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**STAFF REPORT: REGULAR CALENDAR**

**Consistency Determination No.:** **CD-0004-19**

**Federal Agency:** **Bureau of Indian Affairs**

**Location:** Approximately 0.5 acres of mostly developed 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 wastewater treatment, additional parking, and water supply.

**Staff Recommendation:** Objection

**Staff Note:**

As the Commission urged when it objected to the BIA's previous, similar consistency determination at the June 2019 Commission meeting in San Diego, the Bureau of Indian Affairs (BIA) has resubmitted a federal consistency determination for the proposed Trinidad Rancheria Hotel. The Commission made it clear that such a resubmittal would provide two benefits: allow for progress to be made on the issue of water supply for the proposed hotel, and enable a local public hearing to be held at the Commission's August meeting in Eureka.

This staff report is similar to that which was prepared for CD-0001-19, and it includes updated information on the issue of water supply (see Section IV.E Development). During its review of CD-0001-19, the Commission received approximately 190 public comments and petitions expressing support for and opposition to the proposed hotel. These documents, as well as some

ex parte communication forms submitted by Commissioners during the review of CD-0001-19 are available on-line at <https://www.coastal.ca.gov/meetings/agenda/#/2019/6>.

## **SUMMARY OF STAFF RECOMMENDATION**

The Bureau of Indian Affairs (BIA) has submitted a consistency determination for a loan guarantee and lease of trust land (land held in trust by the federal government on behalf of a Tribe) to enable the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) to build and operate a five-story hotel adjacent to the existing Cher-Ae Heights Casino. The proposed 100-room hotel would be sited on approximately 0.5 acres of mostly developed land, with approximately 51,000 square feet of land developed as a leach field for the proposed hotel, and an approximately 1.5 acre area paved to provide additional parking.

The proposed hotel would be five stories tall, and it would rise approximately 64 feet in height above the floor of the Tribe's existing casino. Since the October 2018 publication of the draft Environmental Assessment for the proposed project, the hotel design has changed significantly, including alterations to its exterior appearance and height, location of wastewater treatment facilities, specification of measures to provide slope stability, and amount of required water.

As currently proposed, the hotel would be the tallest building by at least 30 feet in Trinidad and the surrounding area, where single- and two-story buildings in a low-density, mostly rural land use pattern predominate. Adjacent neighborhoods in Trinidad and Humboldt County contain mostly one- and two-story homes. The hotel would be visible from Trinidad Head and the Trinidad Harbor area, visitor destinations that provide views of the ocean and forested coastline with a predominantly rural coastal character, the scenic nature of which is a vital component of the popularity of the Trinidad area as a visitor destination point. As proposed, the hotel is not compatible with the character of this rural community, but there appear to be alternative locations and/or designs that would accommodate a hotel that would be consistent with the rural nature of this portion of the coast. Therefore, the staff recommends the Commission find that the proposed hotel is inconsistent with Sections 30251 and 30253(e) of the Coastal Act, since it 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 measure to address consistency with Sections 30251 and 30253(e) of the Coastal Act:

1. Revise the hotel design by incorporating building heights or siting to ensure that the proposed hotel is visually compatible with the character of its surroundings and is thus more protective of the views from Trinidad Head and Trinidad Harbor. This measure could be accomplished by designing a hotel with a height of no more than 40 feet, which could be achieved by reducing the number of rooms or relocating all or a portion of the hotel to other areas on land adjacent to or near the existing casino. Reducing heights to no more than 40 feet would result in a building height that is not out of character with the heights of existing buildings on the Rancheria and surrounding area of Trinidad and Humboldt County.

The Trinidad Rancheria would prefer that the City of Trinidad (City) provide water to the hotel. There is no existing contract or other agreement in place for such use of City water, and no other alternative that would meet hotel water needs is provided. Staff recommends the Commission find the proposed hotel inconsistent with Section 30250(a) of the Coastal Act because it is not known whether adequate water is available. Page 26 of this staff report lists information that staff is recommending the BIA would need to provide to enable the Commission to find the proposed project consistent with Section 30250(a) of the Coastal Act related to water supply.

The proposed project would include an expansion of the existing, on-site leach field, additional wastewater recycling, increased wastewater storage capacity, and use of treated wastewater for landscaping irrigation. The combination of these measures would result in sufficient capacity to appropriately dispose of wastewater, including at times of peak flows, generated by the proposed hotel. Therefore, staff recommends the Commission find the proposed project consistent with Section 30250(a) of the Coastal Act with respect to wastewater treatment.

A traffic assessment for the proposed project finds that there is sufficient road capacity to handle traffic generated by the proposed hotel, which is a visitor-serving use. Therefore, staff recommends the Commission find the proposed project consistent with Sections 30250(a) and 30254 of the Coastal Act with respect to transportation.

A geotechnical feasibility and design report concludes that the site is suitable for the proposed hotel with below-grade foundation design elements and the use of slope stabilization walls. The Trinidad Rancheria has committed to incorporating landscaping to conceal such walls where they extend above grade. Therefore, staff recommends the Commission find the proposed project consistent with Sections 30253(a) and 30253(b) of the Coastal Act.

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 BIA's consistency determination is lacking such detailed descriptions and comprehensive data, and the supplemental information provided by the Rancheria on May 13, 2019 did not cure all of these deficiencies. For the reasons described above, the staff recommends that the Commission **object to** the BIA's consistency determination, based on inconsistency with the CCMP.

The standard of review for this project is consistency with the enforceable policies of the California Coastal Management Program, which are the Chapter 3 policies of the Coastal Act. The motion to carry out the staff recommendation is on page 5.

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- APPENDIX A:** MAY 13, 2019 COVER LETTER FOR PROJECT INFORMATION PROVIDED BY THE TRINIDAD RANCHERIA
- APPENDIX B:** PROJECT INFORMATION RE: SCENIC RESOURCES AND VIEWSHED
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## EXHIBITS

- Exhibit 1 – Regional context
- Exhibit 2 – Vicinity map
- Exhibit 3 – Aerial of proposed hotel site and associated infrastructure
- Exhibit 4 – Proposed hotel site plan
- Exhibit 5 – Existing views from Trinidad Head
- Exhibit 6 – Simulated views depicting hotel
- Exhibit 7 – Rendering of façade of proposed hotel
- Exhibit 8 – Location of proposed expanded leach field
- Exhibit 9 – Hotel illustration from the Cher-Ae Heights Indian Community of the Trinidad Rancheria, Comprehensive Community-Based Plan
- Exhibit 10 – City of Trinidad Letter re: status of review of water supply

## 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-0004-19 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 an objection to 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-0004-19 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 Sections IV.D: Scenic and Visual Resources and IV.E Development, the Commission finds 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. The Commission finds that it would be possible to bring this project into compliance with the CCMP if the BIA implements the following measures:

1. Revise the hotel design by incorporating building heights or siting to ensure that the proposed hotel is visually compatible with the character of its surroundings and protects the views from Trinidad Head and Trinidad Harbor. This measure could be accomplished by designing a hotel with a height of no more than 40 feet, which could be achieved by reducing the number of rooms or relocating all or a portion of the hotel to other areas on land adjacent to or near the existing casino. Reducing heights to no more than 40 feet would result in a building height that is not out of character with the heights of existing buildings on the Rancheria and surrounding areas of Trinidad and Humboldt County.

2. Provide evidence that the City of Trinidad is able to and is agreeing to provide water to the proposed hotel from the City's water supply. This evidence could take the form of a contract or "will-serve letter" from the City, a letter of intent to complete a contract, or a similar expression of agreement from the City to provide water for the proposed hotel. Alternately, provide a description of how water would be provided from an alternative source that would be consistent with Section 30250(a) of the Coastal Act, accompanied by an analysis of effects to coastal resources (pursuant to Chapter 3 of the Coastal Act) that implementing such an alternative would entail.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION

#### *Overview*

The Bureau of Indian Affairs (BIA) has submitted a consistency determination for a loan guarantee and the approval of a lease of land held in federal trust for the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) Economic Development Corporation hotel project. This consistency determination describes a project similar to the project that was the subject of consistency determination CD-0001-19, that the BIA submitted in February, 2019, and to which the Commission objected at its June 2019 meeting in San Diego (see IV.B, Project History and Related Actions).

The proposed hotel would be located on approximately 0.5 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 casino parking (**Exhibits 3 and 4**). This land is part of the approximately 46.5 acres that comprise this portion of the Trinidad Rancheria property, which also includes land on the north and west side of Highway 101 (the "Westhaven Parcel").

The BIA's consistency determination incorporates information from the Trinidad Rancheria related to the hotel's proposed design, water, wastewater, traffic, and geotechnical and engineering. This information is included in appendices to this staff report and is summarized in the findings below. In its cover letter accompanying this information, which is included in **Appendix A**, the Trinidad Rancheria describes its efforts to develop the proposed project and expands on the project purpose, beginning with the following:

*The Tribe applauds the Commission's recent adoption of the California Coastal Commission Environmental Justice Policy, and the Commission's explicit acknowledgement of the "painful history of genocide against Native American Tribes" and the Commission's honoring of the efforts of California's coastal tribes to "rebuild thriving living cultures..." The Tribe has worked with the Commission on several projects to protect the ecological and cultural resources located in Trinidad Harbor, while also developing a sustainable economy for the*

*Tribe and the region and expanding access and recreational opportunities for the public. In order [to] rebuild thriving culture and protect the ecological and cultural resources we hold so dear, we must create a sustainable economy and provide jobs for our members and other marginalized communities living in the region....the Tribe's land base is very small and a significant portion of the eastern part of the Trinidad Rancheria was sacrificed to accommodate the State of California's construction [of] Highway 101, which brought economic benefits to the region but bypassed the Trinidad Rancheria and further impoverished the Cher-Ae Heights Indian Community.*

The Trinidad Rancheria's cover letter also describes the Tribe's history and its federally recognized status, as well as the efforts leading to its 2011 Comprehensive Community-Based Plan (Community Plan). The Community Plan identifies the Tribe's goals and future development plans for its land, including a new interchange with Highway 101, a mini-mart and gas station, additional highway-focused retail facilities, an RV park on the eastern portion of the Rancheria property, and a community center. The Trinidad Rancheria concludes this portion of its cover letter by stating:

*The construction of the hotel on the Tribe's trust land is the beginning of the dream that will see the Community Plan come to life. The hope is that the hotel will be the tribal business to jumpstart other businesses, help fund a community center and additional tribal housing, and bring jobs to both the Tribe and surrounding communities. The hotel will bring the revenue needed to begin to address poverty, unemployment, job creation, and provide the internal capacity for the Tribe to improve the general welfare of the Tribal Members. In addition, and consistent with the Coastal Act, the hotel, as a visitor-serving land use that will provide shuttle service to Trinidad Harbor for guests, is vital to the economic health of the region. It will enhance public access to the coast and help support the regional economy by drawing additional tourists, who will have improved access to coastal recreational activities and enjoy shopping and eating in the City of Trinidad and neighboring towns.*

*The Cher-Ae Heights Indian Community has been a marginalized community since the non-Indian development of Trinidad Harbor and the City of Trinidad, and our community still suffers from very high unemployment and low income. The Trinidad Rancheria land base was acquired by the United States to provide a sustainable homeland for our people, and the proposed project will help achieve that goal, and it will support our efforts to protect the coast and enhance the public's access. Consistent with [the Commission's] Environmental Justice Policy, we encourage the Commission to take these circumstances and values into account when assessing this consistency determination.*



***Details of the proposed project***

The proposed hotel would be located on Trinidad Rancheria land east of the boundary of the City of Trinidad. Land to the north and east of Trinidad Rancheria property is under the land use control of Humboldt County. Highway 101 has a general northwest-southeast orientation in this area (**Exhibit 3**).

Access to the proposed hotel would occur through Scenic Drive, a two-lane road roughly parallel to Highway 101 that connects the Trinidad Rancheria and the existing casino to downtown Trinidad. 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 to provide direct access to the Trinidad Rancheria property and, as described in the Community Plan, to support additional development. While environmental review and design processes for the interchange are underway, related CEQA documentation, which Caltrans is preparing, 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 guest 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 access provided by an existing driveway and parking on its southern face and a covered access along the southeast edge of the casino (**Exhibit 4**). While initial plans were for a six-story hotel, the BIA's consistency determination indicates that the proposed hotel would be five stories tall. The proposed hotel also would include an expanded leach field, wastewater treatment, and parking. **Exhibit 5** provides existing views from Trinidad Head of the surrounding area, and **Exhibit 6** depicts simulations of the proposed hotel as it would appear from Trinidad Head and other public locations, including a view from Trinidad Harbor immediately offshore of the site location.

The hotel's design has evolved since its portrayal in the 2018 draft EA. In **Appendix B**, the Trinidad Rancheria describes the proposed hotel as follows:

*The hotel has been sited to overlap the existing structure as much as possible in part, to minimize the appearance of additional development on the site. The design has also been revised with a smaller grade level building footprint to better fit within the topography. This in turn lowers the perceived height of the building above the adjacent grade by one floor at the South end of the exposed façade. The changing grade results in an overall height of 78.5' vs. 65.5' on the North and South ends respectively.*

*The materials used on the exterior consist of natural stone veneer, lap siding, and vertical siding in multiple earth toned colors. Several roof planes have been sloped back from the exposed elevations minimizing the amount of visible roof surface and larger overhangs create greater depths of shadow on the building face. The natural coloration along with offsets in the building face and roofline all help to break up the perceived overall size of the building.*

Several existing large trees would remain, and two large trees would be removed (**Exhibit 4**). The Trinidad Rancheria also states that landscaping would be enhanced to provide further protection of views from the Harbor.

Information supplied by the BIA indicates that:

*... [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.*

**Exhibit 3** provides an aerial view of the Trinidad Rancheria property and adjoining properties.

#### ***Assessed alternatives***

The draft EA for the proposed project assesses a preferred alternative and a “no project alternative.” No other alternatives are included in the draft EA because of a determination that other alternatives would not meet the project purpose and need, 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.*

In **Appendix A**, the Trinidad Rancheria provides further description of the factors considered that led to the proposed hotel, including:

1. An independent consultant’s analysis of lodging demand in the Humboldt/Del Norte region, resulting in a recommendation that an “upper midscale hotel (3+-star quality) of approximately 100 rooms or more would be market justified at the Cher-Ae Heights Casino.”

2. Ensuring that the profits from the hotel were sufficient to cover quarterly capital loan payments and return a profit to the Tribe; this included consideration of a hotel with fewer than the proposed 100 rooms, but with the conclusion that 100 rooms was necessary.
3. Partnering with a national chain (Hyatt Place Franchising, LLC) with an existing marketing system but without an existing nearby location (the next nearest Hyatt Hotel is 180 miles away in Santa Rosa).

The EA, consistency determination, and other information submitted by the BIA or Trinidad Rancheria do not identify or assess alternative designs or locations on Trinidad Rancheria property that would meet the above objectives while addressing issues related to lack of demonstrated water supply and inconsistency with community character. In **Appendix B**, the Trinidad Rancheria states:

*Finally, relocation of the hotel is not a viable alternative. The Tribe does not have any other land available on the Rancheria Trust Property. Locating the hotel adjacent to the Casino is not only the preferred alternative, but it is the only alternative. We would also like to respectfully request the Commission and its staff take into consideration that Trinidad Rancheria lost trust lands in the past due to the construction of Highway 101. In 1962, when the current layout of Highway 101 was constructed, it bisected the Rancheria on the north eastern corner which left [a] nine-acre parcel on the eastern side of Highway 101. This parcel was subsequently disposed of by the BIA because an adjacent land owner refused to give the Rancheria the necessary right-of-way. The lost acreage was never replaced by the BIA.*

As noted on the following page, the Commission recently concurred with a BIA consistency determination for placing 10 acres of land in Trust for the Rancheria (CD-0006-18).

## **B. PROJECT HISTORY AND RELATED COMMISSION ACTIONS**

On June 19, 2019, the Commission objected to the BIA's consistency determination CD-0001-19 for the proposed hotel. The Commission objection focused on the issue of water supply for the proposed hotel and the adverse effects of the hotel on the visual character of the surrounding community. During their deliberations, Commissioners' discussions centered on water and the location of the public hearing and to a lesser degree on the visual and community character aspect of the proposed hotel; however, the Commission voted to object based on both issues, pursuant to the staff report. Commissioners also strongly urged the BIA and the Trinidad Rancheria to continue working with the City of Trinidad to address the issue of water supply to the proposed hotel, and in similar strong terms urged the BIA to resubmit a revised consistency determination for the proposed project. Commissioners expressed support for the Trinidad Rancheria to seek the potential economic benefits of the proposed hotel in support of the overall goals of the Tribe, provided that the project could be found consistent with the Coastal Act. Commissioners noted that if the BIA were to resubmit the consistency determination, all parties would benefit from conducting a public hearing at the Commission's August 7-9, 2019, meeting

in Eureka, which would enable greater public participation than was possible for the Commission's June meeting in San Diego, and additionally would allow more time for possible resolution of water supply issues that are currently under study by the City.

During its review of CD-0001-19, the Commission received approximately 190 public comments, as well as petitions expressing support for and opposition to the proposed hotel. These comments, as well as ex parte communication disclosure forms submitted by Commissioners, are available on-line at: <https://www.coastal.ca.gov/meetings/agenda/#/2019/6>.

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. On April 16, 2019, the Humboldt Alliance for Responsible Planning filed suit in Superior Court against the Commission regarding this decision.

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) in the Trinidad Harbor area 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 Cal FIRE 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. ENVIRONMENTAL JUSTICE**

In the past actions described in Section IV.B, and in recent actions such as the Commission's adoption of the Environmental Justice Policy in March 2019 and the Tribal Notification and Consultation Policy in August 2018, the Commission has committed to working with tribes as partners in the mission of protecting coastal resources. As stated in the Environmental Justice Policy:

*The Commission respectfully acknowledges the painful history of genocide against Native American Tribes and honors the efforts of California's coastal tribes to rebuild thriving, living cultures based on traditional knowledge, language, and practices. The Commission commits to regular and meaningful partnership to ensure that tribes are valued and respected contributors to the management of California's coast.*

In the Trinidad Rancheria's June 6, 2019 letter in response to the staff report for CD-0001-19 (which recommended that the Commission object to that BIA consistency determination), the Tribe states:

*If you object to the Bureau of Indian Affairs' (BIA) consistency determination, it may be construed as contrary to your very own principles of environmental justice and social and racial equity. Social and racial equity are not just about access to the coast for people of color and other marginalized groups, and they are not about merely respecting tribal concerns, they are about recognizing tribal sovereignty – that reservation lands were set aside for sustainable homelands, which includes economic development purposes.*

In the June 11, 2019 addendum to the staff report for CD-0001-19, Commission staff stated:

*Commission staff acknowledges and respects the Trinidad Rancheria's sovereignty and its position that this project raises environmental justice issues because it will create economic development opportunities that enable prosperity and combat poverty in the Trinidad Rancheria community. Staff also acknowledges that the Commission adopted an Environmental Justice Policy in March 2019 in which the Commission committed to consider environmental justice principles, consistent with Coastal Act policies, in the agency's decision-making process.*

*However, the Commission's actions in furtherance of environmental justice goals must be undertaken in accordance with the resource protection policies of Chapter 3 of the Coastal Act, in this case carried out through the Coastal Zone Management Act. As the Commission's Environmental Justice Policy states: "The Commission's environmental justice policy shall be implemented in a manner that is fully consistent with the standards in, and furthers the goals of Chapter 3 of the Coastal Act (the agency's legal standard of review)...."<sup>1</sup> Thus, the identification of a project as having environmental justice benefits does not create a different standard of review for the project or negate the need to protect coastal resources which may otherwise be impacted by the development.*

*Here, staff is not recommending that the Commission categorically object to the proposed land use—a 100 room hotel. Rather, as explained in the staff report, staff has identified two specific issues that require more work before staff would recommend that the Commission find the project consistent to the maximum extent practicable with the Coastal Act. Staff has also identified project modifications that would ensure such consistency while still allowing the Trinidad Rancheria to realize the benefits of economic development vis a vis a hotel*

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<sup>1</sup> Likewise, the "Coastal Development and Environmental Justice" implementation section of the Environmental Justice Policy states, in relevant part: "when appropriate, propose mitigation measures to avoid or fully mitigate identified impacts, in a manner that is fully consistent with Chapter 3."

*proposal. Therefore, staff's recommendation would not prevent the economic development desired by the Trinidad Rancheria here, but would ensure that the development is conducted in a manner consistent to the maximum extent practicable with the Coastal Act's resource protection policies.*

This response to the Trinidad Rancheria, made during the Commission's consideration of the prior consistency determination, remains valid for this Consistency Determination.

#### **D. 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. 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. As of the publication of this staff report, no questions or concerns had been brought to the attention of Commission staff by representatives of the Yurok Tribe. Any concerns raised subsequent to the publication of this staff report will be brought to the attention of the Commission through the development of an addendum to this staff report and recommendation.

During the Commission's review of CD-0001-19, the Tsurai Ancestral Society provided a comment letter that requested that the Commission oppose the project, stating "[t]he proposed hotel impacts the Tsurai Village's cultural and natural resources and will forever change the traditional landscape that shapes our cultural identity." This comment letter also expressed concern for the location of the hearing on that Consistency Determination, asking that the Commission hear the item at its August meeting in Eureka and stating:

*We hope the Commission is able to resolve the issue of protecting the sacredness of public input when discussing projects that effect public resources, no matter what the Bureau of Indian Affairs chooses to do. This means allowing an opportunity for hearings to be held within the nearest community to the proposed project, just as your own policy states."*

Additionally, on June 7, the Commission received a letter from the Northern Chumash Tribal Council, located in San Luis Obispo County, which expressed:

*"...our strong support for the...proposal to construct and operate a hotel to be located at the Trinidad Rancheria. The Northern Chumash Tribal Council stands in solidarity with the Trinidad Rancheria in their efforts to build this hotel to sustain their tribal members and allow their culture to thrive."*

**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.*

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 mostly developed land consisting of 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 now is proposed to be five stories tall and 63 feet, 9 inches above the casino floor (David Tyson, personal communication March 4, 2019). In Appendix B, information from the Trinidad Rancheria indicates that the site's "changing grade results in an overall height of 78.5 ft. vs. 65.5 ft. on the North and South ends respectively."

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.

**Appendix B** includes an update to the description of the hotel design from the Trinidad Rancheria:

*The materials used on the exterior consist of natural stone veneer, lap siding and vertical siding in multiple earth toned colors. Several roof planes have been sloped back from the exposed elevations minimizing the amount of visible roof*

*surface and larger overhangs create greater depth of shadow on the building face. The natural coloration along with offsets in the building face and roofline all help to break up the perceived overall size of the building.*

*The Rancheria and its architects have created a design for the hotel that is Pacific Northwest in character, and is compatible with the natural environment and surrounding coastal area. The use of exterior design elements that further reduce the prominence of the proposed hotel as recommended by the Commission staff has been seriously contemplated, and the technical staff have recommended the following mitigations to the viewshed:*

- 1) Existing buildings and rooftops, including the casino, water tank, wastewater treatment facility, and maintenance shop will be painted with natural colors of brown and green to minimize the effect on the viewshed from the Harbor Properties.*
- 2) Preservation of old growth trees wherever possible.*
- 3) Replanting of trees to minimize focus on the hotel (front of hotel facing Scenic Drive).*
- 4) Landscaping to minimize asphalt and concrete retaining walls.*

**Exhibit 7** is a rendering of the proposed façade of the hotel. As indicated in **Exhibit 4**, two large trees would be removed as part of the proposed project, while several such trees on the western and eastern borders of the site would remain. The Trinidad Rancheria states that an approximately forty foot long concrete wall with a three-foot-high, above-grade face would be located on the southeast corner of the hotel structure, which would be visible from Trinidad Harbor, but that this exposed face would be concealed by new landscaping and existing tall trees. Additionally, as described in **Appendix B**, the Trinidad Rancheria:

*...plans to create rain gardens as a way to enhance the aesthetic of the hotel and create a more natural environment. Bioretention swales, also known as rain gardens, incorporate mulch, soil and plants to retain stormwater and filter pollutants within it. Rain gardens may range from simple shallow depressions to more complex designs, but all are structurally engineered to provide interception/capture, infiltration, filtration, storage, and water uptake by vegetation with respect to stormwater quantity control.*

The locations of such features have not yet been determined. In Appendix B, the Trinidad Rancheria also states that:

*The Tribe is willing to make a formal commitment as part of this concurrence to continually protect and enhance the ocean views as part of our cultural and environmental stewardship responsibilities. Further, the Tribe will work closely with the Commission to coordinate all mitigations regarding the hotel impacts on the viewshed.*



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.”

*Scenic and visual resource analysis*

Trinidad and surrounding environs are one of the more spectacular sections of the North Coast of California, an area 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 tourist draw, providing 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 character of this part of the coast, with little commercial development outside of the existing single- and two-story buildings adjacent to Trinidad Harbor and in the town center area of Trinidad (**Exhibit 5**).

Trinidad Head and Trinidad Harbor are popular visitor destinations that provide public access to beaches and hiking trails, recreational boat launching and use in Trinidad Harbor, and other harbor-related amenities such as the existing pier and restaurant. In part because of its scenic value, Trinidad Head is included as part of the federally-designated California Coastal National Monument. Recognizing these existing amenities and this context, long-term plans for the City of Trinidad include a focus on the continuing importance of tourism to the local and regional economy (City of Trinidad 2017).

Because of its federal trust status, land that makes up the Trinidad Rancheria property is not subject to the land use authority of either the City of Trinidad, which abuts the Rancheria on its west side, 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 development that would be allowed within their jurisdictions and therefore the existing and desired character of the area surrounding the Trinidad Rancheria property.

The Trinidad Draft General Plan (City of Trinidad 2017), which is being prepared by the City as part of an 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 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...” According to the existing zoning code for Trinidad, buildings in the area adjacent to the Trinidad Rancheria property are limited to a height of 25 feet as a way of achieving the policy of ensuring development remains consistent with the visual character of the community.

Land to the east, north, and south of Trinidad Rancheria property is in the jurisdiction of Humboldt County, and 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...*

*...Residents want new development to compliment (sic) the character of their neighborhood and community. The design of subdivisions, buildings, streetscapes and open spaces contributes to community character and, if done well, can lead to aesthetic new development that enhances communities and minimizes adverse neighborhood reactions during the permitting process.*

Land along Scenic Drive and south and east of the Trinidad Rancheria property is under Humboldt County jurisdiction and is designated in the Humboldt County LCP as “Coastal View” and “Coastal Scenic” areas. The LCP’s stated intent for areas with the Coastal View designation is that “...no development shall block coastal views to the detriment of the public” (Humboldt County 2007). Additionally, the LCP states that the intent in Coastal Scenic areas is for “...all development [to] be subordinate to the character of the designated area and to the scenic use and enjoyment of public recreational lands within these areas” (Humboldt County 2007). Implementing regulations for lands under these designations require commercial uses to maintain existing landforms, minimize grading and removal of native vegetation, and to be limited to a height of 30 feet (as measured from the highest point of the foundation) or 40 feet (as measured from the lowest point of the foundation). The Trinidad Rancheria property is not subject to County or City land use controls, so development on the Rancheria is not subject to these codes and policies. However, this information does provide context for the scale and character of development that currently exists and that would be allowable in the area, directly related to the Coastal Act Section 30251 requirement that development “be visually compatible with the character of surrounding areas.”

The proposed hotel is within property that is 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 (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 state that their application will meet an overall purpose of ensuring 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, which is identified as having the potential for “the future addition of a hotel and hospitality wing to the existing casino,” 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, the wastewater treatment facility, and single family residences. In the larger area including the community of Trinidad, commercial development mostly is located in the downtown area of Trinidad, along the streets that connect Highway 101 with Trinidad Harbor. Commercial establishments include

restaurants, cafes, a gas station, grocery store, and other 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. Similarly, structures in the nearby areas under Humboldt County land use control consist of one- and two-story buildings.

The proposed hotel would be one story higher than would be allowed under the height limitations of the Trinidad Rancheria's Integrated Development Standards. As described above, no other structure of similar height or massing is located within 20 miles of this mostly rural, undeveloped section of coast. It also would be approximately 30 feet higher than a building that would be allowed in adjacent land under Humboldt County jurisdiction, and approximately 40-45 feet higher than would be allowed within the City of Trinidad jurisdiction—significant heights above the one- or two-story structures that would be allowable.

Therefore, at its proposed height, the hotel would not be visually compatible with the character of Trinidad or nearby portions of Humboldt County.

As indicated in the view simulations provided in **Exhibit 6**, the hotel would not be entirely shielded by existing vegetation or tree cover and would be clearly visible from the public view areas of Trinidad Head and Trinidad Harbor. The existing views from Trinidad Head and Trinidad Harbor do not include any structures more than three stories in height. The coastal views in this area of mostly undeveloped or sparsely developed coast, as exemplified by the views from Trinidad Head provided in **Exhibit 5**.

For these reasons, the Commission finds that the hotel would not be 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, the Commission concludes that the proposed project is inconsistent with Sections 30251 and 30253(e) of the Coastal Act.

It appears that there are opportunities within the land area that is controlled by the Trinidad Rancheria for an alternative hotel site that would result in a structure that would be more compatible with the character of the surrounding community. For example, as illustrated in **Exhibit 3**, there are relatively large portions of the Rancheria property that are presently occupied by parking (some of which is proposed to be replaced by an expanded leach field for the hotel—see **Exhibit 8**), and an approximately 1.5 acre area that is proposed for a new parking lot. The presence of these areas, and the proposed changes to their existing uses, suggest that there are alternative locations for proposed 100 room hotel on Rancheria land, even with the larger footprint that a shorter facility with the same capacity might require. A hotel at a reduced height that also incorporated the design improvements described previously (such as the materials for the exterior face, roof treatments, landscaping, and improvements to existing structures, for example) would be an alternative that potentially could be visually compatible with the character of the surrounding area. The Trinidad Rancheria Comprehensive Plan provided an example of one such alternative design at a conceptual level—see **Exhibit 9**.

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 would include a redesign of the hotel in the following manner:

1. Revise the hotel design by incorporating building heights or siting to ensure that the proposed hotel is visually compatible with the character of its surroundings and protects the views from Trinidad Head and Trinidad Harbor. This measure could be accomplished by designing a hotel with a height of no more than 40 feet, which could be achieved by reducing the number of rooms or relocating all or a portion of the hotel to other areas on land adjacent to or near the existing casino. Reducing heights to no more than 40 feet would result in a building height that is not out of character with the heights of existing buildings on the Rancheria and the surrounding areas of Trinidad and Humboldt County.

#### **F. DEVELOPMENT**

Section 30250(a) 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; ... Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

The proposed project would be located immediately adjacent to the existing casino. Hotel parking would be provided by the existing spaces that currently serve the casino and through approximately 44 new spaces adjacent to the south face of the proposed hotel. Natural gas and electric utilities currently provide service to the casino and also would serve the proposed hotel. The water supply, wastewater treatment, and traffic-related 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 (City) 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 in that document. The draft EA for the proposed project estimates that approximately 18,860 gallons of water per day (gpd) would be required for the hotel.

In **Appendix C**, the Trinidad Rancheria states that:

*Based on information provided by TBE Architects, via FEA Consulting Engineers, and industry standards, the Rancheria's best available information to date is that the hotel will require approximately 14,184 gallons per day. This number reflects 100% occupancy. However, according to Wright, Inc., hotels average between 65% and 70% occupancy on an annual basis. As a result, this brings the average down to approximately 9,000 gallons per day. With off-site laundry, the recycling of water, and additional water saving techniques, the Rancheria can achieve [an] estimated daily consumption that is much lower. We will provide the Commission with the lowest consumption number once it is available to us.*

On April 16, 2019, the Trinidad Rancheria sent a letter to the City requesting the expansion of water service to serve the proposed hotel (this letter is included in **Appendix C**). **Appendix C** also includes a summary of the water infrastructure-related projects that the Trinidad Rancheria has conducted or contributed to in recent years, related to its existing use of City water serving the casino.

The City'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, in part 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 in its 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.*

A May 1, 2019 report provides an assessment of the City's water treatment plant and its production rate (GHD 2019). The study purpose was to:

*Provide an analysis to determine the theoretical effective maximum water production capacity of Trinidad's drinking water production facility under current conditions.*

*This analysis does not address policy issues related to providing additional connections or obligating the City to provide additional water. This analysis did not consider or address potential water storage needs, distribution network needs, nor any risk analysis of different system components... Additional evaluations are needed before making obligations for additional water...*

The study concludes that there is a theoretical surplus of up to approximately 48,000 gallons per day of supply to meet future service needs, but recognizes that there would be additional costs to produce this type of increase that were not evaluated. The study then states:

*This analysis and recommendations were limited to considering the theoretical effective maximum water production capacity of Trinidad's drinking water production facility under current conditions. This memo does not address policy issues related to providing additional connections or obligating the City to provide additional water. This analysis did not consider or address potential water storage needs, distribution network needs, nor any risk analysis of different system components. It is recommended that the City evaluate their policy for considering additional service requests. Additional evaluations are needed before making obligations for additional water supply to meet future service requests.*

The City is conducting additional water supply-related studies, including an assessment of water requirements if build-out in the City occurred according to the City's general plan and zoning restrictions and considering the needs of land within the City's water service area (which extends beyond current City boundaries). A draft of this build-out assessment was presented to the Trinidad Planning Commission in early July, 2019. Its purpose is described as follows:

*The City needs to develop policies by which they will evaluate and prioritize requests for water service from outside City limits and consider when annexation may be required or sought. In order to do that, the City also needs to understand how much water is available, and what the future demand for water may be, both inside the City and within the service area.*

The conclusion in the draft build-out report is:

*...the City only has about half the capacity needed to serve build-out in the City and the service area, not including the hotel. Therefore, the City is going to have to prioritize future service and should consider adjusting the service area boundaries.*

A final aspect of the City's plans to study its water supply 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 is examining other water supply considerations, such as supplying the CALFIRE station one mile north of the City limits (which was the subject of an LCP amendment certified by the Commission at its February 2019 hearing).

It is within this overall context that the City is considering the possibility of increased water supply to the Trinidad Rancheria for the proposed hotel. In a July 23, 2019 letter to the Commission (**Exhibit 10**), the City provided an update on its studies, stating:

*The City has relatively short-term water storage capacity in the existing redwood tanks and relies upon a sufficient continuous source of supply from Luffenholtz Creek to meet year round requirements. The flow in the creek varies significantly throughout the year and multi-year droughts, other extractions from the creek, and long-term climate change can significantly reduce summer flows. It is possible that stream flows could diminish during dry periods to the point that the City's legal right to extract water is curtailed or drops to zero. The City may at some point wish to develop additional sources of supply to enhance long-term system reliability.*

*Due to the complex nature of water supply for Trinidad, the question of supplying water to an additional customer is complex and requires the technical analysis underway at this time as well as the development of policy to guide the City over the long term. The City needs to address the conditions under which the City can supply water to customers given the potential supply challenges under some conditions. The development of policy needs to address existing water supply and water rights limitations, as well as prioritization of future potential water needs that may be served by the Trinidad system. The City is looking at setting water policy for the long-term future of the community, not simply evaluating water supply requests one at a time.*

*Although the initial technical work underway is planned for completion within the next several months, this work will not tell the City whether a particular water supply request should be granted. Rather, it will inform policy development that will take some time to complete. The City will develop policy through an interactive public process, which will likely evolve over multiple meetings supported by the City's technical contractors.*

*To that end, the City Council and Planning Commission will be having a joint meeting to address water policy and the general plan on July 31, 2019.*

In Appendix C, the Trinidad Rancheria describes conversations with the City since March 2019 as follows:

*...the Rancheria has met with the City in two government-to-government meetings related to our water request. During the second meeting we were able to discuss the results of one of their commissioned water studies. The conclusion of the study indicated that the City does have a surplus of water and therefore could meet the Rancheria's need. The report stated initial evaluations would be needed as the study focused specifically on the treatment plant's production capacity and did*



*not address the City's water policy issues. The Rancheria has sent the City a letter formally requesting water and will send a follow-up letter requesting an exact amount.*

With respect to their intentions if the Trinidad Rancheria is not able to obtain water for the proposed hotel from the City, in **Appendix C**, the Trinidad Rancheria states:

*While using the City's water and infrastructure is our preferred alternative, in the event that they are unable to provide the necessary water, the Rancheria plans to seek water from outside sources. We have researched and plan to include in our mitigations the use of an atmospheric water generator.*

No other potential "outside sources" of water are described by the Trinidad Rancheria<sup>2</sup>, and the atmospheric water generator is described as follows:

*The Tribe is looking into the use of large-scale atmospheric water generators as a possible mitigation to address water consumption concerns during peak usage times and the impacts that the hotel could have on the local supply. A water generator would extract water from the ambient humidity in the air and through a series of filters, membranes, pumps, etc., and treat it to drinking water standards. The climate on the North Coast is quite literally the most ideal for maximizing the potential of this type of technology. This would mean a significant upfront investment as the large-scale generators are very costly. However, it could mean the Rancheria would be able to provide up to 5,000 liters (or a little over 1,000) gallons) per day. Again, while our first option is to purchase additional water from the City of Trinidad, we are exploring ways to reduce any impact the hotel development may have on water supply.*

On May 14, 2019, the Trinidad Rancheria sent a letter to the City to follow up on its April 16, 2019 letter summarizing its most up-to-date information related to its water request, including the estimate of water need for the proposed hotel.

In summary, as of the time of this staff report, the City is continuing to assess its water supply and the Trinidad Rancheria has submitted a request for water to the City. It presently is not certain if the City is able to or will agree to provide water for the proposed hotel. If the City does not provide water, it is not certain how water needs for the proposed hotel would be met.

Section 30254 of the Coastal Act prioritizes visitor-serving land uses (among other types of land uses) in situations where existing or public works facilities can accommodate only a limited amount of new development. In this case, because the proposed hotel is a visitor-serving use, if the City has excess water available for new development, the hotel would have a higher priority

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<sup>2</sup> At the Commission hearing in June for CD-0001-19, brief mention was made by the representative of the Rancheria that the Tribe had existing water rights associated with the land that makes up the Trinidad Rancheria. As of the publication of this staff report, the Commission has not received any evidence supporting this claim.

for this water than general residential or other lower priority uses enumerated under Section 30254.

However, Section 30250(a) also is applicable and states that “new development 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...” Providing water is an essential aspect of accommodating development, particularly for a use such as the proposed hotel. The proposed hotel does not have a certain water supply, since the City has not agreed to supply water and the atmospheric water generator described by the Trinidad Rancheria, if installed at the site, would not be sufficient to meet the hotel’s identified water need. Therefore, the Commission finds that is unable to find the proposed project consistent with Section 30250(a) of the Coastal Act, since it is not known whether adequate water is available to accommodate the hotel.

The Commission further finds that in order for it to be able to determine the proposed project consistent with Section 30250(a) related to the water supply aspect of the proposed project, the BIA would need to provide additional information and accompanying analysis to:

1. Provide evidence that the City of Trinidad is able to and is agreeing to provide water to the proposed hotel from the City’s water supply. This evidence could take the form of a contract from the City, a letter of intent to complete a contract, or a similar expression of agreement from the City to provide water for the proposed hotel. Alternately, provide a description of how water would be provided from a water source that would be consistent with Section 30250(a) of the Coastal Act, 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 proposed hotel would generate wastewater that would require treatment through the existing wastewater treatment plant on the Trinidad Rancheria land, including upgrades to that plant.

The existing wastewater treatment plant processes wastewater 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.*

Information provided by the Trinidad Rancheria in **Appendix D** indicates that:

*The Rancheria has worked with the developer, engineers, and a technical team, to analyze the operational capacity of the existing leach field, refine the estimate of project wastewater generated by the proposed project, and to conduct a site-specific 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.*

This analysis included an assessment of existing flows from the casino and projected wastewater flows resulting from the proposed hotel, including calculations of average daily flows, maximum month daily flow (assuming higher water usage rates in the summer months), and peak daily flows (SHN 2019a). The results of this assessment are summarized by the Trinidad Rancheria in Appendix D as follows:

*The projected peak day flow for the hotel...is 14,184 gpd. Wastewater recycling and landscape irrigation have been proposed as options to reduce wastewater discharge flow rates from the new hotel. The amount of recycling and irrigation to be implemented may be determined based on potential disposal shortfalls resulting from limited available disposal field capacity. FEA Consulting Engineers estimates that 15% wastewater recycling can be accommodated in the proposed hotel.*

As concluded in this assessment, “Actual discharge flow rates are anticipated to be equal to or lower than values presented in this report, such that disposal shortfalls are not expected to occur at all times. It is likely that typical disposal shortfalls will be less than...” the estimated values provided in the assessment (SHN 2019a).

In addition to this assessment of wastewater flows, the Trinidad Rancheria also completed soil studies to identify a suitable wastewater disposal field area by determining wastewater disposal capacity based on soil and groundwater conditions (SHN 2019b). Following an assessment of soil samples, bores, percolation tests, and observations at groundwater wells, this study indicated that an approximately 51,500 ft<sup>2</sup> area extending to the north and west around the existing leach field would be suitable for wastewater disposal and would be able to accommodate a maximum of 11,200 gpd of treated wastewater (SHN 2019b). **Exhibit 8** indicates the location of the proposed leach field.

To partially make up for the difference in the capacity of the leach field to handle peak flows generated by the hotel, the Trinidad Rancheria is proposing additional storage capacity (storage tanks) to expand the gray water system in the existing wastewater treatment plant (**Exhibit 3**). With the addition of this storage capacity and the recycling of wastewater from the casino and hotel, the assessment concludes that from the months of May through November, at times of peak discharge (assuming a maximum occupancy of the hotel and an increase in casino patronage) the amount of effluent would exceed the capacity of the new leach field. To address this issue, the Trinidad Rancheria states that it will dispose of excess effluent on adjacent tribal property as land irrigation and that there is sufficient, appropriate land under its management for

such disposal. According to the Trinidad Rancheria, the wastewater treatment facility results in treated water that is suitable for disposal in such a manner and will meet state recycled water requirements for treatment for such disposal (Jacque Hostler-Carmesin, personal communication May 2019). **Appendix D** provides the analysis conducted in support of the design of the leach field and the wastewater system.

The Commission has reviewed the information related to wastewater treatment and concurs with the determination that the proposed wastewater treatment measures, including the expanded leach field, water conservation and recycling, additional storage, and landscape irrigation (including disposal of excess effluent), are sufficient to treat the wastewater generated by the proposed hotel. For these reasons, the Commission finds that the proposed project is consistent with Section 30250(a) of the Coastal Act with respect to wastewater treatment.

### ***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 traffic study summarized in the draft EA for the proposed project appears to combine the effects of the proposed hotel with a tripling of the size of the casino (to 150,000 square feet), as well as the addition of significant other commercial and recreational development in the nearby area, in its assessment of potential traffic impacts. This traffic study concludes that two local intersections would operate at an unacceptable level of service in the future if all of this development, plus general population growth, is added to existing development. The study does not assess the impact generated solely by the proposed hotel, and consequently, it is not clear the extent to which the hotel project itself will impact future traffic levels, much less whether Caltrans believes that a new interchange would be necessary to provide mitigation for traffic-related impacts associated with the new hotel or to provide adequate transportation infrastructure to the hotel by itself. Additionally, if a new interchange was required to mitigate traffic caused solely by the hotel, then the Commission also would need information regarding the effects that such an interchange would have on coastal resources.

In **Appendix E**, the Trinidad Rancheria provided the results of a traffic impact study, which it conducted in early 2019, evaluating potential traffic impacts associated with the proposed hotel. This 2019 study included traffic counts at 14 locations in the area, including peak hour turning movement counts at seven locations, trip generations and traffic analysis, using the California Department of Transportation “Guide for the Preparation of Traffic Impact Studies.” The traffic study included seasonal adjustments to traffic counts, since it was performed in the winter of 2019, to assess potential summer-time (i.e., higher volume) traffic currently and projecting 20 years into the future, modeling conditions both with and without the proposed hotel. The results of this analysis, summarized in the accompanying letter from the Trinidad Rancheria, note that there are two intersections (the intersection of Patrick’s Point Drive/Scenic Drive and Main Street, and at the Northbound off-ramp from Highway 101) where 2039 conditions are modeled to have slightly lower levels of service as a result of the project, but would be at failing levels either with or without the proposed hotel. The report notes that Scenic Drive and other local roadways are currently in serviceable condition but will require upgrades over the coming decades with or without the project, simply to deal with existing traffic and projected population growth. It concludes that “the proposed 100-Room Hotel will have little to no impact on the current level of service and functionality of the supporting transportation network and existing traffic patterns.” Thus, it can be anticipated that improvements to the intersections to address traffic congestion issues would occur regardless of the presence of the hotel. Additionally, as the hotel would be a visitor-serving land use, it would receive priority consideration under Section 30254 of the Coastal Act if the existing road network could only accommodate a limited amount of new development.

In **Appendix E**, the Trinidad Rancheria describes its long-standing efforts with respect to the existing road network in the area, including (for example) its efforts to maintain Scenic Drive and its long-term planning and goals for a new Highway 101 interchange. The Trinidad Rancheria also describes its intent to provide hotel visitor shuttle service to Trinidad Harbor and the visitor amenities in that part of the community such as Trinidad Head.

In summary, there is sufficient evidence that the hotel would be adequately served by public roads and that the nearby transportation network will be able to accommodate it. Although some studies have conclude that the hotel, either by itself or in combination with other development, may cause two intersections to operate at slightly lower levels of service than they otherwise would, the Coastal Act standard is whether the hotel is in the area where public services are able to accommodate it. Here, local roadways and intersections are able to accommodate the hotel. Based on this analysis and the information provided by the Trinidad Rancheria, the Commission finds that the proposed project is consistent with Sections 30250(a) and 30254 of the Coastal Act with respect to the transportation-related aspects of the proposed project.

### ***Summary***

For the reasons described above, the Commission is unable at this time to find the proposed project consistent with Section 30250(a) of the Coastal Act, because it is unclear whether adequate public services, specifically water, are available to accommodate the proposed project. The Commission further finds that in order for it to determine the proposed project consistent

with Section 30250(a) related to the water supply aspect of the proposed project, the BIA would need to provide additional information and accompanying analysis related to water supply for the proposed project as described on page 26.

## **G. HAZARDS**

Sections 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. The closest fault to the proposed project is the Trinidad Fault, near the shoreline, approximately 500 feet to the southwest of the proposed site (Crawford and Associates Inc. and Taber 2016). The geotechnical report completed for the proposed project states that “[w]hile we cannot say conclusively that an active fault is not present within this footprint, we consider the likelihood of an active fault through the site to be low and that the risk of fault rupture does not represent a ‘fatal flaw’ to the project” (Crawford and Associates Inc. and Taber 2016).

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 geotechnical issues associated with the proposed project, 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.

The draft EA for the proposed project included a draft geotechnical feasibility and preliminary design report for the proposed hotel. **Appendix F** provides the final version of this geotechnical report (Crawford and Associates, Inc. and Taber 2016) and a May 2019 summary letter from the report's authors. The conclusion of the geotechnical report states:

*... we consider the site is suitable for construction of the proposed hotel and complementary facilities provided that appropriate mitigation of the geologic hazards is incorporated into project design.*

The summary letter recommends the following measures to address the risks posed by the existing landslide and, in general, the landslide risk on the site:

1. A Mechanically Stabilized Earth (MSE) wall or welded wire wall retaining system to help provide slope stability. This wall would include imported backfill material with horizontal reinforcing elements (wire mats, fabric or geo-grid) at one foot-intervals, and subsurface drainage and surface runoff controls. See **Exhibit 4** for the proposed locations of this type of wall, which would serve as slope stabilization and as retaining walls for the new parking on the southwest (ocean-facing) edge of the hotel.
2. Cast-in-drilled-hole piles with minimum penetration of ten feet into the underlying bedrock to provide foundation support for the anticipated structure loads associated with the hotel.

An independent engineering review of the proposed approach to the hotel foundation resulted in agreement with that approach (Karren 2019); the letter summarizing this review is provided in **Appendix F**. In **Appendix F** the Trinidad Rancheria also states that it would include these measures in the proposed hotel. According to the Trinidad Rancheria, visual effects of such the emplaced wall systems would be addressed through landscaping; such walls along Scenic Drive are almost completely obscured by native vegetation.

With the incorporation of these measures, the proposed project has been designed to minimize risk from landslides in the area and to assure stability and structural integrity of the proposed hotel. Therefore, the Commission finds that the proposed project is consistent with Sections 30253(a) and (b) of the Coastal Act.

## **H. 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 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. Public comment on the project suggested that the parking lot for the casino was developed over an unnamed drainage. 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.*

Existing creeks and drainages in the area flow into Trinidad Harbor, which is a state-designated Area of Special Biological Significance.

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 for the proposed project, roof drains installed on the proposed hotel would route water into the existing storm drainage system. As described previously, the hotel design also incorporates low impact development features such as rain gardens.

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.

### **I. 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

### Federal Consistency Determination documents

1. Consistency Determination CD-0004-19, Bureau of Indian Affairs, Trinidad Rancheria Hotel Project Loan Guarantee and Management Contract, July 8, 2019.
2. Consistency Determination CD-0001-19, Bureau of Indian Affairs, Trinidad Rancheria Hotel Project Loan Guarantee and Management Contract, February 14, 2019.
3. Staff Report for CD-0001-19, adopted at the June 12, 2019 Commission meeting.
4. Correspondence from the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) received by the Commission on May 13, 2019 regarding the proposed hotel project. Includes a cover letter and specific information regarding hazards, traffic, viewshed, wastewater, and water supply aspects of the proposed hotel.
5. Electronic correspondence on May 22, 2019 from Jacque Hostler-Carmesin, Trinidad Rancheria, to John Weber, Coastal Commission staff, regarding proposed project geohazards, wastewater, and design.
6. Crawford & Associates, Inc. and Taber. 2016. Geotechnical Feasibility and Preliminary Design Report Trinidad Rancheria Cher-Ae Heights Hotel. November 2016.
7. Karren, Kenneth W. 2019. Letter to David Nejetski, Thalden Boyd Emery Architects, regarding Cher Ae Heights Casino Hotel. May 10, 2019.
8. SHN 2019a. May 13, 2019 letter to Travis Olson, Wright Group, regarding Cher-Ae Heights Hotel, Wastewater Treatment System Basis of Design, Revision 1.
9. SHN 2019b. May 10, 2019 letter to Travis Olson, Wright Group, regarding Geologic Feasibility Assessment for the Subsurface Disposal of Treated Wastewater; Proposed Cher-Ae Heights Hotel, Trinidad Rancheria, Humboldt County, CA; APNs 515-311-012, -013, 014, & -015.

### Other Documents

1. Bureau of Indian Affairs. Draft Environmental Assessment, Trinidad Rancheria Economic Development Corporation Hotel Development Project, September 2018.
2. Cher-Ae Heights Indian Community of the Trinidad Rancheria. *Comprehensive Community-Based Plan*. December 2011.
3. Cher-Ae Heights Indian Community of the Trinidad Rancheria. *Integrated Development Standards*. October 2011.

4. City of Trinidad. 1978 General Plan. Available on-line at <http://trinidad.ca.gov/document-library/document/city-trinidad-general-plan-condensed-version>. Accessed May 15, 2019.
5. City of Trinidad, Local Coastal Program planning grant application to the California Coastal Commission, May 2017.
6. Crawford and Associates Inc. Draft Geotechnical Feasibility and Preliminary Design Report Trinidad Rancheria Cher-Ae Heights Hotel, November 2016.
7. GHD 2019. May 1, 2019 Memo to Eli Naffah, City of Trinidad, from Becky Price-Hall, Bryan Buckman, and Ryan DeSmet providing the Water Treatment Plant Production Rate Test and Analysis.
8. Humboldt County, 2007. Trinidad Area Plan of the Humboldt County Local Coastal Program.
9. Northstar Designing Solutions. Preliminary Feasibility Report for Trinidad Rancheria Cher-Ae Heights Facility, Northstar Designing Solutions. September 2016.
10. Omni-Means Ltd. And SHN Consulting Engineers & Geologists, Inc. Trinidad Area Freeway Master Plan Study Report. February 2014.
11. Staff report for CDP 1-18-0360, approved by the Commission at its February 2019 meeting.
12. Zoning code for the City of Trinidad. Available on-line at <https://www.codepublishing.com/CA/Trinidad/>. Accessed May 15, 2019.