any parcel of land be divided or the boundaries thereof adjusted in any manner not in compliance with the minimum lot area,*

*minimum yards, maximum density and other regulations for the zone in which such lot is located, except as provided in Article 6 hereof. No yard or other space provided about any building for the purposes of complying with the provisions of these regulations shall be considered as providing a yard or open space for more than one building or lot unless specifically permitted elsewhere in these regulations. [Emphasis added.]*

Appendix A of the City of Trinidad's Land Use Plan (LUP) defines 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.]*

"Principal Permitted Uses" in the OS zoning district are enumerated in ZOTC Section 4.02.A as follows:

1. *Public and private open space, wildlife habitat.*
2. *Low-intensity recreation on publicly controlled lands and waters such as beachcombing, hiking, fishing.*
3. *Pedestrian travel within public access easements consistent with the trail system identified in the General Plan.*
4. *Removal of vegetation posing an imminent hazard to structures or people if approved by the City Engineer.*
5. *Picnicing on public lands designated for such use.*

"Uses Permitted With (sic) a Use Permit" in the OS zoning district are enumerated in ZOTC Section 4.02.B as follows:

1. *Pedestrian trails, vista points, including improvements to existing facilities.*
2. *Shoreline related recreation uses, including improvements to existing facilities.*
3. *Removal of vegetation including timber.*
4. *Structures and improvements, such as seawalls and revetments, related to the protection or maintenance of scenic and cultural resources, beaches, coastal bluffs and buildings threatened by natural processes.*
5. *Structures accessory to uses and buildings existing within the open space zone at the time this ordinance is adopted.*
6. *Wildlife habitat management and scientific research activities and related temporary structures. [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.]*

ZOCT Section 6.01 states the following with respect to the intent and applicability of the General Provisions and Exceptions article of the City’s zoning ordinance:

*The following specific regulations are intended to provide for the locations and control of certain special and accessory uses and to provide supplementary regulations pertaining to yards, buildings, parking, and non-conforming uses which apply to several zones or uses. The following regulations shall apply in all zones. Where the provisions of this article conflict with the provisions of any zone, the provision of this article shall apply.*

In addition to the specific provision within ZOCT Section 4.02.B.5 for authorizing “accessory structures” meeting certain prerequisites within the Open Space zoning district, ZOCT Section 6.02 provides for authorizing “accessory uses” in all zoning districts as follows:

*Accessory uses, as defined herein<sup>2</sup>, shall be permitted as appurtenant to any permitted use, without the necessity of securing a use permit, unless particularly provided in this article, provided that no accessory use shall be conducted on any property in the SE, SR and UR zones unless and until the main building is erected and occupied, or until a use permit is secured.*

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<sup>2</sup> Zoning Ordinance Appendix A defines the term “accessory use” 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.” [Emphases added.]



*Use of a recreational vehicle as a temporary residence by visitors for not more than 15 days in any calendar year shall be a use accessory to a dwelling. [Emphasis added.]*

2. Analysis

The “Zoning Ordinance of the City of Trinidad,” together with its grading and subdivision ordinances, comprise the Implementation Program for the City’s certified LCP. Similar to many other local jurisdiction’s land use regulatory programs, the City of Trinidad’s zoning ordinance is organized in a series of chapters identifying and set forth permissible uses for various base and overlay zoning districts. These regulations are further modified by exceptions granted to the prescriptive standards applicable for certain classes of development or locations as may be needed to more effectively administer the standards jurisdiction-wide. For example, the City’s zoning ordinance establishes an “Open Space” zoning district and sets standards for allowable development therein by listing categories of principal and conditionally permissible uses and development types, minimum lot size for land divisions, maximum residential density, maximum height of structures, and special review considerations for development undertaken in geologically unstable or cultural resource sensitive areas. These regulations can be modified in other sections of the zoning regulations where overriding provisions to the particular zoning districts’ development parameters, such as the maximum allowable height of structures, lot location, setbacks and permitting requirements for accessory structures, are set forth. Also found within the City’s zoning ordinance are regulations for off-street parking requirements, signage limitations, design review procedures, rights for continuing legal nonconforming uses, procedures for the granting of coastal development permits, variances and zoning amendments, and code violation enforcement sanctions.

Like other jurisdictions’ development codes, the City of Trinidad’s zoning ordinance also contains provisions authorizing hearing officers or bodies to make interpretations regarding certain ambiguous situations. However, under the Trinidad program, this discretion is limited primarily to determinations regarding indistinct boundaries between public rights-of-way and adjoining private properties, whether a zoning district boundary is co-terminus with property lines, decisions regarding the imminence of an emergency situation, or the consistency of certain provisionally approvable uses with conditions within certain geographic settings (e.g., residences in Special Environment zoning districts).

No discretionary authority is granted under the zoning ordinance for a City administrator or hearing officer to waive application of the various development regulations, to exempt imposition of applicable land use regulatory law because of past erroneous regulatory practices, or to make determinations as to the similarity of any unlisted land use to another identified use for purposes of how the zoning standards might be administered for that unlisted use. Moreover, as specifically directed in ZOCT Section 3.01, unless the land use for which the proposed new development is intended to serve has been expressly included in the list of permissible uses of the zoning district in which the new development would be located, any erection alteration, addition to or enlargement of any

such building or structure or part thereof is not to be authorized. Similarly, no grant of approval to deviate from the specified prescriptive standards of the zoning district (i.e., minimum lot area and yard areas, maximum residential density or building height, etc.) may be made unless specifically provided for within the general exceptions article of the zoning ordinance, or through the issuance of a variance, subject to certain mandated findings.

The proposed development entails installation of independently functioning mobile phone and wireless device telecommunication relay equipment. The Commission finds that this use type is not specifically included in the lists of principal- and conditionally-permitted uses of any zoning district within the City. However, given the ultra-high frequency band in which the proposed project apparatus would operate, the use might reasonably be considered as being a form of “radio and television transmission facilities,” a conditional use unique to the Public and Religious zoning district, even though the proposed facilities would not primarily entail commercial electronic broadcast media per se. Thus, at a minimum, either redesignation of the Trinidad Head lease area’s land use and zoning designation from Open Space to Public and Religious or amending the Open Space designations’ standards to allow for telecommunication facility development would be necessary before a coastal development permit could authorize the proposed use at the proposed location consistent with the principally permitted or conditional use provisions of the certified LCP. The Commission notes the City could also process an LCP amendment, with or without the applicant’s participation, expressly permitting telecommunications facilities as a permitted use in other specified zones. The Commission has acted on several such proposed amendments in the coastal zone and has approved such amendments consistent with the applicable provisions of the Coastal Act and the certified LUP.

Alternatively, as has been the practice followed by the City when this appealed development and its antecedents were before that local agency, the proposed development might be considered as “*structures accessory to uses and buildings existing within the open space zone at the time this ordinance is adopted.*” However, to qualify as this use type, the development must meet the two prerequisites set forth in ZOCT Section 4.02.B.5: (1) the subject improvement needs to truly be “accessory,” insofar as it is physically and/or functionally subordinate, supplemental, or secondary to a primary use; and (2) that primary use must have been existing within the development site’s Open Space zoning district on May 22, 1985, the date of adoption of the zoning ordinance for Trinidad Head. The Commission finds that neither of these two conditions are met by the proposed development, as the project improvements comprise independently functioning telecommunications facilities with no interdependence upon the other similar equipment at the site and, at the time the ordinance was adopted, no primary use was in place within the Open Space zoning district encompassing the Trinidad Head site for which the subject new development would serve in an accessorial capacity.

Therefore, the Commission finds that, as the subject telecommunication facilities are not included within the specific list of principal and conditionally permissible uses within

Open Space zoning districts, and the proposed development would be inconsistent with ZOCT Section 3.01.

The zoning ordinance does contain a “general provisions and exceptions” chapter which supersede and modify certain of the development regulations set forth in the various zoning district sections of the code. Chief among these modifications are provisions for the authorization of accessory uses without the issuance of a conditional use permit. In addition to not appearing among the list of principally and conditionally permitted uses of the various zoning districts, the proposed project would be inconsistent with other standards of the LCP regarding the approval of accessory uses in any zoning district and the applicable maximum height regulations. Although ZOCT Section 6.02 provides for the approval of accessory uses in any zoning district if such use is appurtenant to any principally-permitted use, the accessory use must nonetheless meet the definition for the development type as set forth within the zoning code. The definition of “accessory use” contained in Appendix A of the zoning ordinance instructs that that use must be a “*subordinate use*” as well as one “*customarily incidental to the primary use of the premises.*” Furthermore, such use must be one “*which does not alter or change the character of the premises.*” Just as the proposed development cannot be recognized as an “accessory structure” permissible as a conditional use within the Open Space zoning district, the Commission similarly finds the proposed telecommunication facilities are neither a subordinate land use nor incidental to a primary use at the project site. Therefore, in addition to the foregoing findings regarding the permissibility of the subject telecommunication facilities as one of the enumerated uses within the open space zoning district, the Commission finds that the proposed development would also be inconsistent with the LCP provisions for approval of accessory uses in all zones including ZOCT Section 6.02.

As the proposed development is neither a principal or conditional use within the Open Space zoning district and is not an accessory use allowed in all zones, the proposed development is not an allowable use and must be denied.

The Commission notes that even if the proposed use of the site were for one of the allowable uses within the Open Space zoning district, which it is not, the project is also inconsistent with other sections of the LCP, as discussed below.

**D. Inconsistency with Height Restrictions**

1. Relevant LCP Provisions

ZOCT Section 6.01 states the following with respect to the intent and applicability of the General Provisions and Exceptions article of the City’s zoning ordinance:

*The following specific regulations are intended to provide for the locations and control of certain special and accessory uses and to provide supplementary regulations pertaining to yards, buildings, parking, and non-conforming uses which apply to several zones or uses. The following*

*regulations shall apply in all zones. Where the provisions of this article conflict with the provisions of any zone, the provision of this article shall apply.*

ZOCT Section 6.09, in applicable part, establishes the following maximum height standard for authorized accessory structures:

*Accessory structures shall not be more than 15 feet in height in the SR and UR zones and shall comply with the maximum building (sic) height limitation in other zones.* [Emphasis added.]

ZOCT Section 4.02.C.2 establishes the maximum building height for development within the Open Space zoning district as follows:

*15 feet* except that the design assistance committee may require a lesser height if necessary to accomplish the purposes of subsection C3 and C5.<sup>3</sup> [Emphasis added.]

ZOCT Section 6.10 provides the following modifications to the height standards set forth in ZOCT Sections 4.02 and 6.09:

*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.* [Emphasis added.]

## 2. Analysis

As discussed above in Findings Section II.C, the zoning ordinance contains a “general provisions and exceptions” chapter which can supersede and modify certain of the development regulations set forth in the various zoning district sections of the code. Chief among these modifications are provisions for the authorization of accessory uses without the issuance of a conditional use permit, and exceptions to the specific height limitations for accessory structures set forth in the regulations for each zoning district.

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<sup>3</sup> Cited sub-sections C3 and C5 refer to other OS zone standards for minimizing impacts associated with development on geologically unstable slopes and within the Tsurai Study Area, respectively. Although much of the periphery of Trinidad Head comprises near vertical ocean cliff faces, the telecommunications lease area is situated on the crest of the headland and is not in a setting that has been identified as consisting of “unstable” or “questionable stability” lands. Additionally, the project site is not located within the Tsurai Study Area. Accordingly, the provision authorizing the hearing body to further restrict maximum structural height below 15 feet would not be applicable.

The project is inconsistent with the height limitations established for both development specifically within the Open Space zoning district and generally as an accessory use or structure Citywide. The project entails the attachment of two panel antennae, one each, near the top of the two existing 21-foot wooden stanchions within the telecommunications facility lease area with a resulting overall height of approximately 22 to 23 feet. This placement would exceed the 15-foot height maximum established for the Open Space zoning district. Furthermore, as the project structures would not constitute one of the architectural or mechanical appurtenances identified in ZOCT Section 6.10 for which the zoning district height standards may be waived, the development cannot be exempted from the Open Space district's 15-foot maximum height standard and, as directed by ZOTC Sections 3.01 and 3.06, may not be authorized. Therefore, the Commission finds the development inconsistent with the height standards set forth in the LCP and must be denied. Even if the project was consistent with the applicable height standards set forth in the LCP, which it is not, the proposed development is independently inconsistent with other provisions of the certified LCP.

**E. Protection of the Open Space Coastal Resources of Trinidad Head**

1. Relevant LCP Provisions

The Land Use Plan (LUP) component of the City of Trinidad's certified Local Coastal Program comprise the policies contained in the Trinidad General Plan. The LUP identifies numerous types of natural resources present on Trinidad Head warranting protection, establishes development proposal procedures, and sets limitations on the type and scale of development so that the inherent quality and integrity of these resources are sustained. The natural resources include its historic significance, prominent coastal headland topography, open space aesthetics, flora and fauna, recreational opportunities, and visual resources.

Policy No. 17 of the Biological Resources chapter of the LUP 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.* [Emphasis added.]

Policy No. 39 of the Circulation chapter of the LUP states:

*Scenic Drive, Stagecoach Road and Patricks Point Drive north of the intersection with Stagecoach Road, and Edwards Street are the three scenic routes in the planning area. Scenic Drive is limited to one lane in certain areas but it should be considered a scenic road because of the spectacular views it affords of the coastline.* [Emphases added.]

Policy No. 66 of the Recreation chapter of the LUP:

*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 Community Design chapter of the LUP contains the following discussion with regard to the presence of Trinidad Head as a contributing factor to the historic character of the community:

*Another element of community character often mentioned by property owners is the historical background of the city. There are five historical areas or structures in the community and several old houses. In 1775 Spanish explorers erected a cross on Trinidad (sic) Head. A large granite cross has been erected there to commemorate the event.*

Policy No. 76 of the Community Design chapter of the LUP directs:

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

LUP Appendix B, entitled Community Design Considerations, contains, in applicable part, the following design review criteria for development at the project site in the intent of protecting the visual resources and character of the Trinidad community area:

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 setback 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.*
4. *Buildings, fences, paved areas, signs and landscaping, and similar developments shall not be allowed to significantly block views of the shoreline from key public viewing points or from view points inside structures located uphill from the proposed development...*
6. *Plant materials should be used to integrate the man-made and natural environments, to screen or soften the visual impact of new development and to provide diversity in developed areas. Existing attractive vegetation common to the area shall be used.*

7. *The visual destruction of natural land forms caused by cutting, filling, grading or vegetation removal shall be minimal. Structures should be designed to fit hillside sites rather than altering the land form to accommodate structures designed for level sites...*
  
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.*

Following the City's annexation of Trinidad Head in 1984, on May 22, 1985, the Commission certified an amendment to the City of Trinidad's LCP to apply Open Space land use and zoning designations to the 47-acre area acquired by the City.

Appendix A of 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.]*

## 2. Analysis

In addition to being considered a sacred place in the cosmology of the coastal Yurok and Tsurai peoples, a designated state historical landmark (HUM-146), having a site listed within the National Register of Historic Places (USCG Light Station), being surrounded

by one of the 101 statewide “Critical Coastal Areas” identified under the California Ocean Plan (Kelp Beds at Trinidad Head), and situated alongside one of the 34 “Areas of Special Biological Significance” by the State Water Resources Control Board (adjoining 297 acre of ocean waters), the Trinidad Head landform on which the project would be sited comprises one of the most noteworthy coastal areas within California. In addition to its fringing coastal waters and kelp beds, Trinidad Head also affords significant habitat to a variety of environmentally sensitive plant and animal species, including the western lily (*Lilium occidentale*) and a variety of protected waterfowl and marine mammals on its bluff faces and intertidal areas. The landform is also a major local visual amenity to the local area, given its location within the viewshed of two of the scenic routes identified in the City’s LUP and its designation as a “significant natural feature” within the visual resources inventory of the County of Humboldt LUP’s Trinidad Area Plan geographic segment.

The significant coastal resource amenities of Trinidad Head are noted in several contexts within the LCP. Protection of these resources, primarily through allowing only minimal development on Trinidad Head, is emphasized within several LCP policies and standards, most notably the purpose statements of the Open Space land use and zoning districts, and in Policies 17 and 66 of the LUP. In addition, the LCP directs that development proposals occurring within the Open Space designated area encompassing Trinidad Head are to receive enhanced considerations with regard to evaluating, preventing, and mitigating potential impacts to:

- Natural open space amenities
- Wildlife and rare plant habitat;
- Recreational trail use;
- Cultural and historical resources;
- Geologic stability and hydrology
- Hydrology;
- Water quality; and
- Views to and along the coastline.

The Commission finds that based upon the directives within the City’s LCP regarding Open Space designated lands in general and Trinidad Head in particular, the proposed development would not be consistent with these various policies, as the proposed project will significantly contribute to the degradation of coastal resources, either directly or cumulatively, contrary to the directives within the LCP.

#### Open Space Amenities in General

Firstly, as stated in several LCP policies, only very minimal development is envisioned for Trinidad Head, primarily limited to recreational trails and vista points, other non-consumptive, passive recreational uses such as picnicking, fishing, and beachcombing, and construction of certain qualifying accessory structures supporting existing primary uses, in keeping with protecting the natural and scenic character of the area. The proposed project does not comprise one of the categories of potentially compatible uses.



#### Wildlife and Rare Plant Habitat

Secondly, the LCP directs that vehicular access is to be restricted and that other recognized uses, such as vegetation removal, active wildlife management, and scientific research activities, or the construction of qualifying accessory structures, be carefully assessed for their compatibility with the dominant open space amenities of the area, with their size and scope being limited accordingly. Given the required physical operating parameters of the proposed mobile phone and wireless service, the adverse visual impacts of such facilities to the open space amenities of the Trinidad Head area are significant. For example, the subject mobile phone and wireless service facilities require line-of-sight locations in order for the radio signal transmissions to be effectively received and relayed. Consequently, as a matter of practical necessity, the facilities must be placed on or near the highest elevations on the site. The proposed development therefore will significantly adversely impact visual resources, both in terms of interfering with views to and along the coast, and by altering the character of the Trinidad Head setting as viewed from other vantage points, such as the foot of Edwards Street, along Scenic Drive or from adjoining state parklands.

#### Recreational Trail Use

Thirdly, the proposed telecommunications facilities also entail electronic control devices which require environmental control cooling fans to ensure their proper functioning. These cooling fans can, especially on sunny, calm days, generate significant levels of noise that, both directly and together with other existing equipment, can detract from the natural open space character and aesthetics of the area, impacting the recreational experience of trail users and wildlife in the vicinity.

Fourthly, if telecommunications infrastructure is installed at this location, the related service and support needs also increase. Increases in maintenance vehicular traffic will cause further conflicts to the primarily pedestrian-mode recreationists who need to use portions of the narrow one-lane road for access to the trails. Additionally, increased road way use will result in the need for more frequent road maintenance which, when involving ground-disturbing grading, adversely affects rare plant habitat, alters runoff patterns, and degrades the quality of surrounding coastal waters.

#### Visual Resources

Lastly, Trinidad Head is a visual resource of both locally designated and statewide significance. In addition to being recognized within both the City and County LCPs as a noteworthy element within the scenic vistas of the Trinidad area, topographically this promontory ranks alongside Point Saint George, Point Arena, Cape Mendocino, Point Reyes, Point Sur, Morro Rock, and Point Dume as one of California's most prominent rocky headlands, offering on clear days wide-sweeping views of tens of miles of adjoining coastline. The proposed telecommunication facilities will cumulatively adversely affect the natural aesthetics of the area by introducing an additional

approximately 12 square-feet<sup>4</sup> of anthropogenic materials surface area into the portions of the viewshed visible from public vantage points along the Tsurai Loop Trail, within the harbor area, and from other adjacent beach, coastline, and parkland locales.

The Commission acknowledges that there are other existing commercial telecommunications facilities on Trinidad Head that are presently affecting the viewshed. However, these projects were approved by the City of Trinidad, and, as these developments were not appealed, were not directly reviewed by the Commission for their effects on the visual resources of the area.

The Commission further notes that the continued presence of these facilities is limited by the ground lease to the 40' x 60' area in which the equipment is located which will expire in 2017. The Commission further notes that notwithstanding its withdrawal from formal hearing at the City Council's January 23, 2007 meeting, a resolution declaring a moratorium on the authorization of the installation of additional telecommunication facilities during the remaining term of the ground lease and a statement of intention to not extend at Trinidad Head the lease once it has expired, was recently drafted by a Councilmember for consideration by the Council (see Exhibit No. 11). Accordingly, as discontinuance of the commercial telecommunications use on Trinidad Head within the next ten years is likely, the portion of Trinidad Head affected by these facilities could be returned to a more natural and scenic appearance.

In addition, the Commission also recognizes that there are other developments on Trinidad Head that influence the visual resources of the area, namely the public service federal telecommunications and environmental monitoring facilities administered by the U.S. Coast Guard and the National Oceanographic and Atmospheric Administration (NOAA). The U.S. Coast Guard radio facilities were developed prior to the enactment of the Coastal Zone Management Act in 1972 and were not subject to consistency review by the Commission. The environmental monitoring facility erected by NOAA was granted a "negative determination" by the Commission in 2002, concurring with the applicant agency's analysis that these scientific monitoring facilities, representing one of a network of similar facilities developed under international treaty world-wide for studying the concentrations, dispersal, and chemical reactivity of various atmospheric pollutants, would be consistent with the policies and standards of the Coastal Act, California's coastal management program.

Moreover, distinctions can be made between the commercial telecommunications facility and the federal installations in terms of their relative visual dominance. The telecommunications lease parcel is located somewhat down slope from the crest of Trinidad Head on the southeasterly aspect of the landform, whereas the Coast Guard and NOAA facilities are sited around to the summit on the more north-northwestern aspect of

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<sup>4</sup> The referenced 12 square-feet relates to the surface area of the two 1' x 6' panel antennae. As the associated 5' x 20' equipment cabinetry would be erected in an area surrounded by existing trees, shrubs, and fencing, this componentry would not be similarly visible from public vantage points.

the headland. As a result, the telecommunications facilities represent a more prominent feature within the foreground of the viewscape of the natural silhouette of the Trinidad Head looking northerly from the upper portion of Tsurai Loop Trail in proximity to the Heceta Landing commemorative cross and nearby vista points along the trail, from the foot of Edwards Street — a designated scenic route, from other public vantage points within the City and harbor area, and from along Scenic Drive to the southeast of the City. While the Coast Guard and NOAA facilities are similarly visible from these locales, their exposure is generally limited to the upper portions of the transmission equipment, with the attending trailers, fencing, walkways and other improvements being more out of the lines of sight or screened by intervening vegetation growing on the northern face of the Head. In addition, with four vertical stanchions ranging in height from roughly 20 feet to 45 feet housing a variety of attached dishes, panels, and whip antennae, and associated equipment cabinetry, guy wires and cross-members all clustered within the relatively small, approximately 1,000-square-foot area of the 60' x 40' lease site and in close proximity to the line of electrical service poles flanking the adjacent access road, the visual density of the commercial telecommunication facilities is much more intense than the relatively dispersed federal installations situated further upslope.

Therefore, the Commission finds that the proposed development would create a cumulative adverse impact on visual resources that would be inconsistent with the requirements of Policy 66 of the LUP that Trinidad Head be kept in a natural state and Section 4.02 of the zoning ordinance which states that the purpose of the Open Space zone is to maximize protection of natural and scenic character of the are, and the design review criteria of LUP Appendix B, providing criteria which states that structures should blend with the natural visual form of the area and not unnecessarily extend above the natural silhouette.

#### Conclusion

For all the foregoing reasons, the Commission finds that the proposed telecommunications facilities would not be compatible with the natural and scenic amenities of the open space designated areas encompassing Trinidad Head. Therefore, as the Commission finds the development to be inconsistent with LUP Policies 17, 39, and 66, its Community Design standards, and the standards for Open Space land use and zoning designated areas, the proposed development must be denied.

#### **F. Alternatives**

As discussed in Staff Note 3 above, the applicant's agent has submitted a line-of-sight signal reception study detailing the extent of existing "indoor" (i.e., fixed-location) service reception from the applicant's existing telecommunication relay facilities off of Murray Road above the unincorporated community of McKinleyville and the Walker Mountain sites to the southeast and northeast of Trinidad, respectively. The study also extrapolates the increased line-of-sight reception area that would be achieved if the Trinidad Head facilities were to be installed (see Exhibit No. 12).

This study was submitted in response to the request for information regarding feasible alternative locations and designs for, and viable technical options to the subject telecommunications facilities which would result in less overall adverse visual 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. Based upon these studies, the applicant's agent contends that, due to the orientation and elevations of the intervening undulating topography, the presence of elevated segments of Highway 101 between the City and these inland facilities, the likely greater visibility on the Trinidad Head ridgeline of a "stealth tower" design, and the legal impediments that would be associated with obtaining authorizations for an offshore transmission facility, there are no other feasible alternative locations or designs for the subject telecommunication facilities that would meet the central objective of the project for improving mobile telephone and wireless transmission in the indoor service reception sites in the applicant's McKinleyville to Patrick's Point service area.

The applicant has not, however, addressed the so-called "no project" alternative, namely, that the subject development of additional telecommunication facilities on Trinidad Head not go forward and the applicant provide somewhat less coverage in this portion of their service area. The Commission notes that telecommunication service providers have no inherent responsibility or inalienable rights to construct facilities such that 100 percent coverage of a given service area is attained. The proposed facilities would not fill a complete void in coverage but instead would only improve some stationary indoor and mobile coverage. In fact, there are numerous locations both within Humboldt County, statewide within the Coastal Zone, and nationwide in a multitude of rural areas, where, due to topographic or other limitations, full and uninterrupted telecommunications services have not been extended and/or are actively being planned for installation of additional facilities to improve service. Moreover, unlike the other service providers with equipment currently installed at the City's Trinidad Head telecommunications site, the applicant has not secured any explicit rights from the City to develop facilities within the bounds of the lease parcel, nor has the ground lease been amended to add U.S. Cellular as a sub-lessee of the 2,400-square-foot lease parcel.<sup>5</sup>

Accordingly, a permit denial that is the "no project alternative," would not constitute a prohibition on the applicant providing continued telecommunications services to the City of Trinidad and surrounding areas, albeit geographically limited and discontinuous. Nor would a denial impose significant and disproportionate impediments to the applicant in terms of relative competitive advantage, as compared with other service providers being subject to similar practical service area constraints. Furthermore, a project-specific denial would not in any manner prevent the applicant from seeking development of telecommunication facilities in other portions of the City of Trinidad jurisdiction where such facilities may be authorized under current land use planning and zoning regulations.

**G. Federal Telecommunications Act**

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<sup>5</sup> Gabe Adams, Clerk, City of Trinidad, Pers. comm.

Public entities' powers to regulate the placement of cellular facilities are limited by the Federal Communications Commission ("FCC") and Federal law, specifically the Telecommunications Act of 1996 ("TCA"), 47 U.S.C. section 332(c).

TCA provides, among other things, that state and local governments cannot "unreasonably discriminate among providers of functionally equivalent services" or "prohibit or have the effect of prohibiting the provision of personal wireless services." State and local governments must act "within a reasonable time frame" in acting on applications, and decisions to deny such requests must be "in writing and supported by substantial evidence contained in a written record." In addition, state and local governments cannot "regulate the placement, construction and modification of cellular facilities on the basis of environmental effects of radio frequency emissions" if the facilities comply with the FCC regulations with respect to such emissions. 47 U.S.C. section 332(c)(7)(B)(v).

The five limitations upon a state and local government's authority with respect to wireless telecommunications facilities contained within, in the Telecommunications Act of 1996 (TCA) do not state or imply that the TCA prevents public entities from exercising their traditional prerogative to restrict and control development based upon aesthetic or other land use considerations. Other than the enumerated exceptions, the TCA does not limit or affect the authority of a state or local government. Though Congress sought to encourage the expansion of personal wireless services, the TCA does not federalize telecommunications land use law. Instead, Congress struck a balance between public entities and personal wireless service providers. Under the TCA, public entities retain control "over decisions regarding the placement, constructions, and modification of personal wireless service facilities." 47 U.S.C. § 332(c)(7)(A).

The Commission's adherence to the restrictions provided by the TCA is documented by substantial evidence contained within this staff report. A reasonable decision whether to approve the construction of an antenna for cellular telephone communications requires balancing two considerations. The first is the contribution that the antenna will make to the availability of cellular telephone services. The second is the aesthetic or other harm that the antenna will cause.

In this case, the Commission is not imposing a general ban on telecommunications facilities but rather determining adherence to the use limitations of a certified LCP and assessing the adverse visual impact of a proposed facility at a particular location. The proposed development will not fill a complete void or significant gap in coverage but would rather only improve indoor service. A project-specific denial would not in any manner prevent the applicant from seeking development of telecommunication facilities in other portions of the City of Trinidad jurisdiction where such facilities may be authorized under current land use planning and zoning regulations. The City could also process an LCPA, with or without the applicant's participation, expressly permitting telecommunications facilities as a permitted use in other specified zones. The Commission has acted on several such proposed amendments in the coastal zone and has

approved such amendments consistent with the applicable provisions of the Coastal Act and the certified LUP.

**H. California Environmental Quality Act**

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would significantly lessen any significant effect that the activity may have on the environment.

The Commission incorporates its findings on LCP and Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report.

As discussed herein in the findings addressing the consistency of the proposed project with the standards of the certified LCP and the public access policies of the Coastal Act, the proposed project is not consistent with the policies of the LCP that restrict the classes of development suitable for open space designated lands, limit the height of structures in the Open Space zoning district, and protect the coastal resources of Trinidad Head.

As also discussed above in the findings addressing project options, there are feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

Use the links at left and below to go to the exhibits.

**III. EXHIBITS:**

1. Regional Location Map
2. Vicinity Map
3. Humboldt County Assessor's Map No. 42-12
4. Project Site Aerial
5. Site Plan, Elevation View, and Equipment Cabinet (Typical)
6. Notice of Final Local Action
7. Appeal, filed October 4, 2006 (Friends of Trinidad Head)
8. Preceding City of Trinidad Coastal Development Permits for Trinidad Head Telecommunication Facilities
9. Preceding Coastal Zone Management Act Consistency Determinations and Concurrences
10. General Correspondence
11. City of Trinidad Resolution In re: Discontinuance of Leasing Trinidad Head for Telecommunications Uses (Withdrawn)
12. Applicant's and Interested Parties' Correspondence (with Individualized Color Photo Attachments)