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STAFF REPORT: REGULAR CALENDAR

Consistency Determination No.: **CD-0006-18**

Federal Agency: **Bureau of Indian Affairs**

Location: Nine parcels of land adjacent to Trinidad Harbor, in the town of Trinidad, Humboldt County (**Exhibits 1 and 2**)

Project Description: Trust transfer of approximately ten acres of land and subsequent development of stormwater improvements and construction of a 1,300 square foot visitor's center.

Staff Recommendation: Conditional Concurrence

SUMMARY OF STAFF RECOMMENDATION

The Bureau of Indian Affairs (BIA) has submitted a consistency determination to place approximately ten acres currently owned in fee title by the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) into federal trust status with the United States. The proposed fee-to-trust property, located in Trinidad, Humboldt County, currently contains a parking lot and adjoining access way (Bay Street), restaurant, small temporary buildings providing storage and serving as a gift and tackle shop, and a single family residence (used as a vacation rental); approximately half of the area of this land is open space. Once the subject property has been placed into trust, the Trinidad Rancheria proposes to construct a visitor center and stormwater improvements to provide stormwater treatment for the paved areas of Bay Street and adjacent parking.

The visitor center would be a single-story, 1,300-square foot building in space currently occupied by the existing temporary buildings. The visitor center would be open to the public and would provide “educational opportunities for tribal citizens and non-tribal members of the public, focusing on regional resources including Tribal cultural resources” according to the BIA consistency determination. The Trinidad Rancheria has agreed to provide staff with design details for the visitor center once they have been prepared.

The stormwater improvements would treat runoff from Bay Street and the adjacent parking areas that discharges into Trinidad Bay. These improvements would include the construction of cisterns, dry wells, rain gardens, installation of permeable pavement, and a bioswale along Bay Street. Since purchasing the subject property, the Trinidad Rancheria has pursued grants to address stormwater pollution; the subject stormwater improvements are supported by a grant from the State Water Quality Control Board. The Trinidad Rancheria has agreed to include Commission staff in the review of the stormwater improvements as their design progresses.

The proposed project includes mitigation measures to address potential effects of construction activities associated with the visitor center and stormwater improvements on water quality, existing habitats and the potential presence of sensitive species, and to previously unidentified archaeological and paleontological resources that may be disturbed by construction activities.

The subject property supports activities that are integral to the operation and character of the harbor, such as by providing public access and other support functions to the existing pier, Trinidad Beach State Park, Trinidad Head, Launcher Beach, and the existing restaurant. According to the BIA consistency determination, approximately half of the area of the subject property is currently open space and “would be preserved as open space and the Tribe would maintain public access to the open space.” The Tribe has expressed its intent to adopt a Tribal Resolution recognizing the importance of the existing uses, including open space and public access, in the subject property and expressing its commitment to maintaining this open space and public access. In addition, staff is recommending a condition directing the BIA 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 goal of this coordination will be to assure that with such future activities and or changes to public access, the project will remain consistent with the public access and recreation policies of the Coastal Act.

The staff therefore recommends the Commission **conditionally concur** with the BIA’s consistency determination and find the proposal, as conditioned, consistent with the public access (Section 30210-12), recreation (Section 30221), upland (Section 30223), marine resources (Section 30230), biological productivity (Section 30231), archeological or paleontological resources (Section 30244), and scenic and visual resource policies (Section 30251) of the Coastal Act. If the BIA does not agree to the condition, the Commission’s action will be treated as an objection.

The standard of review for this project is the Chapter 3 policies of the Coastal Act. The motion to conditionally concur is on page 4.

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EXHIBITS

- Exhibit 1 – Regional context
- Exhibit 2 – Vicinity map
- Exhibit 3 – Proposed property for fee-to-trust action
- Exhibit 4 – Proposed stormwater improvements
- Exhibit 5 – Public views in the project vicinity and proposed visitor center location
- Exhibit 6 – Habitats in the project area

I. FEDERAL AGENCY’S CONSISTENCY DETERMINATION

The Bureau of Indian Affairs has determined the project consistent to the maximum extent practicable with the California Coastal Management Program (CCMP).

II. MOTION AND RESOLUTION

Motion:

*I move that the Commission **conditionally concur** with consistency determination CD-0006-18 on the grounds that, if modified as described in the Commission’s conditional concurrence, the project would be fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the CCMP.*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence with the determination of consistency, provided the project is modified in accordance with the recommended condition, and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution:

*The Commission hereby **conditionally concurs** with consistency determination CD-0006-18 by the Bureau of Indian Affairs on the grounds that the project would be fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the CCMP, provided the BIA agrees to modify the project consistent with the condition specified below, as provided for in 15 CFR §930.4.*

Condition:

The BIA will assure that the Tribe will adopt Tribal Ordinances and submit them to the Executive Director of the Commission, committing to coordinate any future, currently unanticipated, development proposals or changes in public access with the Commission staff. The goal of this coordination will be to assure that with such future activities and/or changes to public access, the project will remain consistent with the public access and recreation policies of the Coastal Act.

III. APPLICABLE LEGAL AUTHORITIES

A. Standard of Review. The federal Coastal Zone Management Act (“CZMA”), 16 U.S.C. § 1451-1464, requires that federal agency activities affecting coastal resources be “carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of

approved State management programs.” *Id.* at § 1456(c)(1)(A). The implementing regulations for the CZMA (“federal consistency regulations”), at 15 C.F.R. § 930.32(a)(1), define the phrase “consistent to the maximum extent practicable” to mean:

... fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

This standard allows a federal activity that is not fully consistent with California’s Coastal Management Program (“CCMP”) to proceed, if full compliance with the CCMP would be “prohibited by existing law.” In its consistency determination, the BIA did not argue that full consistency is prohibited by existing law or provide any documentation to support a maximum extent practicable argument. Therefore, there is no basis to conclude that existing law applicable to the Federal agency prohibits full consistency. Since the BIA has raised no issue of practicability, as so defined, the standard before the Commission is full consistency with the enforceable policies of the CCMP, which are the policies of Chapter 3 of the Coastal Act (Cal. Pub. Res. Code §§ 30200-30265.5).

B. Conditional Concurrences. The federal consistency regulations (15 CFR § 930.4) provide for conditional concurrences, as follows:

(a) Federal agencies, ... should cooperate with State agencies to develop conditions that, if agreed to during the State agency’s consistency review period and included in a Federal agency’s final decision under Subpart C ... would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency’s concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency’s conditional concurrence letter as an objection pursuant to the applicable Subpart . . . ; and

(2) The Federal agency (for Subpart C) ... shall modify the applicable plan [or] project proposal, ... pursuant to the State agency’s conditions. The Federal agency ... shall immediately notify the State agency if the State agency’s conditions are not acceptable...;

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency’s conditional concurrence as an objection pursuant to the applicable Subpart.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The Bureau of Indian Affairs (BIA) has submitted a consistency determination for the placement of property in the city of Trinidad (**Exhibit 1**) currently owned in fee title by the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) into federal trust status with the United States on behalf of the Trinidad Rancheria. The subject property consists of a total of 10.01 acres and is adjacent to Trinidad Harbor and Trinidad Head (**Exhibit 2**) as outlined in **Exhibit 3**, which also identifies the subject parcels and their sizes. Portions of this property currently are developed with a restaurant, a rental home, small buildings that support harbor activities, and parking and access (along Bay Street) for the Harbor, pier, beaches, and Trinidad Head; a majority of this property is open space (**Exhibit 3**).

After this property has been placed into federal trust, the Trinidad Rancheria proposes to construct a visitor center and complete several stormwater improvements along Bay Street and the adjacent parking area (**Exhibit 4**). According to the draft Environmental Assessment (EA) for the proposed project, the stormwater improvements would be constructed during the first phases of the construction of the visitor center with construction of both elements anticipated to last five to six months.

The proposed single-story, 1,300 square-foot visitor center would replace several small temporary buildings that currently are used as storage, an office for the Harbor Master, and a tackle and gift shop (**Exhibit 5**). In its consistency determination, the BIA describes the visitor center as intended to “provide educational opportunities for tribal citizens and non-tribal members of the public, focusing on regional resources including Tribal cultural resources.” The visitor center would be staffed by one full-time equivalent employee and would include a seating and reception area, two offices (with one office for the Harbor Manager), a restroom, and a food preparation area, with parking provided at the existing parking lot along Bay Street. The Trinidad Rancheria estimates five visitors per day during peak tourism season calling at the visitor center, according to the draft EA for the proposed project.

The Trinidad Rancheria’s proposed stormwater improvement features would treat runoff from Bay Street and the adjacent parking areas that currently discharges into Trinidad Bay (**Exhibit 4**). These improvements would include the construction of cisterns, dry wells, rain gardens, replacement of existing concrete rubble with rip-rap along the edge of the pavement behind the existing temporary buildings, installation of permeable pavement, and a bioswale along Bay Street, as shown in **Exhibit 4**.

According to the consistency determination for the proposed project, “[a] majority of the proposed trust parcels would be designated by the Tribe as open space...[a]ll existing open space within the project site (approximately five acres) would be preserved as open space and the Tribe would maintain public access to the open space.”

One of the purposes for the proposed fee-to-trust action is to increase tribal sovereignty, self-determination, and self-governance. Past Commission actions have been conducted in acknowledgement of this purpose, with an accompanying recognition that a fee-to-trust action necessarily modifies the effect and scope of state law authority in three ways:

1. While the City of Trinidad currently does not 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 (LCP), 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, one effect of the proposed federal consistency action would be to eliminate this CDP review process procedure, which could 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 also would no longer occur if the land were put into trust. 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 development review process.
3. Once the land is in trust, the Commission retains federal CZMA authority to perform future federal consistency reviews. However, that authority would be less extensive than state law CDP authority for three reasons:
 - a. Such reviews would only be triggered if an activity needed a federal permit, federal funding, or was being carried out by a federal agency.
 - b. The property would no longer be considered "within the coastal zone" but would be treated as similar to federal land, in which case the Commission would be limited to reviewing an activity's effects on coastal resources located outside the trust property boundary.
 - c. The Commission would not have the benefit of a formal local government review.

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.

B. RELATED COMMISSION ACTIONS

Since 2000, the Commission has concurred with consistency determinations and negative determinations from the Bureau of Indian Affairs on several fee-to-trust actions involving federally-recognized Tribes. These include:

- ND-035-00 for the conveyance of five parcels into trust for the Smith River Rancheria and subsequent use of the parcels for parking.

- ND-064-00 for the conveyance of four parcels into trust for the Smith River Rancheria and subsequent use of the parcels for residential uses and a Head Start facility.
- ND-037-02 and ND-069-02 for the conveyance of six parcels into trust for the Yurok Tribe; negotiations and coordination resulted in an agreement with the BIA and the Yurok Tribe that future development activities on these parcels would be subject to federal consistency review pursuant to the Coastal Zone Management Act.
- CD-054-05 for the conveyance of the Martin Ranch parcel for the Elk Valley Rancheria, and the subsequent construction of a gaming casino, resort, restaurant, parking, and associated improvements.
- ND-007-09 for the conveyance of 7.19 acres into trust for the Smith River Rancheria and construction of retail space and eight single family homes.
- ND-046-09 for conveyance of three parcels into trust for the Smith River Rancheria and subsequent use of the parcels for a health clinic and eight single-story dwelling units for elder tribal members.
- CD-063-10 for conveyance of three parcels into trust for the Smith River Rancheria and development of 26 single family residences and 15,000 square feet of commercial space.
- ND-016-11 for conveyance of a two acre parcel into trust for the Elk Valley Rancheria and improvements to an existing motel.
- CD-024-12 for conveyance of a 2.44 acre parcel into trust for the Smith River Rancheria and subsequent expansion of an existing parking lot for recreational vehicle parking stalls.

In addition to these concurrences, the Commission objected to CD-077-06, which was a fee-to-trust action for five acres owned by the Big Lagoon Rancheria and subsequent construction of three residential buildings. The objection centered on the three residential buildings and their lack of consistency with Coastal Act Sections 30250 and 30253; proposed conditions that could have resulted in concurrence focused on reducing the density and scale of the residential development, and the need for Tribal Ordinances or other equivalent mechanisms assuring coordination for future development not currently contemplated. The BIA has not yet responded to the letter notifying it of the Commission's action (and thus has not formally indicated whether BIA agrees or disagrees with the conditions).

Additionally, at its February 2019 meeting, through CDP 1-18-0630 the Commission approved the relocation of the Trinidad Memorial Lighthouse to a temporary site (up to four years) near the western end of Bay Street where it intersects with the parking area serving Trinidad State Beach (**Exhibit 3**). The temporary site for the lighthouse is on a parcel that is included in the fee-to-trust action that is the subject of this consistency determination. The applicant in CDP 1-18-0360, the Trinidad Civic Club, "has expressed its intent to seek authorization for a permanent site for the [Trinidad Memorial Lighthouse] nearby within the upland area of the harbor prior to the end of the four year authorization period."

C. OTHER AGENCY APPROVALS AND TRIBAL CONSULTATIONS

U.S. Environmental Protection Agency (EPA)

Through the National Pollutant Discharge Elimination System (NPDES) permitting program under the federal Clean Water Act, the U.S. EPA regulates waste discharges into receiving waters from federal lands, including from construction activities. As part of the NPDES general construction permit that the Trinidad Rancheria would obtain for this project, a stormwater pollution prevention plan would be prepared and implemented. The Trinidad Rancheria would be applying for the NPDES permit following the fee-to-trust action.

State Water Quality Control Board (State Water Board)

The Trinidad Rancheria is designing the stormwater improvements included in the BIA consistency determination through grant funding obtained from the State Water Board. This grant includes a requirement for State Water Board review of the design of the stormwater improvements, which the Trinidad Rancheria is intending to submit on April 1, 2019 (Jonas Savage, Environmental Director for the Trinidad Rancheria, personal communication, February 1, 2019).

Tribal Outreach

During the process of reviewing this project and developing this recommendation, Commission staff reached out to representatives of the Yurok Tribe and the Tsurai Ancestral Society, who are understood to have current and historic connections to the project area. As is the case with the Trinidad Rancheria, the Yurok Tribe is a federally-recognized tribe. In previous correspondence related to the proposal, the Yurok Tribe stated that “[t]he Yurok Tribe maintains a standing objection to the BIA and [Department of] Interior taking into trust any land for Trinidad Rancheria, or any other Tribe, within Yurok Ancestral Territory.” (Yurok Tribe 2016). This general sentiment also was transmitted via e-mail during the staff review of the BIA’s consistency determination (Amy Cordalis, attorney for the Yurok Tribe, personal communication, January 2019). The Tsurai Ancestral Society requested general information about the proposed fee-to-trust action and stated that the proposal was “problematic for many reasons” (Sarah Lindgren-Akana, personal communication, February 2019). Any concerns raised subsequent to the publication of this report will be brought to the attention of the Commission through the development of an addendum to this staff report and recommendation.

D. PUBLIC ACCESS AND RECREATION

Section 30210 of the Coastal Act states:

In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*
- (b) *For purposes of this section, "new development" does not include:*
 - (1) *Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.*
 - (2) *The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.*
 - (3) *Improvements to any structure which do not change the intensity of its use, which do not increase the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.*
 - (4) *The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure.*
 - (5) *Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.*

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Currently, the land areas that are the subject of the BIA's consistency determination provide parking and support public access to the existing restaurant, Trinidad State Beach, Trinidad Head, the pier, and boater access at Launcher Beach (**Exhibit 3**). Trinidad Head is part of the federally-designated California Coastal National Monument; Trinidad State Beach is immediately west of the subject property, and Launcher Beach provides recreational boating access to Trinidad Harbor. In addition to supporting recreational activities and public access to these local recreational amenities, existing parking areas also are used as storage and provide additional support for commercial and recreational crab and fishing activity which operates from Trinidad Harbor and the pier. Approximately half of the total acreage of the subject property is made up of undeveloped land, trails, and parking areas adjacent to Bay Street, which provides vehicle access to these areas (**Exhibit 3**).

The Trinidad Rancheria owns and is responsible for the management and maintenance of the existing pier. The pier supports commercial crab fishing vessels and recreational angling for salmon and other species. With support from a 2011 State Coastal Conservancy grant, the Trinidad Rancheria replaced the previous wooden structure with a concrete and steel pier, in part to address water quality concerns associated with the former pier, such as that structure's creosote-treated piles and fish cleaning station which discharged directly into Trinidad Harbor. Under the terms of the grant agreement with the State Coastal Conservancy for the pier reconstruction, the Trinidad Rancheria is required to maintain public access to the pier until 2032. Additionally, the pier is included in the National Tribal Transportation Facility Inventory, which means that, pursuant to federal regulations regarding restrictions of use of a Tribal transportation facility (25 CFR §170.114), it must be open and available for public use, except for temporary restrictions when required for public health or safety or when conducting engineering and traffic analyses to determine maximum vehicular size, speed limits, and weight limits.

In 2014 and 2017, the City of Trinidad (City) received grants from the Commission to update its LCP. While work has occurred under the terms of these grants, the resulting draft LCP has not been finalized or approved by the City Council or the Commission. Currently, land in the harbor area is zoned commercial, and surrounding parcels are zoned open space (Trinidad Head and Trinidad Little Head) and urban residential (the residences north of the project site). In the draft LCP that the City has developed, the land that is the subject of this fee-to-trust action would be given the "Harbor Area" zoning designation, intended to "encourage a mixture of commercial fishing, recreational boating and fishing, mixed coastal dependent/compatible commercial and visitor-serving uses consistent with coastal access policies while protecting the Trinidad Head [Area of State Biological Significance]." Other portions of the City's draft LCP identify a desire to develop a harbor area parking plan while recognizing the importance of accommodating uses such as the commercial and recreational fishing operations which use the pier, and limiting non-coastal-dependent uses to a total of 25% of the developed land in the harbor area.

Separate from the City's LCP work, in 2011 the Trinidad Rancheria completed a "Comprehensive Community-Based Plan" (Plan) for all of its land holdings, including the harbor area. Specifically regarding the harbor, the Plan recognizes the importance of the pier and harbor to residents and visitors alike. The Plan is described as guiding decision-makers including the Tribal Council, Tribal Community members, and Rancheria staff. To implement the Plan, in 2011 the Trinidad Rancheria prepared a series of Integrated Development Standards, which states that "[t]he pier parcel holds great potential as a tourism destination. Modest improvements, such as a paved plaza, thoughtful landscaping, and informal food or retail vendors, may enhance the experience of the harbor and encourage visitors to spend time along the waterfront."

In its consistency determination, the BIA states that "[a] majority of the proposed trust parcels would be designated by the Tribe as open space." In its assessment of the proposed project's consistency with Coastal Act public access policies, the BIA states:

All existing open space within the project site (approximately five acres) would be preserved as open space and the Tribe would maintain public access to the open space. The open space would include Trinidad Little Head, all beach front, all Coastal Bluffs lands on the property, and current open space west of the residence. Development would only occur on existing disturbed lands constituting the existing parking lot, storage area, and the tackle and gift shop.

None of these activities would result in an increase in the number of structures, block roads or trails, develop previously undeveloped lands, reduce current recreational access levels, or change any existing access postings.

As described previously, access to the pier and beach areas presently is supported by activities (parking, pedestrian and vehicle access, e.g.) that occur on the land that is included in the proposed fee-to-trust action. The BIA's consistency determination states that "...the Tribe would maintain public access to the open space, allowing continued public access to beaches. Accordingly, there would be no change to public access to beaches..." This would enable continued access to the pier, as well, which under federal regulation and the terms of the grant agreement with the Coastal Conservancy is required to remain open to public access as described previously.

The proposed development activities that are described in the BIA's consistency determination would occur in already developed areas and are intended to provide additional public amenities (i.e., the proposed visitor center) and to address stormwater runoff to Trinidad Harbor. The BIA states that "[t]he stormwater improvements would be incorporated into the existing parking lot, which provides access to the harbor and would not result in decreased access..."; installation of these stormwater improvements could result in temporary closure of portions of the parking lot during construction, but such effects would be temporary and ample parking would remain in the area during construction. Additionally, according to the BIA's consistency determination,

The Proposed Project would result in the construction of a new visitor's center in a location that already hosts a number of storage units and a tackle and gift shop. The footprint for the visitor's center would lie within an area previously disturbed by these existing uses and the paved parking lot. Development of the visitor's center would result in a consolidated building replacing an aggregation of smaller structures....the development of the visitor's center would have no impact on harbor and open space access.

Exhibit 5 indicates the location of the proposed visitor center. Its construction would result in the replacement of several small structures, not all of which are open to the public, with a single building which would provide public services as described previously.

In their comment letters to the BIA during the public comment period for the proposed project draft EA, the City of Trinidad and the Coastal Conservancy identified potential effects to public access as a potential concern in the Harbor area. The Coastal Conservancy focused its comments on the pier, and the City also identified the importance of the pier's support of access to the harbor and the significance of the harbor to the community and region. The City and Coastal Conservancy identified the potential lack of local review of future development proposals, resulting from placement of the subject land into federal trust ownership, as a contributing factor in these concerns. As summarized above, however, future activities on the subject property would trigger Commission federal consistency review if federal approvals (permits) or federal funds were involved or if the action was undertaken by a federal agency directly. Federal consistency actions that come before the Commission include notice to known local interested parties (adjacent property owners, potentially involved local governments, and other interested parties) describing the proposed actions and providing an opportunity for public review and comment.

Additionally, if the Executive Director identifies significant changes to the proposed actions described in the BIA's consistency determination, the project would be subject to the re-opener provisions in the federal consistency regulations (15 CFR §§ 930.45 & .46). For example, if the staff became aware of a proposed action that was not described in the BIA's consistency determination, and there appeared to be a potential effect on coastal resources or public access, staff could bring the matter back to the Commission for a public hearing on the question of whether the project is likely to have an effect on coastal resources that is substantially different from what was originally described and anticipated and, if so, whether the project is no longer consistent with the California Coastal Management Program.

The BIA's consistency determination describes the Trinidad Rancheria's intent to maintain existing public access and open space. In addition, the Trinidad Rancheria Tribal Council has expressed its willingness to adopt a Tribal Resolution which would confirm the general sentiments of the Comprehensive Community-Based Plan regarding the importance of the harbor properties to the community. The Tribal Resolution would also express the Trinidad Rancheria's commitment to the public access and open space that presently exists on its property, and further express its intent that there be no change in uses.

To memorialize this commitment and assure its success, the Commission is adopting a condition which, if the BIA agrees to it, will result in the BIA's assurance that the Tribe will adopt Tribal Ordinances and submit them to the Executive Director of the Commission, committing to coordinating any future, currently unanticipated, development proposals or changes in public access with the Commission staff. The goal of this coordination will be to assure that with such future activities and/or changes to public access, the project will remain consistent with the public access and recreation policies of the Coastal Act.

With these measures, the Commission finds the project would not interfere with the public's right to access the sea and would therefore be consistent with Coastal Act Section 30210-12. Additionally, the Commission finds that the proposed project would protect and support oceanfront land for recreational use and would therefore be consistent with Coastal Act Sections 30221 and 30223.

E. SCENIC AND VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The existing scenic quality of the proposed project site is exemplary, with outstanding views of the harbor, ocean, Trinidad Head, Trinidad Pier, and surrounding areas. The project site is not visible from Highway 101, and the site is already developed: current development and structures include the boat launch, restaurant, bait shop, storage facility, restrooms, wastewater treatment tanks, and a shed serving as the Harbor Manager's office. Photos of the project site from public vantage points adjacent to Trinity Harbor are provided in **Exhibit 5**.

The consistency determination from the BIA states that:

The scenic and visual qualities of the coastal area would not be affected by Proposed Project development as most of the components (drains, swales, rain gardens, etc.) would be at or near ground level within an extant parking lot. The only structure with any profile, the visitor's center, would be a single-story building that replaces a cluster of storage sheds and a tackle and gift shop. Replacement of several small buildings with one larger one within a built environment would not detract from scenic and visual qualities of the area. The

parcels being taken into open space would remain as open space, preserving their scenic characteristics.

The proposed visitor center would occur in the area currently occupied by temporary, small structures housing the tackle shop, Harbor Master office, and storage (**Exhibit 5**). According to the draft EA for the proposed project, existing vegetation would be maintained during construction of the visitor center, and the Trinidad Rancheria would use downcast external lighting to reduce potential light pollution. The visitor center would be one story and would have a metal roof and wooden exterior. While its design has not progressed to the point of identifying further external architectural details, the Trinidad Rancheria has agreed to provide the Executive Director with such details for review and consultation when they are prepared.

With these measures, the Commission finds the project would protect public views of the ocean and the scenic and visual qualities of the area and would be consistent with the character of the surrounding area, and would therefore be consistent with Coastal Act Section 30251.

F. MARINE RESOURCES AND WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Marine and biological resources

As described in the draft EA for the proposed project, the project site and immediate surroundings are potentially habitat for four species with special status under the federal Endangered Species Act: one plant species (the western lily-*Lilium occidentale*) and three animal species, including the marbled murrelet (*Brachyramphus marmoratus*), western snowy

plover (*Charadrius alexandrinus nivosus*), and the Steller sea lion (*Eumetopias jubatus*). No western lilies were discovered during a consultant site visit in 2015; while there is potential suitable habitat on the shoreline west of the vacation home, this potential habitat is outside of the footprint of the stormwater improvements or visitor center. Marbled murrelets nest in old growth forests and forage in shallow shoreline and tidal pools; while the project site does not contain breeding habitat for the species, potential foraging habitats (the embayments of Trinidad Harbor and offshore Trinidad State Beach) for marbled murrelets are adjacent to the project site. Western snowy plover could occur on the beach areas adjacent to the project site (i.e. during migratory periods for the species), and Steller sea lions have the potential to be hauled-out on the beach as well.

These three animal species were not documented during a site visit in 2015 by consultants for the BIA, but given the suitability of existing habitats they potentially could be affected by the proposed project. As a result, the draft EA includes the following mitigation measures:

- Although marbled murrelet nesting habitat is not found on the project site, some [rafting] may occur in the waters of Trinidad Bay. A qualified biologist shall conduct a pre-construction survey and in the event that marbled murrelet are identified on or near the project site, consultation with the USFWS shall be conducted to determine the appropriate buffer distances and measures from the species.
- A qualified biologist shall conduct a preconstruction survey within 100 feet around the vicinity of the project site for active western snowy plover nests should construction activities commence during the nesting season for western snowy plover (March through September). Following the preconstruction nesting bird survey, if any active western snowy plover nests are located within the vicinity of the project site, a no-disturbance buffer zone shall be established around the nests to avoid disturbance of the nest. The distance around the no-disturbance buffer shall be determined by the biologist in coordination with USFWS, if needed, and will depend on the level of noise or construction activity, the level of ambient noise in the vicinity of the nest, line-of-sight between the nest and disturbance, and the species at hand. The biologist shall delimit the buffer zone with construction tape or pin flags. The no-disturbance buffer will remain in place until after the nesting season...or until the biologist determines that the young birds have fledged. A report shall be prepared and submitted to the Tribe and the USFWS following the fledging of the nestlings to document the results.
- Limit construction noise to standard daytime hours (7:00 am to 6:00 pm Monday through Friday and 9:00 am to 5:00 pm on Saturday; no construction would occur on Sundays) to eliminate construction noise during hours that would be sensitive to the steller sea lion; where feasible the stationary construction equipment shall be located on the southern portion of the project site; all construction equipment over 50 horsepower shall be equipped with noise reducing mufflers.
- Implementation of steller sea lion training for all on-site workers and employees shall be conducted. If steller sea lion is discovered on or near the project site during construction activities, all construction activities will halt, the on-call biologist shall be notified immediately, and consultation with the NMFS and USFWS shall determine appropriate measures for buffers or measures to be applied.

The Trinidad Rancheria has agreed to provide the Executive Director with copies of any reports prepared as part of the implementation of these mitigation measures for review and approval.

Additionally, the draft EA for the proposed project includes the following measures to minimize impacts to nesting birds:

- In accordance with the Migratory Bird Treaty Act, a qualified biologist will conduct a preconstruction survey within 100 feet around the vicinity of the project site for active nests should construction activities commence during the nesting season for birds of prey and migratory birds (between February 15 and September 15).
- Following a preconstruction nesting bird survey, if any active nests of migratory birds are located within the vicinity of the Action Area, a no-disturbance buffer zone shall be established around the nests to avoid disturbance or destruction of the nest. The distance around the no-disturbance buffer shall be determined by the biologist in coordination with USFWS, if needed, and will depend on the level of noise or construction activity, the level of ambient noise in the vicinity of the nest, line-of-sight between the nest and disturbance, and species at hand. The biologist shall delineate the buffer zone with construction tape or pin flags. The no-disturbance buffer will remain in place until after the nesting season (to be lifted August-September) or until the biologist determines that the young birds have fledged. A report shall be prepared and submitted to the Tribe and the USFWS following the fledging of the nestlings to document the results.

The Trinidad Rancheria has agreed to provide the Executive Director with copies of reports prepared as part of the implementation of these mitigation measures for review and approval.

Water quality

As described in the draft EA for the proposed project:

Trinidad Harbor is designated by the California Coastal Commission as a Critical Coastal Area and by the State Water Board as an Area of Special Biological Significant (ASBS). In 2005, the Rancheria received a cease and desist order (CDO) from the SWRCB [State Water Resources Control Board] for prohibited discharges from the Trinidad harbor and pier facilities to the Trinidad Head ASBS. The list of prohibited discharges in the CDO included the freshwater hose on the pier, the fish cleaning station, runoff from the pier itself, boat cleaning activities in and around the boat launch, and runoff from the harbor parking lot facility. Since 2005, the Rancheria has completed significant modifications at the Trinidad harbor and pier facilities to eliminate the prohibited discharges as set forth in the CDO. Major site improvements that have been undertaken include removal of the fish cleaning station and

freshwater hose at the pier, construction of a new wastewater treatment system for the Seascope Restaurant and adjacent vacation rental, construction of new public restrooms, and reconstruction of the pier including installation of a stormwater capture and treatment system for runoff from the pier. These modifications resulted in elimination of all of the discharges of concern with the exception of stormwater runoff from the parking lot... This parking lot has been identified by the SWRCB as a nonpoint source area that contributes discharges to the Trinidad ASBS, and this area falls under the CDO issued in 2005.

The parking lot stormwater improvements were included in the draft ASBS compliance plan prepared by the Trinidad Rancheria (Trinidad Rancheria 2014). The State Water Board awarded a grant in 2016 to the Trinidad Rancheria to further develop the design for these improvements, which include installation of a bioswale along Bay Street, linear drains across Bay Street, dry wells and cisterns to collect rainwater, installation of a rain garden, and the installation of permeable pavers toward Bay Street's eastern end (**Exhibit 4**).

Per the requirements of its grant agreement, the Trinidad Rancheria will submit 50% design specifications on April 1, 2019 to the State Water Board. Following this submittal, the design specifications will be the subject of further agency review, for which the Trinidad Rancheria has agreed to provide notice to Commission staff to enable further review of the design of these stormwater improvements under Coastal Act water quality and marine resource policies.

The stormwater improvements that the Trinidad Rancheria has proposed are a component of an overall program to enhance water quality in Trinidad Harbor. As part of a separate project, the City of Trinidad is proposing a project to reconfigure existing stormwater treatment for the residential areas north of the project site. The City's proposal would include replacement of an existing stormwater discharge near the boat launch with a series of localized stormwater treatment and infiltration features along Edwards and Van Wycke Streets, up-slope from the harbor and the property owned by the Trinidad Rancheria (**Exhibit 3**) (City of Trinidad 2018). The City has coordinated with the Trinidad Rancheria on this project since certain elements of the City's proposal would occur on land owned by the Trinidad Rancheria. As the City's project nears its final design phase, the City and the Trinidad Rancheria intend to enter into a negotiation regarding the use of Rancheria land for the City's project.

Construction of the visitor center and the stormwater features could affect water quality through soil grading, excavation, and stockpiling. In response to this potential, the draft EA for the proposed project states that a National Pollutant Discharge Elimination System (NPDES) general construction permit will be prepared. As part of this NPDES permit, a Storm Water Pollution Prevention Plan (SWPPP) will be prepared, and the draft EA identifies the following best management practices and mitigation measures that will be included in the SWPPP:

- Stripped areas shall be stabilized through temporary seeding using dryland grasses.
- Exposed stockpiled soils shall be covered with plastic covering to prevent wind and rain erosion.

- The construction entrance shall be stabilized by the use of rip-rap, crushed gravel, or other such material to prevent the track-out of dirt and mud.
- Construction roadways shall be stabilized through the use of frequent watering, stabilizing chemical application, or physical covering of gravel or rip-rap.
- Filter fences shall be erected at all onsite stormwater exit points and along the edge of graded areas to stabilize [*sic*] non-graded areas and control siltation of onsite stormwater.
- Prior to land-disturbing activities, the clearing and grading limits shall be marked clearly, both in the field and on the plans. This can be done using construction fences or by creating buffer zones.
- Concentrated flows create high potential for erosion; therefore, any slopes shall be protected from concentration flow. This can be done by using gradient terraces, interceptor dikes, and swales, and by installing pipe slope drains or level spreaders. Inlets need to be protected to provide an initial filtering of stormwater runoff; however, any sediment buildup shall be removed so the inlet does not become blocked.
- The SWPPP shall address maintenance and repair of heavy equipment on site to remove the potential for pollution from oil, fuel, hydraulic fluid, or any other potential pollutant.
- If construction occurs during wet periods, sub-grade stabilization shall be required. Mulching or netting may be needed for wet-weather construction.
- Temporary erosion control measures (such as silt fence, gravel filter berms, straw wattles, sediment/grease traps, mulching of disturbed soil, construction stormwater chemical treatment, and construction stormwater filtration) shall be employed for disturbed areas.
- Exposed and unworked soils shall be stabilized by the application of effective BMPs. These include, but are not limited to, temporary or permanent seeding, mulching, nets, and blankets, plastic covering, sodding, and gradient terraces.
- Existing vegetation shall be retained where possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction.
- Temporary erosion control measures (such as silt fences, staked straw bales, and temporary revegetation) shall be employed for disturbed areas and stockpiled soil.
- Potentially hazardous materials shall be stored away from drainages and containment berms shall be constructed to prevent spilled materials from reaching water bodies.
- Vehicles and equipment used during construction shall be provided proper and timely maintenance to reduce potential for mechanical breakdowns leading to a spill of materials into water bodies. Maintenance and fueling shall be conducted in an area that meets the criteria set forth in the spill prevention plan.
- Disturbed areas shall be revegetated after completion of construction activities.
- Storm drain inlets shall also be labeled “No Dumping – Drains to Ocean.”
- Permanent energy dissipators shall be included for drainage outlets.
- All equipment re-fueling and maintenance shall occur in an approved staging area and an agency-approved spill prevention plan will be implemented by the contractor.

Summary

With the inclusion of the measures described above to address potential impacts to marine and biological resources and water quality, the Commission finds that the proposed project would maintain and enhance marine resources and sustain the biological productivity of coastal waters and that the proposed project would be consistent with Sections 30230 and 30231 of the Coastal Act.

G. CULTURAL RESOURCES

Section 30244 of the Coastal Act states, in part:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The draft EA for the proposed project included the results and related analyses of background research and field surveys performed for the proposed project and for the previous pier reconstruction project. The draft EA concluded that these surveys indicated no known cultural or historic resources within the area that would be disturbed as part of the proposed project's construction or earth-moving activities (i.e., the stormwater improvements or visitor center construction). The draft EA states that "known resources do occur within the areas designated as open space and would not be disturbed by proposed project activities." Therefore, the draft EA concludes that "[i]mplementation of Alternative A would not adversely affect historic properties."

However, as described in the staff report for the relocation of the Trinidad Memorial lighthouse (CDP 1-18-0630), the project site is adjacent to culturally sensitive and significant lands associated with the southernmost village (known as Tsurai Village) within the aboriginal territory of the Yurok People. Village inhabitants used a broad part of the landscape in and around Trinidad for many purposes; Trinidad Head is a deeply spiritual site of importance to the Trinidad Rancheria, Yurok Tribe, and Tsurai Ancestral Society.

Therefore, soil disturbance activities could result in effects to undiscovered historic or cultural resources. Accordingly, the draft EA includes the following mitigation measures:

- Any inadvertent discovery of archaeological resources shall be subject to Section 106 of the National Historic Preservation Act as amended (36 C.F.R. §800), the Native American Graves Protection and Repatriation Act (NAGPRA)(25 U.S.C. §3001 et seq.), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. §470aa-mm). Specifically, procedures for post review discoveries without prior planning pursuant to 36 C.F.R. §800.13 shall be followed. The purpose of the following mitigation measures is to minimize the potential adverse effect of construction activities to previously unknown archaeological or paleontological resources in the case of inadvertent discovery:

- All work within 50 feet of the potential archeological find shall be halted until a professional archeologist, or paleontologist if the find is of a paleontological nature, can assess the significance of the find.
- If any archaeological find is determined to be significant by the archaeologist, or paleontologist as appropriate, then representatives of the Tribe shall meet with the archaeologist, or paleontologist, to determine the appropriate course of action, including the development of a Treatment Plan, if necessary.
- All significant cultural or paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist, or paleontologist, according to current professional standards.
- If human remains are discovered during ground-disturbing activities on Tribal lands, pursuant to [the Native American Graves Protection and Repatriation Act] NAGPRA, the Tribal Official and BIA representative shall be contacted immediately. No further disturbance shall occur until the Tribal Official and BIA representative have made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the BIA representative shall notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.

With the incorporation of these activities, the Commission finds that the project will include reasonable mitigation measures to address potential effects of the proposed project on archeological or paleontological resources, and that the proposed project is consistent with Section 30244 of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS

Consistency Determination CD-0006-18, Bureau of Indian Affairs, Trinidad Rancheria Fee to trust, stormwater improvement, and interpretive visitor center project, December 26, 2018.

California State Coastal Conservancy, Cher-Ae Heights Community of the Trinidad Rancheria, and the City of Trinidad. Agreement Protecting the Public Interest in Certain Improvements Funded by the California State Coastal Conservancy. April 2012.

Cher-Ae Heights Indian Community of the Trinidad Rancheria Comprehensive Community-Based Plan. December 2011.

Cher-Ae Heights Indian Community of the Trinidad Rancheria Integrated Development Standards. October 2011.

Cher-Ae Heights Indian Community of the Trinidad Rancheria Draft ASBS Compliance Plan. Trinidad Rancheria Environmental Program. December 5, 2014.

City of Trinidad, USDA Rural Development Funding Application Preliminary Engineering Report. Prepared by GHD for the City of Trinidad, January 2018.

Draft Environmental Assessment, Trinidad Rancheria Stormwater Improvement and Interpretive Visitor Center Project, March 2017.

Electronic correspondence from Amy Cordalis, Tribal Attorney for the Yurok Tribe, to John Weber, Coastal Commission staff dated January 24, 2019.

Electronic correspondence from Chad Broussard, Environmental Protection Specialist, U.S. Department of the Interior Bureau of Indian Affairs, Pacific Region, dated February 12, 2019 (providing revised project delineation).

Electronic correspondence from Jonas Savage, Environmental Director, Trinidad Rancheria to John Weber, Coastal Commission staff, dated January 31, 2019 (regarding stormwater improvements).

Electronic correspondence from Sarah Lindgren-Akana, Secretary, Tsurai Ancestral Society to John Weber, Coastal Commission staff, dated February 15, 2019.

Letter from Yurok Tribe to the Bureau of Indian Affairs regarding petitions for land into trust within Yurok Ancestral Territory, dated April 14, 2016.

Staff report for CDP 1-18-0360, approved by the Commission at its February 2019 meeting.