

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE: (415) 904-5200
FAX: (415) 904-5400
TDD: (415) 597-5885



Th10b

CD-0006-18

MARCH 4, 2019

CORRESPONDENCE

(received by 5:00 pm, March 1, 2019)

From: Kimberly Tays [<mailto:kimkat067@gmail.com>]

Sent: Wednesday, February 20, 2019 4:05 PM

To: Energy@Coastal

Subject: March 2019 Agenda Item Thursday 10b-CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Dear Coastal Commissioners:

Please accept my comments on the above-referenced item for your consideration.

I have reviewed the Environmental Assessment (EA) for the Trinidad Rancheria's (Rancheria) plans for the pier/harbor area in Trinidad, California. While I am not opposed to stormwater and visitor center improvements, I oppose the transfer of that property into federal trust, because Californians would be relinquishing state oversight of this scenic, sensitive and important piece of California's coastline.

The California Coastal Act (CCA) is an excellent state law that protects our coastal resources and provides an opportunity for citizens to participate in the public hearing/coastal development permit (CDP) process. The appeals process is an especially important feature of the CCA. It gives everyday citizens the right to appeal development approvals (that may harm coastal resources) without an attorney or having to file a lawsuit. In fact, if an appeal fee is charged at the local level of government, an appellant may file an appeal directly to the California Coastal Commission (CCC), free of charge. You only need to comply with the appeal process requirements under the CCA and state your reasons, in the appeal, why the project would violate the CCA. In addition, if public members have concerns about possible CCA violations or unpermitted development, they can contact the local CCC office in Arcata, and staff can look into those matters.

Public members would not enjoy that same level of participation under the National Environmental Protection Act (NEPA) as they enjoy under the CCA. For example, under NEPA there is no official public notice, only the federal register. While public members can submit comments on proposed projects, the federal process would not be as intuitive or accessible as the state process. And it is unlikely the public would have much influence over what types of development is allowed or constructed on sovereign, tribal land. If a federal agency is not following proper processes under NEPA, the only recourse public members would have is to file a lawsuit. Considering the prohibitive costs of hiring a lawyer and filing a lawsuit, it is doubtful ordinary citizens would consider such a recourse. This would cause improper or illegal processes that could harm coastal resources to go unchallenged.

While NEPA would replace the California Environmental Quality Act (CEQA) as the standard for review, NEPA does not appear to be as strict as CEQA regarding environmental impacts. For example, some impacts determined to be significant under CEQA may not lead to a determination of significance under NEPA. Also, NEPA does not require that a determination of significant impacts be stated in the environmental documents. If the pier/harbor area retains its current status, the public would be assured: (1) the CCA would continue to protect this important coastal environment, (2) the public would have the right to easily participate in the CDP public

hearing process, (3) the public would have the right to appeal projects that may violate the CCA or cause significant impacts to coastal resources, and (4) that CCA or CDP violations could be investigated by local CCC staff.

In regards to concerns of public access, there is a statement in the EA that says “*While the pier would be included within the trust action, in accordance with an agreement executed April 18, 2012 between the Tribe and the California Coastal Conservancy (CCC), the Tribe would maintain public access to the Trinidad Pier and associated marine access and recreational improvements until 2032.*” (See Section 2.0, pg. 2-2, of EA.) I did not see any further discussion in the EA that spells out what will happen after the Year 2032. Public access to the pier, harbor, beach, etc., needs to extend into perpetuity, not just until 2032. If public access is not guaranteed into the future, that area could essentially be privatized, as the Rancheria would have sovereign authority over the land. That means public access to the beach and recreational and fishing opportunities could be cut off or fees could be charged to access the pier, harbor, beaches and bay. I am not saying that this is what the Rancheria is planning, but these are very realistic scenarios that could play out in the future.

In addition to concerns about public access, I am equally concerned about future protections for water quality in Trinidad Bay, an Area of Special Biological Significance (ASBS). The California Coastal Commission is a known entity, and the public can count on this high-functioning and committed state agency to protect Trinidad Bay and our coastal waters. Transferring the pier/harbor area into federal status could place Trinidad Bay and nearby coastal waters in jeopardy, because: (1) the Trump Administration working to severely weaken or dismantle environmental protections and laws like the Clean Water Act, (2) the Trump Administration is working to undermine NEPA and drastically cut the EPA’s budget (the same agency that is charged with protecting water quality), and (3) President Trump has appointed people to run the EPA that do not respect environmental laws and protections.

I am not sure if the following comments are appropriate, as they have to do with the development proposals for the pier/harbor area instead of the transfer of property from simple-fee to federal status. However, I wish to relay my concerns, nonetheless, as they involve Impacts from the proposed visitor center and **non-compliance with conditions of CDPs** issued to the Rancheria in 2011 (re: new restroom facilities/septic system upgrades) and 2012 (re: upgrades to the pier).

Re: the Visitor Center and Non-Compliance of 2012 CDP Condition: Currently, the plans show peaked rooflines for the visitor center. If the visitor center had a semi-flat roof, with enough slope for proper drainage, this would greatly reduce the building’s height, bulk and visual impacts. Good designs for a visitor center should include lowering the roofline, using natural siding and installing a minimum number of low-wattage lights on the exterior, with the requirement that all exterior and interior lights be turned off during non-business hours to protect the nightsky and nocturnal wildlife. **Currently, there is an excessive amount of light pollution coming from the pier, despite the condition placed on the Rancheria’s 2012 CDP for pier-related improvements that newly-installed lighting should not leave the immediate dock area.** Despite that condition, light pollution from the pier can be seen as far away as the Scenic Overlook off of Hwy 101 in McKinleyville. The pier lights also cast shadows onto Little Head, Trinidad Head, etc., and give the harbor an industrial look and feel. Before anymore

development projects are allowed at the pier/harbor, the Rancheria should be required to bring the pier lighting into compliance with the condition of their 2012 CDP. Lower-wattage light fixtures that are shielded and downcast should be installed (or existing lights modified in that fashion). The pier lights should also be turned off at night when the pier is not in use, again, in order to protect the nightsky and nocturnal wildlife.

Re: Non-Compliance of 2011 CDP Condition: I did not see any plans in the EA to deal with the invasive ice plant that is spreading up the leach field in the harbor area. One of the conditions of approval of the 2011 CDP required the Rancheria to plant native plants on the leach field. However, that was never done. The public was told that plant roots would interfere with the leach lines. However, the ice plant roots could be as much of a problem, or more so, than native plant roots. Before any new development projects are approved, the Rancheria should be required to remove the non-native, invasive ice plant on the leach field and plant native vegetation in its place. Native wildflowers like California poppies (that do not have extensive roots) could be planted, which would enhance the natural beauty of the area.

I suspect the Rancheria has other plans for the pier/harbor area that have not been revealed in the EA. If this area is placed under federal status, it seems highly likely that the Rancheria will be given great leeway to develop the area as they wish, and the public will have very little recourse to protect this beautiful piece of California's coastline from damaging or destructive development projects and uses.

For the reasons stated above, I ask the California Coastal Commission to deny the change in status of the Trinidad pier/harbor area and vote to keep this property as is so it remains in the public's realm and subject to the laws of the State of California and California Coastal Act.

Sincerely,
Kimberly Tays
P.O. Box 5047
Arcata, CA. 95518



Tsurai Ancestral Society

P.O. Box 62

Trinidad, Ca. 95570

February 20, 2019

California Coastal Commission

John Weber

45 Freemont Street

#200 San Francisco, CA 94105

Cc: Executive Director Jack Ainsworth; Senator Kamala Harris; Commission District Manager
Bob Merrill

**Re: California Coastal Commission Staff Report, Trinidad Rancheria's Proposed Trust
Application**

Dear Commissioners:

This letter serves as the Tsurai Ancestral Society's comment for the Cher-Ae Heights Indian Community of the Trinidad Rancheria's ("Trinidad Rancheria" or "Rancheria") application to take nine Trinidad Harbor area parcels in Trust ("fee-to-Trust") now before you. The Tsurai Ancestral Society was not consulted during the preparation or drafting of either this application, or any previous work including the environmental assessment submitted to the Bureau of Indian Affairs. We think this is significant due to our status as an organization of documented lineal descendants of the Tsurai village (which the parcels being considered lay inside of), and we have not sold any of our rights to, or agreed to be separated from, our ancestral lands.

The Tsurai Ancestral Society objects to the Bureau of Indian Affairs ("BIA"), the U.S. Department of the Interior ("Interior"), and the California Coastal Commission taking into trust any land for Trinidad Rancheria, or any other Tribe other than the Yurok Tribe, within Tsurai ancestral territory. All the parcels in the Rancheria's fee-to-trust application are located outside of the Trinidad Rancheria. The parcels were previously held in fee by a private individual who took them from the Tsurai inhabitants through the Homestead Act of 1862. At no time, did any of the Tsurai village people, or their descendants, sell or sign any documents giving up our rights to this area. To separate us from our village through placing pieces of it into trust, with anyone other than the Yurok Tribe, is denying us our rights to practice our religion, ceremonies and traditional ways of our culture that are strongly tied to the land itself.

Additionally, the Tsurai are deeply concerned that the proposed development outlined in this application is not accurate as to their plans for the area if put into trust. The Trinidad Rancheria has historically performed projects that destroyed Tsurai village sacred sites, and their lack of knowledge about the village, or its important sites, have a major, significant negative impact on our ability to practice, and preserve our culture. Once those places are destroyed, they are not replaceable. We think the need for CEQA oversight in any development in this area is extremely important. Given the Rancheria's lack of outreach to both the Tsurai Ancestral Society and Yurok Tribe, prior to submitting the application to the BIA, is an example of why this is necessary.

The Tsurai Ancestral Society would like clarification as to how the California Coastal Commission will protect the hearing process from Commissioner Sundberg's conflicts of interest. In December of 2017, the Trinidad Rancheria participated in the Memorial Lighthouse project by the Trinidad Civic Club. If the project had not been stopped by an occupation of the lineal descendants of the Tsurai village and Yurok tribe, they would have permanently destroyed the traditional access to the Tsurai village. Commissioner Ryan Sundberg was a part of the planning process for that project, as he attended meetings with the Civic Club. The Tsurai Ancestral Society thinks his participation was a conflict of interest as he is member of the Trinidad Rancheria, per capita beneficiary, prior and present employee, Humboldt County Supervisor for that district, and sitting California Coastal Commissioner. His role in the project was not defined to us upon inquiry, so we are unsure which entity he represented in the meetings. Commissioner Sundberg not only did not recuse himself from the Commission hearing on the Trinidad Civic Club CDP last month, but personally made the motion to accept the project. The Tsurai Ancestral Society would like the Commission to outline how these hearings are protected from any conflicts of interest in the case of Mr. Sundberg and his various titles, employment, tribal status and benefits he may receive upon approval.

The Tsurai Ancestral Society recognizes that, typically, fee-to-Trust actions have a benefit to tribal self-determination and sovereignty. We ask the Commission to recognize and evaluate the negative impact to the Tsurai lineal descendants if the Rancheria, a non-historical Tribe whose members moved to Trinidad in 1967, is given trust status over pieces of our village.

The significant negative impacts this has on the rights, privileges, and historical claims of the Tsurai Ancestral Society and Yurok Tribe, a historical and reservation-based tribe are immeasurable. Given the Tsurai have never sold their rights to this land, a trust action will forever deny us any chance at repatriation.

Claims of lineal descendancy have recently been made by some members of the Trinidad Rancheria including Commissioner Sundberg. Village lineal descendancy was submitted into evidence in the Jessie Short, et. al. vs The United States case. Those documents are publicly available and were accepted as legal evidence. The Tsurai Ancestral Society thinks this is the most impartial and accurate information available to determine the truth of such claims. The Jessie Short Case plaintiff information regarding descendancy was so significant, the Yurok Tribe has used the information when determining tribal enrollment eligibility.

In closing, we hope you take our concerns into consideration and request the Commission deny this application.

Sincerely,

Axel Lindgren III

Tsurai Ancestral Society Chairman

From: Boggiano, Reid@SLC
To: Weber, John@Coastal
Cc: Berman, Dan@CityofTrinidad
Subject: RE: Hearing Notice for CD-0006-18 (Bureau of Indian Affairs-Trinidad)
Date: Monday, February 25, 2019 3:35:30 PM

Hi John,

Thanks for the call today. I noticed the legend in the exhibit calls to the Ordinary High Water Mark (OHWM) estimated from recent data. The OHWM is a legal term that averages the high water over an 18.6-year period. The only way to know where the OHWM is at a specific point in time is to survey the area.

I think there needs to be some disclaimer with a caveat explaining that the boundary is an estimation and excludes any lands below the OHWM. I'm happy to discuss further.

Reid Boggiano, Granted Lands Program Manager

CALIFORNIA STATE LANDS COMMISSION

External Affairs

100 Howe Avenue, Suite 100-South | Sacramento | CA 95825

Phone: 916.574.0450 | Email: Reid.Boggiano@slc.ca.gov

From: Susan Walter [mailto:sooz2@outlook.com]

Sent: Tuesday, February 26, 2019 11:42 AM

To: Energy@Coastal

Subject: Public Comment on March 2019 Agenda Item Thursday 10b - CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Placing the property adjacent to the Trinidad pier area into Trust is a bad idea for many reasons. The mandate of the Coastal Commission is to protect public access. Why then would you approve placing the most used public access point in Trinidad in Trust thus depriving the Commission and the City of Trinidad of regulating what is done there and what effects development has on the public. The loss of tax revenue to the city would be significant. It is significant that both the Yurok Tribe and the Tsurai Ancestral Society (who in my opinion more closely represent the native population prior to White settlement) oppose this project. It is my understanding that the Rancheria told Bob Hallmark when he sold them the property that it would not be put into Trust. Apparently that wasn't included in the title documents, so I don't know what weight that would hold. At the very least it seems disingenuous. Please don't deprive the citizens of our State and local residents of having a say in what is done in such an important part of our community. Please reject this application.

Sincerely, Richard Walter, local resident of 45 years.

Sent from Windows Mail



Tsurai Ancestral Society

P.O. Box 62

Trinidad, Ca. 95570

February 27, 2019

California Coastal Commission

Cc: John Weber

45 Fremont Street

#200 San Francisco, CA

Cc: Executive Director Jack Ainsworth; Senator Kamala Harris; Commission District Manager Bob Merrill

Re: March 2019 Agenda Item Thursday 10b-CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Dear Commissioners:

The Tsurai Ancestral Society has reviewed the staff report regarding the above-named agenda item and would like to include the following comment in to the previously prepared response dated 2/20/2019. (See attachment A)

Upon the review of the staff report, the Tsurai Ancestral Society thinks staff did not perform a substantial review of the negative impact to the Tsurai village and the Tsurai Ancestral Society.

California Coastal Commission staff member John Weber contact Tsurai Ancestral Society Secretary Sarah Lindgren-Akana on January 30th. (See Attachment B) He gave a vague deadline for the due date of our response, even when asked for clarification. Mr. Weber also did

not adequately attempt to address any of the questions or concerns raised regarding Commissioner Sundberg's role in this application and hearing. The Tsurai Ancestral Society's response was then included in the "correspondence" portion of this packet. The submission was sent by the approximate deadline given by Mr. Weber, but again a definite timeline for inclusion in the staff report was not clear (or if inclusion was ever an option at all). This placement of the comment within the packet contradicts the staff report's placement of the Tsurai Ancestral Society's email quote used by Mr. Weber. The Ancestral Society's comments should not be placed in the same category as regular public comment given our unique, historical and legal ties to the Tsurai village. Our comment should be included in the Tribal Consultation portion of this report, just like our quote.

The Tsurai Ancestral Society is a non-profit made up of documented lineal descendants of the Tsurai Village (see our original comment regarding the *Jessie Short et. al. vs The United States* regarding documentation.) We are recognized in the City of Trinidad's LCP and General Plan because of our unique relationship to the land being discussed in and around Trinidad. Our organization is made up entirely of Yurok people, as the Tsurai Village is exclusively Yurok in origin. This is documented in many archeological studies, and explorers' notes dating from 1775 to present.

The history of the reservation system created by the government, and more recently the Rancherias, often completely disregarded the unique culture each tribe enjoyed. By opening the Trinidad Rancheria up to homeless Indians throughout California, the BIA placed families from five distinct Tribes onto Yurok land, and into a portion of the Tsurai village. While this has been economically beneficial for the Rancheria members, it has not been culturally beneficial as it separated them from their various Tribes and cultural practices. The Tsurai were able to withstand the push from extermination of their existence by the California Governor, and by local vigilantly groups. We have been able to maintain a solid, unbroken connection to our village as we never left. We remained within the boundaries and continued to caretake the graves of our family members and friends. The people buried within the village are not strangers, and their stories are not unknown to us. We empathize with the people that got caught up in the displacement that happened during colonization, however, the government cannot make right one wrong by hurting another. If the desire to put the property into trust is merely financially beneficial, through not paying property tax, it seems an alternative to trust status should be explored. The Tsurai may have been able to outrun the vigilantes, but the knife of another tribe putting our sacred places into trust is the one that will cut our throat.

The Tsurai Ancestral Society has not changed its previous recommendation for the Coastal Commission to deny the application named above. If the Commission chooses not to deny, the Tsurai request a continuance so that proper consultation can occur for both the Tsurai Ancestral Society and Yurok Tribe. The Tsurai invite Commissioners to meet with us and visit our village in person before making any decisions that will have a permanent, lasting impact on us, our children, and our future lineal descendants.

Sincerely,

Axel Lindgren III

Tsurai Ancestral Society Chairman

Attachment B:



Sarah Lindgren-Akana <mzlindgren79@gmail.com>

Trinidad Rancheria

9 messages

Weber, John@Coastal <john.weber@coastal.ca.gov>
To: "mzlindgren79@gmail.com" <mzlindgren79@gmail.com>

Wed, Jan 30, 2019 at 3:19 PM

Hi Sarah-

I am reaching out to you at this email address because you were given to me as a contact for the Tsurai Ancestral Society. If there is someone else who would be more appropriate to speak to, please let me know.

The purpose of this contact is because the Coastal Commission has received a formal letter of application for approval of a proposed fee-to-trust action by the Bureau of Indian Affairs (BIA), acting at the request of the Trinidad Rancheria. This action would involve land that is currently owned by the Trinidad Rancheria in the vicinity of Bay Street and Trinidad Harbor, and the proposal is to place this land into federal trust. The letter further describes a foreseeable consequence of this action, if it were to go forward, being the subsequent development of stormwater features serving the harbor, construction of a visitor center, and a designation of a majority of the proposed trust parcels as open space.

I am reaching out to you to see if the Tsurai Ancestral Society has questions or comments on the proposed action. If further information would be helpful to provide, please let me know.

My contact information is below.

Thanks very much,

John

John Weber

California Coastal Commission

[45 Fremont Street #2000](#)

[San Francisco, CA 94105](#)

415-904-5245

<http://www.coastal.ca.gov/>

Every Californian should conserve water. Find out how at:

[SaveOurWater.com](#) · [Drought.CA.gov](#)

Sarah Lindgren-Akana <mzlindgren79@gmail.com>
To: john.weber@coastal.ca.gov

Thu, Jan 31, 2019 at 1:46 PM

Hello,

Thank you for sending this over. We would appreciate the letter you're referencing, as well as any of the documents filed by the Rancheria to the BIA and their responses, if available. Is there any information outlining how the Trinidad Rancheria would protect the interest of the Tsurai Village descendants, including but not limited to access to traditional gathering sites, cultural resources and traditionally significant areas where we still practice our religion.

Thank you,

Sarah Lindgren-Akana
Tsurai Ancestral Society Secretary
[Quoted text hidden]

Weber, John@Coastal <john.weber@coastal.ca.gov>

Thu, Jan 31, 2019 at 2:25 PM

To: Sarah Lindgren-Akana <mzlindgren79@gmail.com>

Sarah:

Please see the attached document which is the letter I originally spoke about.

With respect to documents filed by the Rancheria to the BIA, and/or responses from the BIA, the BIA should be able to help you with that, as we do not have such documents on file here at the Commission. However, in the attached letter you will see a reference to an environmental assessment that was prepared for the proposal, which is available here: <https://trinidad-rancheria.org/wp-content/uploads/2018/03/TrinidadHarborFTTEAMarch2017withAppend.pdf>

That environmental assessment provides additional detail/overview of the proposed project, including a section on cultural resources.

As you go over this information, if there are further questions or concerns related to the Commission's review, I would welcome the chance to discuss. So, please let me know if you have further questions-and thank you.

John

[Quoted text hidden]

 **CD_Bureau of Indian Affairs_12 26 2018.pdf**
610K

3 attachments

image001.jpg
4K

image002.jpg
7K

 **CD_Bureau of Indian Affairs_12 26 2018.pdf**
610K

Sarah Lindgren-Akana <mzlindgren79@gmail.com>
To: "Weber, John@Coastal" <john.weber@coastal.ca.gov>
Cc: Kelly Lindgren <klindgren69@gmail.com>

Fri, Feb 15, 2019 at 1:42 PM

Hi John,

The proposed land being put into trust is problematic for many reasons.

We are in the midst of a litigation in which the Trinidad Rancheria is attempting to prevent us and the Yurok Tribe from getting our traditional burial grounds back. (A very short distance from the area the TR is applying to put into trust.)

Can you give us a timeline as to when we need to respond by? We are putting a lot of our energy into the legal matter, but want to respond to this, as it contains culturally significant places and items for us, the Tsurai people.

Also, could you please let us know what Commissioner Sundberg's role is in this matter, and when his term is up on the Commission?

Thank you,

Sarah Lindgren-Akana
Tsurai Ancestral Society Secretary

Sent from my iPhone

[Quoted text hidden]

<CD_Bureau of Indian Affairs_12 26 2018.pdf>

Weber, John@Coastal <john.weber@coastal.ca.gov>

Fri, Feb 15, 2019 at 2:28
PM

To: Sarah Lindgren-Akana <mzlindgren79@gmail.com>
Cc: Kelly Lindgren <klindgren69@gmail.com>

Thanks for your response, Sarah.

At present, the schedule is this: the proposal is on the Commission's March 6-8 meeting agenda. This means that a staff report regarding the project will be published at the end of next week. The staff report will be posted on-line at the Commission's web site (specifically on the meeting agenda <https://www.coastal.ca.gov/meetings/agenda/#/2019/3>). I also have your information on our public notice list for the proposed project, which means that you will receive e-mail notice once the staff report has been posted. Comments that are submitted on the staff report before 5:00 pm on

Friday, March 1, would be posted on-line and distributed by staff to the Commission.

With respect to Commissioner Sundberg, my understanding is that his last meeting as a Commissioner will be in March. I am not aware of any other details with respect to his role as Commissioner and this proposal.

Please let me know if further questions, and thanks very much.

-John

[Quoted text hidden]

From: Michelle Dougherty
To: Energy@Coastal
Subject: CD 0006-18
Date: Wednesday, February 27, 2019 3:27:22 PM

We the people are concerned about the Rancheria putting Trinidad harbor, launch and beach into a federal land trust. Please consider the small businesses and the heart of Trinidad. The public should be able to access the beach and the sensitive environment that our bay holds should be protected.

Sent from my iPhone

From: Johnny Newsome

To: Energy@Coastal

Subject: Trinidad Bay CD 0006-18

Date: Wednesday, February 27, 2019 3:50:17 PM

CA Coastal Commission:

Reference agenda item: CD 0006-18

I would like to Comment on your March 7 agenda item concerning beach access in Trinidad Bay. I live in the area and use the beach access regularly for recreational kayaking. In fact these sorts of recreational accesses were a large part of my decision to retire in this area. I request that you protect public access to Trinidad Bay beach.

I am a private citizen and have no association with any business interests. I do, however, recognize the value of clean recreational tourism in this area.

Thank you for your consideration,

Johnny Newsome

910 Diamond Drive

Arcata, CA 95521

j.newsone@moreheadstate.edu

From: [Chris Whitworth](#)
To: [Energy@Coastal](#)
Subject: Trinidad Bay Access
Date: Wednesday, February 27, 2019 4:52:22 PM

Dear Coastal Commission Representatives,

As an ocean kayaker I regularly use the beach access to Trinidad Bay.
Please act to retain free public access to the Trinidad Bay for all recreational uses.

Thank you,
Chris Whitworth
64 Johnson Lane
McKinleyville, Can 95519

From: Kimberly Tays [<mailto:kimkat067@gmail.com>]

Sent: Wednesday, February 27, 2019 4:19 PM

To: Peskin, Aaron@Coastal; Groom, Carole@Coastal; Bochco, Dayna@Coastal; Brownsey, Donne@Coastal; Turnbull-Sanders, Effie@Coastal; Howell, Erik@Coastal; Vargas, Mark@Coastal; Luevano, Mary@Coastal; Uranga, Roberto@Coastal; Aminzadeh, Sara@Coastal; Padilla, Stephen@Coastal
Cc: Berman, Dan@CityofTrinidad; Delaplaine, Mark@Coastal; Frankie Myers; Boggiano, Reid@SLC; Corbaley, Su@SCC

Subject: Subject: March 2019 Agenda Item Thursday 10b-CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Dear Coastal Commissioners:

As you are scheduled to vote on the above-referenced issue at your March 7 meeting, I felt it was important to bring up what I believe is a major omission of substantive information regarding the transfer of the pier/harbor area within the city limits of Trinidad from fee-simple to federal trust status on behalf of the Cher-ae-Heights Trinidad Rancheria.

On February 20, 2019, I submitted my comments via email to the Coastal Commission (CCC), prior to the February 22 posting of the staff report prepared by John Weber of your office. When I went to the CCC's website to read the staff report, exhibits and correspondence, I realized that the Bureau of Indian Affairs' (BIA) responses to public comments were not discussed in any meaningful way in the staff report and that only a few sentences were devoted to concerns raised by the Coastal Conservancy and City of Trinidad when, in reality, there were so many other concerns that were not evaluated or discussed. When talking to others in the community, I realized none of us have seen any responses to our 2017 comments from the BIA. In addition, it seems that responses to substantive concerns raised in letters submitted in 2017 to the BIA by the California Coastal Conservancy, the City of Trinidad, the Yurok Tribe, the State Lands Commission and, **even, the California Coastal Commission** have not been published anywhere or provided to the public in any manner.

In an effort to locate the BIA's responses, I asked Mr Weber on February 26 if he was "*going to include the responses to public comments that were supposedly prepared by the BIA.*" I explained that I could not find any information on the BIA's website and that I would like to read the BIA's responses to public comments. As a result of my inquiry, Mr. Weber cc'd my email to Mr. Broussard of the BIA. So far, I have received no reply from Mr. Broussard. On February 27, I emailed Mr. Weber, again, asking him "Have you personally reviewed the BIA's responses to public comments on the transfer proposal?" He replied "***no, neither I nor anyone at the Commission has seen them.***" My concern here is that in order to properly vet the transfer of property to the Trinidad Rancheria, it is essential that the Coastal Commissioners be made aware of the major concerns that the public and various agencies have expressed and which appear to not have been addressed by the BIA or properly assessed in the CCC's staff report.

For the above reasons, I am asking the Coastal Commissioners to please postpone any vote on this issue until the BIA has fully disclosed its written responses to public concerns on the transfer proposal and those responses are fully considered and evaluated in the CCC's staff report for review by the Coastal Commissioners. This is an extremely important issue to the City of

Trinidad and its citizens (and the public), and it is important that this project be considered very carefully to insure that these coastal resources and public access are protected. Below are some of the letters that were submitted to the BIA in 2017. There are other letters out there, too; however, these are the ones I have access to at this time. Again, I respectfully ask that you postpone any decisions on this matter until these concerns have been fully evaluated and addressed.

Sincerely,
Kimberly Tays
P.O. Box 5047
Arcata, CA 95518

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



April 6, 2017

Amy Dutschke
Regional Director
Bureau of Indian Affairs
Pacific Regional Office
Attn: Chad Broussard
2800 Cottage Way
Sacramento, CA 95825

Re: Coastal Commission Staff Comments, Environmental Assessment for Proposed Trust Acquisition of Nine Acres for the Cher-Ae Heights Indian Community of the Trinidad Rancheria, Trinidad, Humboldt County

Dear Ms. Dutschke:

The California Coastal Commission received a copy of the above-referenced Environmental Assessment (EA) for the placement of nine Trinidad Harbor area parcels (totaling 9 acres) in Trust (fee-to-Trust) for the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Rancheria). The parcels contain existing harbor uses and businesses, including a pier, boat launch, boat cleaning and maintenance facilities, two parking lots, the Seascapes Restaurant, a bait and gift shop, a vacation rental house, recreation areas, and boat parking areas. The activity also contemplates, and the EA analyzes, future development consisting of stormwater improvements and construction of an interpretive visitor center.

As is the normal BIA practice for fee-to-trust actions in the coastal zone, the EA acknowledges the need for the BIA to submit a consistency determination to the Commission under the Coastal Zone Management Act (CZMA, Section 307¹). A consistency determination is a finding that a proposed activity is consistent to the maximum extent practicable with the California Coastal Management Program, combined with information necessary to support that conclusion, including an analysis of the activity's consistency with Chapter 3 of the Coastal Act. We provide these comments in assisting the BIA in preparation of that document and expect that our comments will be responded to prior to or in combination with that submittal.

¹ 16 U.S.C. Section 1456, with implementing regulations at 15 CFR Part 930.

We understand that one of the benefits to the Rancheria of the proposed fee-to-trust action is increased tribal sovereignty, self-determination and self-governance. In so doing, a fee-to-trust action necessarily modifies the effect and scope of state law authority in several ways, as follows:

(1) While the City of Trinidad does not currently issue coastal development permits (CDPs) for development in the Harbor area (because that segment of the City does not have a Commission-certified Local Coastal Program), the City is currently drafting an LCP segment for the Harbor area. If such segment were to become certified, then absent a fee-to-trust action, most development in this area would need to receive City-issued CDPs. Thus, the effect of the proposed action would be to eliminate this CDP review process procedure, which could, among other things, reduce the ability of the public to participate in locally- or regionally-important coastal matters.

(2) For similar reasons, the current Coastal Act permitting process, involving Commission review of CDP applications, would also no longer occur if the land were put into Trust, and while the Commission's meeting locations are not as accessible to the local public as City meetings, they nevertheless afford opportunities for public participation in the review process.

(3) Once the land is in Trust, the Commission retains the federal CZMA authority to perform future federal consistency reviews that may be triggered. However, that authority would be less extensive than state law CDP authority, for three reasons: (i) such reviews would only be triggered in the event that an activity needed a federal permit, federally funding, or was being carried out by a federal agency; (ii) the property would no longer be considered "within the coastal zone," but instead would be treated as similar to federal land, which means the Commission would be limited to reviewing an activity's "spillover effects" on coastal zone resources (i.e., effects from development on coastal resources located outside the Trust property boundary); and (iii) the Commission would not have the benefit of a formal local government review (assuming, as discussed in #1 above, the City were to attain CDP review authority under a certified LCP segment).

In reviewing past fee-to-trust actions, the Commission has recognized the benefits to Tribes of increasing self-determination and sovereignty, and in these reviews the Commission has sought to develop meaningful working relationships with the affected Tribes for continuing coordination and cooperation, which are values inherently embodied within the spirit of the CZMA itself. The CZMA not only encourages, but successfully relies on, communication and cooperation among all levels of government (and the public). We believe these values and relationships should extend not only to the fee-to-trust action, but ideally to continued relationships and coordination after such time as the land is placed in Trust. We would note that these types of relationships are also strongly encouraged under the Resources Agency Tribal Consultation Policy dated November 12, 2012 (and adopted pursuant to Executive Order B-10-11).

Thus, the Commission's review of fee-to-trust actions has typically been multi-layered, as follows:

(1) The Commission reviews a "snapshot" of anticipated development analyzed in BIA EA's, in order to assess the consistency of any anticipated development likely to accompany a fee-to-trust action with the applicable Coastal Act policies.

(2) The Commission has sought assurances that the Commission or its staff will be afforded the opportunity to review, comment, and work with the BIA and/or the Tribe to ensure that building, monitoring, mitigation, or other pre-construction plans reflect, and are in accordance with, the activities that were described and analyzed in a BIA EA and Commission findings on a consistency determination.

(3) The Commission has sought to develop meaningful working relationships to enable continued future cooperation and coordination with respect to changes to previously anticipated activities on Trust properties, or to activities that were not able to be anticipated at the time of Commission review, either of which changes may affect coastal resources in a manner different than was analyzed in the EA or consistency determination.

During our review of the upcoming consistency determination, we intend to explore ways to address these issues further, hopefully with both the BIA and the Rancheria, and we would be happy to provide examples of adopted Commission actions on past fee-to-trust consistency determinations. As you may be aware, we have also, at the Rancheria's request, engaged in Government-to-Government Consultations with the Rancheria concerning this fee-to-trust proposal.

From an overall perspective, it would appear that existing and proposed uses of the land as identified in the EA are generally consistent with Coastal Act goals and priorities, such as those policies protecting public views, water quality, and cultural resources, and giving priority to fishing and visitor-serving facilities. More specifically, however, we do have several questions and information requests concerning the descriptions and analyses in the EA, as follows:

1) **Parcels/Acreage.** We are confused over what may be some minor discrepancies in the EA concerning the parcels in the fee-to-trust action. The text and maps note nine parcels that have Assessor Parcel Numbers (APNs) assigned: (042-07-101, 042-07-102, 042-07-105, 042-07-108, 042-07-112, 042-07-113, 042-07-114, 042-09-108, and 042-09-110). These APNs total 6.5 acres, and 2.5 acres are identified for which there are no APNs. Figure 1-3 lists the total acreage at 9.38 acres, whereas Figure 3-4 gives a slightly different acreage (9.27 acres). Table 2-1 lists the total acreage at 9.35 acres and states that the areas with no APNs comprise 3.24 acres (differing from Figure 1-3, which indicates the non-APN area to be 2.85 acres). Also, we are

unclear about which are the areas that do not have APNs. Do they include beach areas seaward of the Mean High Tide line, and/or any submerged land under the pier? Also, what is the significance of the area outside the red line on Figure 1-3, adjacent and to the west of Parcel 1 (surrounded with a white line)? We would appreciate clarification as to the precise parcels and acreages included in this application.

2) **Submerged Lands.** If any lands in the fee-to-trust action would be located below Mean High Tide, does the BIA have the authority to place such lands into Trust for a Tribe? If it does, what, if any, coordination with the State Lands Commission and/or the City of Trinidad is necessary?

3) **Pier.** For the pier, if it is only the above-water structure being considered in the fee-to-trust application, we would appreciate an explanation of the authority under which this action would occur, as well as an explanation of the roles the State Lands Commission, the City of Trinidad, and the California Coastal Conservancy would play in this transfer. The EA states the Rancheria has an agreement with the Coastal Conservancy, dated April 18, 2012, under which the Tribe would maintain public access on the pier until 2032. We would also appreciate being apprised as to what should be expected if and when that agreement were to reach or near its expiration date. Is it likely to be renewed? Does the agreement contain language for how post-2032 conditions will be considered?

4) **Standard of Review.** We wish to clarify for all reviewers as to the Commission's standard of review when it reviews any consistency determination. Page 3-28 of the EA correctly identifies that the enforceable policies of the state's federally-certified Coastal Management Program (CMP) constitute the standard of review for federal consistency determinations. The California CMP has been certified, and Chapter 3 of the Coastal Act will therefore be the standard of review. However, statements on subsequent pages could be read differently.

For example, the page 3-29 in the EA states "The most recent draft update to the City General Plan (1978), which includes provisions that constitute the LCP under the CZMA, ..." To reiterate, Chapter 3 of the Coastal Act will be the standard of review for any consistency determination; the LCP can, if certified, be used as guidance in interpreting Chapter 3 policies. You may want to consider deleting the phrase "under the CZMA" from that sentence.

In the Land Use Consistency discussion contained on Page 4-12, we would suggest similar types of clarifications to avoid confusion. First, if an LCP update is still in draft form, and not yet reviewed by the Commission, it should not be argued to support past Commission interpretations of Coastal Act policies. Second, the following phrase may need some modification, where it states "the Local Coastal Plan (LCP) developed in accordance with the Coastal Zone Management Act..." LCPs are developed in accordance with state law (the Coastal Act). They can be used as guidance or background under the CZMA, but it is probably more accurate to say

“... developed in accordance with the Coastal Act...” in this context. Third, while it may be the case that “the proposed development and trust action is consistent with the most current draft of the Local Coastal Plan,” any such statement should probably not be used, or at a minimum, not be used without further elaboration, to establish the consistency of the action with Chapter 3 of the Coastal Act.

5) Interpretive Center. Appendix B of the EA provides some building details for the proposed Interpretive Facility, but we would request more details on this facility in the consistency determination. We are not able to read the notes on the plan pages, and the building materials and colors are either illegible or not provided. We would appreciate knowing those details, or if they are not available at this time, the development of a working relationship under which we could be provided those details. A visual simulation showing before and after public views of the facility would also be helpful.

6) Infrastructure/Public Services Assumptions. The EA assumes that the capacity of local services will be adequate, based on an assumed expected increased visitor use of 5 persons/day. It is not clear how that assumption was arrived at.

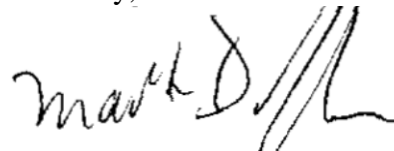
7) Alternatives. It is not clear why the “No Project” alternative assumes no stormwater improvements would be made, and why such improvements would only occur under the proposed alternative. Is there a reason those improvements would not occur in the absence of a fee-to-trust action?

Finally, there are a few harbor improvements we would like to see incorporated into the proposal if they are feasible, and if they are not, to possibly be the subject of future planning efforts and inter-governmental coordination. As shown prominently in the photo on the EA’s cover page (i.e., a photo taken from north of the parking lot closest to the pier), a number of stands of invasive pampas grass have established themselves in the project area. Since the Rancheria is working on water quality improvements in this area, incorporating efforts aimed at invasive species eradication may be feasible, and any such efforts would certainly improve public views and benefit native habitats in the area. We would also pose the idea of improving management of the unpaved (and relatively unmanaged) parking lot just north of the Trinidad Head, improvements which may also be able to be combined with the proposed stormwater management measures, and which would have a secondary benefit of improving public access to this popular area during peak parking demand periods.

CCC Letter to BIA Director Dutschke
Trinidad Rancheria Fee-to-Trust
April 6, 2017
Page 6

In conclusion, we appreciate this opportunity to comment. If you have any questions about these comments, preparation of a consistency determination, or the history of the Commission's previous fee-to-trust reviews mentioned above, please feel free to contact me at (415) 904-5289, or by email at mdelaplaine@coastal.ca.gov. Thank you for your attention to this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'mark D/L', with a stylized flourish at the end.

MARK DELAPLAINE
Manager, Energy, Ocean Resources, and
Federal Consistency Division

cc: CCC Arcata Office
Jacque Hostler-Carmesin, Chief Executive Officer, Trinidad Rancheria
Garth Sundberg, Tribal Chairman, Trinidad Rancheria
State Lands Commission
Coastal Conservancy (Su Corbaley)
City of Trinidad (Dan Berman)
Bureau of Land Management (David Fuller)



April 21st, 2017

Amy Dutschke, Regional Director
Bureau of Indian Affairs, Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Dear Ms. Dutschke:

The City of Trinidad welcomes this opportunity to provide comment on the March 2017 Draft Environmental Assessment (EA) for a Proposed Project that includes: 1) the proposed trust acquisition of approximately nine acres adjacent to Trinidad Bay, by the United States, for the benefit of the Cher-Ae Heights Indian Community of the Trinidad Rancheria Tribe (Tribe); 2) a proposed Storm water Improvement Project on the properties; and 3) a proposed Interpretive Visitor Center on the properties.

The City offers the following comments on the Draft EA in order to ensure that the final document accomplishes the goals of providing a complete and accurate analysis of the impacts of the proposed actions as required under NEPA.

Background:

The natural sheltered harbor of Trinidad Bay is the reason the City of Trinidad exists, and was the first port to be developed on the north coast after Spanish fur traders first landed there in 1775. Trinidad became the main supply port for the Klamath gold rush in the 1850's and was the original County seat of the defunct Klamath County because of the harbor. After the gold rush, logging and fishing became central to the local economy. As logging declined, recreation and tourism increased, with the coastal access and the harbor central to that industry, which brings more than 12,000 visitors per year to Trinidad. And although declining stocks have reduced the fishing fleet in Trinidad, the commercial crab fishery remains vibrant and the harbor remains a primary component of the City's identity.

Trinidad Bay serves as the last safe harbor north of Humboldt Bay until Crescent City, 50 miles to the north. Launcher Beach, proposed for trust acquisition, provides free public access for small beach-launched boats, and has likely done so since time immemorial. The mooring field in Trinidad Bay is operated by the Rancheria, but owned by the City. Access to the mooring field and the Bay itself for boaters including commercial and recreational fisherman is of critical importance. Trinidad Pier is located on City owned tidelands, and the recent replacement of it was paid for primarily with State grant funding. The harbor and the properties in question serve a wide range of users, including commercial and recreational fishermen and recreational boaters accessing the bay.

Summary Comments:

The City's most significant concerns about the Draft EA arise from the minimal analysis provided regarding the most significant component of the Proposed Action: the transfer of the properties into federal trust status. The EA would be unnecessary absent the trust acquisition, and the listed purposes of the project in the EA introduction are focused on the trust acquisition. Yet the impact analysis seems to be focused primarily on the visitor center, with almost no analysis of the trust acquisition impacts, and limited analysis of the impacts of the storm water project. The City believes the document does not adequately address the implications and impacts of the trust acquisition.

The City believes that this dramatic change in jurisdiction can be reasonably anticipated to impact the environment, coastal resources, public access to the ocean and beaches, and public access to Trinidad Head; and those impacts should be discussed and analyzed. The change in jurisdiction and applicable law is not in itself a physical impact, but it would change how all future projects on the property are evaluated and the standards they would be held to.

Local and state laws currently affecting these properties, including the California Coastal Act, and the State Ocean Plan, provide a high level of environmental protection for coastal resources and public access, both of which are critical issues for this location. Removing this property from local and state jurisdiction can be reasonably anticipated to result in significant impact to the environment, and public coastal access. Permitting of future development, including the two projects identified in the EA and all future projects, would occur only through the NEPA process which is less protective of coastal resources and public access to the coast and ocean, than the California Coastal Act.

For example, activities on the property could affect adjacent lands that are in City and/or State jurisdiction. Run-off, both storm water or dry-weather, is a good example. Trinidad Bay is a State Water Quality Protection Area (SWQPA), Area of Special Biological Significance (ASBS) and Critical Coastal Area (CCC) and is subject to strict discharge prohibitions under the California Ocean Plan. Would the State standards apply to runoff from Trust land? And if not, what standards would apply and would they be less protective? The City requests that a revised EA include an analysis of how public access and environmental review of the current proposed projects, and future projects, would change with trust acquisition.

Specific Comments:**1. Ownership of land proposed for trust acquisition.**

The proposed project includes transferring almost 3 acres of land to trust status that is outside the parcels owned in fee by the Trinidad Rancheria. The EA needs to clearly explain and document, how land not owned in fee by the Rancheria can be subject to a 'fee to trust' process.

According to California Civil Code §670, the State of California holds title to all the land below the Ordinary High Water (OHW). The project boundary indicated on Figure 1-3 includes lands that are clearly below OHW as part of the trust acquisition. A portion of the Trinidad Harbor tidelands, including those areas below OHW shown on Figure 1-3, were granted to the City of Trinidad to hold in Trust for the benefit of the public. Those lands cannot be legally transferred as part of this trust acquisition. The legal description of the tidelands granted to the City are publicly available and describe those lands as extending to the high tide line. Portions of the proposed storm water project as shown in Appendix A on 'Launcher Beach' also appear to fall clearly within the City's granted tidelands.

Additionally, there are areas between the OHW and property boundaries of the parcels owned by the Tribe that are shown as part of the trust acquisition. Bay St., as shown on Figure 1-3, was vacated by the City in 1912. The Rancheria may hold legal title of those lands per CA Civil Code §830, but this ownership outside the parcel lines does need to be documented through a survey or surveys that are included or referenced in the EA

The pier itself is also shown as included in the transfer. The City's understanding is that the Rancheria does own the structure of the Pier, but not the underlying waters (tidelands) which are state lands granted to the City for management. This distinction must be properly and clearly identified in the EA. The draft EA shows an assessor's parcel number for the pier as included for trust acquisition, but that parcel is state tidelands.

The City requests that a revised EA address these issues after further discussion with the State Lands Commission and the City of Trinidad, and that the area proposed for trust status be verified by survey to ensure it does not include state tidelands and is appropriate for transfer.

2. Project Purpose, Need, and Alternatives

The Purpose and Need statement (section 1.4 starting on page 1-3) lists 7 purposes served by the Project, but only the first of them seems to clearly apply to the trust acquisition – facilitating self-governance by exercising sovereignty over the land. The proposed 'Trinidad Harbor District' (page 2-3) to better organize and manage the Harbor area businesses sounds like a good idea, but seems independent of the proposed project. It is also not discussed further or analyzed at all in the EA. If there are economic benefits to the Rancheria to placing the land into trust, they are not well explained in this section. The worthy goals of preserving the local environment, reducing storm water runoff, and highlighting the cultural and economic importance of the Harbor do not obviously depend on trust acquisition. As discussed under Summary Comments above, the City is concerned that environmental protections for the property will in fact be lessened under trust acquisition.

The project alternatives need further exploration and assessment. The EA combines the two construction projects and the placement of the land in trust into a single proposed project for analysis. The statement in the EA that "Alternative A would provide important socioeconomic benefits to the Tribe including recreational and cultural opportunities" needs some explanation and support. Is that associated with the trust acquisition, or the two physical projects, and what are those opportunities and benefits. Without that information it is difficult to assess why a smaller area of Trust transfer, or no Trust transfer at all, would not be reasonable alternatives. The only alternative evaluated is the 'no-action' alternative. But the construction projects and the transfer of the land into federal trust status do not need to be linked. The storm water improvements are already funded by state grants, are supported by the City, and could certainly be implemented independent of the trust acquisition. The Interpretive Visitor Center could also proceed independent of the trust application, with permitting through the City and Coastal Commission.

The City requests that a revised EA provide explanations and support for the arguments presented, to support the purpose and need, and explain how the proposed project, and alternatives, would meet those needs.

3. Public Access

The EA does not have an adequate discussion of the public use and benefit that the harbor provides, nor how that will be protected. The EA states that the Tribe must provide public access to the pier until 2032. That is only 15 years from now; what happens after that? The EA also states that Tribe would maintain public access to all open spaces, but this statement is very vague. What is the area covered, and through what mechanism would this be guaranteed?

The only access road to Trinidad Head passes through the proposed trust acquisition. The City utilizes that road to maintain our popular trail system on Trinidad Head. One of the only mainland components of the California Coastal National Monument has only recently been established on Trinidad Head and is anticipating increased visitor traffic. An important public safety facility (an emergency radio repeater) and federal and state atmospheric monitoring stations are also located on Trinidad Head and require vehicle access. Access rights on that road are currently protected by easement and likely by prescriptive rights as well. Would those easements and prescriptive rights be enforceable after trust acquisition? If not, the loss of those rights should be addressed, and possible mitigation measures to prevent their loss should be considered. This is a public safety and a recreation concern.

Parking is also an important public access issue in the Harbor area. Parking availability and management are already a problem in the harbor area on busy days. Parking is not discussed at all under transportation and traffic or elsewhere in the EA. Could the Rancheria start charging fees to park, or close parking areas to the public? Both would be nearly impossible under current state jurisdiction, but if trust acquisition changes that, those impacts should be analyzed.

Launcher Beach, as the name implies, is heavily used for small boat beach launching. It is the only easily accessed sheltered beach for this purpose between Humboldt Bay and Crescent City. Could this access be closed, or charged for, post trust acquisition? If so, those impacts need to be analyzed.

4. Additional context and impact analysis issues:

The City believes the following issues should be addressed in a revised EA:

- Planning for sea level rise is not mentioned anywhere in the document. The plans shown for the proposed Visitor Center show labelled elevation contours, but it is not clear if those are relative to the high tide line, or to the '0' tidal elevation.
- The discussion regarding flooding data is outdated. FEMA has produced new coastal flood maps for Trinidad reflecting the impacts of sea level rise that should be referenced in this analysis.
- The estimate of five visitors per day to the visitor center is unsupported and seems very low. That could be true if averaged over an entire year, but the analysis needs to be based on peak usage to analyze impacts.
- The data on the City water system is outdated. In addition, the EA contains conflicting information, stating that there are 315 total connections to the City water system in one place of the document and 325 in another.
- The wastewater analysis is based on the stated treatment capacity of the tanks at 35,000 gpd. However, the leachfield only has an approved capacity of 4,750 gpd, which is what the analysis needs to be based on. Also, the average water use is what is presented in the setting, but the analysis needs to include peak usage to be valid. This is a complex wastewater treatment system currently overseen and regulated by the Humboldt County Division of Environmental Health and the North Coast Regional Water Quality Control Board. How would this oversight change should the land be transferred?

- Within the climate change analysis section, the fact that the City, County, CEQ and EPA have not adopted standards or thresholds for greenhouses gasses is used as the basis for determining that there will be no impacts. However, that completely ignores the fact that the State of California has adopted strict guidelines.
- The visual analysis concludes that the overall visual character will be improved over current conditions. While that may be true, there is no discussion or even acknowledgement that coastal views will be blocked and impacted by a larger structure (visitor center). This is a known issue, since there was public controversy over placing an interpretive sign in that vicinity due to view blockage.
- One of the mitigation measures for seismic activity is that structures will be built to California Building Code standards. But there is no information provided about who oversees and enforces that to ensure that impacts are minimized under trust acquisition.
- The indirect effects analysis seems to address cumulative effects and dismisses them as already analyzed under the various individual topics. There will be numerous indirect effects to the City, community, adjacent lands, etc, which needs to be addressed in that section.

5. Socioeconomic Impacts

The discussion of socioeconomics focuses on the County rather than the City, which makes the impacts appear much smaller than they are. The population estimate of 236 for Trinidad is not accurate. The American Community Survey data, where that number came from, is not reliable for a town as small as Trinidad; the margin of error is often 100% or more. For example, the 2010 ACS estimate of Trinidad's population was 259, but the 2010 Census shows a population of 367 and that it was increasing. The tax and land use information and analysis discuss County data, not the City, which makes it invalid for assessing impacts to Trinidad.

This section notes that property taxes were \$46,063 in 2014, and declares them '*de minimis*' in relation to the County's total property tax revenue. Staff see at least three direct financial impacts to the City of Trinidad that should be addressed here:

- a. **Property tax** –The City of Trinidad receives approximately \$4,000 annually in property taxes from the harbor properties, out of approximately \$100,000 in total property tax revenue across the City. The Harbor property taxes may be *de minimis* relative to total County property tax revenue, but they represent about 4% of the City's property tax revenue, and .7% of our total General Fund revenue.
- b. **Sales tax** – The City receives sales and use tax on Seascope restaurant sales as well as the bait shop. These funds will be lost to the City in the event of federal trust status. The City has requests in to the State Board of Equalization to help quantify these amounts.
- c. **Transient Occupancy Tax** – The Rancheria operates a Short Term Rental in the home above the Seascope. The City received almost \$5,000 in Transient Occupancy Tax (TOT) revenues from this rental in the last fiscal year that would be lost in trust acquisition. This is approximately 1% of the City's total annual General Fund Revenue

In addition, the public access and parking issues discussed previously are very significant to the potential socioeconomic impacts to the City. The City is very concerned that trust acquisition means that current protections for public access to and across the property for parking, recreation, and boater use would be lost, and that access could be restricted in the future. The dramatic socioeconomic

impact of such a restriction must be analyzed as part of the EA. This is the key beach access and boater access in the City, and Trinidad Head itself is a highly scenic and heavily visited area. The City does not doubt the current Rancheria Tribal Council's stated intent to maintain access at all, but a trust acquisition would be effectively permanent, and a future Tribal Council could reconsider this stance. Those access rights are strongly protected under state law, and the proposed action would eliminate those protections. That would in turn affect the socioeconomics of the City. Without a binding guarantee of such access as a mitigation measure, this is a reasonable potential outcome of the project that should be analyzed and addressed.

6. Consultation

The harbor area, and the City of Trinidad in its entirety, are within the ancestral territory of the Yurok Tribe, and the harbor area is immediately adjacent to the historic Yurok village of Tsurai. The EA does not clearly indicate whether the BIA has conducted any consultation with the federally recognized Yurok Tribe regarding the proposed action. In addition, the local Tsurai Ancestral Society (TAS) organization is comprised of descendants of the Tsurai Village. If this has not happened, the City requests that the BIA consult directly with both the Yurok Tribe and the TAS regarding the proposed action as part of revising the EA. The City can provide contact info if necessary.

Thank you for your consideration of these comments. We offer them with the goal of improving the EA. The Trinidad Harbor Area is a key part of the City of Trinidad, and we appreciate your review and look forward to your response. If we can provide any additional information, please contact me at citymanager@trinidad.ca.gov or 707-677-3876.

Sincerely,



Daniel Berman
City Manager

cc: Trinidad City Council
Trinidad Planning Commission
Trevor Parker, Trinidad City Planner
Jacque Hostler-Carmesin, CEO, Trinidad Rancheria
Su Corbaley, California Coastal Conservancy
Mark Delaplaine, California Coastal Commission
Melissa Kraemer, California Coastal Commission
Reid Boggiano, State Lands Commission



April 21, 2017

Amy Dutschke
Regional Director
Bureau of Indian Affairs
Pacific Regional Office
ATTN: Chad Broussard
2800 Cottage Way
Sacramento, CA 95825

Re: California State Coastal Conservancy Staff Comments to the Environmental Assessment for Proposed Trust Acquisition of Nine Acres for the Cher-Ae Heights Indian Community of the Trinidad Rancheria

Dear Ms. Dutschke:

The California State Coastal Conservancy staff (Conservancy) has reviewed the Bureau of Indian Affairs' (BIS) environmental assessment (EA) titled *Trinidad Rancheria Stormwater Improvement and Interpretive Visitor Center Project*, dated March 2017. This document was prepared to evaluate environmental impacts from the transfer to federal trust ownership of 9 acres of Cher-Ae Heights Community of the Trinidad Rancheria (Rancheria) holdings as well as other planned improvements in the area. Conservancy staff became aware of the availability of the EA in late March when the City of Trinidad forwarded the BIA notice. The Conservancy requested an extension to the April 6, 2017 deadline, which you granted to April 21, 2017. Conservancy staff submits the following questions and comments for your consideration.

The document fails to fully describe the project or adequately analyze its potential impacts. The document purportedly is an analysis of environmental impacts from the stormwater improvements and interpretive visitor center project the Rancheria intends to undertake, but includes as part of the project the acquisition of the properties by the BIA into Federal Trust status. Inexplicably, the EA hinges the implementation of those improvements on the property transfer to BIA Federal Trust ownership, perhaps in an effort to avoid State regulatory and environmental evaluation. It would seem that the acquisition of the property and the stormwater and visitor center project are two separate projects. As such, each project should be decoupled and fully described, and the corresponding potential impacts fully evaluated. If the two activities are truly one "action" for purposes of federal agency review, the EA should explain why it should be necessary that the properties be in Federal Trust ownership before the improvements can be made.

The EA fails to analyze the critical action being considered, that of trust acquisition of the Rancheria properties. The implications to socioeconomic, recreation, and infrastructure use and maintenance for public use are broad, yet are not adequately analyzed. It does not adequately analyze the economic impacts to the City of Trinidad should the properties be placed in Trust and taken off the tax rolls. What would be the tax revenue losses to the City?

1515 Clay Street, 10th Floor
Oakland, California 94612-1401
510-286-1015 Fax: 510-286-0470

The EA fails to analyze the impacts to public use should the properties be placed into Federal Trust ownership. Of particular concern to the Conservancy is the public's continued use of the pier for fishing (commercial and public) and other recreational uses. The EA states (on page 2-2) "While the pier would be included within the trust action, in accordance with an agreement executed April 18, 2012 between the Tribe and the California Coastal Conservancy (CCC), the Tribe would maintain public access to the Trinidad Pier and associated marine access and recreational improvements until 2032. Federal laws, such as the Clean Water Act (CWA) and the Endangered Species Act (ESA), would continue to apply to tribal trust lands." There is no discussion or speculation offered as to how – or if – public access will continue after 2032. Nor is it clear what is meant by 'and associated marine access and recreational improvements'. The project as defined in the EA and the analysis of impacts is not clear. The EA should not allude to the possible elimination of public access to the pier after 2032 and should instead state unequivocally that public access, as provided through the grants from the State of California, shall continue. We do not believe the pier structure itself, which overlies City-owned tidal and subtidal lands, is real property eligible for transfer into trust; but we do believe the foot of the pier, located on land, may be eligible. The EA does not adequately analyze the impacts to public use of the pier structure should the foot of the pier be placed in trust. Therefore the entire pier should not be included in the project description, unless the potential loss of public use is mitigated for.

The Conservancy and several other public agencies have invested significantly in improvements to the Trinidad Harbor waterfront. With the specific objective of restoring an aging waterfront infrastructure and maintaining a vital economic and cultural component of the Trinidad community, the Conservancy granted nearly \$900,000 in 2006 and 2010 to the Rancheria to plan, design and assist the Rancheria replace the Trinidad Pier. The Conservancy noted in its funding recommendation that "if this facility were to become unavailable it would have an important impact on the local tourist and fishing economy" and that "[T]herefore, the proposed work is necessary in order to continue to provide access for fishing and boat launching and support activities for recreational and commercial fishing activities."

At the time of the construction grant was made, the Conservancy sought assurances the pier would remain open to the public for both recreational coastal access and fishing access. In reply, in an email dated October 14, 2010, the Rancheria gave assurances that according to the lease agreement with the City of Trinidad [for the use of the subtidal lands owned by the City] the Rancheria has to ensure public access. Also according to the Rancheria, as the Trinidad Pier is seen as a critical transportation in establishing maritime transportation opportunities to meet projected tribal and regional needs the pier was placed on the Rancheria's inventory as a transportation facility. Providing additional assurances of the public's continued use of the pier, the Rancheria referred to Title 25 of the Code of Federal Regulations Section 170, which address Indian Roads Reservation (IRR) Program. 25 CFR Section 170.120 requires that transportation facilities must be open and available for public use. Further, 25 CFR Section 170.813 (a), addresses the restriction of public access under specific circumstances. We believe the EA is should include only this limitation of closure to the public.

The Rancheria further assured that "[i]f in the unlikely event the Tribe was forced to sell the pier, the Tribe would include a clause that it would remain open to the public."

When the Conservancy grants funds to non-profit private entities for capital improvements, it requires an agreement pursuant to the Conservancy enabling legislation, California Code of Regulations, Division

Amy Dutschke
Regional Director
Bureau of Indian Affairs
Page 3

21, Section 31116(c) be recorded which guarantees the public interest in the improvement is protected. When funds are granted to a public entity, such as the Rancheria, it is presumed the entity will operate and maintain the facility consistent with its public benefit and promises made. Therefore, because of the assurances made by the Rancheria, the Conservancy was confident the pier would remain open for public use for the life of the structure, which is certainly beyond the year 2032 when the pier construction grant agreement between the Conservancy and the Rancheria expires. The Conservancy used that date with the expectation as to the useful life of the improvements funded by the Conservancy. But, as described above, we fully expected that public access would continue on the existing structure well beyond that date.

Finally, the Rancheria had previously informed the Conservancy of its intentions to apply for Federal Trust ownership of its harbor properties and that, as part of that application process, the Conservancy would be notified and offered the opportunity to comment. However, the Conservancy did not receive notification of the availability of this EA for comment. Had the City of Trinidad not forwarded the notice of availability to staff, the Conservancy would have missed its opportunity to comment. We presume the Rancheria and the BIA will notify the Conservancy when the Rancheria's application for Federal Trust ownership is available for comment. Please add the Conservancy to your mailing list for further actions toward transfer of the Trinidad Harbor Pier to Federal Trust ownership.

Thank you for your consideration of these comments. We would welcome the opportunity to speak with you and the Rancheria to discuss possible changes to the project scope and mitigations for the impacts. If I can provide additional information please contact me at su.corbaley@scc.ca.gov or 510-286-6767.

Regards,



Su Corbaley
Project Manager

Cc: Jacque Hostler-Carmesin, CEO, Trinidad Rancheria
Dan Berman, Trinidad City Manager
Mark Delaplaine, California Coastal Commission

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, *Executive Officer*
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916-802-9487)

File Ref: G04-05

Amy Dutschke, Regional Director
Bureau of Indian Affairs, Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Dear Ms. Dutschke:

The California State Lands Commission received notice that the Bureau of Indian Affairs has prepared an Environmental Assessment regarding a proposed trust acquisition of approximately nine acres adjacent to Trinidad Bay, by the United States, for the benefit of the Cher-Ae Heights Indian Community of the Trinidad Rancheria Tribe (Tribe). It is our understanding this action would shift civil regulatory jurisdiction over the approximately nine-acre site from the State, Humboldt County, and the City of Trinidad to the Tribe and the federal government. Although information provided to the California State Lands Commission suggests the majority of the land proposed to be conveyed into federal trust status is owned by the Tribe in fee simple status, lands waterward of the Ordinary High Water Mark are sovereign tide and submerged lands that have been legislatively granted to the City of Trinidad.¹ It appears, as depicted in figure 1-3 of the Environmental Assessment, the proposed transfer includes sovereign lands underneath the pier, boat launch ramp, and portions of the City's beaches and bluffs. Trustees of legislatively granted lands are statutorily and constitutionally prohibited from selling or transferring sovereign lands.

Through the City's granting statutes, the Legislature has delegated the day-to-day management of sovereign land to the City to hold in trust for the benefit of the people of the State of California. The U.S. Supreme Court wrote that when trusts are "property of special character, like lands under navigable waters, they cannot be placed entirely beyond the direction and control of the State"² and that the Legislature may amend or revoke the grant as it deems appropriate.³

¹ The City holds certain lands in trust pursuant to Chapter 936, Statutes of 1986.

² Illinois Central R.R. Co. v. Illinois (1892) 146 U.S. 387, 454.

³ Illinois Central R.R. Co. v. Illinois (1892) 146 U.S. 387, 452-453; Boone v Kingsbury, 206 Cal. 148, 189; People v. California Fish Co., 166 Cal. 576, 585-586; Mallon v City of Long Beach, 44 Cal.2d 199, 206.

Additionally, Section 2 of the City's granting statute states that the City "shall not at any time grant, convey, give, or alienate the granted lands, or any part thereof, to any individual, firm, or corporation for any purposes whatsoever; except that the trustee or its successors may grant franchises thereon for limited periods, not exceeding 66 years, for wharves and other public uses and purposes...." While trust lands cannot generally be alienated from public ownership, uses of trust lands can be carried out by public or private entities by lease from the City.

We encourage the Tribe to work collaboratively with the City to find a way forward that meets the Tribe's needs while complying with the City's granting statutes and the common law Public Trust Doctrine.

Sincerely,



Reid Boggiano
Public Land Management Specialist

Cc: Daniel Berman, City of Trinidad



YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548



April 17, 2017

Amy Dutschke
Regional Director
Bureau of Indian Affairs
Pacific Regional Office
Attn: Chad Broussard
2800 Cottage Way
Sacramento, CA 95825

Re: Yurok Tribe Opposition to Trinidad Rancheria's Proposed Trust Acquisition and Objections to Environmental Assessment

Aiy-ye-kwee' Ms. Dutschke:

This letter serves as a follow up to our April 14, 2016 correspondence to your office opposing the Cher-Ae Heights Indian Community of the Trinidad Rancheria's ("Trinidad Rancheria" or "Rancheria") application to take nine Trinidad Harbor area parcels in Trust ("fee-to-Trust"). We received no response to our previous comments, however, in light of the recently issued Environmental Assessment, which the Yurok Tribe ("Tribe") was not consulted with during the preparation or drafting of, Yurok Tribal Council believes additional comments are necessary at this time.

The Yurok Tribe maintains a standing objection to the Bureau of Indian Affairs ("BIA") and the U.S. Department of the Interior ("Interior") taking into trust any land for Trinidad Rancheria, or any other Tribe, within Yurok Ancestral Territory. All of parcels in the Rancheria's fee-to-Trust application are located outside of Trinidad Rancheria and within the exterior boundaries of Yurok Ancestral Territory, defined by the Yurok Constitution and federal case law. The Yurok Tribe requests participation in this and any land into trust decision by BIA and Interior for lands located within the Yurok Ancestral Territory, as defined by Article I, Section 1 of the Constitution of the Yurok Tribe.

Additionally, the Tribe is deeply concerned that it was not consulted with during the preparation or drafting of the Environmental Assessment ("EA") for the placement of nine Trinidad Harbor area parcels (totaling 9 acres) in Trust for the Rancheria. Due to this omission, the EA is not compliant with the National Historic Preservation Act of 1996 Section 106. The Yurok Tribe THPO has no knowledge of outreach conducted by the Rancheria to the Yurok Tribe Historic Preservation Officer, Mr. Frankie Myers.

As you know, Section 106 of the National Historic Preservation Act of 1966 ("NHPA") requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations

issued by ACHP. The agencies must identify the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer ("SHPO"/"THPO") to consult with during the process. If the agencies' undertaking could affect historic properties, the agency determines the scope of appropriate identification efforts and then proceeds to identify historic properties in the area of potential effects. The agency reviews background information, consults with the SHPO/THPO and others, seeks information from knowledgeable parties, and conducts additional studies as necessary. Yurok THPO was not consulted during the preparation of this EA for this fee-to-Trust application.

The parcels the Rancheria is petitioning be placed in trust contain areas of cultural significance to the Yurok Tribe. The area in question is within the Yurok Village of T'Suri. It is the duty of the Yurok Heritage Preservation Officer per the Yurok Tribal Constitution to, "[p]reserve and promote our culture, language, and religious beliefs and practices, and pass them on to our children, our grandchildren, and to their children and grandchildren on." as well as to "[i]nsure peace, harmony and protection of individual human rights among our members and among others who may come within the jurisdiction of our tribal government." It is also the responsibility of the Yurok THPO to uphold Yurok Tribal Resolution 96-04 to "...preserve important Yurok and Non-Yurok cultural knowledge and protect the many documented archeological and culturally significant sites located with the Yurok Ancestral Territory...". Among concerns that this fee-to-Trust application bring up include viewshed concerns, Yurok family Village rights, Tribal rights, and more.

Specific to the EA, we share comments and concerns raised by the California Coastal Commission in their letter dated April 6, 2017, however, specifically the Tribe requests a written response to the following points: (1) clarification on the parcels and acreage contemplated be included in the fee-to-Trust application, (2) whether any lands in the fee-to-Trust application would be located below the Mean High Tide and a formal opinion from Interior on whether the BIA has authority to place such lands into Trust for a tribe, (3) more complete details on the proposed interpretive center, and (4) more complete justification on why the "No Project" alternative assumes no stormwater improvements would be made without the proposed alternative. More specifically, the Yurok Tribe has more financial and work force resources. Why would the Yurok Tribe action not be included as an alternative action?

While the Yurok Tribe recognizes fee-to-Trust actions has a benefit to tribal self-determination and sovereignty, we request that the BIA and Interior evaluate the cost of the Rancheria's, a non-historical Tribe, application has on the rights, privileges, self-determination, and sovereignty of the Yurok Tribe, an historical reservation-based Tribe.

Should you have any questions, please contact General Counsel Amy Cordalis at 707-482-1350 ext. 1356 or email acordalis@yuroktribe.nsn.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "T. P. O'Rourke, Sr.", followed by a stylized flourish.

Thomas P. O'Rourke, Sr.
Chairman

cc:

Chairman Garth Sundberg, Trinidad Rancheria

Dan Berman, City of Trinidad

Sarah Lindgren, Tsurai Ancestral Society

Congressman Jared Huffman

Senator Kamala Harris

Senator Diane Feinstein

Acting Assistant Secretary – Indian Affairs (AS-LA), Department of the Interior

From: Kimberly Tays <kimkat067@gmail.com>

Sent: Thursday, February 28, 2019 12:02:14 AM

To: Peskin, Aaron@Coastal; Groom, Carole@Coastal; Bochco, Dayna@Coastal; Brownsey, Donne@Coastal; Turnbull-Sanders, Effie@Coastal; Howell, Erik@Coastal; Vargas, Mark@Coastal; Luevano, Mary@Coastal; Uranga, Roberto@Coastal; Aminzadeh, Sara@Coastal; Padilla, Stephen@Coastal

Cc: Berman, Dan@CityofTrinidad; Delaplaine, Mark@Coastal; Frankie Myers; Levine, Joshua@Coastal; Merrill, Bob@Coastal; Boggiano, Reid@SLC; Simon, Larry@Coastal; Corbaley, Su@SCC

Subject: March 2019 Agenda Item Thursday 10b-CD-0006-18 (BIA, Trinidad) (3rd EMAIL SUBMISSION)

Dear Coastal Commissioners:

Please forgive my submission of a 3rd email re: the above agenda item. I had a difficult time finding my email below since it was submitted to Chad Broussard of the BIA back in 2017. Even though my statements in the following email are somewhat redundant to the email I sent for your review on Feb. 20, 2019, I wanted to provide a full record of my written comments to the Commissioners. Even though my email was submitted to the BIA almost 2 years ago, I have yet to receive any written responses to the concerns I raised regarding the Trinidad Rancheria's federal status proposal.

Thank you for taking the time to review all of my emails (dated Feb 20, 2019, Feb 27, 2019 and Feb 28, 2019).

Kimberly Tays
P.O. Box 5047
Arcata, CA 95518

----- Forwarded message -----

From: **Kimberly Tays** <kimkat067@gmail.com>

Date: Mon, Mar 27, 2017 at 8:37 PM

Subject: Environmental Assessment for Trinidad Rancheria in Humboldt County, California

To: <chad.broussard@bia.gov>

CC: Simon, Larry@Coastal <Larry.Simon@coastal.ca.gov>, Delaplaine, Mark@Coastal <mark.delaplaine@coastal.ca.gov>, Merrill, Bob@Coastal <bob.merrill@coastal.ca.gov>, Berman Dan <citymanager@trinidad.ca.gov>

SENT VIA EMAIL ONLY

Mr. Chad Broussard
Environmental Protection Specialist
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way

Sacramento, CA 95825

Dear Mr. Boussard:

Thank you for the opportunity to present my written comments regarding the Trinidad Rancheria's Environmental Assessment (EA) that has been published by the Bureau of Indian Affairs (BIA).

I feel it is important to point out that the title of the EA is misleading and should have included the Trinidad Rancheria's plans to transfer the 9-acre harbor/pier area from fee-simple status into federal status. The reader is not aware of the plan to transfer the area into federal status until he/she reads the main body of the document.

I have reviewed the EA, and while I am not opposed to stormwater and visitor center improvements, I oppose the transfer of the harbor/pier area into federal trust, because Californians would be giving up local control of this very scenic and sensitive part of California's coastline. The California Coastal Act (CCA) is an excellent state law that protects our coastal resources and provides excellent noticing requirements that allow for public participation in the coastal development permit (CDP) process, including the right to appeal decisions that could harm or negatively impact coastal resources. If this area is placed under federal status, **public members would not enjoy the same noticing requirements and public participation they enjoy under the CCA**. Under the National Environmental Protection Act (NEPA), there is no official public notice, only the federal register. While the public can submit comments, the federal process would not be as intuitive nor as easily accessible as the CCA process. And, once this area is under federal status, it is **unlikely** the public would have much influence over what development projects are allowed. There is a local office of the California Coastal Commission (CCC) in Arcata. If the public has concerns about possible CCA violations or inappropriate development, they can contact the local CCC office and staff can review those matters. Although NEPA would replace the California Environmental Quality Act (CEQA), NEPA does not appear to be as strict as CEQA concerning mitigation for development project impacts. And, given the Trump Administration's disdain for environmental laws and protections and plans to slash the U.S. EPA's budget, it is highly likely that important federal environmental laws and protections could be dismantled or severely weakened during the next 4 to 8 years; thus, opening this area up to harmful development projects and uses. If this area remains under its current status, the public would be assured: (1) the CCA would continue to protect this scenic, sensitive coastal environment, (2) the public would have the right to easily participate in the CDP permit review process, (3) the public would have the right to appeal projects that may violate the CCA or cause significant impact to coastal resources, and (4) that CCA or CDP violations could be investigated by local Coastal Commission staff. I did not see any analysis in the EA that explained how federal status would impact the public's right to participate in the permit review/appeal processes that they currently enjoy under the Coastal Act, nor did I see any information on how NEPA regulations compare with CEQA regulations when it comes to coastal resource protection. I would like to know what the Rancheria **cannot** do now, under its current status, that it would be allowed to do once the pier/harbor area is under federal status? Why can't plans for stormwater improvements and construction of the visitor center be carried out under a CDP process? Why do these development projects need to be tied to the federal status request? Could there be more than meets the eye on development plans for the pier/harbor area and control over public access.

For example, I would like to know what the following statement means:

While the pier would be included within the trust action, in accordance with an agreement executed April 18, 2012 between the Tribe and the California Coastal Conservancy (CCC), the Tribe would maintain public access to the Trinidad Pier and associated marine access and recreational improvements until 2032. (See Section 2.0, pg. 2-2, of EA.)

I did not see any further discussion in the EA that spells out what will happen after the Year 2032. Public access to the pier, harbor, beach, recreational and fishing opportunities, etc., needs to extend into perpetuity, not just until 2032. If public access is not guaranteed into the future, the 9-acre pier/harbor area could essentially be privatized, as the Rancheria would have sovereign authority over the land. That means public access to the beach and marine and recreational opportunities could be cut off. As Trinidad Harbor provides the only reasonable access to the ocean between Eureka and Crescent City, the Rancheria's sovereign authority over the area means access could be cut off to the local commercial fishermen and sports fishermen, or that substantial fees could be charged for pier/harbor access. Also, if the Rancheria has sovereign authority over Launcher Beach, public access could be cut off for that beach, which is popular launching place for kayakers and small boaters. Or, fees could be charged to the public if they wish to access the beach or Trinidad Bay. I am not saying that this is what the Rancheria is planning, but these are very realistic scenarios that could play out in the future.

In addition to my deep concerns about public access, I am equally concerned about future protections for water quality in Trinidad Bay, an Area of Special Biological Significance (ASBS). It is no secret that President Trump has plans to slash the budget of the U.S. EPA and could possibly eliminate the agency altogether. And given

the Trump Administration's disdain for environmental protections, including the Clean Water Act, I must question the following language that is provided for on pages 3-7 and 3-8 concerning protections for water quality:

The Clean Water Act (CWA) (33 USC 1251-1376), as amended by the Water Quality Act of 1987, is the major federal legislation governing water quality. The objective of the CWA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." The U.S. Environmental Protection Agency (USEPA) is delegated as the authoritative body under the CWA. Important sections of the CWA applicable to the Proposed Action are as follows:

Sections 303 and 304 provide for water quality standards, criteria, and guidelines. Section 303(d) requires states to identify impaired water bodies and develop total maximum daily loads (TMDLs) for the contaminant(s) of concern.

Section 402 establishes the National Pollutant Discharge Elimination System (NPDES), a permitting system for the discharge of any pollutant (except for dredged or fill material) into waters of the U.S. Each NPDES permit contains limits on pollutant concentrations of wastes discharged to surface waters to prevent degradation of water quality and protect beneficial uses. Trinidad Bay is a very important and sensitive coastal body of water. The California Coastal Commission is a known entity, and the public can count on this high-functioning and committed state agency to protect Trinidad Bay and our coastal resources. Transferring the pier/harbor area into federal status could place Trinidad Bay in jeopardy, especially since the Trump Administration has plans to defund the EPA and is already in the process of weakening important environmental laws. It is unlikely we can count on the EPA to insure that the water quality of Trinidad Bay is protected.

While my main concerns center around protecting public access and water quality, I am also concerned with impacts to visual and scenic resources from the visitor center. Currently, the plans show traditional peaked roof lines. If the visitor center had a semi-flat roof, with enough slope for proper drainage, this would reduce the building's height, bulk and lessen its visual impacts. Good designs for the visitor center would include lowering the roof line, using natural siding, installing a minimum number of low-wattage lights on the exterior and leaving interior lights turned off at night. The EA fails to address the visual and scenic impacts from the visitor center. It mentions that existing views are blocked by a variety of structures by the boat launch ramp, but the fact is the visitor center would have a much bigger footprint and be much taller than the existing outbuildings. The EA needs to evaluate the visual impacts of a new visitor center to insure it does not significantly impact views of the harbor, beach, Little Head, Trinidad Head, offshore rocks, etc.

I am concerned about the plans to install exterior lighting on the visitor center. **Currently, there is excessive light pollution coming from the pier.** One of the conditions for the pier project (which was completed in 2012) was that the **lighting should not leave the immediate dock area.** Contrary to that condition, pier-related light pollution can be seen as far away as the Scenic Overlook, off of Hwy 101. These excessively bright lights cause the area to look more like an industrial zone than a quaint seaside village. Excessive light pollution and glare is cast around the harbor, on Trinidad Head, on nearby neighborhoods and greatly diminishes the night-sky from nearby trails, bluffs and Trinidad Head. The excessive light pollution/glare is likely having a negative impact on nocturnal wildlife, too. Before anymore development permits are issued, the California Coastal Commission should talk to the Rancheria about bringing the pier lighting into compliance with the condition of the pier permit. Lower-wattage light fixtures that are shielded and downcast should be installed. Or, existing light fixtures should be modified with shields and lower-wattage bulbs and half the lights turned off. If the fishermen are not using the pier, a minimal number of lights should be left on to further minimize light pollution and energy waste. The EA fails to address cumulative impacts of additional outdoor lighting on the community, on nocturnal wildlife, and on the quality of the night-sky. Adding more external lights to the visitor center will further exacerbate existing light pollution/glare emanating from the pier.

The current plans for the visitor center describe the siding as rough-sawn vertical siding shown in random pattern. However, there is **no guarantee** that natural siding would be used, because underneath the description it says final siding type to be specified and approved by owner. I am concerned the plans call for siding that would blend in nicely with the natural surroundings, but then a different material could be used. That is what happened with the pier project that was completed in 2012. One of the permit conditions required that stamped concrete be used so that the pier surface resembled wooden planks and blended in

better with the natural surroundings. The staff report specifically stated that the pier would **not have a standard concrete gray surface**; however, that is exactly the type of surface that was installed. I was not aware of this design change until I saw that the pier's surface looked more like a freeway on-ramp than a natural wooden pier. This is a classic example of "bait and switch"; where the permit described the project in a way that pleased the public and permitting agencies, and then something different was built. I am concerned this will happen with the visitor center; where a certain type of siding or materials are proposed and approved, but then the project is constructed in a way that detracts from the natural and scenic character of the village and harbor.

In addition to non-compliance of permit conditions regarding the pier's surface and lighting, large billboards announcing the pier project were supposed to be removed once the project was completed. The pier project was completed in 2012 and the billboard signs are still there (one is located at the bottom of Trinidad Head; the other one is attached to the chain-link fence behind the restaurant). The billboard signs add unnecessary clutter and visual blight to the landscape. Prior to the approval of permits for this current project, the Rancheria should be required to remove the pier-related billboards, as this was a condition of the permit. The issue of signage makes me question whether additional billboards will be erected to announce the stormwater improvements. What sort of signage will be required for the visitor center? The cumulative impacts of more signage should be addressed in the EA.

With regards to plans to plant native vegetation, I did not see any plans to deal with the invasive ice plant that is moving upslope on the leach field. One of the conditions of the 2011 restroom/septic system project required the Rancheria to re-plant the leach field with native plants; however, that did not happen. The public was told that the plant roots would interfere with the leach lines. However, the roots of the ice plant could be as much of a problem, or more so, than native plants that are planted on the leach field. The Rancheria should be required to remove the non-native, invasive ice plant on the leach field and plant native vegetation in its place, as that was a condition of their 2011 restroom/septic system permit. Perhaps, native wildflowers like California poppies (that do not have extensive roots) could be planted on the hillside. That would enhance the natural beauty of the area.

In addition to the above concerns about coastal resource protections, the EA fails to address the financial impacts that would occur to the City of Trinidad if the harbor/pier area is placed under federal trust. The Rancheria would no longer be subject to local/state taxes. This would negatively impact Trinidad's financial budget, especially since it is a small town with limited revenue sources. The Rancheria would be using the City's infrastructure and public resources, but it would not be contributing to the taxes that support the infrastructure and public resources. The EA must evaluate how this federal status designation would impact the financial standing of the City of Trinidad.

I suspect the Rancheria has other plans for the pier/harbor area that have not been revealed in the EA. If this area is placed under federal status, it seems highly likely that the Rancheria will be given great leeway to develop the area as they wish, and that the public will have very little recourse, especially under the Trump Administration, to protect this piece of California's coastline from damaging or destructive development projects and uses. While I support the idea of stormwater improvements and a nicely designed visitor center, I am opposed to plans to transfer the harbor/pier area from fee-simple status to federal status.

Please confirm receipt of this email letter. Thank you for considering my comments regarding this important decision.

Sincerely,
Kimberly Tays
P. O. Box 5047
Arcata, CA 95518

From: [Nova Love](#)
To: Energy@Coastal
Subject: agenda item on March 7: CD 0006-18
Date: Wednesday, February 27, 2019 10:17:03 PM

Greetings Commission,

I oppose Trinidad Rancheria's bid put Trinidad harbor into a federal trust. I support open public access.

Regards,

Nova Love

From: [Jennifer Scott](#)
To: Energy@Coastal
Subject: CD 0006-18
Date: Wednesday, February 27, 2019 9:32:02 PM

I am writing to let you know I am against the federal trust that is being talked about. My family enjoys the free access to the Trinidad harbor and that shouldn't have to change.

Sent from my iPhone

From: loletastockwells@suddenlink.net

To: Energy@Coastal

Subject: agenda item on March 7: CD 0006-18

Date: Wednesday, February 27, 2019 7:43:55 PM

To whom it may concern: It has come to my attention that access to beaches in Trinidad Bay is in jeopardy. I am appealing as a life long resident of Humboldt County and user of public access beaches and ocean interface areas. I am in strong opposition to efforts which would cut off the general public's ability to utilize limited coastal resources like the beaches in Trinidad Bay. Please act in the interest of the public and future generations who deserve to have access rights to the beaches within Trinidad Bay and elsewhere.

thank you,

Eric Stockwell

Loleta

(707) 845-0400

From: [Scott Willits](#)

To: [Energy@Coastal](#)

Subject: Reference agenda item on March 7: CD 0006-18

Date: Thursday, February 28, 2019 10:30:46 AM

Dear California Coastal Commission,

As a long time Humboldt County local, surfer, angler, paddler, mariner, environmental engineer, and past board member of the Humboldt Surfrider Chapter, please count me as a very vocal NO on the question of placing any part of Trinidad Harbor into a federal trust or any other regulatory move that could in any way result in restricting the public's right to full fair and free access to Trinidad Harbor or its associated beaches. Unfettered public access to ALL beaches and ocean entry points throughout the State is a sacred trust that shall not be violated. Any moves to restrict said access will ultimately result in the degradation of the environmental quality of the resource. Access to the waters of Trinidad Bay and its surrounds in particular are of significant import to the economies of City of Trinidad and Humboldt County.

Sincerely,

[Scott Willits](#)

[707-407-5266](#)

www.ourevolution.com

From: [Toby Vanlandingham](#)

To: [Energy@Coastal](#)

Subject: Public Comment on March 2019 Agenda Item Thursday 10b - CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Date: Thursday, February 28, 2019 10:59:05 AM

As a Yurok tribal member, and an elected official with a sworn duty to uphold the Constitution of the Yurok Tribe, I would like to go on the record as stating I have an objection to the BIA and Department of Interior taking into trust any land for Trinidad Rancheria, or any other Tribe, within Yurok Ancestral Territory.

I'm sure Commissioner Ryan Sundberg fully is aware of his personal conflict of interest with this item and I'm sure will recuse himself from acting on this item, but, I feel I need to go on the record as stating that there is a personal conflict with Commissioner Sundberg and this item. Mr Sundberg is an enrolled member of the Trinidad Rancheria and will directly benefit from any decision he makes on this item and therefore should be recused.

Wokhlew'
Toby Vanlandingham
Weitchpec District Representative
Yurok Tribal Council
1-707-951-2285

From: [Ethan Luckens](#)

To: [Energy@Coastal](#)

Subject: Public Comment on agenda item on March 7: CD 0006-18

Date: Thursday, February 28, 2019 11:01:09 AM

Coastal Commision Members,

Please do not allow the Trinidad Rancheria to put Trinidad Harbor into a Federal Trust.

This will allow them to block the current free access for Ocean Kayakers and others who use the beach at Trinidad Bay as a launch point. This is the only launch point to access the popular kayak fishing locations off the rocks north of Trinidad head and for recreational kayaking in Trinidad bay.

Please do not let the Rancheria take away fishing and recreation access to Trinidad Bay from the public.

Thank You,

V.R.

Ethan Luckens

295 McAdams Rd

McKinleyville, CA 95519

From: Arwen Ellison
To: Energy@Coastal

Subject: Public Comment on March 2019 Agenda Item Thursday 10b - CD-0006-18 (Bureau of Indian Affairs, Trinidad)
Date: Thursday, February 28, 2019 12:28:19 PM

I am a long time Humboldt County resident having lived in this area since 1994 soon after I graduated high school. I came for college and never left. I am employed in Trinidad and am fortunate to enjoy the beauty of the North Coast almost everyday. Our family frequently uses the public beach near the pier and Seascope to put out boats and hang out in the calm waves or just watch the sky change with clouds and color. There is nothing better for relieving stress than recreating in the outdoors. My relationship with my husband is literally improved by his angling and paddling in the Trinidad harbor. My fear is that public access to this area is in danger. As basic cost of living increases without wage increases, even the addition of a small day use fee to this historically free area would limit access. For example, in prime time, a \$10 day use fee would cost our family about \$50 a month. Furthermore, the exact intention of these changes is unclear to the general public. Our concern and reaction is indeed based in fear. Fear that more of our public coastal land will be developed and monetized at the expense of our freedom to continue to enjoy the area as we have for years. What is the vision of Trinidad from the Rancheria's perspective? Blazing a freeway exit through the trees and building a four story hotel is not a big enough money generator? Perhaps I could save my money for the parking fees by never spending money on ANY business owned by the Rancheria, and make sure that everyone knows why. Please make your intentions known to the public. In the spirit of tradition and freedom, please leave access to the beach free and open.

Thank you for your consideration.

A. Ellison
Eureka, CA
Sent from my iPhone

J. Bryce Kenny
Attorney at Law
P.O. Box 361
Trinidad, California 95570
Telephone: (707) 442-4431
Email: jlbrycekenny@gmail.com

February 28, 2019

California Coastal Commission
45 Fremont Ste., Ste. 2000
San Francisco, CA 94105

Re: Item No. Th10b

Letter Opposing Staff Recommendation

Dear Commissioner:

On behalf of the Humboldt Alliance for Responsible Planning (HARP), an unincorporated association of Trinidad area residents, please vote against the staff recommendation on the above referenced item. The proposed transfer of Trinidad Harbor lands to be held in trust by the federal government for the benefit of the Cher-Ae Heights Indian Community of the Trinidad Rancheria is not consistent with the California Coastal Act for the following reasons:

1. The Proposed Trust Transfer Takes the Property out of State Jurisdiction With no Meaningful Guarantee of Coastal Access in the Future

Case law states that the federal Coastal Zone Management Act of 1972 (CZMA) was passed by congress with the express intent of increasing the authority of coastal states over their coastal lands. Southern Pac. Transp. vs California Coastal Comm 520 Fed.Supp. 800, 803 (N.D. Ca. 1981). The proposed trust transfer will completely *eliminate* state and local jurisdiction over the subject lands, thus accomplishing the exact opposite of what congress intended by the CZMA. Without the CZMA, there would be no “approved state plans,” no California Coastal Act and no Chapter 3, the yardstick against which federal consistency is measured.

Chapter 3, with emphasis added, begins with the statement that “The Legislature hereby finds and declares:... (b) That the **permanent protection** of the state’s natural and scenic resources is a paramount concern to present and **future**

residents of the state and nation....” Thus, in determining whether the proposed trust transfer is consistent with Chapter 3, it must be asked whether the transfer permanently protects Trinidad’s natural harbor for use by future generations? The answer is clearly “no,” because it leaves future uses up to the vagaries of the governing council of an Indian Tribe. Tribes enjoy substantial autonomy in the conduct of their own affairs. There is no reason now to doubt the good faith of statements that the Tribe would never impair public access to the subject lands, but the Tribe does not know what the future has in store for it, or even who will be running things in 20 years. The letters from Bob Hallmark and Jim Cuthbertson, submitted herewith, show that the Tribe promised in 2000 that it would never seek to have the subject property put into federal trust status; yet here we are. If the major source of the Tribe’s funding, its gaming operation, is devastated by, for example, a general legalization of casino gambling in California, it will have no choice but to exploit its other property for its maximum economic return. So long as there are no federal permits, funding, or applications by an agency in play, the retained jurisdiction of the Commission regarding federal consistency is meaningless. The staff report acknowledges this.

Further, as the staff report states, the Tribe is only saying that it will continue to provide public access to those portions of the land currently classified as “open space,” which does not include the vehicle accessway to the launch beach. What is needed is ironclad assurance that that right of way will be maintained in perpetuity. Moreover, once the trust transfer occurs, the Tribe can, with the stroke of a pen, *change* the classification of any part of the land from open space to commercial, and no one can stop them.

Thus, it is crystal clear that the proposed trust transfer is consistent with neither the CZMA nor the California Coastal Act. How can the proposed transfer be consistent when it creates the exact opposite of what congress intended when passing the CZMA?

The staff report states that the Bureau of Indian Affairs (BIA) will be required to “...assure that the Tribe adopts a Tribal Ordinance that commits to coordinating any future, currently unanticipated, development proposals or changes in public access with the Commission Staff.” The problem with that is that the BIA has no authority to compel the Tribe to pass any ordinance. Such ordinances are the product of “self-government” and are left exclusively to the Tribes. Second, such an ordinance could be repealed by a future Tribal Council. Third, such an ordinance could only be judicially enforced by a waiver of the Tribe’s immunity from suit. If the staff takes the same approach to that issue as it did in one of the

prior approvals it offers on page 8 of the staff report, CD-054-05 involving the Elk Valley Rancheria, the result will be an ordinance that only waives immunity from suit that is brought in their own tribal court! With all due respect to tribal courts, they pale in comparison to state or federal courts in their legal expertise. This is because they do not have the independence that comes from a constitutional separation of powers, they can and usually are presided over by non-attorney judges who are elected by the tribal membership, and they do not have the financial resources to put them on par with state and federal courts in terms of research staff and so forth. Only a general waiver of immunity and consent to suit in state or federal court that could not be revoked by future Tribal Councils would make a Tribal Ordinance of any value to those who cherish perpetual public access as it has been known in Trinidad.

None of the prior approvals listed in the staff report is applicable to the situation here, because none of them involved land that is an absolutely indispensable link between public access to Trinidad Bay by the hundreds of small boat owners--including the ever more popular ocean-going kayaks--all of whom must cross the non-open space portions of the subject property to get to the beach. The owner of a local kayak rental and tour business estimates that the launching beach is used by thousands of people per year to launch their kayaks. This proposed trust transfer is absolutely unprecedented in the history of the Coastal Commission.

2. The Trust Transfer is not Necessary to Accomplish the Tribe's Goals

The improvements which the Tribe desires to implement are laudable; the construction of a visitor center and storm water runoff improvements. However--and this is crucial--federal trust transfer is not necessary to accomplish either.

This was pointed out by the California Coastal Conservancy in its April 21, 2017, comments to the BIA concerning the Environmental Assessment (EA) it had prepared for the project. "Inexplicably, the EA hinges the implementation of those improvements on the property transfer to BIA Federal Trust ownership, perhaps in an effort to avoid State regulatory and environmental evaluation." "The EA fails to analyze the critical action being considered, that of trust acquisition of the Rancheria properties."

The Commission staff echoed those concerns¹ on page 4 of its own comments dated April 6, 2017, when it states “It is not clear why the “No Project” alternative assumes no stormwater improvements would be made, and why such improvements would only occur under the proposed alternative [ie: the trust transfer]. Is there a reason those improvements would not occur in the absence of a fee-to-trust action?” In point of fact, there is no reason why either project requires a fee to trust transfer. Indeed, the Tribe replaced the pier and constructed new restrooms and sewage disposal facility while the property was in fee status.

The staff report reasons that the Commission has previously recognized the benefits to tribes of increasing their self-determination and sovereignty. Respectfully, that is not the legitimate purview of the Commission. Congress creates and terminates Indian Tribes to the extent that they are recognized political entities. It and the federal courts determine the scope of tribal self-government and sovereignty. The Commission, on the other hand, is charged with protecting, in perpetuity, the rights of Californians, including individual Native Americans, to access coastal waters, as prescribed by the Coastal Act, the California Constitution and the Public Trust Doctrine.

Please do not let the setting of the stage for perpetual loss of those rights happen on your watch, even if the loss happens far in the future. Please vote “no” on item Th10b.

Very Truly Yours,



J. Bryce Kenny
Attorney for HARP

¹ Both comments are incorporated herein by reference.

Robert Hallmark
P.O. Box 123
Trinidad, CA 95570
(707) 677-3726

February 27, 2019

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: March 7, 2019 meeting, item Th10-b Letter in Opposition to Staff Report


Dear Commissioner:

I was the owner of the Trinidad Harbor property prior to selling it to the Trinidad Rancheria in 2000. The property had been in my family since the 1940's.

In approximately mid-January of 2000, I had a meeting with the then Chairwoman of the Rancheria, and several members of the Tribal Council, about the terms of the contemplated sale. I specifically stated that as a term of the sale, I wanted a guarantee that the property would not be put into trust status and become part of the Rancheria per se. I was concerned that such a transfer would have too big of a negative impact on the City of Trinidad, as I was aware of how much was paid each year in property and sales tax. Carol Ervin, the Chairwoman, orally promised me that they would never seek to have the property put into trust status. I thought that a paper had been signed to that effect, but when I checked my papers, I could not find one.

I am against the proposed trust transfer because I don't think it is fair for one group to be exempt from paying their fair share of taxes to support the local government, when they get police, fire, and other services. I think that putting it in trust status would be inconsistent with the intent of the California Coastal Act that such special coastal property would always be open to the public.

Sincerely,


Robert Hallmark

James Cuthbertson
P.O. Box 1201
Trinidad, CA 95570
(707) 499-0675

February 27, 2019

Re: Meeting of March 7, 2019
Item No. Th.10-b

Opposition to Staff Recommendation

California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, CA 94105

Dear Commissioner,

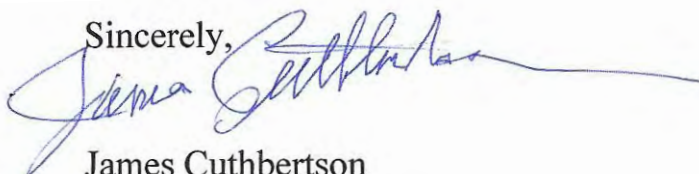
I write to request that you vote "no" on the federal consistency of transferring the Trinidad Harbor property into federal trust status.

I was the Mayor Pro Tem of the City of Trinidad, and attended all of the negotiations that went on between the City, the Tribe, and the property owner, Bob Hallmark. We met at the City Hall at least 10 times before terms were finally agreed upon.

One issue that constantly came up was the possibility that the Tribe would want to put the land into federal trust status so it could exercise its sovereign powers over it. Both the City and the property owner were against that, and it almost became an insurmountable stall in the process. Finally, the Chairwoman, Carol Ervin stated that the Tribe would not ever do that, and a deal was made.

I was against the trust status, because I knew it would have a significant impact on the City finances, because of the future loss of tax revenue that would occur. I am still against the trust transfer for that reason, and because the Tribe could prohibit the public from going on to the property for beach access and they could not be sued over it. Please vote no on this item.

Sincerely,



James Cuthbertson

From: Cynthia Lindgren

To: Bochco, Dayna@Coastal; Peskin, Aaron@Coastal; Groom, Carole@Coastal; Brownsey, Donne@Coastal; Turnbull-Sanders, Effie@Coastal; Howell, Erik@Coastal; Vargas, Mark@Coastal; Luevano, Mary@Coastal; Uranga, Roberto@Coastal; Aminzadeh, Sara@Coastal; Padilla, Stephen@Coastal; Delaplaine, Mark@Coastal; Corbaley, Su@SCC; Merrill, Bob@Coastal; Energy@Coastal

Subject: March2019 Agenda Item Thursday 10b-CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Date: Thursday, February 28, 2019 2:04:11 PM

I appreciate the opportunity to express my OPPOSITION to the Cher-Ae-Heights Trinidad Rancheria's request to transfer land to federal trust status.

Trinidad is a small community with limited financial resources but a profound desire and responsibility to protect the integrity and environmental health of this extraordinary section of California's coast. The laws of the State of California and the California Coastal Act with its vision of resource protection and public access are critical to our community's involvement and the preservation of the area. Please do not remove these important oversights by transferring the property to federal trust. The Trinidad Bay is the only viable commercial safe harbor between Eureka and Crescent City (84 miles by car). For generations this harbor has been free for people to come and go as they please, for their enjoyment, recreation and livelihoods. It is used by professional fishermen and crabbers, recreational boaters, kayakers, hikers, educators, beachgoers, school children, etc. It is a public center of gravity for our community.

Please think of the future. Today's promises sometimes don't carry into the future.

We don't know what leaders of the Trinidad Rancheria will want to do with their hold over the harbor and beach areas and access to the pier in 20 or 40 years when the economy of ocean access is something different than it is today. The community of Trinidad and our children's children will have no control or input into this if the land is in federal status.

Thank you.
Cindy Bell Lindgren
P.O. Box 276
Trinidad, California
(707) 498-5919
cynbell2@gmail.com

From: MAREVA RUSSO

To: Energy@Coastal

Subject: Trinidad Rancheria Federal status

Date: Thursday, February 28, 2019 3:14:16 PM

Thank you for the opportunity to comment regarding the Cher-Ae Heights Indian Community of the Trinidad Rancheria's request to transfer land at the base of Trinidad Head to federal status. I am thirty years employed by Seascapes Restaurant (first under Hallmark family ownership then, since year 2000, Trinidad Rancheria), located on that property.

I support the written comments emailed to you by Kimberly Tays on March 27, 2017. I do not think these parcels of private property should be granted federal status.

This land is immediately adjacent to Trinidad Head, the Tsurai Indian community ancestral site, Trinidad State Beach and Trinidad Harbor. In this location, public access and diversity of human activity is intensely exercised now and has been throughout history. Trinidad Head is known to be a sacred place for the Yurok tribe.

To convey federal status (which results in relaxing of regulatory oversight) for this property to the Trinidad Rancheria is inappropriate. This property's current status encourages and requires the Rancheria to be the best possible custodians for the precious cultural, visual, economic and recreational resources at this focal point for the City of Trinidad.

Sincerely,
Mareva Russo
P. O. Box 972
Trinidad, CA 95570

From: Don Allan

To: Energy@Coastal

Subject: Public Comment on March 2019 Agenda Item Thursday 10b - CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Date: Thursday, February 28, 2019 4:15:28 PM

821 2nd Ave., Trinidad, Ca 95570

February 28, 2019

California Coastal Commission

45 Fremont Ste., Ste. 2000

San Francisco, CA 94105

Re: Item No. Th10b Letter Opposing Staff Recommendation

Dear Commissioners:

As a long time and concerned resident of Humboldt County and the Trinidad area I oppose the transfer of the Trinidad Harbor and adjacent upland areas (collectively referred to as "the Harbor" hereafter), including the parking lot and access roads to Launcher Beach, into federal trust status for the reasons articulated below. Placing the Harbor in trust status will reduce or eliminate the ability of the local government, the California Coastal Commission, and the State Water Resources Control Board to regulate activities and ensure public access. The federal Coastal Zone Management Act of 1972 (CZMA) was passed in order to increase the authority of coastal states over their coastal lands. Placing the Harbor into trust status is inconsistent with purposes of the CZMA.

The State Coastal Conservancy and other State agencies provided over \$10,000,000 to replace the old pier and make other improvements to the Harbor. There is no guarantee that future Tribal Councils will continue to allow free public access after the 20-year period conditioned by state grants expires in 2032. Many low income people rely on fishing in Trinidad Bay as a source of food, using small skiffs, kayaks, and even stand-up paddle boards, to set crab pots and to fish for rock fish. These ocean users rely on free public access through the parking lot to Launcher Beach. Restricting access or charging a fee for access to the Harbor would have a significant negative impact on the community.

Transferring the Harbor to trust status eliminates any authority of the City of Trinidad and reduces the role of the State Coastal Commission to only those issues that may require a federal consistency determination. The area surrounding Trinidad Head was designated an Area of Special Biological Significance by the State Water Resources Control Board because of the importance of the kelp beds to the marine ecosystem. In fact that designation allowed the Rancheria to acquire grant funds to replace the old pier. Placing the Harbor in trust status will eliminate environmental review of future actions by the Rancheria and will weaken environmental protections and oversight. As seen with the Rancheria's recent proposal to erect a 100-room hotel on their trust lands south of Trinidad, the Rancheria has a very poor track record for engaging the public and keeping them informed of developments that will have huge impacts on the community, and has made some very questionable decisions regarding management of their current Rancheria lands, including filling in wetlands, routing a creek into a long culvert and creating a parking lot over the creek, and their most recent proposals to construct a freeway off ramp and build a 100-room hotel on the edge of a landslide. Placing the Harbor into trust status will remove a very important opportunity for public input and comments on decisions made by the Rancheria Council, reducing public involvement and placing the decision making in the hands of a few individuals. The Coastal Commission staff report states that the Tribe is only saying that it will continue to provide public access to those portions of the land currently classified as open space. This does not include the road to Launcher Beach which the public currently uses for launching small boats. If the property is transferred into trust status the Rancheria can change the classification of any part of the land from open space to commercial, with no public recourse. The impacts on public access would be significant.

The improvements which the Tribe proposes do not require the transfer of the land into trust status and using that as justification for the transfer is misleading and inaccurate. As stated by the Coastal Conservancy in its 4/21/2017 letter to the Bureau of Indian Affairs (BIA), the transfer of the Harbor into trust status appears to be an effort to avoid State environmental regulations.

The City of Trinidad will also lose revenue if the Harbor is placed under trust status. The City currently benefits from transient occupancy tax (TOT) generated by a vacation rental on the property and from sales and property tax. The City has claimed repeatedly at City council meetings during the adoption of its Vacation Rental ordinance that the City relies on revenue from the TOT and that the City budget is very lean, stating that a reduction in revenue would affect the City's ability to provide services such as police services and street maintenance. Transferring the Harbor into trust status will negatively affect the City's revenue. Increased traffic has been downplayed but with the proposed visitor center it is likely that there will be significantly more traffic using City streets while the property generates less revenue for the City. Please deny the approval of the consistency determination application to place the Harbor under trust status.

Sincerely,
Don Allan

From: Jason Self

To: Energy@Coastal

Subject: Public Comment on March 2019 Agenda Item Thursday 10b - CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Date: Thursday, February 28, 2019 6:30:31 PM

Dear Commissioners:

My name is Jason Self, and I own Kayak Trinidad. We utilize our public right to access launcher beach in Trinidad harbor daily. In 2018 we hosted 983 guests on our Whale & Wildlife kayak tours. The selling point for my business is the protected ocean launch offered by launch beach in Trinidad harbor. As one of the only places in Northern California with a flat water, non surf beach launch and direct access to the ocean, my business is 100% dependent on access to launcher beach as launching and landing anywhere else requires going through surf. Surf launches are an expert only affair and involve a high risk of injury or damage to property. Speaking from a safety and liability standpoint, surf launches are not acceptable for most casual kayakers.

The transfer of Trinidad harbor land into a Federal Trust takes away the protection of the law guaranteeing public access and puts it into the hands and discretion of Trinidad Rancheria. This is unacceptable to me and my business. I can not have my business dependent on access controlled by TR who for any reason could block or deny my business' access to the ocean.

I moved to Trinidad, invested in this community, and started my business here because of the access launch beach in Trinidad harbor provides, bolstered by guaranteed access to it according to CA state law.

I am a sea kayaker first and a business owner second. On a personal level, it's also unacceptable to forfeit my and the public's right to guaranteed access to the ocean.

I have specifically heard the CEO of Trinidad Rancheria on multiple occasions say "once the land is put into trust, we can do whatever we want and won't have to adhere to California Coastal Commission laws anymore."

Anyone who has utilized launch beach or paddled in Trinidad knows how much Trinidad Rancheria discriminates against kayakers/paddlers/divers and anyone else who accesses launch beach because they want to make money off of us. If the land is put into trust, they can charge for access, deny our access for any reason, or block it all together. We are harassed by their staff, threatened with trespass, and generally treated as second class citizens while power boaters who pay to utilize their mechanical launcher are treated like royalty. There is no doubt in my mind that if the land is put into trust and our right to access is taken from state law and

put into TR hands, it will only get worse, and they will attempt to restrict and deny access based on who they like and who they don't. Up until this point, we have been able to call their bluff with the CCC access law on our side.

I am at launch beach [from 7am to 130pm](#) almost every day of the year. I would estimate the number of paddlers utilizing launch beach to be between 11,000 and 15,500 people including my guests. Most of my guests, and a large percentage of paddlers utilizing this ocean access point are from out of the area.

This access point is so unique, people come from all over the state to use it. My guests come from as far away as Germany, Scotland, and the UK. Access to launch beach in Trinidad harbor should remain protected by state law to protect this major asset to the community of Trinidad, Humboldt County, California and beyond.

There is no justification of TR's request to transfer the land into trust other than the fact it gives them a way to go around California access and environmental law. This action directly threatens my business, my livelihood, my way of life as well as the majority of the people in our community and county.

Sincerely,

Jason Self
Owner,
Kayak Trinidad
www.kayaktrinidad.com
[707-329-0085](tel:707-329-0085)
Sent from my iPad

From: B H

To: Energy@Coastal

Subject: Reference agenda item on March 7: CD 0006-18

Date: Thursday, February 28, 2019 10:08:11 PM

Trinidad Rancheria

Allowing this to be built would lock out any and all access to the public.

To put this land into a Federal Trust is not right and not in the best interest of the public in and out of state. Not just locals use this area.

What you are proposing doing is just lining the pockets of the wealthy and screwing over other people.

Brian

From: Alan Phillips
To: Energy@Coastal
Subject: Opposed!
Date: Friday, March 1, 2019 7:29:31 AM

Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad).

Allen Philips
7007 black oak dr
Redding ca. 96002

Sent from my iPhone

From: michael morris

To: Energy@Coastal

Subject: Fw: agenda item on March 7, 2019:cd 0006-18

Date: Friday, March 1, 2019 8:22:37 AM

From: michael morris <lilmorris2000@yahoo.com>

Subject: agenda item on Thursday, March 7, 2019 Federal Consistency 10.6, App No. CD 0006-18 (BIA, Trinidad)

Opposed

To Whom,

I don't have all the details but it has come to my attention that this issue may concern me. I am a sea kayaker and fisherman who accesses the ocean at Trinidad, CA via the harbor at Trinidad Head. I have heard there may be some change of jurisdiction or control to the harbor that could impact the public's right of access to the beach/ocean as it has been for as long as I've been alive. I am very much against any change to the public's access to the launch beach at Trinidad Harbor and for any plans to place the harbor property into Federal Trust.

Thank You,
Michael H. Morris
3516 E St.
Eureka, CA 95503

From: Penne Ogara

To: Energy@Coastal

Subject: Reference agenda item on March 7 2019 CD 0006-18 Trinidad Rancheria Harbor

Date: Friday, March 1, 2019 8:29:14 AM

To Coastal Commissioners,

Objection to Trinidad Harbor being placed into federal trust for the benefit of Trinidad Rancheria.

As a concerned citizen of the Trinidad area, I am strongly against the proposed action to place Trinidad Harbor into federal trust as that would place public access to the beaches near the Seascape restaurant, the boat ramp, and Trinidad State Beach in grave jeopardy. If access is not protected by law, it can be taken away. As an example, the after sundown access to the pier is prohibited to the public after the Trinidad Rancheria bought the property from the Hallmarks (who used to allow such access).

The public access to the beach (north side of Trinidad bay) near the boat ramp is critical and the only viable and safe access point for kayakers and small boaters for many miles up and down the coast.

Please exercise your authority to protect the public's interest under law by preserving these invaluable public resources in perpetuity for the public good.

Penne O'gara

From: [Georgianna Wood](#)

To: [Energy@Coastal](#)

Subject: Transfer of Trinidad Pier to Federal Jurisdiction

Date: Friday, March 1, 2019 9:00:43 AM

I oppose the transfer of the harbor/pier area into federal trust, because Californians would be giving up local control of this very scenic and sensitive part of California's coastline. The California Coastal Act (CCA) is an excellent state law that protects our coastal resources and provides excellent noticing requirements that allow for public participation in the coastal development permit (CDP) process, including the right to appeal decisions that could harm or negatively impact coastal resources. Stronger than federal regulations. If this area is placed under federal status, public members would not receive the same noticing requirements and public participation they enjoy under the CCA. Under the National Environmental Protection Act (NEPA), there is no official public notice, only the federal register. While the public can submit comments, the federal process would not be as intuitive nor as easily accessible as the CCA process. And, once this area is under federal status, it is unlikely the public would have much influence over what development projects are allowed.

I personally access Trinidad Harbor and Trinidad Head every week as a hiker, kayaker and angler, and have a deep sense of stewardship. The proposal to transfer the property to federal trust is too vague to clearly understand the potential ramifications of the act, and the potential of destructive large projects there are truly alarming.

--

-Georgianna Wood
2045 Margaret Lane
Arcata, CA 95521

><(((0>·'~·..·'~·..><(((0>
·'~·..·'~·..><(((0>·'~·..·'~·..

From: John Schmidt

To: Energy@Coastal

Subject: Public Comment on March 2019 Agenda Item Thursday 10b - CD-0006-18 (Bureau of Indian Affairs, Trinidad)
OPPOSED

Date: Friday, March 1, 2019 9:18:38 AM

OPPOSED strongly opposed!

This transfer is ill advised on many fronts!

If done it will be harmful to:

1. Local control of lands and environmental protections
2. Yurok tribal rights and sacred lands, many documented archaeological and culturally significant sites located within the Yurok Ancestral Territory.
3. The financial well being of the city of Trinidad
4. Public access to beach, ocean, and parking lot
5. Unique launch point for small boats, fishing boats, and kayaks.
6. A waste of public monies for the resulting legal actions that will result from transfer of lands that the Rancheria does not own.

PLEASE DO NOT APPROVE THIS TRANSFER TO FEDERAL CONTROL

It is not in the interest of the our coast or our people.

Sincerely,
John Schmidt
1062A Crescent Way
Arcata, Ca. 95521

From: [Charlotte Cerny](#)

To: [Energy@Coastal](#)

Subject: Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad).

Date: Friday, March 1, 2019 9:52:37 AM

Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18
(BIA, Trinidad)

"I **STRONGLY oppose** the transfer of the harbor/pier area into federal trust. As a kayaker and person that truly loves this very special area, I believe that The California Coastal Act (CCA) is an excellent state law that protects our coastal resources and provides excellent noticing requirements that allow for public participation in the coastal development permit (CDP) process, including the right to appeal decisions that could harm or negatively impact coastal resources. If this area is placed under federal status, public members would not enjoy the same noticing requirements and public participation they enjoy under the CCA. This all would be lost in the transfer.

Respectfully,
Charlotte Cerny
1271 Vernon St
Eureka, CA 95501
Member of Explore North Coast Kayakers

From: [molly martian](#)

To: [Energy@Coastal](#)

Subject: Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad)

Date: Friday, March 1, 2019 10:11:49 AM

OPPOSED

molly martin
1221 T St, Eureka, CA 95501

thank you,
molly

From: Tom Dammann

To: Energy@Coastal

Subject: Reference agenda item on March 7: CD 0006-18

Date: Friday, March 1, 2019 11:06:01 AM

Please prevent the Trinidad Rancheria from curtailing of public access to California coastal areas. This is what the Coastal Commission was constituted to do, stop this change.

Sincerely,

Thomas Dammann.

From: [Joan Carpenter](#)

To: [Energy@Coastal](#)

Subject: Agenda Item Thursday March 7

Date: Friday, March 1, 2019 12:10:00 PM

Opposed

Regarding Fed Consistency 10.b App No. CD-0006-18 (BIA, Trinidad)

I strongly opposed this Application due to the extraordinary and rare marine access values at Trinidad cove. The early explorers in 1839, prior to the discovery of the mouth of Humboldt Bay, found and used the natural cove at Trinidad to land and launch. It has been a vital access point since that time. No other safe harbor exists anywhere else nearby. This site enables recreational kayakers safe access to the ocean. This site provides important emergency access for coast search and rescue as well as environmental protection access in case of spills or accidents. Changes to regulation and jurisdiction that could possibly lead to limits for ocean access at Trinidad cove would significantly damage recreational users of the Coast.

I am Joan L Carpenter at

1411 L St Eureka, CA 95501

email: Joan.redwoodrr@gmail.com

Tele: 831-601-2692

From: [Damon Maguire](#)

To: [Energy@Coastal](#)

Subject: Public Comment on March 2019 Agenda Item Thursday 10b - CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Date: Friday, March 1, 2019 12:18:14 PM

Please postpone any action on the transfer of Trinidad Head to federal oversight (Bureau of Indian Affairs). There are too many questions as to what this move would do and too many stakeholders that have not had time to respond or study the issue. I don't believe there is any reason to make this transfer at this time. Thank you.

From: [Marcella Ogata-Day](#)

To: Energy@Coastal

Subject: Comment on: Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad)

Date: Friday, March 1, 2019 12:24:15 PM

Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18
(BIA, Trinidad)

OPPOSED

I just read an article by Elaine Weinreb discussing Trinidad Rancheria's Plans for the Harbor and land adjacent to be put into Federal Trust. She raises some points which, to me, should be addressed before any steps are taken further toward placing the parcels of land into a federal trust:

What is the rationale? Will it make things simpler?

What are the benefits for the Trinidad Rancheria?

How does it affect Native Americans not affiliated with the Rancheria

How will it impact the city of Trinidad and state agencies?

How will it affect public access and recreational use long-term?

If given a trust status — what does "Conditionally Concurring mean?" What are the potential issues which the Federal agency, BIA, may have to modify instances to be consistent with CCMP policies?

I realize that just by reading this article and looking through some basic information, that I may not know the full picture. But it seems there are others like me who may not be fully informed. As a kayaker, I launch out of Trinidad almost every Sunday morning and feel blessed by this area, access and the community.

--

Marcella Ogata-Day

PO Box 724

Arcata, CA 95518

marcelladesign.info

707.672.6707

From: citymanager@trinidad.ca.gov

To: Energy@Coastal

Cc: sladwig@trinidad.ca.gov; Gabe Adams; "Trever Parker"

Subject: Public Comment on March 2019 Agenda Item Thursday 10b - CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Date: Friday, March 1, 2019 12:51:57 PM

Attachments: [March 1 2019 City of Trinidad comment letter to CCC on Trust Status of Harbor.pdf](#)

[City of Trinidad Comments on EA for Trinidad Harbor.pdf](#)

[CCC to BIA.Trinidad fee-to-Trust EA 4.6.17.pdf](#)

[Coastal Conservancy comments to Trinidad Rancheria EA April 21, 2017.pdf](#)

Please find attached Comments from the City of Trinidad on the above referenced item.
The City's comments include:

A letter Dated March 1st 2019 from the City

The City of Trinidad Comments on the draft EA for Trinidad Harbor

I have also attached, and would like entered into the record, the comments submitted on the draft EA by the Coastal Commission and the Coastal Conservancy.

The City believes the Commission should require a formal response from BIA to all these comments before acting on the Consistency Determination.

Thank you,
Daniel Berman
City Manager,
City of Trinidad



March 1st, 2019

California Coastal Commission

Submitted via email to EORFC@coastal.ca.gov

RE: CD 0006-18 – Consistency Determination for BIA request to place Trinidad Harbor into federal trust status.

Dear Coastal Commissioners and staff,

The City of Trinidad has significant concerns and questions about the proposal to put the Trinidad Harbor properties into federal trust status. These concerns are very relevant to the Consistency Determination request before you, and include impacts to coastal access, loss of protection for coastal resources, and loss of opportunity for local community input and control over this important coastal harbor. The City, local community members, the Coastal Conservancy, the Coastal Commission, and the State Lands Commission all raised these substantive concerns in formal comments on the draft Environmental Assessment (EA) released by the Bureau of Indian Affairs in 2017 for this project. The BIA and the Trinidad Rancheria have never provided any response to the numerous comments that were submitted on the draft EA, nor have they released a revised document or completed the NEPA process for the proposed actions.

The City was surprised to learn that the BIA was applying for a Consistency Determination prior to completing the NEPA process, and prior to providing any response to comments submitted for the draft EA. The comments submitted on the Draft EA are highly relevant to the Consistency Determination before you, and do not appear to have been provided to the CCC, nor considered as part of the staff report on the Consistency Determination. The BIA application to the Coastal Commission appears to include new or updated information that has never been provided to the City or the local community.

I have attached the detailed comments submitted by the City on the draft EA and hereby incorporate them in full as part of the City's comments on the Consistency Determination request before you. I have also attached comments submitted by other agencies and community members, which I ask to be entered into the record for Commission staff and Commissioners to consider in relation to this Consistency Determination.

The City believes that the Coastal Commission should postpone acting on this Consistency Determination until the NEPA process has been completed. Completion of the NEPA process would:

- 1) Result in a clear and thorough project description for the public to review, which is currently not available;

- 2) Provide a process for BIA and the Trinidad Rancheria to publicly address the many unanswered questions submitted in response to the draft EA, providing significant additional information for the Commission as they consider the Consistency Determination;
- 3) Provide clarity and detail on any minimization and mitigation measures that result from the NEPA process, which could (hopefully) help address many of the City's concerns; and
- 4) Provide substantially more detail than is currently available on the impacts of the project to coastal access, resources, and future use.

The proposed 'conditional approval' in the draft staff report reflects the legitimate concerns of CCC staff, that the proposed action will result in a situation where future development and management of this critical coastal access facility will no longer be subject to local or state control. This poses a very real risk that future management and development may not be consistent with the Coastal Act. Unfortunately the proposed condition in the staff recommendation is fundamentally ineffective in addressing this very real concern. The proposed tribal council resolution expressing an intent to consult with the Commission on future uses and management practices is well-intentioned but cannot be enforced. In the best-case scenario where it is fully in place and utilized, this consultation would be entirely voluntary on the part of the Trinidad Rancheria, and they would have no obligation to implement any of the Commission's recommendations. The Coastal Commission would have some authority to influence future actions through Consistency Determination reviews, but only for activities that trigger a new federal permit process, and the decision to initiate new federal permitting would lie primarily with the Trinidad Rancheria.

One striking example of community concerns is that under federal trust status the Rancheria could implement parking fees for effectively all parking for the Harbor, Trinidad Head, Launcher Beach, and Trinidad State Beach. The Rancheria could limit, charge for, or even eliminate the longstanding and free beach launching at 'Launcher Beach'. This is a valuable and extremely rare type of coastal access in Northern California and is heavily used. The City is very concerned, and we think the Commission should be very concerned, that there would be no way to prevent impacts like these to coastal access under federal trust status. Such restrictions would not require federal funding or approval, and therefore would be solely under the authority of the Trinidad Rancheria Tribal Council.

The City urges the Commission to postpone action on this item until the NEPA process is completed and the many questions and concerns posed to the BIA and Rancheria through that process are addressed. Alternatively, the Commission should request detailed responses to these questions and comments that the BIA and Trinidad Rancheria received almost two years ago. Either approach would allow the Commissioners and their staff to make a much more informed decision on this important issue.

Please review our attached letter in detail, as well as those of other concerned agencies and citizens.

Thank you for your attention to this critical decision,

A handwritten signature in blue ink, appearing to read "Dan Berman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dan Berman

City Manager
City of Trinidad

cc (via email)

Trinidad City Council

Trinidad Planning Commission

Trinidad City Planner

Cher-ae Heights Indian Community of the Trinidad Rancheria

Bureau of Indian Affairs

California Coastal Conservancy

State Lands Commission



April 21st, 2017

Amy Dutschke, Regional Director
Bureau of Indian Affairs, Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Dear Ms. Dutschke:

The City of Trinidad welcomes this opportunity to provide comment on the March 2017 Draft Environmental Assessment (EA) for a Proposed Project that includes: 1) the proposed trust acquisition of approximately nine acres adjacent to Trinidad Bay, by the United States, for the benefit of the Cher-Ae Heights Indian Community of the Trinidad Rancheria Tribe (Tribe); 2) a proposed Storm water Improvement Project on the properties; and 3) a proposed Interpretive Visitor Center on the properties.

The City offers the following comments on the Draft EA in order to ensure that the final document accomplishes the goals of providing a complete and accurate analysis of the impacts of the proposed actions as required under NEPA.

Background:

The natural sheltered harbor of Trinidad Bay is the reason the City of Trinidad exists, and was the first port to be developed on the north coast after Spanish fur traders first landed there in 1775. Trinidad became the main supply port for the Klamath gold rush in the 1850's and was the original County seat of the defunct Klamath County because of the harbor. After the gold rush, logging and fishing became central to the local economy. As logging declined, recreation and tourism increased, with the coastal access and the harbor central to that industry, which brings more than 12,000 visitors per year to Trinidad. And although declining stocks have reduced the fishing fleet in Trinidad, the commercial crab fishery remains vibrant and the harbor remains a primary component of the City's identity.

Trinidad Bay serves as the last safe harbor north of Humboldt Bay until Crescent City, 50 miles to the north. Launcher Beach, proposed for trust acquisition, provides free public access for small beach-launched boats, and has likely done so since time immemorial. The mooring field in Trinidad Bay is operated by the Rancheria, but owned by the City. Access to the mooring field and the Bay itself for boaters including commercial and recreational fisherman is of critical importance. Trinidad Pier is located on City owned tidelands, and the recent replacement of it was paid for primarily with State grant funding. The harbor and the properties in question serve a wide range of users, including commercial and recreational fishermen and recreational boaters accessing the bay.

Summary Comments:

The City's most significant concerns about the Draft EA arise from the minimal analysis provided regarding the most significant component of the Proposed Action: the transfer of the properties into federal trust status. The EA would be unnecessary absent the trust acquisition, and the listed purposes of the project in the EA introduction are focused on the trust acquisition. Yet the impact analysis seems to be focused primarily on the visitor center, with almost no analysis of the trust acquisition impacts, and limited analysis of the impacts of the storm water project. The City believes the document does not adequately address the implications and impacts of the trust acquisition.

The City believes that this dramatic change in jurisdiction can be reasonably anticipated to impact the environment, coastal resources, public access to the ocean and beaches, and public access to Trinidad Head; and those impacts should be discussed and analyzed. The change in jurisdiction and applicable law is not in itself a physical impact, but it would change how all future projects on the property are evaluated and the standards they would be held to.

Local and state laws currently affecting these properties, including the California Coastal Act, and the State Ocean Plan, provide a high level of environmental protection for coastal resources and public access, both of which are critical issues for this location. Removing this property from local and state jurisdiction can be reasonably anticipated to result in significant impact to the environment, and public coastal access. Permitting of future development, including the two projects identified in the EA and all future projects, would occur only through the NEPA process which is less protective of coastal resources and public access to the coast and ocean, than the California Coastal Act.

For example, activities on the property could affect adjacent lands that are in City and/or State jurisdiction. Run-off, both storm water or dry-weather, is a good example. Trinidad Bay is a State Water Quality Protection Area (SWQPA), Area of Special Biological Significance (ASBS) and Critical Coastal Area (CCC) and is subject to strict discharge prohibitions under the California Ocean Plan. Would the State standards apply to runoff from Trust land? And if not, what standards would apply and would they be less protective? The City requests that a revised EA include an analysis of how public access and environmental review of the current proposed projects, and future projects, would change with trust acquisition.

Specific Comments:**1. Ownership of land proposed for trust acquisition.**

The proposed project includes transferring almost 3 acres of land to trust status that is outside the parcels owned in fee by the Trinidad Rancheria. The EA needs to clearly explain and document, how land not owned in fee by the Rancheria can be subject to a 'fee to trust' process.

According to California Civil Code §670, the State of California holds title to all the land below the Ordinary High Water (OHW). The project boundary indicated on Figure 1-3 includes lands that are clearly below OHW as part of the trust acquisition. A portion of the Trinidad Harbor tidelands, including those areas below OHW shown on Figure 1-3, were granted to the City of Trinidad to hold in Trust for the benefit of the public. Those lands cannot be legally transferred as part of this trust acquisition. The legal description of the tidelands granted to the City are publicly available and describe those lands as extending to the high tide line. Portions of the proposed storm water project as shown in Appendix A on 'Launcher Beach' also appear to fall clearly within the City's granted tidelands.

Additionally, there are areas between the OHW and property boundaries of the parcels owned by the Tribe that are shown as part of the trust acquisition. Bay St., as shown on Figure 1-3, was vacated by the City in 1912. The Rancheria may hold legal title of those lands per CA Civil Code §830, but this ownership outside the parcel lines does need to be documented through a survey or surveys that are included or referenced in the EA

The pier itself is also shown as included in the transfer. The City's understanding is that the Rancheria does own the structure of the Pier, but not the underlying waters (tidelands) which are state lands granted to the City for management. This distinction must be properly and clearly identified in the EA. The draft EA shows an assessor's parcel number for the pier as included for trust acquisition, but that parcel is state tidelands.

The City requests that a revised EA address these issues after further discussion with the State Lands Commission and the City of Trinidad, and that the area proposed for trust status be verified by survey to ensure it does not include state tidelands and is appropriate for transfer.

2. Project Purpose, Need, and Alternatives

The Purpose and Need statement (section 1.4 starting on page 1-3) lists 7 purposes served by the Project, but only the first of them seems to clearly apply to the trust acquisition – facilitating self-governance by exercising sovereignty over the land. The proposed 'Trinidad Harbor District' (page 2-3) to better organize and manage the Harbor area businesses sounds like a good idea, but seems independent of the proposed project. It is also not discussed further or analyzed at all in the EA. If there are economic benefits to the Rancheria to placing the land into trust, they are not well explained in this section. The worthy goals of preserving the local environment, reducing storm water runoff, and highlighting the cultural and economic importance of the Harbor do not obviously depend on trust acquisition. As discussed under Summary Comments above, the City is concerned that environmental protections for the property will in fact be lessened under trust acquisition.

The project alternatives need further exploration and assessment. The EA combines the two construction projects and the placement of the land in trust into a single proposed project for analysis. The statement in the EA that "Alternative A would provide important socioeconomic benefits to the Tribe including recreational and cultural opportunities" needs some explanation and support. Is that associated with the trust acquisition, or the two physical projects, and what are those opportunities and benefits. Without that information it is difficult to assess why a smaller area of Trust transfer, or no Trust transfer at all, would not be reasonable alternatives. The only alternative evaluated is the 'no-action' alternative. But the construction projects and the transfer of the land into federal trust status do not need to be linked. The storm water improvements are already funded by state grants, are supported by the City, and could certainly be implemented independent of the trust acquisition. The Interpretive Visitor Center could also proceed independent of the trust application, with permitting through the City and Coastal Commission.

The City requests that a revised EA provide explanations and support for the arguments presented, to support the purpose and need, and explain how the proposed project, and alternatives, would meet those needs.

3. Public Access

The EA does not have an adequate discussion of the public use and benefit that the harbor provides, nor how that will be protected. The EA states that the Tribe must provide public access to the pier until 2032. That is only 15 years from now; what happens after that? The EA also states that Tribe would maintain public access to all open spaces, but this statement is very vague. What is the area covered, and through what mechanism would this be guaranteed?

The only access road to Trinidad Head passes through the proposed trust acquisition. The City utilizes that road to maintain our popular trail system on Trinidad Head. One of the only mainland components of the California Coastal National Monument has only recently been established on Trinidad Head and is anticipating increased visitor traffic. An important public safety facility (an emergency radio repeater) and federal and state atmospheric monitoring stations are also located on Trinidad Head and require vehicle access. Access rights on that road are currently protected by easement and likely by prescriptive rights as well. Would those easements and prescriptive rights be enforceable after trust acquisition? If not, the loss of those rights should be addressed, and possible mitigation measures to prevent their loss should be considered. This is a public safety and a recreation concern.

Parking is also an important public access issue in the Harbor area. Parking availability and management are already a problem in the harbor area on busy days. Parking is not discussed at all under transportation and traffic or elsewhere in the EA. Could the Rancheria start charging fees to park, or close parking areas to the public? Both would be nearly impossible under current state jurisdiction, but if trust acquisition changes that, those impacts should be analyzed.

Launcher Beach, as the name implies, is heavily used for small boat beach launching. It is the only easily accessed sheltered beach for this purpose between Humboldt Bay and Crescent City. Could this access be closed, or charged for, post trust acquisition? If so, those impacts need to be analyzed.

4. Additional context and impact analysis issues:

The City believes the following issues should be addressed in a revised EA:

- Planning for sea level rise is not mentioned anywhere in the document. The plans shown for the proposed Visitor Center show labelled elevation contours, but it is not clear if those are relative to the high tide line, or to the '0' tidal elevation.
- The discussion regarding flooding data is outdated. FEMA has produced new coastal flood maps for Trinidad reflecting the impacts of sea level rise that should be referenced in this analysis.
- The estimate of five visitors per day to the visitor center is unsupported and seems very low. That could be true if averaged over an entire year, but the analysis needs to be based on peak usage to analyze impacts.
- The data on the City water system is outdated. In addition, the EA contains conflicting information, stating that there are 315 total connections to the City water system in one place of the document and 325 in another.
- The wastewater analysis is based on the stated treatment capacity of the tanks at 35,000 gpd. However, the leachfield only has an approved capacity of 4,750 gpd, which is what the analysis needs to be based on. Also, the average water use is what is presented in the setting, but the analysis needs to include peak usage to be valid. This is a complex wastewater treatment system currently overseen and regulated by the Humboldt County Division of Environmental Health and the North Coast Regional Water Quality Control Board. How would this oversight change should the land be transferred?

- Within the climate change analysis section, the fact that the City, County, CEQ and EPA have not adopted standards or thresholds for greenhouses gasses is used as the basis for determining that there will be no impacts. However, that completely ignores the fact that the State of California has adopted strict guidelines.
- The visual analysis concludes that the overall visual character will be improved over current conditions. While that may be true, there is no discussion or even acknowledgement that coastal views will be blocked and impacted by a larger structure (visitor center). This is a known issue, since there was public controversy over placing an interpretive sign in that vicinity due to view blockage.
- One of the mitigation measures for seismic activity is that structures will be built to California Building Code standards. But there is no information provided about who oversees and enforces that to ensure that impacts are minimized under trust acquisition.
- The indirect effects analysis seems to address cumulative effects and dismisses them as already analyzed under the various individual topics. There will be numerous indirect effects to the City, community, adjacent lands, etc, which needs to be addressed in that section.

5. Socioeconomic Impacts

The discussion of socioeconomics focuses on the County rather than the City, which makes the impacts appear much smaller than they are. The population estimate of 236 for Trinidad is not accurate. The American Community Survey data, where that number came from, is not reliable for a town as small as Trinidad; the margin of error is often 100% or more. For example, the 2010 ACS estimate of Trinidad's population was 259, but the 2010 Census shows a population of 367 and that it was increasing. The tax and land use information and analysis discuss County data, not the City, which makes it invalid for assessing impacts to Trinidad.

This section notes that property taxes were \$46,063 in 2014, and declares them '*de minimis*' in relation to the County's total property tax revenue. Staff see at least three direct financial impacts to the City of Trinidad that should be addressed here:

- a. **Property tax** –The City of Trinidad receives approximately \$4,000 annually in property taxes from the harbor properties, out of approximately \$100,000 in total property tax revenue across the City. The Harbor property taxes may be *de minimis* relative to total County property tax revenue, but they represent about 4% of the City's property tax revenue, and .7% of our total General Fund revenue.
- b. **Sales tax** – The City receives sales and use tax on Seascope restaurant sales as well as the bait shop. These funds will be lost to the City in the event of federal trust status. The City has requests in to the State Board of Equalization to help quantify these amounts.
- c. **Transient Occupancy Tax** – The Rancheria operates a Short Term Rental in the home above the Seascope. The City received almost \$5,000 in Transient Occupancy Tax (TOT) revenues from this rental in the last fiscal year that would be lost in trust acquisition. This is approximately 1% of the City's total annual General Fund Revenue

In addition, the public access and parking issues discussed previously are very significant to the potential socioeconomic impacts to the City. The City is very concerned that trust acquisition means that current protections for public access to and across the property for parking, recreation, and boater use would be lost, and that access could be restricted in the future. The dramatic socioeconomic

impact of such a restriction must be analyzed as part of the EA. This is the key beach access and boater access in the City, and Trinidad Head itself is a highly scenic and heavily visited area. The City does not doubt the current Rancheria Tribal Council's stated intent to maintain access at all, but a trust acquisition would be effectively permanent, and a future Tribal Council could reconsider this stance. Those access rights are strongly protected under state law, and the proposed action would eliminate those protections. That would in turn affect the socioeconomics of the City. Without a binding guarantee of such access as a mitigation measure, this is a reasonable potential outcome of the project that should be analyzed and addressed.

6. Consultation

The harbor area, and the City of Trinidad in its entirety, are within the ancestral territory of the Yurok Tribe, and the harbor area is immediately adjacent to the historic Yurok village of Tsurai. The EA does not clearly indicate whether the BIA has conducted any consultation with the federally recognized Yurok Tribe regarding the proposed action. In addition, the local Tsurai Ancestral Society (TAS) organization is comprised of descendants of the Tsurai Village. If this has not happened, the City requests that the BIA consult directly with both the Yurok Tribe and the TAS regarding the proposed action as part of revising the EA. The City can provide contact info if necessary.

Thank you for your consideration of these comments. We offer them with the goal of improving the EA. The Trinidad Harbor Area is a key part of the City of Trinidad, and we appreciate your review and look forward to your response. If we can provide any additional information, please contact me at citymanager@trinidad.ca.gov or 707-677-3876.

Sincerely,



Daniel Berman
City Manager

cc: Trinidad City Council
Trinidad Planning Commission
Trevor Parker, Trinidad City Planner
Jacque Hostler-Carmesin, CEO, Trinidad Rancheria
Su Corbaley, California Coastal Conservancy
Mark Delaplaine, California Coastal Commission
Melissa Kraemer, California Coastal Commission
Reid Boggiano, State Lands Commission

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



April 6, 2017

Amy Dutschke
Regional Director
Bureau of Indian Affairs
Pacific Regional Office
Attn: Chad Broussard
2800 Cottage Way
Sacramento, CA 95825

Re: Coastal Commission Staff Comments, Environmental Assessment for Proposed Trust Acquisition of Nine Acres for the Cher-Ae Heights Indian Community of the Trinidad Rancheria, Trinidad, Humboldt County

Dear Ms. Dutschke:

The California Coastal Commission received a copy of the above-referenced Environmental Assessment (EA) for the placement of nine Trinidad Harbor area parcels (totaling 9 acres) in Trust (fee-to-Trust) for the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Rancheria). The parcels contain existing harbor uses and businesses, including a pier, boat launch, boat cleaning and maintenance facilities, two parking lots, the Seascapes Restaurant, a bait and gift shop, a vacation rental house, recreation areas, and boat parking areas. The activity also contemplates, and the EA analyzes, future development consisting of stormwater improvements and construction of an interpretive visitor center.

As is the normal BIA practice for fee-to-trust actions in the coastal zone, the EA acknowledges the need for the BIA to submit a consistency determination to the Commission under the Coastal Zone Management Act (CZMA, Section 307¹). A consistency determination is a finding that a proposed activity is consistent to the maximum extent practicable with the California Coastal Management Program, combined with information necessary to support that conclusion, including an analysis of the activity's consistency with Chapter 3 of the Coastal Act. We provide these comments in assisting the BIA in preparation of that document and expect that our comments will be responded to prior to or in combination with that submittal.

¹ 16 U.S.C. Section 1456, with implementing regulations at 15 CFR Part 930.

We understand that one of the benefits to the Rancheria of the proposed fee-to-trust action is increased tribal sovereignty, self-determination and self-governance. In so doing, a fee-to-trust action necessarily modifies the effect and scope of state law authority in several ways, as follows:

(1) While the City of Trinidad does not currently issue coastal development permits (CDPs) for development in the Harbor area (because that segment of the City does not have a Commission-certified Local Coastal Program), the City is currently drafting an LCP segment for the Harbor area. If such segment were to become certified, then absent a fee-to-trust action, most development in this area would need to receive City-issued CDPs. Thus, the effect of the proposed action would be to eliminate this CDP review process procedure, which could, among other things, reduce the ability of the public to participate in locally- or regionally-important coastal matters.

(2) For similar reasons, the current Coastal Act permitting process, involving Commission review of CDP applications, would also no longer occur if the land were put into Trust, and while the Commission's meeting locations are not as accessible to the local public as City meetings, they nevertheless afford opportunities for public participation in the review process.

(3) Once the land is in Trust, the Commission retains the federal CZMA authority to perform future federal consistency reviews that may be triggered. However, that authority would be less extensive than state law CDP authority, for three reasons: (i) such reviews would only be triggered in the event that an activity needed a federal permit, federally funding, or was being carried out by a federal agency; (ii) the property would no longer be considered "within the coastal zone," but instead would be treated as similar to federal land, which means the Commission would be limited to reviewing an activity's "spillover effects" on coastal zone resources (i.e., effects from development on coastal resources located outside the Trust property boundary); and (iii) the Commission would not have the benefit of a formal local government review (assuming, as discussed in #1 above, the City were to attain CDP review authority under a certified LCP segment).

In reviewing past fee-to-trust actions, the Commission has recognized the benefits to Tribes of increasing self-determination and sovereignty, and in these reviews the Commission has sought to develop meaningful working relationships with the affected Tribes for continuing coordination and cooperation, which are values inherently embodied within the spirit of the CZMA itself. The CZMA not only encourages, but successfully relies on, communication and cooperation among all levels of government (and the public). We believe these values and relationships should extend not only to the fee-to-trust action, but ideally to continued relationships and coordination after such time as the land is placed in Trust. We would note that these types of relationships are also strongly encouraged under the Resources Agency Tribal Consultation Policy dated November 12, 2012 (and adopted pursuant to Executive Order B-10-11).

Thus, the Commission's review of fee-to-trust actions has typically been multi-layered, as follows:

(1) The Commission reviews a "snapshot" of anticipated development analyzed in BIA EA's, in order to assess the consistency of any anticipated development likely to accompany a fee-to-trust action with the applicable Coastal Act policies.

(2) The Commission has sought assurances that the Commission or its staff will be afforded the opportunity to review, comment, and work with the BIA and/or the Tribe to ensure that building, monitoring, mitigation, or other pre-construction plans reflect, and are in accordance with, the activities that were described and analyzed in a BIA EA and Commission findings on a consistency determination.

(3) The Commission has sought to develop meaningful working relationships to enable continued future cooperation and coordination with respect to changes to previously anticipated activities on Trust properties, or to activities that were not able to be anticipated at the time of Commission review, either of which changes may affect coastal resources in a manner different than was analyzed in the EA or consistency determination.

During our review of the upcoming consistency determination, we intend to explore ways to address these issues further, hopefully with both the BIA and the Rancheria, and we would be happy to provide examples of adopted Commission actions on past fee-to-trust consistency determinations. As you may be aware, we have also, at the Rancheria's request, engaged in Government-to-Government Consultations with the Rancheria concerning this fee-to-trust proposal.

From an overall perspective, it would appear that existing and proposed uses of the land as identified in the EA are generally consistent with Coastal Act goals and priorities, such as those policies protecting public views, water quality, and cultural resources, and giving priority to fishing and visitor-serving facilities. More specifically, however, we do have several questions and information requests concerning the descriptions and analyses in the EA, as follows:

1) **Parcels/Acreage.** We are confused over what may be some minor discrepancies in the EA concerning the parcels in the fee-to-trust action. The text and maps note nine parcels that have Assessor Parcel Numbers (APNs) assigned: (042-07-101, 042-07-102, 042-07-105, 042-07-108, 042-07-112, 042-07-113, 042-07-114, 042-09-108, and 042-09-110). These APNs total 6.5 acres, and 2.5 acres are identified for which there are no APNs. Figure 1-3 lists the total acreage at 9.38 acres, whereas Figure 3-4 gives a slightly different acreage (9.27 acres). Table 2-1 lists the total acreage at 9.35 acres and states that the areas with no APNs comprise 3.24 acres (differing from Figure 1-3, which indicates the non-APN area to be 2.85 acres). Also, we are

unclear about which are the areas that do not have APNs. Do they include beach areas seaward of the Mean High Tide line, and/or any submerged land under the pier? Also, what is the significance of the area outside the red line on Figure 1-3, adjacent and to the west of Parcel 1 (surrounded with a white line)? We would appreciate clarification as to the precise parcels and acreages included in this application.

2) **Submerged Lands.** If any lands in the fee-to-trust action would be located below Mean High Tide, does the BIA have the authority to place such lands into Trust for a Tribe? If it does, what, if any, coordination with the State Lands Commission and/or the City of Trinidad is necessary?

3) **Pier.** For the pier, if it is only the above-water structure being considered in the fee-to-trust application, we would appreciate an explanation of the authority under which this action would occur, as well as an explanation of the roles the State Lands Commission, the City of Trinidad, and the California Coastal Conservancy would play in this transfer. The EA states the Rancheria has an agreement with the Coastal Conservancy, dated April 18, 2012, under which the Tribe would maintain public access on the pier until 2032. We would also appreciate being apprised as to what should be expected if and when that agreement were to reach or near its expiration date. Is it likely to be renewed? Does the agreement contain language for how post-2032 conditions will be considered?

4) **Standard of Review.** We wish to clarify for all reviewers as to the Commission's standard of review when it reviews any consistency determination. Page 3-28 of the EA correctly identifies that the enforceable policies of the state's federally-certified Coastal Management Program (CMP) constitute the standard of review for federal consistency determinations. The California CMP has been certified, and Chapter 3 of the Coastal Act will therefore be the standard of review. However, statements on subsequent pages could be read differently.

For example, the page 3-29 in the EA states "The most recent draft update to the City General Plan (1978), which includes provisions that constitute the LCP under the CZMA, ..." To reiterate, Chapter 3 of the Coastal Act will be the standard of review for any consistency determination; the LCP can, if certified, be used as guidance in interpreting Chapter 3 policies. You may want to consider deleting the phrase "under the CZMA" from that sentence.

In the Land Use Consistency discussion contained on Page 4-12, we would suggest similar types of clarifications to avoid confusion. First, if an LCP update is still in draft form, and not yet reviewed by the Commission, it should not be argued to support past Commission interpretations of Coastal Act policies. Second, the following phrase may need some modification, where it states "the Local Coastal Plan (LCP) developed in accordance with the Coastal Zone Management Act..." LCPs are developed in accordance with state law (the Coastal Act). They can be used as guidance or background under the CZMA, but it is probably more accurate to say

“... developed in accordance with the Coastal Act...” in this context. Third, while it may be the case that “the proposed development and trust action is consistent with the most current draft of the Local Coastal Plan,” any such statement should probably not be used, or at a minimum, not be used without further elaboration, to establish the consistency of the action with Chapter 3 of the Coastal Act.

5) Interpretive Center. Appendix B of the EA provides some building details for the proposed Interpretive Facility, but we would request more details on this facility in the consistency determination. We are not able to read the notes on the plan pages, and the building materials and colors are either illegible or not provided. We would appreciate knowing those details, or if they are not available at this time, the development of a working relationship under which we could be provided those details. A visual simulation showing before and after public views of the facility would also be helpful.

6) Infrastructure/Public Services Assumptions. The EA assumes that the capacity of local services will be adequate, based on an assumed expected increased visitor use of 5 persons/day. It is not clear how that assumption was arrived at.

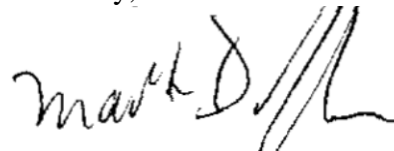
7) Alternatives. It is not clear why the “No Project” alternative assumes no stormwater improvements would be made, and why such improvements would only occur under the proposed alternative. Is there a reason those improvements would not occur in the absence of a fee-to-trust action?

Finally, there are a few harbor improvements we would like to see incorporated into the proposal if they are feasible, and if they are not, to possibly be the subject of future planning efforts and inter-governmental coordination. As shown prominently in the photo on the EA’s cover page (i.e., a photo taken from north of the parking lot closest to the pier), a number of stands of invasive pampas grass have established themselves in the project area. Since the Rancheria is working on water quality improvements in this area, incorporating efforts aimed at invasive species eradication may be feasible, and any such efforts would certainly improve public views and benefit native habitats in the area. We would also pose the idea of improving management of the unpaved (and relatively unmanaged) parking lot just north of the Trinidad Head, improvements which may also be able to be combined with the proposed stormwater management measures, and which would have a secondary benefit of improving public access to this popular area during peak parking demand periods.

CCC Letter to BIA Director Dutschke
Trinidad Rancheria Fee-to-Trust
April 6, 2017
Page 6

In conclusion, we appreciate this opportunity to comment. If you have any questions about these comments, preparation of a consistency determination, or the history of the Commission's previous fee-to-trust reviews mentioned above, please feel free to contact me at (415) 904-5289, or by email at mdelaplaine@coastal.ca.gov. Thank you for your attention to this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'mark D/L', with a stylized flourish at the end.

MARK DELAPLAINE
Manager, Energy, Ocean Resources, and
Federal Consistency Division

cc: CCC Arcata Office
Jacque Hostler-Carmesin, Chief Executive Officer, Trinidad Rancheria
Garth Sundberg, Tribal Chairman, Trinidad Rancheria
State Lands Commission
Coastal Conservancy (Su Corbaley)
City of Trinidad (Dan Berman)
Bureau of Land Management (David Fuller)



April 21, 2017

Amy Dutschke
Regional Director
Bureau of Indian Affairs
Pacific Regional Office
ATTN: Chad Broussard
2800 Cottage Way
Sacramento, CA 95825

Re: California State Coastal Conservancy Staff Comments to the Environmental Assessment for Proposed Trust Acquisition of Nine Acres for the Cher-Ae Heights Indian Community of the Trinidad Rancheria

Dear Ms. Dutschke:

The California State Coastal Conservancy staff (Conservancy) has reviewed the Bureau of Indian Affairs' (BIS) environmental assessment (EA) titled *Trinidad Rancheria Stormwater Improvement and Interpretive Visitor Center Project*, dated March 2017. This document was prepared to evaluate environmental impacts from the transfer to federal trust ownership of 9 acres of Cher-Ae Heights Community of the Trinidad Rancheria (Rancheria) holdings as well as other planned improvements in the area. Conservancy staff became aware of the availability of the EA in late March when the City of Trinidad forwarded the BIA notice. The Conservancy requested an extension to the April 6, 2017 deadline, which you granted to April 21, 2017. Conservancy staff submits the following questions and comments for your consideration.

The document fails to fully describe the project or adequately analyze its potential impacts. The document purportedly is an analysis of environmental impacts from the stormwater improvements and interpretive visitor center project the Rancheria intends to undertake, but includes as part of the project the acquisition of the properties by the BIA into Federal Trust status. Inexplicably, the EA hinges the implementation of those improvements on the property transfer to BIA Federal Trust ownership, perhaps in an effort to avoid State regulatory and environmental evaluation. It would seem that the acquisition of the property and the stormwater and visitor center project are two separate projects. As such, each project should be decoupled and fully described, and the corresponding potential impacts fully evaluated. If the two activities are truly one "action" for purposes of federal agency review, the EA should explain why it should be necessary that the properties be in Federal Trust ownership before the improvements can be made.

The EA fails to analyze the critical action being considered, that of trust acquisition of the Rancheria properties. The implications to socioeconomic, recreation, and infrastructure use and maintenance for public use are broad, yet are not adequately analyzed. It does not adequately analyze the economic impacts to the City of Trinidad should the properties be placed in Trust and taken off the tax rolls. What would be the tax revenue losses to the City?

1515 Clay Street, 10th Floor
Oakland, California 94612-1401
510-286-1015 Fax: 510-286-0470

The EA fails to analyze the impacts to public use should the properties be placed into Federal Trust ownership. Of particular concern to the Conservancy is the public's continued use of the pier for fishing (commercial and public) and other recreational uses. The EA states (on page 2-2) "While the pier would be included within the trust action, in accordance with an agreement executed April 18, 2012 between the Tribe and the California Coastal Conservancy (CCC), the Tribe would maintain public access to the Trinidad Pier and associated marine access and recreational improvements until 2032. Federal laws, such as the Clean Water Act (CWA) and the Endangered Species Act (ESA), would continue to apply to tribal trust lands." There is no discussion or speculation offered as to how – or if – public access will continue after 2032. Nor is it clear what is meant by 'and associated marine access and recreational improvements'. The project as defined in the EA and the analysis of impacts is not clear. The EA should not allude to the possible elimination of public access to the pier after 2032 and should instead state unequivocally that public access, as provided through the grants from the State of California, shall continue. We do not believe the pier structure itself, which overlies City-owned tidal and subtidal lands, is real property eligible for transfer into trust; but we do believe the foot of the pier, located on land, may be eligible. The EA does not adequately analyze the impacts to public use of the pier structure should the foot of the pier be placed in trust. Therefore the entire pier should not be included in the project description, unless the potential loss of public use is mitigated for.

The Conservancy and several other public agencies have invested significantly in improvements to the Trinidad Harbor waterfront. With the specific objective of restoring an aging waterfront infrastructure and maintaining a vital economic and cultural component of the Trinidad community, the Conservancy granted nearly \$900,000 in 2006 and 2010 to the Rancheria to plan, design and assist the Rancheria replace the Trinidad Pier. The Conservancy noted in its funding recommendation that "if this facility were to become unavailable it would have an important impact on the local tourist and fishing economy" and that "[T]herefore, the proposed work is necessary in order to continue to provide access for fishing and boat launching and support activities for recreational and commercial fishing activities."

At the time of the construction grant was made, the Conservancy sought assurances the pier would remain open to the public for both recreational coastal access and fishing access. In reply, in an email dated October 14, 2010, the Rancheria gave assurances that according to the lease agreement with the City of Trinidad [for the use of the subtidal lands owned by the City] the Rancheria has to ensure public access. Also according to the Rancheria, as the Trinidad Pier is seen as a critical transportation in establishing maritime transportation opportunities to meet projected tribal and regional needs the pier was placed on the Rancheria's inventory as a transportation facility. Providing additional assurances of the public's continued use of the pier, the Rancheria referred to Title 25 of the Code of Federal Regulations Section 170, which address Indian Roads Reservation (IRR) Program. 25 CFR Section 170.120 requires that transportation facilities must be open and available for public use. Further, 25 CFR Section 170.813 (a), addresses the restriction of public access under specific circumstances. We believe the EA is should include only this limitation of closure to the public.

The Rancheria further assured that "[i]f in the unlikely event the Tribe was forced to sell the pier, the Tribe would include a clause that it would remain open to the public."

When the Conservancy grants funds to non-profit private entities for capital improvements, it requires an agreement pursuant to the Conservancy enabling legislation, California Code of Regulations, Division

Amy Dutschke
Regional Director
Bureau of Indian Affairs
Page 3

21, Section 31116(c) be recorded which guarantees the public interest in the improvement is protected. When funds are granted to a public entity, such as the Rancheria, it is presumed the entity will operate and maintain the facility consistent with its public benefit and promises made. Therefore, because of the assurances made by the Rancheria, the Conservancy was confident the pier would remain open for public use for the life of the structure, which is certainly beyond the year 2032 when the pier construction grant agreement between the Conservancy and the Rancheria expires. The Conservancy used that date with the expectation as to the useful life of the improvements funded by the Conservancy. But, as described above, we fully expected that public access would continue on the existing structure well beyond that date.

Finally, the Rancheria had previously informed the Conservancy of its intentions to apply for Federal Trust ownership of its harbor properties and that, as part of that application process, the Conservancy would be notified and offered the opportunity to comment. However, the Conservancy did not receive notification of the availability of this EA for comment. Had the City of Trinidad not forwarded the notice of availability to staff, the Conservancy would have missed its opportunity to comment. We presume the Rancheria and the BIA will notify the Conservancy when the Rancheria's application for Federal Trust ownership is available for comment. Please add the Conservancy to your mailing list for further actions toward transfer of the Trinidad Harbor Pier to Federal Trust ownership.

Thank you for your consideration of these comments. We would welcome the opportunity to speak with you and the Rancheria to discuss possible changes to the project scope and mitigations for the impacts. If I can provide additional information please contact me at su.corbaley@scc.ca.gov or 510-286-6767.

Regards,



Su Corbaley
Project Manager

Cc: Jacque Hostler-Carmesin, CEO, Trinidad Rancheria
Dan Berman, Trinidad City Manager
Mark Delaplaine, California Coastal Commission

From: Nick Appelmans

To: Energy@Coastal

Subject: Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad)

Date: Friday, March 1, 2019 1:56:38 PM

Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad)

OPPOSED

To: The Members of the California Coastal Commission

I had been a resident of McKinleyville, CA from 2000 to 2015 and at that time my wife and I raised our children there. The Trinidad harbor was the only place for us to safely launch our kayaks and explore the coastal environs. That launch site is unique in the state of California. Even with large surf breaking elsewhere, you can still get out of that harbor. I know of no place north or south that has that same quality. Furthermore, I don't believe that any one group should have the opportunity to monopolize a resource like that. Please consider denying the application application to transfer the harbor and pier area into a federal trust.

Thank you for your consideration and for the work that you do to make the unique California coast available to all regardless of their socioeconomic status.

Sincerely,
Nicholas Appelmans
4008 SE Schiller St
Portland, OR
97202

EDWARD C. PEASE
PO Box 996
Trinidad, California 95570

February 27, 2019

California Coastal Commission
45 Fremont Ste., Ste. 2000
San Francisco, CA 94105

Re: Item No. Th10b

Dear Commissioners:

We are writing to join our neighbors in Trinidad, including the City of Trinidad and the Humboldt Alliance for Responsible Planning (HARP), in opposing the proposal by the Cher-Ae Heights Indian Community of the Trinidad Rancheria to convert nine parcels of property it owns on the Trinidad Harbor waterfront to federal trust land.

The property in question encompasses all access to Trinidad Harbor, the only harbor and launchable beach between Humboldt Bay and Crescent City. While it is understandable why the Rancheria would wish to gain greater autonomy and less accountability to the City of Trinidad and the public with regards to use and development of this property, there is no evidence that this action would benefit the California public. Rather, it is easy to see how transferring these properties to trust status could be contrary to public interest in terms of citizen voice and municipal oversight regarding land use, and in terms of public access to the shore.

Since the reason for the creation and existence of the Coastal Commission is to be a steward for state coastal lands in order to preserve and safeguard public use and access, it would appear that limiting such access through approval of its change to trust status would be contrary to both the spirit and the letter of the Coastal Management Zone Act.

There is no compelling public interest in placing this land in trust. The CCC's own April 2017 letter to the Bureau of Indian Affairs (BIA) regarding this fee-to-trust action raised this same point: There is no need for the property to be placed in trust for the proposed property improvements — including storm drainage and a visitors center — to go ahead. Other recent state-funded improvements, including

the pier, wastewater system and public restrooms, all were accomplished on the property without it being placed in trust.

Although the Rancheria's proposal promises vague measures to ensure future public access to Trinidad Harbor, there is in fact no guarantee of free access in perpetuity. The Rancheria is an excellent neighbor and partner in the overall Trinidad community, but things change over time, and today's promises can be forgotten. This is illustrated in letters to the Commission regarding this action from Jim Cuthbertson, former mayor pro-tem of Trinidad, and Bob Hallmark, the previous owner of the pier and harbor property. Both clearly recall specific assurances from the Rancheria leadership at the time of the sale of the land in 2000 that the Rancheria would never seek to place the land into trust. Based on failure of past promises, Trinidad residents and the thousands of others who come to make use of Trinidad Harbor — again, the only harbor within miles on this coast — have reason to worry about their future right of full access. Citizens are guaranteed use of the pier under its state funding protocols only until 2032. What happens after that? The Rancheria may promise access to Launcher Beach, which is public land below the high tide mark, but as past experience shows, that could change.

As the staff report notes, the Coastal Commission will have standing on future development on the ~10 acres of Coastal Zone only if such development engages federal entities, for example in the form of funding or federal loan guarantees. Any other developments within this area, if funded privately, might then proceed with little or no public or governmental input or oversight. This lack of public engagement with this crucial part of the town and coast would not be possible except under the proposed trust status.

So the question that the public and the Commission must ask again is how this action in any way will benefit the people of California. It will not.

We urge the Coastal Commission to reject this proposal. It is not in the best interests of the public, now or in the future.

Sincerely,

Edward C. Pease, PhD
Brenda Cooper, PhD

Cc: U.S. Rep. Jared Huffman, Sen. Dianne Feinstein, Sen. Kamala Harris, Bureau of Indian Affairs, City of Trinidad, Trinidad Rancheria

From: Ed Schreiber
To: Energy@Coastal

Subject: Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad).
Date: Friday, March 1, 2019 3:05:02 PM

To whom it may concern:

I am writing in regard to agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad).

I am **Opposed** to the Trinidad Rancheria's application to place its properties at Trinidad Harbor into a Federal trust.

I am a sea kayaker residing in Eureka. I and friends kayak out of Trinidad weekly. It is really rewarding paddling there as often as we do. Free and unhindered public access is needed for both kayakers and power boaters to responsibly enjoy the area. Placing the referenced properties in a Federal Trust status could eventually result in reduced/restricted access by the public.

The California Coastal Act (CCA) is valuable state law that protects our coastal resources from unregulated development. The noticing and hearing requirements allow for full public participation in the coastal development permit (CDP) process.

If the Trinidad Rancheria's harbor properties is placed under federal status, public members would not enjoy the same noticing requirements and public participation they enjoy under the CCA. This all would be lost in the transfer.

Sincerely,

From: Dan Crandall

To: Energy@Coastal

Subject: Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad).

Date: Friday, March 1, 2019 3:10:57 PM

OPPOSED!

I am writing in reference to : Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad). As a lifelong resident of California I am vehemently opposed to the potential for the public access to the water in Trinidad Harbor.

I went to college at Humboldt State , received my degree in Forestry and Natural Resources there in 1981. and lived there for many years afterwards and the Trinidad harbor is a place that I frequented as a fisherman, a birder, a kayaker, a crabber and simply for the access to walking or hanging out on the beach at such a beautiful location. As a college student there I help establish the Arcata Marsh project along with other students as we were there when it was drained and we went out and replanted it and helped build the first trails, etc. .

Before I was in college there my grandmother owned the Seacliff Motel on the road above Trinidad overlooking the Bay and I spent many childhood years there fishing in and out of the harbor, launching our own boat on the sling rail launch, or renting boats from the concessionaire there.

Since my years in College and as the owner of a kayak School and company for the last 25 years I have paddled out of Trinidad harbor with many friends, used the iconic scenic beauty of it for kayak instructional videos in the 90s, and always looked forward to the next time I would be able to come back to the launch area and paddle or fish there again. Closing that access of to the public's use is unthinkable in my mind for so many reasons and I implore to you keep that access open in perpetuity and deny any action including the placing of the harbor area in a Federal Trust that would allow (per my understanding) any possibility to limit public access there. If anything the access should be protected forever in some way so that no schemes, be they for money or otherwise could possibly eliminate such an amazing public access point from use.

Sincerely

Daniel R. Crandall

Dan Crandall - owner

www.kayaking.com

www.TheRiverStore.com

www.CurrentAdventures.com

888.452.9254

530-333-9115

From: Ed Schreiber

To: Energy@Coastal

Subject: Resending FW: Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad).

Date: Friday, March 1, 2019 3:11:10 PM
Resending

From: Ed Schreiber [mailto:elschreiber@suddenlink.net]

Sent: Friday, March 01, 2019 3:05 PM

To: 'EORFC@coastal.ca.gov' <EORFC@coastal.ca.gov>

Subject: Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad).

To whom it may concern:

I am writing in regard to agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad).

I am **Opposed** to the Trinidad Rancheria's application to place its properties at Trinidad Harbor into a Federal trust.

I am a sea kayaker residing in Eureka. I and friends kayak out of Trinidad weekly. It is really rewarding paddling there as often as we do. Free and unhindered public access is needed for both kayakers and power boaters to responsibly enjoy the area. Placing the referenced properties in a Federal Trust status could eventually result in reduced/restricted access by the public.

The California Coastal Act (CCA) is valuable state law that protects our coastal resources from unregulated development. The noticing and hearing requirements allow for full public participation in the coastal development permit (CDP) process.

If the Trinidad Rancheria's harbor properties is placed under federal status, public members would not enjoy the same noticing requirements and public participation they enjoy under the CCA. This all would be lost in the transfer.

Sincerely,
Edward Schreiber
P.O. Box 6297
Eureka, CA 95502

From: [Tim I McClure](#)

To: Energy@Coastal

Subject: Re: Comments on - Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad).

Date: Friday, March 1, 2019 3:33:51 PM

(if the prior submitted comment could have "skill" updated to "skiff", it might eliminate confusion - I apologize for missing that while proofreading and submitting.)

Tim

On Fri, Mar 1, 2019 at 3:21 PM Tim I McClure <Timothy.McClure@humboldt.edu> wrote:

Comments on - Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad).

Timothy I. McClure

2253 Fern St. #3

Eureka, CA, 95503

OPPOSED

By passing these lands into federal trust, Trinidad Rancheria aims to eliminate competition for their boat launching business by restricting other marine access at the site. This is evident based on my interactions with Rancheria staff, which are consistent with the allegations of harassment experienced by other divers and nonmotorized boaters, along with broader circumstances and considerations that strengthen the argument of nefarious intent by the Rancheria.

While diving legally in Trinidad Bay per the marine regulations set out in 33 CFR 165 and 46 USC 2303 and on nautical charts, the boat launcher staff on the Rancheria property have repeatedly harassed me from their skill while I was still in the water (sometimes guiding less-experienced diving friends), threatening to trespass me from the property as my diver down float and flag (technically, not a legal requirement here in CA, just a courtesy to other mariners) supposedly infringe on anglers' ability to navigate in "their" bay. From these interactions it's become clear that those employed by Trinidad Rancheria believe that anglers deserve priority use, and they have a historically implicit right to limit the use of Trinidad Bay based on the tribal ownership of the property, deciding who does and does not deserve this access. In these instances, I've de-escalated the conflict after exiting the water, by calling their bluff and volunteering to call up Coast Guard Sector Humboldt Bay's public affairs office to discuss what regulations apply. However, they're only bluffing as long as the public right to access remains a legal requirement. The launcher staff clearly harass people who don't pay for their service - kayakers, divers, and boaters with craft small enough to trucklaunch on the beach. However, it is unclear how the ability to monopolize this access will increase the revenue of their businesses on the property. As SCUBA divers, we frequent the restaurant following dive days, and surely the income generated by kayakers, divers, and small-craft boaters at the restaurant alone is

significant. Further, eliminating these legitimate uses of Trinidad Bay will not increase the usage of their launcher - ostensibly the rationale for their preferential treatment of those who are paying launching fees. Ultimately - the public right to access the Pacific Ocean at Trinidad Bay is a unique feature in the region that provides indirect economic value to both the Trinidad Rancheria and the town of Trinidad. Passing these lands into federal trust in order to regulate access will do nothing but degrade those economic benefits... suggesting that this is a misguided approach for the Rancheria in the first place. Furthermore, there is no reason that the development of a Visitor Center, or any other improvements to the Rancheria properties to increase economic output cannot be achieved under current oversight by the Coastal Commission and California State Law.

Beyond my direct experiences - there are several other considerations that suggest this land should not be put into federal trust. First of all - the basis that the staff have used to rationalize their right to choose who should and shouldn't be allowed access has been that historically this was "tribal" land. The Trinidad Rancheria was created in 1906 as a refuge for displaced Indians of many different tribes, including Yurok, Wiyot, Tolowa, Chetco, Karuk and Hupa people. However, "The Yurok Tribe maintains a standing objection to the Bureau of Indian Affairs and the U.S. Department of the Interior taking into trust any land for Trinidad Rancheria, or any other Tribe, within Yurok Ancestral Territory," states a letter written by Yurok Tribal Chair Thomas P. O'Rourke, Sr., to the BIA on April 17, 2017. "All of the parcels in the Rancheria's fee-to-Trust application are located outside of Trinidad Rancheria and within the exterior boundaries of Yurok Ancestral Territory, defined by the Yurok Constitution and federal case law." Secondly, is it any coincidence that this is coming before the Coastal Commission at Commissioner Sundberg's last meeting before assuming the role of Executive Director of the Trinidad Rancheria? Anything short of his recusal would be a gross abuse of the position and would reflect an extreme conflict of interest.

If this land is passed into federal trust I also firmly believe that, as others have said, we will soon see efforts to impede access to Trinidad Bay.

Thank you for your time.

Timothy I McClure

From: Andrew Orahoske

To: Energy@Coastal

Subject: Public Comment on March 2019 Agenda Item Thursday 10b - CD-0006-18 (Bureau of Indian Affairs, Trinidad)

Date: Friday, March 1, 2019 3:50:39 PM

OPPOSED

I am writing to urge the Commission to vote against transferring these lands out of Coastal Act jurisdiction. The lack of safeguards for coastal resources without Coastal Act protections means that the proposed action can not be "consistent" with the Coastal Act.

Numerous species of rare, threatened and sensitive fish and wildlife species rely on the area and will likely be negatively impacted by the loss of Coastal Act protection on these lands. The species observed include, but are not limited to:

Marbled Murrelets use the near shore water just off the subject land for critical foraging habitat in the breeding season and for rearing of juveniles. Increased disturbance, pollution and other development related impacts are a concern at this site. The biological section of the staff report should address this species.

Black Oystercatcher breed and forage on the near shore rocks. Like Murrelets, this species is of concern due to the impacts of development at this site.

Peregrine Falcons breed nearby and use the site for foraging.

Pacific Harbor Seals and Gray Whales use the near shore area for foraging, resting and juvenile rearing, especially for the whales' northbound migration.

Healthy Kelp Forests are found adjacent to the site, and could be threatened by development.

The commission should reject the consistency determination and officially object to the BIA's proposal.

In addition, the commission should schedule a hearing closer to the site, in Humboldt County so that interested and affected public can attend.

Thank you for the opportunity to provide comments.

Andrew Orahoske

PO Box 4275

Arcata, CA 95518

From: [mike sawyer](#)

To: [Energy@Coastal](#)

Subject: Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad)

Date: Friday, March 1, 2019 4:06:30 PM

Agenda Item Thursday, March 7, Federal Consistency 10.b, App. No. CD-0006-18 (BIA, Trinidad) OPPOSED!

I oppose the transfer of the harbor/pier area into federal trust.

This is the only access to the Trinidad area for us kayakers and this transfer would be devastating to the community of Trinidad!

Thank you for your consideration,

Mike Sawyer
490 Viewpoint Dr
Redding, CA 96003

From: Teri Savage
To: Energy@Coastal
Subject: March 7: CD 0006-18
Date: Friday, March 1, 2019 4:28:42 PM

California Coastal Commission,
If the Trinidad Rancheria wants to federalize in the midst of the Trump administration does that not betray their anti indigenous intent?

The Ancestral Society's opposition to federalization is concerning considering the burials grounds in the very near vicinity.

How much else does the Trinidad Rancheria own directly or indirectly that could create the environment for a large resort, filling the entire vicinity of current coastal access? Local elites being able to keep the commoners from coastal access is the epitome of corruption and has no place in our environmentally conscious, inclusive community.

Thank-you



Yurok Tribe-OPPOSED
Agenda Item No. Th10b
Consistency Determin. No. CD-0006-18

Second, and most relevant to the Yurok Tribe, the entire proposal is offensive, inappropriate, and an environmental justice violation as it relates to the Yurok Tribe and the Tsurai Ancestral Society. All parties acknowledge that these parcels are not within the Rancheria's territory and are instead within Yurok Ancestral Territory. The very idea of granting a trust application to the Rancheria within Yurok's Ancestral Territory is offensive. While the Rancheria may indeed have a few members with some Yurok ancestry, the same can be said for dozens of tribes spread across the country due to intermarriage among various tribal communities. That fact does not give those tribes, nor the Rancheria, any right to trust land within another Tribe's jurisdiction. Regarding the Rancheria in particular, Yurok descendants had the option to join the Yurok Tribe or take a cash buyout to give up all rights to Yurok lands and resources so it is particularly inappropriate for the Rancheria to claim rights within Yurok Ancestral Territory. Moreover, the BIA proposes this action without having conducted proper government-to-government consultation with the Yurok Tribe, the obvious tribal stakeholder here.

Appallingly, a stated purpose of the trust application is to allow the Rancheria to exercise sovereign authority of the land, land that is within the Yurok Tribe's Ancestral Territory, more specifically the traditional Yurok village of Tsurai. Immediately adjacent to the harbor project are Yurok burial grounds which require careful maintenance to avoid erosion and have already sustained heartbreaking damage. The traditional village residents would obviously have used the harbor to access marine resources but the village also has important cultural sites still cherished by the Yurok people for spiritual reasons. A proposal to allow a Rancheria to exercise governmental power over these areas is distressing, deeply offensive, and wholly inappropriate. The visitor center is a ground disturbing construction project within the area of the Tsurai ancestral village with the potential to unearth and impact cultural resources. The logistical problems of this proposal are demonstrated by the BIA's Draft Environmental Assessment (EA). The EA fails to specify that any Yurok tribal officials will be notified and involved in any such inadvertent discoveries on the Rancheria's proposed trust lands despite acknowledging that the village of Tsurai is, and has been since time immemorial, a Yurok village. Previous work, such as on the pier project, has required Yurok cultural monitors be present, properly acknowledging our Tribe's relationship to this village. The Yurok Tribe's sovereignty and spirituality is being singled out and trampled upon.

To pour salt on that wound, the intended use of the trust land includes the establishment of a visitor center where the Rancheria will educate the public about its cultural resources. Surely, this could be infinitely more appropriately done within the Rancheria's territory and not within Yurok Ancestral Territory. The Rancheria, whose members descend from many tribes, is not the appropriate voice to speak to Yurok's territory and resources. Allowing the Rancheria to be the voice to speak to our culture and resources is unfair, and it belittles and silences the Yurok people and threatens our Yurok cultural resources. Other minority or majority populations in the State do not have to withstand such an affront with the blessing of the federal and state government, and neither should the Yurok Tribe.

Finally, the EA and application rely on laughably inaccurate assumptions. For example, the estimate of an average of five visitors per day to the visitor center is deceptive. We agree with the City of Trinidad that the Commission and BIA must consider averages during peak season when analyzing the impacts of the project. The City of Trinidad hosts several festivals every year and local businesses draw visitors consistently. In fact, Native American tourism is a large growth area—several years ago, the U.S. Department of Commerce predicted a twenty percent increase in tourism in Indian country by 2020. A tribal visitor center can expect increasing visitors, including many

tourist families and even school groups. The harbor area sees many resident and tourist visitors during the peak summer period and the realistic impact of the visitor center on the summer peak should be analyzed. There are multiple historic and natural features that draw more and more visitors to the very quaint City of Trinidad and harbor area. The cumulative effect of increasing traffic to Trinidad Head and the proposed harbor should be considered together. This fundamental inaccuracy throws into question the analysis of roadway operations and transit services for the harbor project and must be corrected before the Commission can grant a federal consistency determination.

Thank you for considering carefully the comments of the Yurok Tribe. We request the Commission deny this application or at the very least table the application to a future meeting to allow robust tribal consultation.

Sincerely,

Joseph L. James
Chairman



Cher-Ae Heights Indian Community of the Trinidad Rancheria



March 1, 2019

John Weber
Commissioners
California Coastal Commission
45 Freemont Street, #2000
San Francisco, CA 94105

RE: Response to Comments Related to Trinidad Rancheria's Fee-to-Trust Application and Request for Coastal Commission Concurrence

Honorable Commissioners and Mr. Weber:

This letter is written in response to comments related to Trinidad Rancheria's Fee-to-Trust (FTT) Application and Request for Concurrence from the California Coastal Commission.

Response to Concerns Related to PUBLIC ACCESS:

Trinidad Rancheria is committing, via a Tribal Resolution, to adopt a Tribal Ordinance that maintains public access to its harbor properties. This commitment comes with assurances from the Bureau of Indian Affairs (BIA), and the Rancheria is "committing to coordinate any future, currently unanticipated, development proposals or changes to public access," per the conditional concurrence required by the Commission. These actions demonstrate that the Rancheria is committed to open public access and has been since negotiations to purchase the properties began. Trinidad Rancheria has owned the harbor properties since 2000, and has **never wavered** in its commitment to public access in the nearly 20 years since.

Response to JURISDICTIONAL CONCERNS:

In 2000, the Trinidad Rancheria irrevocably granted an easement for public access. Additionally, the tidelands lease between the Rancheria and City provides for public access to the Rancheria's harbor lands; the Rancheria, Coastal Conservancy, and City public interest agreement provides for access to the Rancheria's harbor lands; and the Rancheria placed the Trinidad Pier on the National Tribal Transportation Facility Inventory, and applicable federal regulations required that such facilities be open and available for public use, except for temporary restrictions when required for public health or safety.

Governmental Authorities: The Commerce Clause, the Indian Reorganization Act of 1934 allow for tribes to take land into trust for the economic, cultural and social well-being of said tribes. Taking land into trust is done to expand tribal sovereignty, self-determination and self-governance. By purchasing the harbor properties, the Rancheria has expanded its land holdings, and now wishes keep the land in trust for future generations.



www.trinidadrancheria.com

1 Cher-Ae Lane • PO Box 630 • Trinidad, California • 95570 • 707.677.0211 • 707.677.3921 (fax)

Water Quality – The Rancheria has developed a plan to comply with the Special Protections for Areas of Special Biological Significance (ASBS), Governing Point Source Discharges of Storm Water and Nonpoint Source Waste Discharges. The ASBS Compliance Plan is subject to approval by the Executive Director of the State Water Board. As an additional requirement of the ASBS Compliance Plan for Waterfront and Marine Operations the Rancheria has developed a Waterfront Operations Plan. In accordance with SWRCB Resolution No. 2012-0012, ASBS dischargers with nonpoint-source discharges related to waterfront and marine operations are required to develop a waterfront and marine operations management plan. The waterfront plan shall contain appropriate management measures and best management practices (BMPs) to address nonpoint-source pollutant discharges to the ASBS of concern.

Environmental Concerns – Trinidad Rancheria is a proponent of strict environmental practices and stewardship, and has demonstrated this by cleaning up the harbor properties pursuant to the California Ocean Plan agreement. a wastewater treatment facility and public restrooms were installed, and stormwater mitigation planning was commenced. All Rancheria projects, past, present and future will consider impacts to the harbor environment first and foremost. Allegations that the Rancheria's actions will harm the environment are extremely false.

Response to Concerns Related to the CULTURAL AND HISTORIC TIES OF TRINIDAD RANCHERIA

Trinidad Rancheria's members are people of historic Yurok origin and occupy lands in historic Yurok ancestral territory. There are allegations that the Rancheria's projects might interfere with or do harm to Tsurai Village, a significant historic Yurok village site. This is simply not true. The Tsurai Village lies within a 12-acre parcel known as the Tsurai Study Area (TSA). The harbor properties requested to be put into trust are parcels that do not overlap, in any way, with the TSA. Trinidad Rancheria maintains that because they are of Yurok descent, they do, in fact, possess knowledge of Tsurai Village and its important ceremonial and archeological sites. The Rancheria does not wish to cause any harm to the Tsurai Village site, and has always been respectful of the site as it is an important cultural and historic site to Rancheria members as well.

Yurok Ancestral territory is the territory of Yurok people, not exclusive to members of the Yurok Tribe. Claims that Trinidad Rancheria is attempting to take land into trust that lie within the Yurok Tribe's ancestral territory are misguided. Again, the Yurok Tribe and the Trinidad Rancheria are made up of people of historic Yurok origin, so one tribe's claim of jurisdiction over the entirety of Yurok ancestral territory is completely inappropriate.

Sincerely,



Jacque Hostler-Carmesin
CEO