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STAFF REPORT: REGULAR CALENDAR

Consistency Determination No.: **CD-0001-19**

Federal Agency: **Bureau of Indian Affairs**

Location: 0.4 acres of currently paved land adjacent to the existing Cher-Ae Heights Casino, east of Trinidad, Humboldt County (**Exhibits 1 and 2**)

Project Description: Construction of a 100-room, five-story hotel and associated facilities and infrastructure, including a leach field and water supply.

Staff Recommendation: Objection

SUMMARY OF STAFF RECOMMENDATION

The Bureau of Indian Affairs (BIA) has submitted a consistency determination for a loan guarantee and management contract to enable the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) to build a hotel adjacent to the existing Cher-Ae Heights Casino. The proposed 100-room, five-story hotel would be located on 0.4 acres of paved land currently used as a parking lot for the existing Casino. Development of the hotel is proposed for land that is part of the Trinidad Rancheria, east of the boundary of the City of Trinidad and bordered on the north, south, and east by land managed by Humboldt County.

The proposed hotel would be five stories tall, and it would rise approximately 64 feet in height above the floor of the existing Casino. It would be the tallest building by at least 30 feet in Trinidad and the surrounding area, where single- and two-story buildings for residential and commercial uses predominate. The hotel would be visible from Trinidad Head and the Trinidad Harbor area, very popular visitor destinations that provide views of mostly undeveloped, forested coastline and the ocean. For these reasons, the staff recommends the Commission find that the proposed hotel as described in the BIA consistency determination is inconsistent with Section 30251 and 30253(e) of the Coastal Act, since it does not protect views to and along the ocean and scenic coastal areas and is not visually compatible with the character of surrounding areas.

Staff recommends the Commission find that it would be possible to bring this project into compliance with the California Coastal Management Program (CCMP) if the BIA implements the following measures:

1. Include hotel heights, siting, and/or other design elements that ensure that the proposed hotel is visually compatible with the visual character of its surroundings and protects the views from Trinidad Head and Trinidad Harbor. This could be accomplished by one or a combination of the following: reducing the height of the hotel, relocating all or a portion of the hotel to other areas on the Trinidad Rancheria property, and/or the use of exterior design elements that further reduce the prominence of the proposed hotel.

The draft Environmental Assessment (EA) for the proposed project states that water would be provided to the hotel by the City of Trinidad's water supply system through the existing water line that serves the Casino, and that no additional water infrastructure is required. However, there is no existing contract or other agreement in place for the use of City of Trinidad water, and no other alternatives for water supply are described in the BIA consistency determination or the draft EA for the proposed project. It also is not known if provision of water to the hotel by the City would limit the City's ability to provide water for essential public services or to other new, priority coastal land uses in the future. The staff recommends the Commission find that the proposed hotel as described in the BIA consistency determination is not consistent with Sections 30250 and 30254 of the Coastal Act, since it is not known whether adequate public services are available to accommodate the hotel, particularly with respect to water supply. See page 16 of this staff report for additional information that staff is recommending the BIA would need to provide to enable the Commission to find the proposed project consistent with Sections 30250 and 30254 of the Coastal Act related to water supply.

The BIA consistency determination for the proposed hotel indicates that wastewater generated by the proposed hotel would be treated by the Tribe's existing wastewater treatment facilities, which would require upgrades and an additional leach field. However, significant uncertainties remain over the suitability of existing soils for, and actual operating capacity of, the existing leach field and thus the subsequent size of the new leach field needed to treat wastewater and the need for upgrades to the existing wastewater facility. Additional information is needed to evaluate if the proposed hotel could be accommodated by the wastewater treatment systems

described in the BIA consistency determination and draft EA for the proposed project. The staff recommends the Commission find it does not have sufficient information at this time to enable it to find the proposed project consistent with Section 30250 of the Coastal Act with respect to the project's wastewater treatment capacity. See page 18 of this staff report for additional information that staff is recommending the BIA would need to provide to enable the Commission to find the project consistent with Section 30250 related to wastewater treatment.

The draft EA for the proposed project assesses traffic-related impacts associated with the proposed hotel but appears to include a tripling of the size of the existing casino in its assessment. The draft EA for the proposed project concludes that a new interchange with Highway 101 would be the proposed mitigation measure to address transportation effects associated with the proposed hotel, but it is not clear that the hotel alone would result in traffic-related impacts that would require such mitigation, or if other mitigation measures could sufficiently address hotel-related traffic generation. The staff recommends the Commission find it does not have sufficient information at this time to enable it to find the proposed project consistent with Section 30250 of the Coastal Act with respect to traffic and related mitigation to minimize traffic impacts. See page 19 of this staff report for additional information that staff is recommending the BIA would need to provide to enable the Commission to find the project consistent with Section 30250 related to transportation.

The draft EA for the proposed project states that a portion of the proposed site for the hotel is a landslide area, and a draft geotechnical feasibility and preliminary design report suggests that either the hotel footprint will be modified to avoid the landslide or extensive slope stabilization features will be required to ensure structural integrity and stability of the hotel. However, the details of a selected option to ensure slope stability and structural integrity for the hotel are not provided in the BIA consistency determination and are not described in the draft EA for the proposed project. The staff recommends the Commission find it does not have sufficient information to find the proposed project consistent with Sections 30253(a) and 30253(b) of the Coastal Act. See page 21 for additional information and accompanying analysis that staff is recommending the BIA would need to provide to enable the Commission to find the project consistent with Section 30253(a) and 30253(b).

Federal regulations state that a federal agency's "consistency determination shall ... include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement." 15 C.F.R. §930.39(a). In this case, the consistency determination is lacking such detailed descriptions and comprehensive data. The staff therefore recommends the Commission **object to** the BIA's consistency determination, both based on inconsistency with the Coastal Act, and on a lack of information.

The standard of review for this project is the Chapter 3 policies of the Coastal Act. The motion is on page 5.

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EXHIBITS

- Exhibit 1 – Regional context
- Exhibit 2 – Vicinity map
- Exhibit 3 – Proposed hotel and potential leach field locations
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- Exhibit 5 – Proposed hotel exterior design
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- Exhibit 7 – Simulated views depicting hotel

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 **concur** with consistency determination CD-0001-19 that the project described therein is consistent to the maximum extent practicable with the enforceable policies of the CCMP.*

Staff recommends a **NO** vote on the motion. Failure of this motion will result in a disagreement with the determination 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 **objects to** consistency determination CD-0001-19 by the Bureau of Indian Affairs on the grounds that the project described therein is not consistent to the maximum extent practicable with the enforceable policies of the CCMP.*

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 the 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. Procedure if the Commission finds that the proposed activity is inconsistent with the CCMP.

The federal consistency regulations (15 CFR §930.43(a)) require that, if the Commission's objection is based on a finding that the proposed activity is inconsistent with the CCMP, the Commission must identify measures, if they exist, that would bring the project into conformance with the CCMP. That section of the regulations states that:

- (a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response shall describe:*
- (1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and*
 - (2) The specific enforceable policies (including citations).*
 - (3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.*

As described below in Section IV.D: Scenic and Visual Resources of this staff report, staff recommends that the Commission find the proposed project is not consistent to the maximum extent practicable with the CCMP. Pursuant to the requirements of 15 CFR §930.43(a), the Commission is responsible for identifying measures, if they exist, that would bring the project into compliance with the CCMP to the maximum extent practicable. Assuming the informational deficiencies identified in the procedural discussion in Section III.C below (and elaborated on in Sections IV.E and F) can be resolved, staff recommends that the Commission find that it would be possible to bring this project into compliance with the CCMP if the BIA implements the following measures:

1. Includes hotel heights, siting, and/or other design elements that ensure that the proposed hotel is visually compatible with the visual character of its surroundings and protects the views from Trinidad Head and Trinidad Harbor. This could be accomplished by one or a combination of the following: reducing the height of the hotel, relocating all or a portion of the hotel to other areas on the Trinidad Rancheria property, and/or the use of exterior design elements that further reduce the prominence of the proposed hotel.

C. Procedure if the Commission objects to a proposed activity based on a lack of information

Section 930.43(b) of the federal consistency regulations (15 CFR §930.43(b)) requires that, if the Commission's objection is based on a lack of information, the Commission must identify the

information necessary for it to assess the project's consistency with the CCMP. That section states:

If the State agency's objection is based upon a finding that the Federal agency has failed to supply sufficient information, the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal agency activity with the enforceable policies of the management program.

As described in Sections IV. E and F of this staff report, staff recommends that the Commission find this consistency determination to lack information to enable the Commission to determine whether the proposed project is consistent to the maximum extent practicable with Sections 30250, 30251, 30254, and 30253(a), (b), and (e) of the Coastal Act. In order to determine the project's consistency with the CCMP, as described in Sections IV.E and F of this staff report, staff recommends that the Commission request the BIA to provide it with the following necessary information:

1. **Water supply.** Provide additional information identifying the amount of water required by the proposed hotel and describing how the City of Trinidad is agreeing to provide water to the proposed hotel from the City's water supply. Alternately, describe the amount of water needed by the proposed hotel and a description of how water would be provided from an alternative water source, accompanied by an analysis of effects to coastal resources (pursuant to Chapter 3 of the Coastal Act) that implementing such an alternative would entail.
2. **Wastewater treatment.** Verification of the operational capacity of the existing leach field, refined estimate of projected wastewater generated by the proposed project, and results of a detailed soils survey in order to verify the necessary size and location of a new leach field and the need for expansion of the existing WWTP. Once the location and size of the new leach field has been designed, and once the need for expansion of the existing WWTP has been determined, provide an analysis of these aspects of the proposed project for consistency with the enforceable policies of the CCMP (i.e., Chapter 3 of the Coastal Act).
3. **Traffic.** Analysis of the traffic-related impacts to the existing transportation network in Trinidad and surrounding areas generated by the hotel itself and identification of related mitigation measures, accompanied by analysis of this aspect of the proposed project for consistency with the enforceable policies of the CCMP (i.e., Chapter 3 of the Coastal Act).
4. **Hazards.** Information describing the measure(s) proposed to mitigate the existing landslide hazard, including design details or other proposed measures and their potential location. In addition, if stabilization measures require extensive grading or construction of retaining walls, the BIA would

need to provide information sufficient for the Commission to determine consistency of those measures with Section 30251 of the Coastal Act, including its requirement to minimize the alternation of natural land forms.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The Bureau of Indian Affairs (BIA) has submitted a consistency determination for a loan guarantee and the approval of a management contract for the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) Economic Development Corporation hotel project. The proposed hotel would be located on 0.4 acres of land owned by the Trinidad Rancheria, east of the City of Trinidad boundary (**Exhibits 1 and 2**). The proposed hotel would be directly adjacent to the existing Cher-Ae Heights Casino on land that is currently paved and used as parking for the Casino (**Exhibits 3 and 4**). This land is part of the approximately 46.5 acres that comprise this portion of the Trinidad Rancheria, which also owns property in the Trinidad Harbor area and on the north and west side of Highway 101 (the “Westhaven Parcel”).

Access to the proposed hotel would occur through the road system that connects the Trinidad Rancheria to downtown Trinidad and Highway 101. This presently involves Scenic Drive, a two-land road that runs roughly parallel to Highway 101 from downtown Trinidad and is used to provide access to the casino. The draft EA for the proposed project suggests that longer-term plans for transportation and connectivity in the area include a new Highway 101 interchange; while environmental review and design processes for the interchange are underway, related CEQA documentation is anticipated to be issued for public review in 2021.

As described in the draft EA for the proposed project, the proposed hotel would include 100 rooms, 1,552 square feet of meeting space, a business center, fitness room, café/bar, lounge, and indoor pool. The proposed hotel would be connected to the Casino’s southern side, with a porte-cochere on the east side of the existing Casino providing a covered vehicle entrance for arriving guests (**Exhibit 4**). While the BIA consistency determination described a six-story hotel, according to revisions to the proposed hotel provided by the Trinidad Rancheria Economic Development Corporation since the BIA submitted its consistency determination, the proposed hotel would be five stories tall, approximately 64 feet above the floor elevation of the existing casino (David Tyson, personal communication March 2019). A proposed hotel building of five stories was confirmed in a letter from the BIA received by the Commission on March 20, 2019. **Exhibit 5** is an illustration of the exterior design of the proposed hotel from the south (i.e., the southern face of the hotel).

According to the BIA consistency determination:

[t]here are no wetlands or environmental sensitive habitat areas within or adjacent to the proposed hotel site. Surrounding land uses on the Rancheria vary from rural residential to the west, to casino support (parking and wastewater treatment) and Tribal Government to the north and northwest. East of the

proposed hotel site consists of open space. Off-Reservation land uses adjacent to the Rancheria include HWY-101 to the north/northeast of the project site, the coast to the south, rural residential within unincorporated Humboldt County to the east, and rural residential within the City to the west.

The proposed hotel is located on land east of the City of Trinidad, which shares a border with the western edge of the Trinidad Rancheria. Land to the north and east of the Trinidad Rancheria is under the land use control of Humboldt County.

The draft EA for the proposed project assesses a preferred alternative and a “no project alternative.” No other alternatives are assessed in the draft EA for the proposed project because of a determination that other alternatives would not meet the purpose and need of the project, which is stated as helping the Tribe to meet the following objectives:

- *Maintain the socioeconomic status of the Tribe by providing an augmented revenue source that could be used to strengthen the tribal government, fund a variety of social, governmental, administrative, educational, health, and welfare services to improve the quality of life of tribal members; and to provide capital for other economic development and investment opportunities.*
- *Create new jobs for both tribal and non-tribal members.*
- *Reduce visitor trips on local roadways by providing additional overnight accommodations*
- *Provide additional amenities to existing patrons and allow the target market to expand to nonresidential clients.*
- *Allow tribal members to enhance their economic self-sufficiency.*

B. RELATED COMMISSION ACTIONS

At its March 2019 meeting, the Commission concurred with CD-0006-18, a consistency determination from the BIA to place into Federal trust status approximately ten acres of land owned by the Trinidad Rancheria in the Trinidad Harbor vicinity and subsequent development of a visitor center and stormwater improvements.

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 Bay Street intersection with the parking area serving Trinidad State Beach. At this same meeting, the Commission certified an amendment for the Trinidad Local Coastal Program (LCP) to supply water to the CalFIRE station one mile north of the City of Trinidad limits in Humboldt County.

In 2003, the Commission, through NE-038-03, agreed with a Trinidad Rancheria proposal to replace water lines and construct three fire hydrants serving the Trinidad Rancheria.

In 1998, the Commission concurred with a BIA negative determination (ND-40-98) to place a 2.5 acre parcel of land in Federal trust status adjacent to the existing Trinidad Rancheria.

In 1994, the Commission concurred with a Trinidad Rancheria negative determination (ND-119-94) for the acquisition of a 4.37 acre parcel and construction of three single-family homes and rehabilitation of one existing home at 874 Westhaven Drive in the Trinidad area.

C. OTHER AGENCY APPROVALS AND TRIBAL CONSULTATIONS

As part of the development of the draft EA for the proposed project, the BIA conducted informal consultation with the US Fish and Wildlife Service pursuant to Section 7 of the federal Endangered Species Act.

The BIA consistency determination states that water for the hotel will be provided from the City of Trinidad's water supply system, thus requiring City approval. As described in more detail in Section IV.E below, such approval has not yet been granted, and the City presently is conducting an assessment of its overall water supply system.

Tribal Outreach

During the process of developing this recommendation, Commission staff reached out to representatives of the Yurok Tribe and the Tsurai Ancestral Society. As is the case with the Trinidad Rancheria, the Yurok Tribe is a federally-recognized tribe. 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. 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.

Section 30253(e) of the Coastal Act states in part:

Development shall do all of the following:

...

(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

The project site is located near the top of a coastal bluff, approximately 230 feet above mean sea level, on a paved parking lot adjacent to the existing Casino. The draft EA for the proposed project described a six-story building with a height of about 80 feet above the finished Casino floor. Design revisions since the publication of the draft EA indicate that the hotel is now proposed to be five stories tall and 63 feet, 9 inches above the Casino floor (David Tyson, personal communication March 4, 2019)¹. The draft EA for the proposed project states that “lighting from the proposed Hotel would be minimal. The Tribe would use downcast, bi-level dimming motion sensor external lighting, which would not alter the visual aesthetics of the area.” Recognizing that the proposed hotel would impact the overall coastal aesthetics of the proposed site, the draft EA for the proposed project includes the following mitigation measure:

- Design elements shall be incorporated into the Proposed Project to minimize visual impacts of buildings and associated structures, including landscaping that compliments [*sic*] buildings and parking areas, with setbacks and vegetation consistent with existing landscaping. Earth-toned paints and coatings shall be used, all exterior glass shall be non-reflective and low-glare, and signs and facades shall be designed with a non-reflective backing to decrease reflectivity.

Exhibit 5 illustrates the proposed exterior appearance of the hotel.

Trinidad and surrounding environs are considered one of the more spectacular sections of the North Coast of California, known for its beauty and relatively wild, undeveloped setting of ocean, sea stacks, coastline, and forested hills and bluffs. Trinidad Head is a popular destination and provides unobstructed views of the Pacific Ocean and the adjacent coast. Public views in the area, from Trinidad Head, Trinidad Harbor and its pier, and the beaches on either side of Trinidad Head reflect the rural nature of this part of the California coast, which is characterized by little if any commercial development outside of the existing single- and two-story buildings adjacent to Trinidad Harbor and in the town center area of Trinidad (**Exhibit 6**).

Land that makes up the Trinidad Rancheria is not subject to the local land use authority of either the City of Trinidad or Humboldt County, which abuts the Rancheria on its northern and eastern sides. However, the City of Trinidad and Humboldt County LCPs provide context for considering development in the area, and both portray the importance of the area’s scenic quality. For example, the Trinidad Draft General Plan (City of Trinidad 2017) which is currently being prepared by the City of Trinidad as part of their LCP update (and thus has not been reviewed by the Commission) states that:

... the City’s appearance is essential to the quality of life in Trinidad. Visual quality and amenities go hand-in-hand with long-term economic development strategies and strengthen the stability and desirability of the community...[A]s

¹ A recent local press story indicated that the height of the hotel has been further reduced, but such information has not been provided to the Commission as of the publication of this staff report. A letter from the BIA received by the Commission on March 20, 2019 indicated that the proposed hotel would be five stories in height.

the economy evolves to a more tourism and service-based economy, the community has acknowledged the importance of maintaining the cultural and scenic identity of the town and the integrity of the residential neighborhoods, while enhancing views and access to the coastline and planning for managed growth and development.

...

Trinidad has traditionally been very protective of its views and small-town character. ...

The draft Trinidad LCP includes a policy to “[s]ite and design permitted development to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas...”

Similarly, the Humboldt County LCP states:

Within the Trinidad Planning Area, from Moonstone Beach to Patrick’s Point, the scenic and visual qualities are indisputably exceptional. The majority of residents in this area take great pride in protecting and preserving these resources...

Trinidad Head and the Trinidad Harbor are popular visitor destinations that provide public access to beaches, recreational boat launching and use in Trinidad Harbor and other harbor-related amenities such as the existing pier and restaurant, and the hiking trails on Trinidad Head. In part because of its scenic value, Trinidad Head is included as part of the federally-designated California Coastal National Monument. Trinidad Harbor is one of the few sheltered locations for recreational boating along this portion of the California Coast. Largely because of these existing amenities and this coastal context, long-term plans for the City of Trinidad include a focus on of the continuing importance of tourism to the local and regional economy.

The proposed hotel is within property that is owned and managed by the Trinidad Rancheria, which developed a 2011 Cher-Ae Heights Indian Community Comprehensive Community-Based Plan (Trinidad Rancheria Comprehensive Plan). The Trinidad Rancheria Comprehensive Plan is described as a:

... blueprint for future development and provides the basis for growth that best serves the health, safety, and general welfare of the community. It provides a framework and policy direction for land use decisions. Implementation of this comprehensive plan occurs through the Integrated Development Standards...

The Cher-Ae Heights Indian Community Integrated Development Standards, developed by the Trinidad Rancheria in 2011 as a companion to the Trinidad Rancheria Comprehensive Plan, are described as having a purpose as:

... a set of development standards for the Cher-Ae Heights Community of the Trinidad Rancheria. These development standards can be utilized to conduct

planning-level review of projects on Rancheria lands prior to their implementation and construction. Their use helps to ensure that future development patterns are in keeping with the community's long-term vision, as described in the Comprehensive Plan. More specifically, these standards help to ensure the following:

- 1. Implementation of the Trinidad Rancheria Comprehensive Plan. These standards help to implement the goals and policies of the Comprehensive Plan, and to help carry out the vision for development that it describes....*
- 2. Well-Designed Environments that Promote and Reflect Quality and Character. These standards and guidelines promote building patterns and architectural elements that express the Rancheria's heritage and maintain a high-quality public realm for residents and visitors.*
- 3. Green and Sustainable Development. These standards help to promote green and sustainable development through carbon footprint reduction, water conservation and reuse, energy conservation, renewable energy use, recycling and waste reduction, vegetation, urban agriculture, and hazard-resilient development.*

...

The Integrated Development Standards are described as meeting this overall purpose to ensure connectivity and development patterns to support walking and bicycling, environments that promote healthy lifestyles, conservation and protection of natural resources, conservation and protection of cultural and historic resources, and safety from fire, flood, and other dangers. In its introduction, the Integrated Development Standards state that “[n]o lands shall be developed without full compliance of these standards and all other applicable federal standards.” In the Trinidad Rancheria Comprehensive Plan, the land around the Casino where the hotel would be located is designated as a “Recreation and Entertainment Area.” The Integrated Development Standards state that within this designated area, buildings may be up to four stories in height and shall have tall ground floors to accommodate commercial spaces.

Within the boundaries of the Trinidad Rancheria-managed land, existing development consists of one- and two-story structures including the Casino, Tribal Government offices, wastewater treatment facility, and single family residences. In surrounding areas, commercial development is mostly located in the downtown area of Trinidad, along the streets that connect Highway 101 with the community and Trinidad Harbor. Commercial establishments include restaurants, cafes, and small shops. Most of these existing buildings are one- or two-story structures, and none are more than three stories in height. Eureka, approximately 20 miles south of Trinidad, is the closest community with buildings similar to the height of the proposed hotel.

The hotel would not be shielded by existing vegetation and tree cover and would be prominent from the public view areas of Trinidad Head and Trinidad Harbor (**Exhibit 7**, although the size of the image provided by the BIA is not readily conducive to analysis). The hotel would not be visible from Highway 101. The existing views from Trinidad Head do not include any structures more than two stories in height, and the panoramas from this location are of mostly

undeveloped or sparsely developed coast (**Exhibit 6**). Thus, the hotel has not been sited or designed to protect public views from Trinidad Head or Trinidad Harbor.

Therefore, for these reasons, staff recommends that the Commission find that the hotel is not visually compatible with the visual character of its surroundings, is not sited or designed to protect views from Trinidad Head and Trinidad Harbor to and along the ocean and scenic coastal areas, and does not protect the unique characteristics of Trinidad Head or Trinidad Harbor, popular visitor destination points for recreational activities in the area. Therefore, staff recommends that the Commission conclude that the proposed project is inconsistent with Sections 30251 and 30253(e) of the Coastal Act.

Staff recommends that for the Commission to find the proposed project consistent with Section 30251 and 30253(e) of the Coastal Act, the BIA would need to provide a revised consistency determination that:

1. Includes hotel heights, siting, and/or other design elements that ensure that the proposed hotel is visually compatible with the visual character of its surroundings and protects the views from Trinidad Head and Trinidad Harbor. This could be accomplished by one or a combination of the following: reducing the height of the hotel, relocating all or a portion of the hotel to other areas on the Trinidad Rancheria property, and/or the use of exterior design elements that further reduce the prominence of the proposed hotel.

E. DEVELOPMENT

Section 30250 of the Coastal Act states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30254 of the Coastal Act states in part:

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; ...

The proposed project would be located immediately adjacent to the existing Casino. Parking for the hotel would be provided by the existing spaces that currently serve the casino. Natural gas and electric utilities currently provide service to the casino and would also serve the proposed hotel. The water supply and wastewater treatment elements of the proposed hotel project are discussed below.

Water supply

The draft EA for the proposed project states that water would be provided to the hotel by the City of Trinidad's water supply system through the existing water line that serves the Casino, and that no additional water infrastructure is required; no other alternatives for providing water are assessed. The draft EA for the proposed project estimates that approximately 18,860 gallons of water per day (gpd) would be required for the hotel. A letter from the BIA received on March 20, 2019 indicates that "...the Tribe has incorporated water saving design features, including on off-site contracted laundry service that would reduce the water demand to approximately 3,000-3,500 gpd...", although no further information is provided regarding the potential change in estimated water use.

According to the City of Trinidad's comment letter on the draft EA for the proposed project, "[t]he City has not received any application for new or expanded water service for the Hotel, and has made no commitment to provide potable water for the proposed Hotel."

The City of Trinidad's water supply is based on a maximum amount allowed to be withdrawn annually from its water source, Luffenholtz Creek. Water supply is an issue of significant concern for the City and surrounding areas, because a number of wells went dry during the summers of recent drought years (City of Trinidad 2017). As a result, in 2017 the City of Trinidad included a water supply assessment as one of the tasks included in a LCP planning grant application to the Commission; the Commission awarded this grant in August of 2017. In its grant application, the City stated:

The City has recent but limited data regarding the City's watershed capacity and water rights. Data confirm that the Luffenholtz Creek watershed can support build-out within City limits under the current LCP. However, the data needs to be expanded to include portions of service area and various build-out scenarios, including Trinidad Rancheria's plans for increased development.

Presently, the City is assessing how much water could be provided with its existing water system, for example by focusing on the capacity of its water pumps and associated infrastructure; this assessment may be completed in April 2019 (Dan Berman, Trinidad City Manager, personal communication 2019). A parallel, ongoing study is assessing water that could be required if build-out in the City occurred according to the City's overall general plan and zoning restrictions. This parallel study may also be completed in the spring of 2019. A final aspect of the City's plans to study its water supply is longer-term and includes consideration of potential factors related to changing precipitation scenarios resulting from climate change. While these studies are being planned and conducted, the City also has addressed other recent water supply considerations related, for example, to supplying the CalFIRE station one mile north of the City limits (which was the subject of an LCP amendment certified by the Commission at the February 2019 Commission hearing).

It is within this overall context that the City is considering the possibility of increased water supply to the Trinidad Rancheria. Without the results of the City's water supply assessment,

more precise definition of the amount of water that the hotel may require, and any subsequent negotiated agreement with the City, it is not known if water to the hotel will be provided by the City's water system. It is also not known if provision of water to the hotel by the City would limit the City's ability to provide water for essential public services or to other new, priority coastal land uses in the future. If the City does not provide water to the hotel, it is not clear how hotel water would be supplied since no other alternatives for providing water have been described or assessed in either the BIA consistency determination or the draft EA for the proposed project.

Therefore, based on the currently available information, the staff recommends that the Commission find it does not have sufficient information at this time to enable it to find the proposed project consistent with Sections 30250 and 30254 of the Coastal Act, since it is not known if the hotel can be accommodated at this location with respect to the identified water supply need.

Staff further recommends that the Commission find that in order for it to find the proposed project consistent with Section 30250 and 30254 related to the water supply aspect of the proposed project, the BIA would need to provide additional information and accompanying analysis that describes how the project meets one of the two following alternatives related to water supply:

1. Provide additional information identifying the amount of water required by the proposed hotel and describing how the City of Trinidad is agreeing to provide water to the proposed hotel from the City's water supply; or
2. Describe the amount of water needed by the proposed hotel and a description of how water would be provided from an alternative water source, accompanied by an analysis of effects to coastal resources (pursuant to Chapter 3 of the Coastal Act) that implementing such an alternative would entail.

Wastewater treatment

The BIA consistency determination states that the "Proposed Project would utilize the Tribes [*sic*] existing [wastewater treatment plant], requiring upgrades and an additional leach field. This upgrade would be solely on Tribal lands and would allow for the system to handle a total of approximately 50,000 [gallons per day], enough capacity to accommodate operation of the new hotel." A letter from the BIA received on March 20, 2019 indicates that "[t]he Tribe has contracted a consultant to further define the needs of the wastewater treatment plant and to assess leach field capacity and suitable locations for expansion. Preliminary findings indicate adequate acreage and soil types for expanded leach field capacity to meet the demands of the hotel." The letter provided no further results, analyses, or details of where this acreage or soil types exist.

The existing wastewater treatment plant processes wastewater generated by the existing Casino as described in the draft EA for the proposed project:

Wastewater generated by the existing Casino, averaging 7,200 gallons per day (gpd), is currently treated by the Tribe's wastewater treatment plant (WWTP) and leach fields. The existing WWTP utilizes a combination of biological treatment and membrane separation and has an existing capacity of 15,000 gpd. The existing WWTP was designed to double in size with the addition of three filters, without resizing or excessive retrofitting. Wastewater generated by the existing Casino is pumped to a 15,000-gallon holding tank before being transferred to a concrete bioreactor....Approximately 40 percent (4,000 gpd) of the treated wastewater is dispersed via pumps into a leach field with a capacity of 10,000 gpd located south of the Tribal office.

The draft EA for the proposed project includes an analysis of the capacity of the existing leach field to treat the anticipated amount of wastewater that would result from the operation of the hotel, and concludes that "...the existing leach field would operate over capacity. In order to accommodate excess wastewater capacity from the proposed Hotel, a 2004 Wastewater Assessment identified two potential areas feasible for additional leach field dispersal." **Exhibit 3** indicates the location of these two potential leach field areas.

A 2016 feasibility report for the proposed hotel, included as an appendix to the draft EA for the proposed project, identified several considerations related to the design and function of both existing and potential new wastewater treatment facilities on the site that are not fully addressed in either the draft EA or the BIA consistency determination. These considerations include:

1. Questions about the existing, actual operational capacity of the existing leach field serving the Casino, since there is a history of plugging resulting from Casino discharges from before the WWTP was completed. The suggestion in the feasibility report is to clean the existing dispersal field and then evaluate the actual operational capacity of the leach field. This will help verify the necessary size of a new leach field.
2. Questions about the availability of acceptable soils on the overall Trinidad Rancheria property for the leach field, with a suggestion to perform a site-specific soils survey to identify the precise location of such soils. From the information provided in the draft EA for the proposed project and the BIA consistency determination, it does not appear that such a soils survey has been conducted for either of the proposed locations for the new leach field (**Exhibit 3**).
3. Questions about the scope of potential modifications needed for the existing WWTP, depending on the specific amount of increased treatment capacity required by the proposed hotel. From the analysis in the 2016 feasibility report, it appears that the existing WWTP is barely large enough to accommodate the proposed hotel's wastewater. It is not certain whether a WWTP expansion would

be necessary, if an expanded WWTP could be housed within the existing facility, or what size of an addition would be required.

Therefore, additional information is needed to evaluate if the proposed hotel could be accommodated by the existing and proposed wastewater treatment systems described in the BIA consistency determination and draft EA for the proposed project. Therefore, staff recommends that the Commission find that it does not have sufficient information at this time to enable it to find the proposed project consistent with Section 30250 of the Coastal Act with respect to the proposed project's wastewater treatment aspect. Staff further recommends that the Commission find that in order for it to find the proposed project consistent with Section 30250 related to wastewater treatment, the BIA would need to provide information related to the following:

1. Verification of the operational capacity of the existing leach field, refined estimate of projected wastewater generated by the proposed project, and results of a detailed soils survey in order to verify the necessary size and location of a new leach field and the need for expansion of the existing WWTP.
2. Once the location and size of the new leach field has been designed, and once the need for expansion of the existing WWTP has been determined, an analysis of these aspects of the proposed project for consistency with the enforceable policies of the CCMP (i.e., Chapter 3 of the Coastal Act).

Traffic

The draft EA for the proposed project, and an accompanying technical appendix describing the results of a related traffic study, assess the potential for traffic-related impacts that would result from the proposed hotel. The draft EA for the proposed project concludes that:

...with the additional trips generated by the Hotel and ancillary facilities, intersections on the Main Street corridor and the project entrance on Scenic Drive are forecasted to operate at unacceptable [level of service]. Construction of a new intersection off of HWY 101 would reduce adverse effects on transportation and circulation generated by construction of the Hotel. The BIA understands that the Tribe is currently undergoing consultation with Caltrans to complete this interchange. This new interchange may be located approximately 0.7 miles south of the Main Street interchange.

The draft EA for the proposed project includes the construction of the new interchange off Highway 101 as the single mitigation measure for the traffic impacts identified in the technical appendix. As described previously, this interchange is in the environmental review and planning stage, with a related CEQA analysis presently anticipated for publication in 2021.

The draft EA for the proposed project cites an analysis in its technical appendix including the traffic study that appears to combine a tripling in the size of the casino (to 150,000 square feet) and the proposed hotel in its assessment of potential traffic impacts. Traffic generated by both

developments is combined, and the result of that combined assessment results in two local intersections that would operate at an unacceptable level of service. The traffic assessment does not assess the impact generated solely by the proposed hotel, and therefore the traffic impacts associated with the hotel are not clear; consequently, it is not clear if a new interchange would be necessary to provide mitigation for traffic-related impacts associated with the new hotel or if other mitigation measures would be sufficient. Additionally, if a new interchange was required to mitigate traffic caused solely by the hotel, then the Commission would also need information regarding the effects that such an interchange would have on coastal resources.

A letter from the BIA received by the Commission on March 20, 2019 indicates that "...[i]n response to concerns regarding traffic and the interchange, the Tribe has commenced a traffic impact study to address the hotel's impacts on the existing infrastructure. Preliminary results indicate that impacts from the hotel on the existing transportation system would be minimal." No additional information or analyses are provided regarding this study, however.

Therefore, staff recommends that the Commission find that it does not have sufficient information at this time to enable it to find the proposed project consistent with Section 30250 of the Coastal Act with respect to the proposed project's effects on traffic and transportation. Staff further recommends that the Commission find that in order for it to find the proposed project consistent with Section 30250 related to traffic, the BIA would need to provide information related to the following:

1. Analysis of the traffic-related impacts to the existing transportation network in Trinidad and surrounding areas generated by the hotel itself and identification of related mitigation measures, accompanied by analysis of this aspect of the proposed project for consistency with the enforceable policies of the CCMP (i.e., Chapter 3 of the Coastal Act).

Summary

For the reasons described above, staff recommends that the Commission find that it is unable at this time to find the proposed project consistent with Section 30250 of the Coastal Act, because it is unclear whether adequate public services are available to accommodate the proposed project, with respect to: (1) water supply; (2) wastewater treatment; and (3) traffic. Moreover, to determine consistency with Section 30254 of the Coastal Act, staff recommends that the Commission find that it needs information sufficient to determine whether any new or expanded public services can be provided without causing adverse effects on coastal resources and/or growth inducing effects.

Staff further recommends that the Commission find that in order for it to find the proposed project consistent with Sections 30250 and 30254 related to the water supply, wastewater, and traffic aspects of the proposed project, the BIA would need to provide additional information and accompanying analysis as described on pages 16 (water supply), 18 (wastewater), and 19 (traffic).

F. HAZARDS

Section 30253(a) and (b) of the Coastal Act state:

Development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that substantially alter natural landforms along bluffs and cliffs.*

The draft EA for the proposed project states that while Humboldt County is located in a seismically active region, the proposed hotel would not be located within or on an active fault and there is little chance of an active fault on the project site. However, the draft EA for the proposed project also states:

The active landslide that currently extends from the southwest corner of the proposed Hotel southwest toward Scenic Drive has the potential to affect the foundation of the proposed Hotel. However, the active landslide is relatively shallow in nature and may be readily stabilized utilizing measures such as retaining wall systems, slope reconstruction, and sub-drainage elements.

To address the potential effect to the hotel foundation, the draft EA for the proposed project identifies the following mitigation measures:

- Prior to construction of the Hotel foundation, the contractor shall implement one of the slope stabilization options recommended by the soil engineers....options include soil nail walls, reconstructed embankment, soldier pile, and welded wire walls.

A draft geotechnical feasibility and preliminary design report for the proposed hotel (attached as an appendix to the draft EA for the proposed project) also states:

Based on preliminary discussions with the design team, we expect the hotel footprint will be modified to avoid the slide feature. Depending on the final hotel layout, some level of slope stabilization should be considered to limit headward encroachment of the slide. Appropriate stabilization work may include such options as a soil nail wall, welded wire wall or cantilevered soldier pile wall, with wall height likely on the order of 10-15 feet. If the hotel footprint cannot be modified to avoid the slide, then more extensive slope stabilization will be required, such as a drained reconstructed embankment, regraded slope, tie-back soldier pile wall(s) or a tiered wall system.

From this information, it appears that the options for addressing the risks posed by the landslide, and also thus assuring the stability and structural integrity of the proposed hotel, have not been completely determined. Given the potential considerations raised in the draft geotechnical feasibility and preliminary design report for the proposed hotel, the selected option may involve extensive slope stabilization measures. However, the details of a selected option have not been provided in the BIA consistency determination and are not described in the draft EA for the proposed project.

Therefore, staff recommends that the Commission find there is insufficient information to find the proposed project consistent with Sections 30253(a) and 30253(b) of the Coastal Act. Staff further recommends that the Commission find that in order for it to find the proposed project consistent with Section 30253(a) and 30253(b), the BIA would need to provide information describing the measure(s) proposed to mitigate the existing landslide hazard, including design details or other proposed measures and their potential location. In addition, if stabilization measures require extensive grading or construction of retaining walls, the BIA would need to provide information sufficient for the Commission to determine consistency of those measures with Section 30251 of the Coastal Act, including its requirement to minimize the alteration of natural land forms.

G. BIOLOGICAL RESOURCES AND HABITAT

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.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Biological resources and habitat

As described in the draft EA for the proposed project, the existing hotel would be located on a paved area with no vegetation within the area to be disturbed. Habitats and vegetation for the proposed leach field alternative locations (see **Exhibit 3**) are not described in the draft EA or the BIA consistency determination; in general, the draft EA for the proposed project describes most of the undeveloped area adjacent to the proposed project site as:

*.... [c]haracterized by northern coastal scrub, consisting of low shrubs in dense patches that usually occur on windy, exposed sites with shallow and rocky soils. No wildlife occurs on or within the project site due to the high level of foot and vehicle traffic associated with the operation of the existing Casino back of the house. Surrounding the project site and on the adjacent properties, the following wildlife have been observed: turkey vulture (*Cathartes aura*), mourning dove (*Zenaida macroura*), California gull (*Larus californicus*), and American robin (*Turdus migratorius*).*

Although the project site does not contain suitable habitat for nesting birds, there is potential for migratory birds that are accustomed to high levels of human activity to nest adjacent to the project site within the mature trees. The trees are located adjacent to the edge of the asphalt surface.

The draft EA for the proposed project states that there are no surface water features or wetlands within the boundaries of the project site. Consultants for the BIA performed a reconnaissance-level site assessment, queried the California Natural Diversity Data Base, and conducted an informal consultation with the US Fish and Wildlife Service (USFWS) to determine the potential for special-status plant and animal species to be affected by the proposed project. While no habitat identified by the USFWS as critical to the survival of a protected species occurs within or immediately adjacent to the project site, potentially suitable habitat for the marbled murrelet (*Brachyramphus marmoratus*) and the northern spotted owl (*Strix Occidentalis Caurina*) are present in the project vicinity.

Marbled murrelets forage in shallow shoreline and tidal pools and nest in old growth forests. Foraging habitat for marbled murrelet is approximately 500 feet from the project site on shoreline west of the proposed hotel. Potential nesting habitat exists within approximately 25 feet of the project site to the west, south, and east, although the species has not been documented at the site. Similarly, while northern spotted owls live primarily in old growth (150 to 200 year-old) mixed-conifer forests characterized by dense canopies, the species can also be found in previously logged lands if larger trees or snags are present; foraging habitat includes any forested areas with sufficient prey (mice and voles, e.g.). Potentially suitable habitat for the species is located adjacent to the project site, although the species has not been documented at this location, according to the draft EA for the proposed project.

Given the suitability of existing habitats for marbled murrelet and northern spotted owl, these two species could be affected by the proposed project. Additionally, the draft EA states:

... [a]lthough the project site does not contain suitable habitat for nesting birds, there is a potential for migratory birds to nest directly adjacent to the project site within the mature trees. However, the birds would have to be accustomed to areas of intense human activity. Construction activities could result in disturbance of nearby nest sites for migratory birds and other birds of prey through temporary increases in ambient noise levels and increased human activity within the Proposed Project area. Such disruptions could result in the abandonment of active nests. This would be a temporary effect and would not result in take of nesting migratory species.

As a result of the potential for marbled murrelet, northern spotted owl, birds of prey, and migratory birds to be present in the vicinity of the project site, the draft EA for the proposed project includes the following mitigation measure:

- A qualified biologist shall conduct a preconstruction survey within 100 feet of the project site during marbled murrelet, northern spotted owl, bird-of-prey, and migratory bird nesting seasons. If any active nests are located within the vicinity of the project site, a no-disturbance buffer zone shall be established to avoid disturbance or destruction of the nest(s). The distance around the no-disturbance buffer shall be determined by the biologist in coordination with USFWS and will depend on the level of noise or construction activity, the level of ambient noise in the vicinity of the nest, and the line-of-sight between the nest and disturbance. 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 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 any reports prepared as part of the implementation of this mitigation measure for review and approval.

Water quality

No surface water features are found on the proposed site; McConnahas Mill Creek is near the western boundary of the Trinidad Rancheria approximately 1,500 feet west of the Casino site. As described in the draft EA for the proposed project:

The project site has slopes which range from approximately zero to five percent. Runoff within the surface parking lot occurs as sheet flow and follows the topography southwest towards on-site detention basins and swales constructed during the development of the existing Casino. The project site and surrounding lands ...[has] overland flow [that] drains via stormwater outlets into the Pacific Ocean.

Construction of the hotel and leach field could affect water quality through soil grading, excavation, and stockpiling; construction activities may also include use of potentially hazardous materials such as concrete washings, oil, and grease, which could be spilled and/or combine with stormwater runoff. The proposed hotel location, in the existing parking lot, would result in no net increase in impervious surfaces, and according to the draft EA, roof drains installed on the proposed hotel would route water into the existing storm drainage system.

To address potential construction-related water quality impacts, the draft EA for the proposed project describes the following construction best management practices:

- 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 using 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.
- 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.
- Temporary erosion control measures (such as silt fences, staked straw bales, and temporary vegetation) 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.
- Personnel shall follow BMPs for filling and servicing construction equipment and vehicles. To reduce the potential for accidental release, fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment and shall not be stored on site.
- Catch pans shall be placed under equipment to catch potential spills during servicing.
- Refueling shall be conducted only with approved pumps, hoses, and nozzles.
- Vehicle engines shall be shut down during refueling and idling shall be kept to a minimum.
- No smoking, open flames, or welding shall be allowed in refueling or service areas.
- Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
- Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.
- Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with local, state, and federal regulations.
- All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure. All maintenance, refueling, and storage areas shall be inspected monthly.
- Hazardous materials must be stored in appropriate and approved containers in accordance with applicable regulatory agency protocols.
- Potentially hazardous materials, including fuels, shall be stored away from drainages and secondary containment shall be provided for all hazardous materials stored during construction and operation.
- In the event that contaminated soil and/or groundwater are encountered during construction-related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, representatives of the Tribe shall consult with the BIA and EPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan, if necessary. Any contaminated soils that are determined to be hazardous shall be disposed of in accordance with federal regulations.

Summary

With the inclusion of the measures described above to address potential impacts to habitat, biological resources and water quality, the Commission finds that the proposed project would protect adjacent habitat areas and water quality and would sustain the biological productivity of coastal waters and that the proposed project would be consistent with Sections 30231 and 30240 of the Coastal Act.

H. 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 states that the proposed hotel and supporting staging areas would be located on a site that was previously excavated to bedrock as part of the construction of the existing Casino. The leach fields associated with the proposed project are in an area of the Trinidad Rancheria that is not characterized in the draft EA for the proposed project but appear to include previously un-disturbed ground.

The draft EA for the proposed project states that:

... [a] record search was conducted at the Northwest Information Center (NWIC) of the California Historical Resources Information System by AES staff on January 26, 2017 (NWIC File No. 16-1090). Sources reviewed included: the National Register of Historic Places; the California Register of Historical Resources; California Points of Historical Interest; California Inventory of Historic Resources; California Historical Landmarks; Directory of Properties in the Historic Property Data Files for Trinidad County; and Archaeological Determinations of Eligibility. No resources have been noted within 0.25-miles of the Proposed Project in spite of the fact that six cultural resources studies included the [footprint of the proposed Hotel and any construction staging areas] and 0.25 mile buffer.

*...
Geotechnical studies have shown that the Proposed Project site is located on Pleistocene marine terrace sediments deposited on wave-cut bench in rock of the Jura-Cretaceous Franciscan Complex...Mollusks found in this formation, like those found near Trinidad Head approximately 2.5 miles to the west of the [project site] are among the most common Pleistocene fossils...the presence of fossils nearby indicates the potential for fossils to be encountered during construction.*

Additionally, as described in the staff report for the relocation of the Trinidad Memorial lighthouse (CDP 1-18-0630), the proposed project site is approximately 0.75 miles from 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.

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

- Halt work within 50 feet of the find, retain a qualified paleontologist to assess significance. If the find is determined to be significant, determine the appropriate course of action, including recovery, analysis, curation, and reporting according to current professional standards.

With the incorporation of these measures, 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-0001-19, Bureau of Indian Affairs, Trinidad Rancheria Hotel Project Loan Guarantee and Management Contract, February 11, 2019.

Letter received March 20, 2019, from the Bureau of Indian Affairs regarding the timing of the Commission review of the BIA consistency determination and changes to the proposed hotel since the federal consistency determination was submitted.

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.

City of Trinidad, Local Coastal Program planning grant application to the California Coastal Commission, May 2017.

Personal communication from Dan Berman, Trinidad city manager, to John Weber, Coastal Commission staff, dated March 13, 2019.

Draft Environmental Assessment, Trinidad Rancheria Economic Development Corporation Hotel Development Project, September 2018.

Draft Geotechnical Feasibility and Preliminary Design Report Trinidad Rancheria Cher-Ae Heights Hotel, Crawford and Associates Inc., November 2016.

Electronic correspondence from David Tyson, Trinidad Rancheria Economic Development Corporation Interim Manager, to Mark Delaplaine, Coastal Commission staff, dated March 4, 2019.

Preliminary Feasibility Report for Trinidad Rancheria Cher-Ae Heights Facility, Northstar Designing Solutions, September 2016.

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

Trinidad Area Freeway Master Plan Study Report, Omni-Means Ltd. And SHN Consulting Engineers & Geologists, Inc., February 2014.