

# FINDING OF NO SIGNIFICANT IMPACT FOR THE PROPOSED TRINIDAD RANCHERIA STORMWATER IMPROVEMENT AND INTERPRETIVE VISITOR CENTER FEE-TO-TRUST PROJECT

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**AGENCY**                      **Bureau of Indian Affairs**

**ACTIONS**                    **Finding of No Significant Impact**

## SUMMARY

The Cher-Ae-Heights Indian Community of the Trinidad Rancheria (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to approve the trust acquisition of approximately 9 acres for stormwater improvements and the development of an interpretive visitor center (Proposed Action). The land proposed for trust acquisition and development are known locally as the “Harbor Properties” (project site) and are located within Trinidad, California (City) within Humboldt County (County) and include lands up to the ordinary high water mark (OHWM) of the harbor. The project site is located approximately 0.5 miles east and opposite of the bay from the Tribe’s current Reservation which contains the Cher-Ae-Heights Casino and Resort. The project site is within Section 26 of the Trinidad, CA U.S. Geological Survey (USGS) quadrangle within Township 8 North and Range 1 West.

Based upon the entire administrative record including the analysis in the Environmental Assessment (EA) and consideration of comments received during the public review period, the BIA makes a finding of no significant impact (FONSI) for the federal action to acquire approximately 9 acres into trust and subsequent implementation of Alternative A (Proposed Project). This finding constitutes a determination that the Proposed Action is not a federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement (EIS) is not required. Comment letters received on the EA are provided as **Exhibit A**. Responses to each comment letter received are provided as **Exhibit B**. A Mitigation Monitoring and Enforcement Program is provided as **Exhibit C**.

## BACKGROUND

The Cher-Ae Heights Indian Community of the Trinidad Rancheria is a federally-recognized Indian Tribe with approximately 228 members.

The Tribe’s culture, including but not limited to traditional and customary fishing and gathering, is inextricably tied to the land and marine resources. The Trinidad Pier was built between 1945 and 1946 to serve commercial and recreational users. A cannery at the end of the pier was swept away by a storm in 1957 and never replaced. In January 2000, Trinidad Rancheria purchased the Trinidad Pier, harbor

facilities, and the Seascope Restaurant, including the parking along Bay Street. Due to the deterioration of the original wooden supports, the Tribe, with funding in part by the California State Water Resources Control Board (SWRCB), the California Coastal Conservancy (CCC), the Environmental Protection Agency (EPA) Brownfield Grant, the Federal Highway Administration (FHWA), and the BIA, completed a reconstruction of the pier in 2013. The deteriorated creosote-treated wood pilings and the wood decking were replaced by polymer-coated steel pilings and pre-cast concrete decking. The Trinidad Pier is currently the northernmost oceanfront pier in California and serves a fleet of commercial winter crab fishing vessels and year-round water angling for salmon and near shore fish species. The Trinidad Rancheria currently operates the pier, and upland improvements including a boat launch ramp and the Seascope Restaurant. Since taking over the operations of the Trinidad Pier and upland improvements in 2000, the Tribe has incurred losses of over \$1.3 million.

The Tribe's purpose for taking the approximately nine acres of land into trust is to:

- Facilitate Tribal self-governance and self-determination by allowing the Tribal Government to exercise Tribal sovereign authority over the land;
- Protect and enhance the economic well-being of Tribal resources further establishing economic self-sufficiency;
- Further the Tribe's goal to restore its original land base;
- Further the Tribe's goal to preserve the surrounding environment and cultural resources for future generations and the entire community;
- Reduce the current stormwater runoff into Trinidad Bay from Harbor Properties improving the quality of the Trinidad Bay;
- Highlight the cultural and economic background and importance of the Trinidad Harbor to the surrounding region; and
- Form a Trinidad Harbor District which would include all of the Tribe's current harbor properties.

Trinidad Harbor is designated by the California Coastal Commission as a Critical Coastal Area and by the State Water Board as an Area of Special Biological Significant (ASBS). In 2005, the Rancheria received a cease and desist order (CDO) from the SWRCB for prohibited discharges from the Trinidad harbor and pier facilities to the Trinidad Head ASBS. The list of prohibited discharges in the CDO included the freshwater hose on the pier, the fish cleaning station, runoff from the pier itself, boat cleaning activities in and around the boat launch, and runoff from the harbor parking lot facility. Since 2005, the Rancheria has completed significant modifications at the Trinidad harbor and pier facilities to eliminate the prohibited discharges as set forth in the CDO. Major site improvements that have been undertaken include removal of the fish cleaning station and freshwater hose at the pier, construction of a new wastewater treatment system for the Seascope Restaurant and adjacent vacation rental, construction of new public restrooms, and reconstruction of the pier including installation of a stormwater capture and treatment system for runoff from the pier. These modifications resulted in elimination of all of the discharges of concern with the exception of stormwater runoff from the parking lot. The Rancheria is continuing to implement facility improvement efforts to reduce nonpoint sources



of discharge further, with the goal of eliminating all nonpoint-source discharges from the Trinidad harbor and pier facilities. Public parking areas associated with the Trinidad harbor and pier facilities include the main parking lot and boat launch area. These parking areas are used by beachgoers, boaters, and patrons of the Seascape Restaurant, tackle shop, and pier. A significant portion of the traffic at the main parking lot is from boaters with trailers using the launching facilities or boaters without trailers using the mooring facilities. The main parking area contributes stormwater runoff as a nonpoint-source to the adjacent beach area referred to as Launcher Beach. The parking lot is often used as a staging area for boat and trailer repairs, potentially contributing repair-related pollutants to the harbor. This parking lot has been identified by the SWRCB as a nonpoint source area that contributes discharges to the Trinidad ASBS, and this area falls under the CDO issued in 2005

As a governmental entity, the Tribe has a responsibility to meet the economic, social, cultural and environmental needs and concerns of its people. The primary task of the Tribe is to increase the standard of living and quality of life for Tribal members for the Cher-ae Heights Indian Community of the Trinidad Rancheria; and to provide employment opportunities, education and job training. Placing this land into trust will allow the tribe to develop a stronger economic foundation, employing more tribal members, and developing additional amenities to enhance the overall operation. It will allow the land to fall under the Tribe's authority, critical for the exercise of Tribal self-governance and self-determination, and is consistent with the Bureau's trust responsibility to Indian Tribes and the federal policies supporting Indian self-determination and self-sufficiency.

An EA for the Proposed Action (SCH #2017034001) was submitted to the State Clearinghouse and released for public and agency review for a 30-day comment period, established consistent with the Bureau of Indian Affairs National Environmental Policy Act (NEPA) Guidebook (59 IAM 3-H) (BIA NEPA Guidebook), noticed to end on April 6, 2017. In response to requests received, the public comment period was extended to April 21, 2017. The BIA received a total of 13 comment letters.

In October of 2017, the BIA initiated informal consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Services (NMFS) pursuant to Section 7 of the Endangered Species Act of 1979 (ESA). The USFWS and NMFS concurred with the BIA's determination of no adverse effects to threatened or endangered species.

On March 10, 2017 the BIA initiated consultation with the California Office of Historic Preservation (OHP) pursuant to Section 106 of the National Historic Preservation Act of 1966. On December 6, 2017 the BIA received concurrence from the State Historic Preservation Officer (SHPO) that implementation of the proposed fee-to-trust transfer would result in "No Adverse Effect" to historic properties pursuant to 36 CFR Part 800.5(b) "Protection of Historic Properties" (**Exhibit D**).

On December 21, 2018, the BIA has submitted a coastal consistency determination request to the California Coastal Commission as required under the Coastal Zone Management Act. The request included summaries of the specific provisions of Chapter 3, Articles 2 through 6 of the California

Coastal Act of 1976 (CCA) and illustrates how the trust action by the BIA and Tribe's subsequent Proposed Project complies with the CCA. At its March 2019 meeting, the Commission concurred with the BIA's consistency determination.

To determine if the Proposed Action is a federal action significantly affecting the quality of the human environment, the BIA assessed the results of the EA as well as the comments received during the public review period for both documents consistent with the policies and goals of NEPA and the BIA NEPA Guidebook.

## **DESCRIPTION OF THE PROPOSED ACTION**

The BIA's Proposed Action consists of the transfer of the project site into federal trust status for the benefit of the Tribe. The Proposed Action consists of the fee simple conveyance of the approximately nine-acre project site into federal trust status for the benefit of the Tribe in accordance with procedures set forth in 25 Code of Federal Regulations (CFR) §151.3. This trust action would shift civil regulatory jurisdiction over the approximately nine-acre site from the State of California, Humboldt County (County), and City of Trinidad (City) to the Tribe and the federal government. The State, County, and City would continue to exercise criminal jurisdiction under Public Law 280 (18 United States Code [USC] §1162) for the law enforcement activities identified under the Tribal Law Order Act of 2010. While the pier would be included within the trust action, in accordance with an agreement executed April 18, 2012 between the Tribe and the California Coastal Conservancy (CCC), the Tribe would maintain public access to the Trinidad Pier and associated marine access and recreational improvements until at least 2032. Federal laws, such as the Clean Water Act (CWA) and the Endangered Species Act (ESA), would continue to apply to tribal trust lands.

## **ALTERNATIVES CONSIDERED**

The BIA considered two alternatives in the EA, as summarized below.

- 1) **Alternative A – Proposed Project.** Nine-acre trust land acquisition, stormwater improvements on site, and development of an interpretive visitor center located near the center of the project site where the existing bait and tackle shop is located. Existing public accessibility would remain to the pier and boat-launching dock including public access to Trinidad Head trails. The beaches and bluffs would be designated as protected open space. No additional development would occur.
- 2) **No Action Alternative.** Under the No-Action Alternative, the approximately nine-acre site would not be placed in trust for the benefit of the Tribe and would not be developed as identified under Alternative A. Jurisdiction of the property would remain within the City. Ultimately, the nine-acre site could be developed consistent with the existing commercial and recreation land uses by the Tribe. However, for the purposes of the environmental analysis in the EA, it is assumed that, due to the economic considerations for operating the Harbor

Properties by the Tribe, the property will continue to be utilized in its current state for recreation, parking, restaurant, boating, and fishing with no additional facilities constructed under this alternative.

## ENVIRONMENTAL IMPACTS

Potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions and environmental justice, transportation and circulation, land use, agriculture, public services, noise, hazardous materials, and visual resources were evaluated in the EA for Alternative A with the following conclusions:

- A. Project design, implementation of Best Management Practices (BMPs), and mitigation measures would ensure impacts to *land resources* would be less than significant. Refer to EA Sections 2.2, 4.1.1, and 5.1.
- B. Project design, implementation of BMPs, and mitigation measures would ensure impacts to *water resources* would be less than significant. The City has adequate capacity to accommodate the potable water demands for Alternative A. The onsite wastewater system is currently in permit compliance and the additional peak daily flow would not cause the existing system to operate under upset conditions. Refer to EA Sections 2.2, 4.1.2, and 5.2.
- C. Project design, implementation of BMPs, and mitigation measures would ensure impacts to *air quality* would be less than significant. Refer to EA Sections 2.2, 4.1.3, and 5.3.
- D. Project design, implementation of mitigation measures would ensure impacts to *biological resources* would be less than significant. Refer to EA Sections 4.1.4 and 5.4.
- E. Implementation of mitigation measures would ensure impacts to *cultural resources* would be less than significant. Refer to EA Sections 4.1.5 and 5.5.
- F. Impacts to *socioeconomic conditions and environmental justice* issues would be less than significant. Refer to EA Sections 4.1.6.
- G. Impacts to *transportation and circulation* would be less than significant. Refer to EA Sections 4.1.7.
- H. Impacts to *land use resources* would be less than significant. Refer to EA Sections 4.1.8.
- I. Impacts to *agriculture* would be less than significant. Refer to EA Sections 4.1.9.
- J. Impacts to *public services* would be less than significant. Refer to EA Sections 4.1.10.
- K. Implementation of mitigation measures would ensure impacts associated with *noise* would be less than significant. Refer to EA Sections 4.1.11 and 5.11.
- L. Project design and implementation of BMPs would ensure that *hazardous materials* impacts would be less than significant. Refer to EA Sections 2.2 and 4.1.12.
- M. Project design and implementation of BMPs would ensure impacts to *visual resources* would be less than significant. Refer to EA Sections 2.2 and 4.1.13.
- N. Project design, implementation of BMPs would ensure that *cumulative impacts, including greenhouse gas emissions*, would be less than significant. Refer to EA Sections 2.2 and 4.3.

## **BEST MANAGEMENT PRACTICES**

Protective measures and BMPs have been incorporated in the project design of the Proposed Project to eliminate or substantially reduce environmental impacts. These measures and BMPs are detailed in EA Section 2.0 and outlined below:

### **Air Quality**

The following measures would be implemented to reduce temporary construction greenhouse gas emissions.

- The contractor will designate an on-site Air Quality Construction BMP Manager (AQCBM) who will be responsible for directing compliance with the following BMPs for project construction relating to heavy-duty equipment use:
  - All diesel-powered equipment shall be properly maintained and minimize idling time to 5 minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required.
  - Engines shall be kept in good mechanical condition to minimize exhaust emissions.
- The AQCBM will be responsible for directing compliance with the following BMPs for fugitive dust control practices during project construction:
  - Spray exposed soil with water or other suppressant at least twice a day or as needed.
  - Minimize dust emissions during transport of fill material or soil by wetting down loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, and/or covering loads.
  - Promptly clean up spills of transported material on public roads.
  - Restrict traffic on site to reduce soil disturbance and the transport of material onto roadways.
  - Locate construction equipment and truck staging areas away from sensitive receptors as practical and in consideration of potential effects on other resources.
  - Provide wheel washers to remove particulate matter that would otherwise be carried off site by vehicles to decrease deposition of particulate matter on area roadways.
  - Cover dirt, gravel, and debris piles as needed to reduce dust and wind-blown debris.

### **Fire Protection**

The following BMPs, required through contractual obligations, would be included as part of Alternative A to minimize the risk of fire during construction:

- Any construction equipment that normally includes a spark arrester would be equipped with an arrester in good working order. This includes, but is not limited to, vehicles, heavy equipment, and chainsaws.
- During construction, staging areas, welding areas, or areas slated for development using spark-producing equipment would be cleared of dried vegetation or other materials that could serve as

fire fuel. To the extent feasible, the contractor would keep these areas clear of combustible materials in order to maintain a firebreak.

- Structural fire protection would be provided through compliance with Uniform Fire Code requirements for residences and commercial structures similar in size to the proposed clubhouse. The Tribe will cooperate with the fire district by allowing routine inspections. The Tribe would ensure that appropriate water supply and pressure is available for emergency fire flows.
- Typical fire flow allowances would be confirmed with the local Fire Marshall prior to construction of any water storage tank.

### **Hazardous Materials**

The following BMPs will be required through contractual obligations and would be included as part of Alternative A to minimize the risk from use of hazardous materials during construction:

- 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 is 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 and all contaminated soils that are determined to be hazardous shall be disposed of in accordance with federal regulations.

### **Visual Resources**

- Lighting around the building and in the parking lot would be downcast and minimized to ensure that effects to local marine life are minimized, while remaining adequate for public safety and security.

## **SUMMARY OF EA MITIGATION MEASURES**

The mitigation measures described below are included to: 1) reduce significant impacts to a less-than-significant level, 2) further reduce already less-than-significant impacts, or 3) accomplish both. All mitigation measures necessary to reduce significant impacts to less-than-significant levels will be enforceable and binding on the Tribe because they are intrinsic to the project, required by federal law, required by agreements between the Tribe and local agencies, and/or are required by tribal resolutions. The construction contract will include applicable mitigation measures, and inspectors shall be retained during construction.

### **LAND RESOURCES**

Implementation of the protective measures and Best Management Practices (BMPs) described above along with the mitigation measures below would minimize potential impacts related to soils. These measures are recommended for Alternative A.

- Coverage under the General Construction National Pollutant Discharge Elimination System (NPDES) permit shall be obtained from the U.S. Environmental Protection Agency (EPA). As required by the NPDES permit, a Storm Water Pollution Prevention Plan (SWPPP) shall be prepared that addresses potential water quality impacts associated with construction and operation of the Proposed Project. The SWPPP shall make provisions for erosion prevention and sediment control and control of other potential pollutants. The SWPPP shall describe construction practices, stabilization techniques and structural Best Management Practices (BMPs) that are to be implemented to prevent erosion and minimize sediment transport. BMPs shall be inspected, maintained, and repaired to assure continued performance of their intended function. Reports summarizing the scope of these inspections, the personnel conducting the inspection, the dates of the inspections, major observations relating to the implementation of the SWPPP, and actions taken as a result of these inspections shall be prepared and retained as part of the SWPPP. The BMPs shall include, but are not limited to, the following:
  - Stripped areas shall be stabilized through temporary seeding using dryland grasses.
  - Exposed stockpiled soils shall be covered to prevent wind and rain erosion.

- The construction entrance shall be stabilized by the use of rip-rap, crushed gravel, or other such material to prevent the track-out of dirt and mud.
- Construction roadways shall be stabilized through the use of frequent watering, stabilizing chemical application, or physical covering of gravel or rip-rap.
- Filter fences shall be erected at all onsite stormwater exit points and along the edge of graded areas to stabilized non-graded areas and control siltation of onsite stormwater.
- Prior to land-disturbing activities, the clearing and grading limits shall be marked clearly, both in the field and on the plans. This can be done using construction fences or by creating buffer zones.
- Concentrated flows create high potential for erosion; therefore, any slopes shall be protected from concentration flow. This can be done by using gradient terraces, interceptor dikes, and swales, and by installing pipe slope drains or level spreaders. Inlets need to be protected to provide an initial filtering of stormwater runoff; however, any sediment buildup shall be removed so the inlet does not become blocked.
- The SWPPP shall address maintenance and repair of heavy equipment on site to remove the potential for pollution from oil, fuel, hydraulic fluid, or any other potential pollutant.
- If construction occurs during wet periods, sub-grade stabilization shall be required. Mulching or netting may be needed for wet-weather construction.
- Temporary erosion control measures (such as silt fence, gravel filter berms, straw wattles, sediment/grease traps, mulching of disturbed soil, construction stormwater chemical treatment, and construction stormwater filtration) shall be employed for disturbed areas.
- Exposed and unworked soils shall be stabilized by the application of effective BMPs. These include, but are not limited to, temporary or permanent seeding, mulching, nets and blankets, plastic covering, sodding, and gradient terraces.
- Existing vegetation shall be retained where possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction.
- Temporary erosion control measures (such as silt fences, staked straw bales, and temporary revegetation) shall be employed for disturbed areas and stockpiled soil.
- Potentially hazardous materials shall be stored away from drainages and containment berms shall be constructed to prevent spilled materials from reaching water bodies.
- Vehicles and equipment used during construction shall be provided proper and timely maintenance to reduce potential for mechanical breakdowns leading to a spill of materials into water bodies. Maintenance and fueling shall be conducted in an area that meets the criteria set forth in the spill prevention plan.
- Disturbed areas shall be revegetated after completion of construction activities.

## **WATER RESOURCES**

Implementation of the protective measures and BMPs described above along with the recommended mitigation measures below would minimize potential impacts related to water resources. These measures are recommended for Alternative A.

### **Construction Activities**

The following mitigation measures shall be implemented to minimize impacts to water quality from stormwater runoff during construction:

- As required and enforced by the EPA under the Clean Water Act, prior to construction, a SWPPP shall be prepared that addresses water quality impacts associated with construction and on-going operation of the project. Permanent water quality maintenance features shall be incorporated into the project design and operation. Water quality control measures identified in the SWPPP shall include those listed above.

### **Operational Measures**

The following mitigation measures shall be implemented to minimize impacts to water quality from stormwater runoff:

- Storm drain inlets shall also be labeled “No Dumping – Drains to Ocean.”
- Permanent energy dissipaters shall be included for drainage outlets.

## **AIR QUALITY**

Implementation of the protective measures and BMPs described above would reduce potential adverse impacts to air quality. No adverse air quality effects would result from the Proposed Project and therefore no mitigation is required for the Proposed Action.

## **BIOLOGICAL RESOURCES**

Implementation of the mitigation measures below would minimize potential impacts to biological resources. These measures are recommended for Alternative A.

### **Special Status Species**

The following mitigation measures shall be implemented to minimize impacts to special status species.

- Although marbled murrelet nesting habitat is not found on the project site, some rifling may occur in the waters of Trinidad Bay. A qualified biologist shall conduct a pre-construction survey and in the event that marbled murrelet are identified on or near the project site, consultation with the USFWS shall be conducted to determine the appropriate buffer distances and measures from the species.
- A qualified biologist shall conduct a preconstruction survey within 100 feet around the vicinity of the project site for active western snowy plover nests should construction activities



commence during the nesting season for western snowy plover (March through September). Following the preconstruction nesting bird survey, if any active western snowy plover nests are located within the vicinity of the project site, a no-disturbance buffer zone shall be established around the nests to avoid disturbance or destruction of the nest. The distance around the no-disturbance buffer shall be determined by the biologist in coordination with USFWS, if needed, and will depend on the level of noise or construction activity, the level of ambient noise in the vicinity of the nest, line-of-sight between the nest and disturbance, and the species at hand. The biologist shall delimit the buffer zone with construction tape or pin flags. The no-disturbance buffer will remain in place until after the nesting season (to be lifted August-September) or until the biologist determines that the young birds have fledged. A report shall be prepared and submitted to the Tribe and the USFWS following the fledging of the nestlings to document the results.

Implement EA **Mitigation Measure 5.11.1** to limit construction noise to standard daytime hours to eliminate construction noise during hours that would be sensitive to the steller sea lion.

- Implementation of steller sea lion training for all on-site workers and employees shall be conducted. If steller sea lion is discovered on or near the project site during construction activities, all construction activities will halt, the on-call biologist shall be notified immediately, and consultation with the NMFS and USFS shall determine appropriate measures for buffers or measures to be applied.

### **Aquatic Habitats**

The following mitigation measures shall be implemented to minimize impacts to aquatic habitats.

- As described above, prior to construction, an NPDES permit shall be obtained from the EPA and a SWPPP shall be prepared. The SWPPP shall describe construction practices, stabilization techniques and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport as outlined above.
- The project site shall incorporate BMPs for stormwater runoff, including sedimentation basins, vegetated swales, and runoff infiltration devices if necessary, to ensure that the water quality of on-site or nearby waters does not degrade. Stormwater runoff from the project site shall be monitored according to BMPs to assess the quality of water leaving the project site.
- All equipment re-fueling and maintenance shall occur in an approved staging area and an BIA or USEPA approved spill prevention plan will be implemented by the contractor.

### **Migratory Birds**

The following mitigation measures shall be implemented to minimize impacts to nesting birds.

- In accordance with the Migratory Bird Treaty Act, a qualified biologist will conduct a preconstruction survey within 100 feet around the vicinity of the project site for active nests should construction activities commence during the nesting season for birds of prey and migratory birds (between February 15 and September 15).

- Following a preconstruction nesting bird survey, if any active nests of migratory birds are located within the vicinity of the construction footprint, a no-disturbance buffer zone shall be established around the nests to avoid disturbance or destruction of the nest. The distance around the no-disturbance buffer shall be determined by the biologist in coordination with USFWS, if needed, and will depend on the level of noise or construction activity, the level of ambient noise in the vicinity of the nest, line-of-sight between the nest and disturbance, and the species at hand. The biologist shall delineate the buffer zone with construction tape or pin flags. The no-disturbance buffer will remain in place until after the nesting season (to be lifted August-September) or until the biologist determines that the young birds have fledged. A report shall be prepared and submitted to the Tribe and the USFWS following the fledging of the nestlings to document the results.

## **CULTURAL RESOURCES**

The following mitigation measure is required for Alternative A to avoid adverse effects to cultural resources and/or historical properties:

### **Inadvertent Discovery**

The following mitigation measures shall be implemented to minimize impacts to cultural resources during construction:

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

- All work within 50 feet of the potential archaeological find shall be halted until a professional archaeologist, or paleontologist if the find is of a paleontological nature, can assess the significance of the find.
- If any archaeological find is determined to be significant by the archaeologist, or paleontologist as appropriate, then representatives of the Tribe shall meet with the archaeologist, or paleontologist, to determine the appropriate course of action, including the development of a Treatment Plan, if necessary.
- All significant cultural or paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist, or paleontologist, according to current professional standards.
- If human remains are discovered during ground-disturbing activities on Tribal lands, pursuant to NAGPRA, the Tribal Official and BIA representative shall be contacted

immediately. No further disturbance shall occur until the Tribal Official and BIA representative have made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the BIA representative shall notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.

## **SOCIOECONOMIC CONDITIONS/ENVIRONMENTAL JUSTICE**

No mitigation is necessary for Alternative A or B.

## **TRANSPORTATION AND CIRCULATION**

All surrounding intersections are projected to continue operating at acceptable levels of service under the Proposed Action. No mitigation is necessary.

## **LAND USE**

The Tribe shall adopt a Tribal Ordinance that commits to coordinating any future, currently unanticipated, development proposal or change in public access with the California Coastal Commission.

## **PUBLIC SERVICES**

No adverse impacts to public services would occur as a result of the Proposed Project. No mitigation is required for the Proposed Action.

## **NOISE**

### **Construction Noise**

The following mitigation measures shall be implemented to minimize impacts from noise during construction:

- Construction activities would only occur between the hours of 7:00 am to 6:00 pm Monday through Friday, and 9:00 am to 5:00 pm on Saturday. No construction activities would occur on any Sunday.
- Where feasible, the stationary construction equipment shall be located on the southern portion of the project site.
- All construction equipment over 50 horsepower shall be equipped with noise reducing mufflers.

## **HAZARDOUS MATERIALS**

No adverse effects from hazardous materials would result from Proposed Project with the incorporation of the BMPs listed in EA Section 2.2. No mitigation is required for the Proposed Action.

## **VISUAL RESOURCES**

No mitigation is necessary for Alternatives A and B.

## **RESPONSE TO EA COMMENTS**

A total of 13 comment letters were received regarding the EA. These comment letters are provided as Exhibit A. Responses to each comment letter are provided as Exhibit B. A Mitigation Monitoring and Enforcement Program is provided as Exhibit C. Changes to the EA in response to the comments received are included as Exhibit E as errata sheets. Changes are provided in underline/strikeout for clarity.

## **PUBLIC AVAILABILITY**

A Notice of FONSI detailing the availability of the FONSI will be published in local newspapers and distributed to all persons and agencies known to be interested in the Proposed Action. The FONSI will be made available via the internet at <http://www.trinidad-rancheria.org/> and as a hard copy at Tribal Office located at 1 Cher-Ae Ln, Trinidad, CA 95570 or at the Trinidad Branch of the Humboldt County Library located at 380 Janis Court, Trinidad, CA 95570

## **DETERMINATION**

While the Proposed Action assessed under the EA is the trust acquisition of the 9 acres, the BIA also must consider the reasonable foreseeable consequences of such action. For the Proposed Action, the foreseeable consequences assessed in the EA were based on the design being considered by the Tribe. It has been determined that the proposed federal action to approve the Tribe's request to acquire the proposed 9 acres into trust for the purpose of developing stormwater improvements and an interpretive visitor center, does not constitute a major federal action that would significantly affect the quality of the human environment. Therefore an Environmental Impact Statement is not required. This determination is supported by the aforementioned findings described in this FONSI, the analysis contained in the entire administrative record, including the EA, public comments made on the EA, the responses to those comments, and the mitigation imposed.

Issued in Sacramento, California this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Regional Director  
Bureau of Indian Affairs  
U.S. Department of the Interior

## ***EXHIBIT A***

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*COMMENT LETTERS RECEIVED ON THE EA*

# EXHIBIT A

## COMMENTS ON EA

Comments received on the Environmental Assessment (EA) are listed in **Table A-1**. Copies of the comment letters are provided in their entirety on the following pages, and issues are individually bracketed and numbered in the margins of the representative comment letters. Responses to the numbered comments are provided in **Exhibit B**.

**TABLE A-1**  
LIST OF COMMENTERS

Letter Number	Agency/Organization	Name	Date Received
<b><i>Tribes (T)</i></b>			
<b>T1</b>	Thomas O. O'Rourke, Sr., Chairman	Yurok Tribe	17-Apr-17
<b><i>State Agencies (S)</i></b>			
<b>S1</b>	State Clearinghouse	Scott Morgan, Director	10-Apr-17
<b>S2</b>	Coastal Conservancy	Samuel Schuchat	28-Mar-17
<b>S3</b>	California Coastal Commission	Mark Delaplaine, Manager	6-Apr-17
<b>S4</b>	Coastal Conservancy	Su Corbaley, Project Manager	21-Apr-17
<b>S5</b>	State Lands Commission	Reid Boggiano, Public Land Management Specialist	
<b><i>Local Agencies (L)</i></b>			
<b>L1</b>	Daniel Berman	City of Trinidad	23-Mar-17
<b>L2</b>	Daniel Berman	City of Trinidad	24-Apr-17
<b><i>Private Entities/ Organizations (P)</i></b>			
<b>P1</b>	Kimberly Tays	Private	27-Mar-17
<b>P2</b>	Elain Weinreb	Private	23-Mar-17
<b>P3</b>	Marea Russo	Private	1-Apr-17
<b>P4</b>	Marijane Beighley Poulton	Private	7-Apr-17
<b>P5</b>	Bryce Kenny	Private	4-Apr-17

## **TRIBES (T)**

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COMMENT LETTERS



# YUROK TRIBE Comment Letter T1

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



April 17, 2017

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

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

Aiy-ye-kwee' Ms. Dutschke:

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

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

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

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

T1-01

T1-02

T1-03



## Comment Letter T1

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

T1-03  
(Cont.)

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

T1-04

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

T1-05

T1-06

T1-07

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

T1-08

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

Sincerely,



Thomas P. O’Rourke, Sr.  
Chairman

*cc:*

*Chairman Garth Sundberg, Trinidad Rancheria*

*Dan Berman, City of Trinidad*

*Sarah Lindgren, Tsurai Ancestral Society*

*Congressman Jared Huffman*

*Senator Kamala Harris*

*Senator Diane Feinstein*

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

# STATE AGENCIES (S)

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COMMENT LETTERS



STATE OF CALIFORNIA

Comment Letter S1

GOVERNOR'S OFFICE of PLANNING AND RESEARCH

STATE CLEARINGHOUSE AND PLANNING UNIT

EDMUND G. BROWN JR.  
GOVERNOR April 6, 2017

KEN ALEX  
DIRECTOR

Chad Broussard  
U.S. Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

Reg Dir \_\_\_\_\_  
Dep RD Trust \_\_\_\_\_  
Dep RD IS \_\_\_\_\_  
Route Decrms, Chad.  
Response Required \_\_\_\_\_  
Due Date \_\_\_\_\_  
Memo \_\_\_\_\_ Ltr \_\_\_\_\_  
Fax \_\_\_\_\_

Subject: Storm Improvement and Interpretive Visitor Center Project  
SCH#: 2017034001

Dear Chad Broussard:

The State Clearinghouse submitted the above named Environmental Assessment to selected state agencies for review. The review period closed on April 5, 2017, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan  
Director, State Clearinghouse

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044  
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

Date Received 03/07/2017 Start of Review 03/07/2017 End of Review 04/05/2017



Document Details Report  
State Clearinghouse Data Base

Comment Letter S1

**SCH#** 2017034001  
**Project Title** Storm Improvement and Interpretive Visitor Center Project  
**Lead Agency** Bureau of Indian Affairs

**Type** EA Environmental Assessment

**Description** The Tribe proposes to develop the Trinidad Harbor District. As components of the new Trinidad Harbor District, the Tribe would designate the beaches and bluffs as protected open space, improve stormwater quality, reduce stormwater flows generated along Bay St, and construct a visitor center where the existing tackle shop is located.

**Lead Agency Contact**

**Name** Chad Broussard  
**Agency** U.S. Bureau of Indian Affairs  
**Phone** (916) 978-6165 **Fax**  
**email**  
**Address** Pacific Regional Office  
2800 Cottage Way  
**City** Sacramento **State** CA **Zip** 95825

**Project Location**

**County** Humboldt  
**City** Trinidad  
**Region**  
**Lat / Long**  
**Cross Streets** Lighthouse Rd and Bay St  
**Parcel No.** 042-07-101 plus 8 more  
**Township** 8N **Range** 1W **Section** 26 **Base** Trinidad

**Proximity to:**

**Highways** 101  
**Airports**  
**Railways**  
**Waterways** Pacific Ocean-Trinidad Bay  
**Schools** Trinidad ES  
**Land Use** harbor

**Project Issues** Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Coastal Zone; Cumulative Effects; Drainage/Absorption; Economics/Jobs; Flood Plain/Flooding; Geologic/Seismic; Growth Inducing; Landuse; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian

**Reviewing Agencies** Resources Agency; California Coastal Commission; Department of Fish and Wildlife, Region 1E; Department of Parks and Recreation; San Francisco Bay Conservation and Development Commission; Department of Water Resources; California Highway Patrol; Caltrans, District 1; Regional Water Quality Control Board, Region 1; Native American Heritage Commission

**Date Received** 03/07/2017 **Start of Review** 03/07/2017 **End of Review** 04/05/2017



March 28, 2017

Sent via EMAIL: amy.dutschke@bia.gov

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

RE: Environmental Assessment for Proposed Trust Acquisition of Trinidad Harbor properties for the Cher-Ae Heights Indian Community of the Trinidad Rancheria

Dear Ms. Dutschke,

It has come to our attention that the Bureau of Indian Affairs has released for public comment the *Environmental Assessment For Proposed Trust Acquisition Of Nine Acres For The Cher-Ae Heights Indian Community Of The Trinidad Rancheria* for the proposed trust acquisition of Trinidad harbor properties by the BIA. The California State Coastal Conservancy (Conservancy), which has a significant interest in the project, was not notified by the BIA or Trinidad Rancheria that the EA is available for review and comment. Instead, on March 23, 2017, the City of Trinidad informed us about the public comment period ending April 6, 2017. Therefore, and for the additional reasons below, I am writing to request that the BIA extend the public comment period for this Environmental Assessment for an additional 30 days, to May 6<sup>th</sup>.

The proposed project is of significance to the Conservancy. The improvements in and around Trinidad Harbor are key to public access and enjoyment of the waterfront in Trinidad. In 2006, the Conservancy provided a grant of funds to the Trinidad Rancheria to prepare engineering designs for the replacement of the pier structure. In 2010, we granted additional funds to contribute to the construction of the new pier, for the purposes of revitalizing the city water front and providing coastal access and recreational enjoyment for the general public. The EA is a substantial document that warrants a detailed review and analysis.

We have discussed this request with representatives of the Trinidad Rancheria, and they indicated they would likely support a request to extend the public comment period. The fee to trust application process is lengthy and this requested extension is unlikely to affect the larger timeline for that process.

Thank you for your consideration of this request. Please let us know your decision so that we can be sure to submit our comments by the original deadline as necessary. Su Corbaley is the project manager for the pier project. You may contact here at su.corbaley@scc.ca.gov or 510-286-6767.

Regards,

  
Samuel Schuchat  
Executive Officer

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

S2-01

**CALIFORNIA COASTAL COMMISSION**

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

**Comment Letter S3**

April 6, 2017

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

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

Dear Ms. Dutschke:

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

As is the normal BIA practice for fee-to-trust actions in the coastal zone, the EA acknowledges the need for the BIA to submit a consistency determination to the Commission under the Coastal Zone Management Act (CZMA, Section 307<sup>1</sup>). A consistency determination is a finding that a proposed activity is consistent to the maximum extent practicable with the California Coastal Management Program, combined with information necessary to support that conclusion, including an analysis of the activity's consistency with Chapter 3 of the Coastal Act. We provide these comments in assisting the BIA in preparation of that document and expect that our comments will be responded to prior to or in combination with that submittal.

S3-01

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

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

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

S3-02

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

S3-03

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

S3-04

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

S3-05



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

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

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

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

S3-06

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

S3-07

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

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

S3-08

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

S3-08  
(Cont.)

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

S3-09

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

S3-10

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

S3-11

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

S3-12

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

S3-13

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

S3-13  
(Cont.)

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

S3-14

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

S3-15

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

S3-16

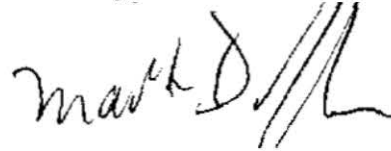
Finally, there are a few harbor improvements we would like to see incorporated into the proposal if they are feasible, and if they are not, to possibly be the subject of future planning efforts and inter-governmental coordination. As shown prominently in the photo on the EA’s cover page (i.e., a photo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

S3-17

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

S3-18

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Delaplaine", with a stylized flourish at the end.

MARK DELAPLAINE

Manager, Energy, Ocean Resources, and  
Federal Consistency Division

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



April 21, 2017

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

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

Dear Ms. Dutschke:

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

S4-01

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

S4-02

S4-03

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

S4-04

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



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

S4-05

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

S4-06

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

S4-07

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

S4-08

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

S4-09



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

S4-09  
(Cont.)

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

S4-10

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

S4-11

Regards,



SU Corbaley  
Project Manager

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

**CALIFORNIA STATE LANDS COMMISSION**

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



*Established in 1938*

**Comment Letter S5**

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

**Contact Phone: (916-574-0450)**

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

Reg Dir \_\_\_\_\_  
Dep RD Trust \_\_\_\_\_  
Dep RD IS \_\_\_\_\_  
Routes Deems  
Response Required \_\_\_\_\_  
Due Date \_\_\_\_\_  
Memo \_\_\_\_\_ Ltr \_\_\_\_\_  
Fax \_\_\_\_\_  
File Ref: G04-05

Dear Ms. Dutschke:

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

S5-01

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

S5-02

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

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

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



**Comment Letter S5**

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

S5-03

We encourage the Tribe to work collaboratively with the City to find a way forward that meets the Tribe's needs while complying with the City's granting statutes and the common law Public Trust Doctrine. If you have any questions, please contact me at (916) 574-0450 or by email at [reid.boggiano@slc.ca.gov](mailto:reid.boggiano@slc.ca.gov).

S5-04

Sincerely,



Reid Boggiano  
Public Land Management Specialist

Cc: Daniel Berman, City of Trinidad

# LOCAL AGENCIES (L)

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COMMENT LETTERS



March 23, 2017

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

RE: Environmental Assessment for the proposed trust acquisition of Trinidad Harbor properties by the Cher-Ae Heights Indian Community of the Trinidad Rancheria

Dear Ms. Dutschke,

On behalf of the City of Trinidad, I am writing to request that the BIA extend the public comment period for this Environmental Assessment EA for an additional 30 days, to May 6<sup>th</sup>.

The proposed project is of great significance to the City of Trinidad, as the subject land represents a key area (Trinidad Harbor) of our very small City. The EA is a substantial document that warrants a detailed review and analysis.

L1-01

We have discussed this request with representatives of the Trinidad Rancheria, and they indicated they would likely support a request to extend the public comment period. The fee to trust application process is lengthy and this requested extension is unlikely to affect the larger timeline for that process.

Thank you for your consideration of this request. Please let us know your decision so that we can be sure to submit our comments by the original deadline as necessary. I can be reached at [citymanager@trinidad.ca.gov](mailto:citymanager@trinidad.ca.gov) or 707-677-3876.

*Dan Berman*  
*City Manager*

cc: Trinidad City Council  
Jacque Hostler - Trinidad Rancheria CEO  
Su Corbaley – California Coastal Conservancy  
Mark Delaplaine – California Coastal Commission



April 21<sup>st</sup>, 2017

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

Dear Ms. Dutschke:

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

L2-01

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

**Background:**

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

L2-02

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

**Summary Comments:**

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

L2-03

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

L2-04

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

L2-05

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

L2-06

**Specific Comments:**

**1. Ownership of land proposed for trust acquisition.**

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

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

L2-07



## Comment Letter L2

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

L2-08

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

L2-09

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

L2-10

### **2. Project Purpose, Need, and Alternatives**

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

L2-11

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

L2-12

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

L2-13

### **3. Public Access**

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

L2-14

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

L2-15

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

L2-16

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

L2-17

#### **4. Additional context and impact analysis issues:**

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

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

L2-18

L2-19

L2-20

L2-21

L2-22

## Comment Letter L2

- Within the climate change analysis section, the fact that the City, County, CEQ and EPA have not adopted standards or thresholds for greenhouses gasses is used as the basis for determining that there will be no impacts. However, that completely ignores the fact that the State of California has adopted strict guidelines. L2-23
- The visual analysis concludes that the overall visual character will be improved over current conditions. While that may be true, there is no discussion or even acknowledgement that coastal views will be blocked and impacted by a larger structure (visitor center). This is a known issue, since there was public controversy over placing an interpretive sign in that vicinity due to view blockage. L2-24
- One of the mitigation measures for seismic activity is that structures will be built to California Building Code standards. But there is no information provided about who oversees and enforces that to ensure that impacts are minimized under trust acquisition. L2-25
- The indirect effects analysis seems to address cumulative effects and dismisses them as already analyzed under the various individual topics. There will be numerous indirect effects to the City, community, adjacent lands, etc, which needs to be addressed in that section. L2-26

### 5. Socioeconomic Impacts

The discussion of socioeconomics focuses on the County rather than the City, which makes the impacts appear much smaller than they are. The population estimate of 236 for Trinidad is not accurate. The American Community Survey data, where that number came from, is not reliable for a town as small as Trinidad; the margin of error is often 100% or more. For example, the 2010 ACS estimate of Trinidad's population was 259, but the 2010 Census shows a population of 367 and that it was increasing. The tax and land use information and analysis discuss County data, not the City, which makes it invalid for assessing impacts to Trinidad. L2-27

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

**a. Property tax** –The City of Trinidad receives approximately \$4,000 annually in property taxes from the harbor properties, out of approximately \$100,000 in total property tax revenue across the City. The Harbor property taxes may be *de minimis* relative to total County property tax revenue, but they represent about 4% of the City's property tax revenue, and .7% of our total General Fund revenue.

**b. Sales tax** – The City receives sales and use tax on Seascope restaurant sales as well as the bait shop. These funds will be lost to the City in the event of federal trust status. The City has requests in to the State Board of Equalization to help quantify these amounts. L2-28

**c. Transient Occupancy Tax** – The Rancheria operates a Short Term Rental in the home above the Seascope. The City received almost \$5,000 in Transient Occupancy Tax (TOT) revenues from this rental in the last fiscal year that would be lost in trust acquisition. This is approximately 1% of the City's total annual General Fund Revenue

In addition, the public access and parking issues discussed previously are very significant to the potential socioeconomic impacts to the City. The City is very concerned that trust acquisition means that current protections for public access to and across the property for parking, recreation, and boater use would be lost, and that access could be restricted in the future. The dramatic socioeconomic L2-29



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

L2-29  
(Cont.)

## **6. Consultation**

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

L2-30

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

Sincerely,



Daniel Berman  
City Manager

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

# **PRIVATE CITIZENS AND COMMERCIAL ENTITIES (P)**

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COMMENT LETTERS

**From:** [Broussard, Chad](#)  
**To:** [Trenton Wilson](#)  
**Subject:** Fwd: Environmental Assessment for Trinidad Rancheria in Humboldt County, California  
**Date:** Tuesday, March 28, 2017 8:57:02 AM

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Chad A. Broussard  
Environmental Protection Specialist  
U.S. Department of Interior, Bureau of Indian Affairs, Pacific Region  
Division of Environmental and Cultural Resources Management, and Safety  
Office Phone: (916) 978-6165  
Cell Phone: (916) 261-6160

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

From: **Kimberly Tays** <[kimkat067@gmail.com](mailto:kimkat067@gmail.com)>  
Date: Mon, Mar 27, 2017 at 8:37 PM  
Subject: Environmental Assessment for Trinidad Rancheria in Humboldt County, California  
To: [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)  
Cc: "Simon, Larry@Coastal" <[Larry.Simon@coastal.ca.gov](mailto:Larry.Simon@coastal.ca.gov)>, "Delaplaine, Mark@Coastal" <[mark.delaplaine@coastal.ca.gov](mailto:mark.delaplaine@coastal.ca.gov)>, "Merrill, Bob@Coastal" <[bob.merrill@coastal.ca.gov](mailto:bob.merrill@coastal.ca.gov)>, Berman Dan <[citymanager@trinidad.ca.gov](mailto:citymanager@trinidad.ca.gov)>

## SENT VIA EMAIL ONLY

Mr. Chad Broussard  
Environmental Protection Specialist  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

Dear Mr. Broussard:

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

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

I have reviewed the EA, and while I am not opposed to stormwater and visitor center improvements, I oppose the transfer of the harbor/pier area into federal trust, because Californians would be giving up local control of this very scenic and sensitive part of California's coastline. The California Coastal Act (CCA) is an excellent state law that protects our coastal resources and provides excellent noticing requirements that allow for public participation in the coastal development permit (CDP) process, including the right to appeal decisions that could harm or negatively impact coastal resources. If this area is placed under federal status, **public members would not enjoy the same noticing requirements and public participation they enjoy under the CCA.** Under the National Environmental Protection Act (NEPA), there is no official public notice, only the federal register. While the public can submit comments, the federal process would not be as intuitive nor as easily accessible as the CCA process. And, once this area is under federal status, it is **unlikely** the public would have much influence over what development projects are allowed. There is a local office of the California Coastal Commission (CCC) in Arcata. If the public has concerns about possible CCA violations or inappropriate development, they can contact the local CCC office and staff can review those matters. Although NEPA would replace the California Environmental Quality Act (CEQA), NEPA does not appear to be as strict as CEQA concerning mitigation for development project impacts. And, given the Trump Administration's disdain for environmental laws and protections and plans to slash the U.S. EPA's budget, it is highly likely

P1-01

P1-02



that important federal environmental laws and protections could be dismantled or severely weakened during the next 4 to 8 years; thus, opening this area up to harmful development projects and uses. If this area remains under its current status, the public would be assured: (1) the CCA would continue to protect this scenic, sensitive coastal environment, (2) the public would have the right to easily participate in the CDP permit review process, (3) the public would have the right to appeal projects that may violate the CCA or cause significant impact to coastal resources, and (4) that CCA or CDP violations could be investigated by local Coastal Commission staff. I did not see any analysis in the EA that explained how federal status would impact the public's right to participate in the permit review/appeal processes that they currently enjoy under the Coastal Act, nor did I see any information on how NEPA regulations compare with CEQA regulations when it comes to coastal resource protection.

P1-02  
(Cont.)

I would like to know what the Rancheria **cannot** do now, under its current status, that it would be allowed to do once the pier/harbor area is under federal status? Why can't plans for stormwater improvements and construction of the visitor center be carried out under a CDP process? Why do these development projects need to be tied to the federal status request? Could there be more than meets the eye on development plans for the pier/harbor area and control over public access.

P1-03

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

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

P1-04

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

P1-05

In addition to my deep concerns about public access, I am equally concerned about future protections for water quality in Trinidad Bay, an Area of Special Biological Significance (ASBS). It is no secret that President Trump has plans to slash the budget of the U.S. EPA and could possibly eliminate the agency altogether. And given the Trump Administration's disdain for environmental protections, including the Clean Water Act, I must question the following language that is provided for on pages 3-7 and 3-8 concerning protections for water quality:

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

P1-06

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

*Section 402* establishes the National Pollutant Discharge Elimination System (NPDES), a permitting system for the discharge of any pollutant (except for dredged or fill material) into waters of the U.S. Each NPDES permit contains limits on pollutant concentrations of wastes discharged to surface waters to prevent degradation of water quality and protect beneficial uses.

Trinidad Bay is a very important and sensitive coastal body of water. The California Coastal Commission is a known entity, and the public can count on this high-functioning and committed state agency to protect Trinidad Bay and our coastal resources. Transferring the pier/harbor area into federal status could place Trinidad Bay in jeopardy, especially since the Trump Administration has plans to defund the EPA and is already in the process of weakening important environmental laws. It is unlikely we can count on the EPA

P1-07

to insure that the water quality of Trinidad Bay is protected.

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

P1-08

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

P1-09

The current plans for the visitor center describe the siding as *rough-sawn vertical siding shown in random pattern*. However, there is **no guarantee** that natural siding would be used, because underneath the description it says *final siding type to be specified and approved by owner*. I am concerned the plans call for siding that would blend in nicely with the natural surroundings, but then a different material could be used. That is what happened with the pier project that was completed in 2012. One of the permit conditions required that stamped concrete be used so that the pier surface resembled wooden planks and blended in better with the natural surroundings. The staff report specifically stated that the pier would **not have a standard concrete gray surface**; however, that is exactly the type of surface that was installed. I was not aware of this design change until I saw that the pier's surface looked more like a freeway on-ramp than a natural wooden pier. This is a classic example of "bait and switch", where the permit described the project in a way that pleased the public and permitting agencies, and then something different was built. I am concerned this will happen with the visitor center; where a certain type of siding or materials are proposed and approved, but then the project is constructed in a way that detracts from the natural and scenic character of the village and harbor.

P1-10

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

P1-11

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

P1-12

## Comment Letter P1

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

P1-13

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

P1-14

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

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



Reg Dir \_\_\_\_\_  
Dep RD Trust \_\_\_\_\_  
Dep RD IS \_\_\_\_\_  
Route Deedms **Comment Letter P2**  
Response Required March 18, 2017  
Due Date \_\_\_\_\_  
Memo \_\_\_\_\_ Ltr \_\_\_\_\_  
Fax \_\_\_\_\_

Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

RECEIVED BIA  
2017 MAR 23 P 2:50

Regarding: Environmental Assessment of Trinidad Rancheria Stormwater Improvement and Interpretive Visitor Center Project March 2017.

The Socio-Economic section on page 4-10 of this document fails to mention the substantial adverse effect that the transfer of this property will have upon the City of Trinidad's General Fund.

P2-01

The City of Trinidad is an incorporated city within the State of California, and as such, has its own tax rolls. Part of the money which is collected by the State of California for sales tax, and by the County of Humboldt for property tax, is returned to the City, and goes into its General Fund. In addition, the City has its own designated sales tax of 0.75% which is not shared with any other entity.

P2-02

The Rancheria-owned properties being discussed in this document are within the boundaries of the City of Trinidad, and are taxed accordingly.

P2-03

I am not a City employee, and speak only as a citizen. I do not have access to the exact figures involved. However, I have made some estimates based on previous years' budgets.

P2-04

The City is very small, with a population of about 300. It has only five medium-sized businesses, and a few even smaller businesses. The total sales tax generated is less than \$200,000 per year. The City's General Fund is about \$500,000.

The Rancheria owned properties within the City's limit contribute to the City's tax base in the following ways:

- 1.) The City leases submerged harbor lands to the Rancheria for about \$5,000 per year.
- 2.) The commercial properties on the Rancheria's harbor properties generate sales tax, which I estimate is \$36,000.
- 3.) Property tax received by the City for these properties I estimate at \$1,200.
- 4.) A Vacation Rental exists on the harbor properties, which generates about \$4,700 per year in Transient Occupancy Tax.

P2-05

## Comment Letter P2

Adding up these figures:

Type of Tax	Estimated Amount of Tax per Year
Lease of Submerged Harbor Lands	\$ 5,000.
Sales Taxes	\$36,000.
Property Taxes	\$ 1,200.
Transient Occupancy Tax	\$ 4,700.
<b>Total</b>	<b>\$46,900</b>

P2-06

Proportion of City's General Tax Fund receipts generated by Rancheria harbor properties: **9%**

It is my sincere hope that the preparers of this document will obtain the exact figures from the appropriate taxing agencies, and give the public some accurate information on the economic effects of this project on the City of Trinidad.

*Elaine Weinreb*

Elaine Weinreb

P.O. Box 427

Trinidad, CA 95570





## Trinidad Rancheria EA, Humboldt County, California

1 message

**MAREVA RUSSO** <vectornest@sbcglobal.net>  
Reply-To: MAREVA RUSSO <vectornest@sbcglobal.net>  
To: "chad.broussard@bia.gov" <chad.broussard@bia.gov>

Sat, Apr 1, 2017 at 11:25 AM

Mr. Chad Broussard  
Environmental Protection Specialist  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

Dear Mr. Broussard:

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

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

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

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

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

P3-01

Marijane Poulton

Reg Dir \_\_\_\_\_  
Dep RD Trust \_\_\_\_\_  
Dep RD IS \_\_\_\_\_  
Route Decems  
Response Required \_\_\_\_\_  
Due Date \_\_\_\_\_  
Memo \_\_\_\_\_ Ltr \_\_\_\_\_  
Fax \_\_\_\_\_

**Comment Letter P4**

PO Box 648  
Trinidad, CA 95570

RECEIVED BIA

2017 APR -7 P 12:14

April 5, 2017

Bureau of Indian Affairs  
2800 Cottage Way STE W2820  
Sacramento, CA 95825 -1885

Re: Environmental Assessment of Trinidad Rancheria Stormwater Improvement and Interpretive Visitor Center  
March 2017

Dear BIA Staff,

I am concerned about allowing the Trinidad Rancheria to start another project prior to correctly completing the previous projects they have undertaken recently. The pier project was to have lighting that did not project beyond the immediate pier area. This is not done. The restroom project was to have native plants installed on the leach field. This is also not done. There are also numerous other incomplete portions of these contracts.

P4-01

I am also concerned that the assessment did not include any financial impacts to the City of Trinidad. Will the business licenses and taxes of the fishing fleet still go to the City, if the land is in a federal trust?

P4-02

The Rancheria does not provide regular cleanup of the parking lot around the restrooms, restaurant, and launching facilities. Ravens raid anything left behind in pickup beds, which often contain old bait, empty drink and fast food containers, plastic bags, twine, broken bits and pieces. These in turn get spread across the lot and are blown into the surrounding vegetation. I have only witnessed the cleanup of the parking lot prior to an opening day on the fishing calendar. I am concerned that additional visitors coming to the Visitor Center may just add to the trash.

P4-03

The Assessment is incorrect in stating that the vegetation surrounding the subject area is native. There are clearly large areas of ice plant, pampas grass, vinca, and other exotics that will move into any newly disturbed areas. Let the Rancheria show responsible care for the land in this area that they have already made commitments toward before allowing additional permitted activities to occur.

P4-04

Sincerely,

*Marijane Beighley Poulton*

Marijane Beighley Poulton  
Resident of the City of Trinidad

J. Bryce Kenny  
P.O. Box 361  
462 Ocean Ave.  
Trinidad, CA 95570  
(707) 442-4431

April 4, 2017

Chad Broussard  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

Re: Fee to Trust Petition of Cher-Ae Heights Indian Community of the Trinidad Rancheria

Dear Mr. Broussard:

I take this opportunity to comment on the NEPA aspect of the Environmental Assessment (EA) on the proposed trust transfer referenced above.

It must first be stated that the Rancheria has done an outstanding job of preserving and improving the use of the harbor for commercial and recreational fishing for all who come to Trinidad for those and other recreational reasons. Trinidad harbor is one of only a few small ports in California that maintains its traditional charm, commercial functionality, and relatively undeveloped state.

And, the Rancheria has been generous to the local school and surrounding community with its casino revenues. It is a well-established part of the local social fabric. However, the improvements it proposes to its harbor property can and should be done without transferring the property into federal trust status. It is simply not necessary, and as set forth below, the subject property is totally unique in that it is the only year-round access for small boats to the Pacific Ocean between Eureka and Crescent City.

As a point of fact which is not clearly stated in the EA, the marine railway for launching and retrieving boats up to approximately 25 feet in length, erroneously referred to as the "boat launch ramp" in the EA, is only open from about May 1 through September 30 of each year. The rest of the time, the boating public uses

P5-01

P5-02



the beach adjacent to the boat launcher for access to the bay and the ocean beyond. This includes the currently very popular ocean kayaks, whose numbers are increasing steadily. I have been launching my boat there since approximately 1982. Exhibit 1 is a photograph of me, on the right, and my brother-in-law and nephew rowing out from the boat launch beach in the spring of 2001. It is extremely likely that this beach was used for that purpose by the original Yurok inhabitants, with their ocean-going redwood canoes, because it is the most sheltered spot from incoming ocean swells of any place in the bay. It is also extremely likely that the earliest European visitors, including Don Bruno de Hezeta, who claimed Trinidad Head for Spain on June 11, 1775, used that beach for the same reason.

P5-02  
(Cont.)

As set forth in detail below, the EA does not comply with NEPA, because it does not acknowledge how placing the subject property into trust status may affect the boat launching beach, motorized access to Trinidad Head, and parking for Trinidad State Beach, among other things.

P5-03

## I. ANALYSIS

### A. The EA Does not Take Into Account or Properly Interpret the Expansive Language Used in Title 40 of the Code of Federal Regulations

40 CFR §1508.3 provides as follows: “Affecting” means will **or may** have an effect on.” (Emphasis provided.) The word “may,” used in this context, is a term of expansion, not limitation. It is synonymous with “might,” “could,” or “possibly.” As one federal district court has stated, “*Lincoln Properties* notes that because “the word ‘may’ precedes the standard of liability” Congress included expansive language intended “to confer upon the courts the authority to grant affirmative equitable relief to the extent necessary to eliminate *any risk* posed by toxic wastes.” California Dept. of Toxic Substances Control v. Interstate Non-Ferrous Corp. (E.D. Cal. 2003) 298 F.Supp.2d 930, 980–81 (Emphasis in original.)

P5-04

40 CFR §1508.8 further defines as follows: “Effects” **include**: (a) Direct effects, which are caused by the action and occur at the same time and place. (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects **may include** growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, **including** ecosystems. Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected

P5-05



ecosystems), aesthetic, **historic, cultural**, economic, **social**, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” (Emphasis provided.)

P5-05  
(Cont.)

“[T]he word ‘including’ in a statute is ‘ordinarily a term of enlargement rather than limitation.’ ” (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 717, 3 Cal.Rptr.3d 623, 74 P.3d 726; see *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 639, 268 P.2d 723 [“The statutory definition of a thing as ‘including’ certain things does not necessarily place thereon a meaning limited to the inclusions”].) *Ortega Rock Quarry v. Golden Eagle Ins. Corp.* (2006) 141 Cal.App.4th 969, 982. That means that when the regulations state examples of things that are included in the term “effects,” it is not meant to limit other things not listed, as also being “effects” for purposes of NEPA analysis.

P5-06

40 CFR Sec. 1508.7 “Cumulative impact. “Cumulative impact” is the impact on the environment which results from the incremental impact of the action when added to other past, present, and **reasonably foreseeable future actions** regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” (Emphasis provided.)

P5-07

40 CFR §1508.27 “Significantly. “Significantly” as used in NEPA requires considerations of both context and intensity: (a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant. (b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity: (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the federal agency believes that on balance the effect will be beneficial. (2) The degree to which the proposed action affects public health or safety. (3) **Unique characteristics of the geographic area such as proximity to historic or cultural resources**, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. (4) **The degree to which the effects on the quality of the human environment are likely to be highly controversial.** (5)

P5-08



**The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.** (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration. (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. **Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.** Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in **or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.** (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. 29 (10) Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment. [43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979].” (Emphasis provided.)

P5-08  
(Cont.)

40 CFR § 1508.18 Major Federal action.

“Major Federal action includes actions with **effects that may be major** and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly ( § 1508.27). Actions **include** the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

P5-09

**(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies;** new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals ( §§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions. (emphasis provided)

P5-10

**(b)** Federal actions tend to fall within one of the following categories:

**(1)** Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551et seq.; treaties

P5-11



and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as **a group of concerted actions to implement a specific policy or plan**; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.” (Emphasis provided.)

P5-11  
(Cont.)

The correct interpretation of the above terms strongly supports the idea that the transfer to trust itself--because it is the end result of a specific BIA “policy and plan”-- must be analyzed for compliance with NEPA in the EA.

P5-12

**B. The EA is Inadequate Because it Fails to Consider the Reasonably Foreseeable Impacts From the Transfer of the Subject Property Into Trust Status**

The EA limits its analysis to the possible effects of those aspects of the project meant to cure the problems identified in the cease and desist order issued by the State Water Resources Control Board, such as contaminants flowing from the paved parking area, identified as Bay Street in the EA, into the ocean. It must be noted here that, while eliminating such runoff is a laudable goal, the problem was caused by the Rancheria shortly after it acquired the property in 2000, when it paved the parking without a permit from the City of Trinidad or the California Coastal Commission. Ariel photos of the Humboldt County Planning Department confirm this. Viewed in that light, the question arises whether the BIA should be assisting the Rancheria in benefiting from its own wrongdoing.

P5-13

The unique character of the subject property, combined with the unique status of property held in trust for the benefit of Indian tribes, makes clear that the very act of transferring the property into trust status poses a significant risk under the definitions set forth in Section A, above.

P5-14



Article X, section 4 of the California Constitution provides: “No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.” This provision was first adopted by the People as part of the Constitution of 1879, at the end of California's third decade as a state. (Grodin, Shanske & Salerno, The California State Constitution (2d ed. 2016) (Grodin) at pp. 248, 255; former Cal. Const., art. XV, § 2.

P5-15

The subject property “fronts” on the tidal lands that comprise the boat launching beach, visible in photo No. 1 appearing at page 3-38 in the EA. At the highest tides, the ocean comes all the way up to the rocks appearing in the right side of the photo. Thus, there is no doubt that those lands are “tidal” and are owned by the State of California and under the jurisdiction of the State Lands Commission. These tidal lands are not part of the mooring field in the bay, which was given by the State Lands Commission to the City of Trinidad. As the United States Supreme Court has stated: “If tideland, the title of the state was complete on admission to the Union. No transfer to private parties was necessary to perfect or assure that title and no power of disposition remained with the United States.” Borax Consolidated v. City of Los Angeles (1935) 296 U.S. 10, 19. And, “...by the common law, the shore ‘is confined to the flux and reflux of the sea at ordinary tides.’ Blundell v. Catterall, 5 B. & A. 268, 292. It is the land ‘between ordinary high and low water mark, the land over which the daily tides ebb and flow. Id. at 22-23.

P5-16

As the EA correctly points out, if the subject property is placed in trust status, there will be no state or local control over it, the Rancheria will be able to control it under the limited sovereignty it enjoys under federal law. Within the meaning of “significant” 40 CFR Sec. 1508.27 (3) the subject property possesses “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources,” namely, the historic entry point for vessels entering and leaving Trinidad Bay, and to fish the waters, a right considered so important, it is enshrined in the California Constitution.

P5-17



## Comment Letter P5

If placed in trust status, the subject land will become “Indian country,” a term of art, defined, as applicable to the Rancheria, as “all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state,...” 18 U.S.C.A. § 1151(b) (West).

P5-18

The Rancheria will have inherent power to exclude nonmembers from the subject lands. Merrion v. Jicarilla Apache Tribe (1982) 455 U.S. 130, 159. Though the EA seeks to assure everyone that the Rancheria has no intention of doing so, the right of unfettered access to Trinidad Bay is too important to leave to the whim of future Rancheria members who might, for financial reasons, elect to impose a hefty fee for crossing their lands, or even make the area into a private resort for the wealthy.

P5-19

One big difference between tribal governments and state or federal governments, is general transparency. Both state and federal laws include open meeting laws and public records laws that allow the citizenry to keep close track of what its governments are doing. The Rancheria is not required to share its internal affairs with anyone but its membership, or authorized federal or state officials. Therefore, it is very difficult for nonmembers to predict what the tribal government will do.

P5-20

Under the expansive definition of 40 CFR 1508.3, it “may” well happen that a decision will be made to change course and exploit other financial aspects of the subject property. With no local or state control, that would be a detrimental “affect” on the rights of nonmembers who wish to exercise their historic and constitutionally guaranteed right to free access to the navigable waters of this state, or to insist on reasonable height limitations and other zoning related controls on development. In the parlance of 40 CFR, it is “reasonably foreseeable” that the trust transfer will lead to the impairment of access to the boat launcher beach, or other harms to nonmembers of the Rancheria.

P5-21

Apparently, an agreement was made between the Rancheria and the California Coastal Conservancy to maintain “public access to the Trinidad Pier and associated marine access and recreational improvements (whatever that means) until 2032.” (EA at 2-2) However, given the likelihood of the boat launch beach having been used by the Yuroks since time immemorial, and by Europeans since 1775, that is cold comfort for those who believe that its free and unfettered use should go on in perpetuity.

P5-22



**C. The EA Does not Provide Adequate Analysis of the Boat Launch Beach as a Traditional Cultural Property Under Section 106 of the National Historic Preservation Act (NHPA)**

It cannot be gainsaid that the California Gold Rush was a major historical event in U.S. and world history. The gold acquired by the United States there propelled it on its course to becoming a world power. Of course, it is also undisputable that its impact on the Native Americans of California was disastrous. But for NEPA analysis, one culture's values cannot be placed above another's. It is simply a question of whether a place or thing qualifies under the standards set forth at 36 CFR Part 800.

P5-23

The harbor in general, and as it applies to these comments, the boat launch beach in particular, is an "historic site" that should be eligible for inclusion in the National Register of Historic Places, as referenced at page 3-22 of the EA. As noted in the EA, until the discovery of Humboldt Bay, Trinidad was the port of access to the gold fields in the vicinity of the Trinity River, and thousands of people disembarked there.

P5-24

Under the fourth bullet point at page 3-22 of the EA, transfer of the subject property to trust status may "change the character of the property's use," if the Rancheria invokes its self-determination power to exclude non-members or all but certain members of the public, from entering its lands in order to get to and from the boat launching beach. As pointed out earlier, this implicates a right protected by the California Constitution. The BIA has not done an adequate NEPA review until this issue is fully discussed in the EA.

P5-25

The seventh bullet point is also implicated in that the trust transfer would be a "transfer...of the property out of federal control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance." While technically, the property would be titled in the federal government's name, the beneficial ownership inures to the Rancheria, and under principles of sovereignty and self-determination, the BIA does not transfer property into trust subject to restrictions or conditions. City of Linclon v U.S. Department of Interior, 229 Fed.Supp.2<sup>nd</sup> 1109, 1124 (D.Ore. 2002).

P5-26

Therefore, as a practical matter, the Rancheria will be free to use the property as it sees fit, without regard to impacts to its historical uses.



The question naturally comes up as to why the Rancheria would ever want to significantly alter the historic uses of the subject property. The fact that it is currently pursuing the construction of a new freeway interchange and a 130-room hotel, would give a reasonable person pause on this issue. (Exhibit 2)

P5-27

It must be understood that the Trinidad area is currently a living “picture post card,” so stunning is the natural scenery. It is one of few places left in California still like that. It is respectfully submitted that a group that would so go against the values of the community at large by pursuing development that has such a drastic impact on the rural nature of the area, would also have no qualms about turning the subject property into an upscale resort, simply for the money it could bring in. Therefore, it is reasonably foreseeable that that will happen.

P5-28

**D. The EA Does not Demonstrate That the Yurok Tribe was Consulted as Part of the Section 106 NHPA Process**

The archeological study discussed in the EA plainly states that the subject property is in the aboriginal territory of the Yurok Tribe. That tribe attained federal recognition in 1988 and is the largest tribe in California, with over 5,000 members. That the Rancheria has members who claim Yurok ancestry does not allow the EA to skip this important part of the cultural impacts analysis required by NEPA.

P5-29

The EA at page 4-10 states, in error, that the project would increase the Rancheria’s land base within its aboriginal territory. By the EA’s own analysis, the Rancheria’s aboriginal territory is the 60 acres it started with in 1908.<sup>1</sup> The EA further arbitrarily and incorrectly describes the Rancheria’s “traditional homeland” as a 20-mile radius around its current lands and labels this as its “area of interest.” (EA at 1-7)

P5-30

Page 3-22 lays out the seven criteria that 36 CFR Sec. 800.5(a)(2) provides, but it skips altogether the critical language that precedes those considerations.

P5-31

36 CFR Sec. 800.4(a)(4) requires, in relevant part, that the agency official “Gather information from any Indian tribe....identified pursuant to § 800.3(f) to assist in identifying properties, **including those located off tribal lands, which may be of religious and cultural significance to them** and may be eligible for the National

P5-32

<sup>1</sup> The 60- acre conclusion may also be in error. A map from the 1940’s, attached as Exhibit 3, shows a parcel that appears to be much smaller than 60-acres as Indian Reservation. It is possible that by the time that map was made, some land was converted to individual allotments, or was sold to non-Indians.



Register....” (Emphasis provided.) Given this directive, it is shocking that the EA does not mention any consultation with the Yurok Tribe, whose aboriginal territory includes the subject property. It also should be understood that there is a local association of Indians who trace their lineage to the actual Yurok village located just east of the subject property, the Tsurai Ancestral Society. They have been very active for over 35 years in efforts to preserve and protect the village site and surrounding lands. They should also have been consulted as part of the NEPA process.

P5-32  
(Cont.)

**E. The Presence of the Access Road to Trinidad Head on the Subject Property and Parking for Trinidad State Beach are not Properly Addressed in the EA**

Numerous exhibits to the EA show that the subject property is traversed by the paved road that goes up onto Trinidad Head, including Figure 1-3. While the EA correctly notes that most visitors walk up the trail, which appears to be located on the legal right of way, the road always has and does provide motorized access and is likely the subject of an implied dedication to public use going back to the time the lighthouse was built. Because the Rancheria will obtain the power to exclude non-members if the land is put into trust status, a discussion of this possibility must be included in the EA.

P5-33

The same goes for the portion of Parcel 1 that is used for public parking for Trinidad State Beach, which starts just north of Trinidad Head.

P5-34

Moreover, once the land goes into trust status, no public easements can be created on it by judicial action. This is because the federal Quiet Title Act, 28 U.S.C. Sec. 2409a (a) exempts Indian trust lands. Thus, the United States has not waived its immunity from suits which seek to establish, among other things, easements over land held in the federal government’s name. Although the law is not entirely clear on the point, it appears that a suit to enforce an easement that already existed of record before the transfer into trust, would also be barred by the federal Quiet Title Act. These uncertainties highlight the point that the subject property is not a good candidate for transfer into trust status.

P5-35

These issues are germane to the Land and Water resources elements, the Cultural Resources element, Transportation and Circulation, and Land Use elements of the EA.

P5-36



## II. CONCLUSION

The EA does not adequately analyze the impact of the trust transfer itself under the criteria for NEPA. The definitions for 40 CFR Sec. 1508 show that NEPA was intended to cast a wide net to ensure that its purposes are achieved. Important issues are not discussed in the EA at all. As to the claim that it is not reasonably foreseeable that the Rancheria will eventually put the property to a use other than what they state, 40 CFR §1508.27 (5) comes into play, as defining “significantly”: “The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” The subject property is unique in that it is the gateway to the boat launch beach, Trinidad Head, and Trinidad State Beach. It has tremendous historical significance as the port of entry to the northern part of the Gold Rush. Users of coastal resources and the State of California have an interest in protecting public access, not just for a period of years, but in perpetuity for future generations. The risk is that the Rancheria is not required to share those concerns. It is only required to provide for its members, and it is not required to conduct its governmental activities open to the public. The future of such a unique property should not be put into the hands of a semi-sovereign whose interests do not necessarily align with those of the other U.S. citizens.

P5-37

At the very least, an Environmental Impact Statement should be prepared, after consulting with all interest parties and properly interpreting the NEPA guidelines. Or, more appropriately, it should be acknowledged that the Alternate B, no project alternative, is the appropriate one, owing to the unique status of the property and the legal principles applicable to it. The Rancheria will not be prohibited from carrying out its laudable efforts to improve storm water drainage, as a result of that.

P5-38

Respectfully Submitted,

J. Bryce Kenny









Exhibit "1"



# CHER-AE HEIGHTS INDIAN COMMUNITY

of the Trinidad Rancheria



## Comprehensive Community-based Plan

DRAFT  
June 2011

prepared by the  
Local Government Commission

Opticos Design, Inc.

Sherwood Engineers

*Exhibit "Z"*

**Comment Letter P5**

or are primarily used by tribal members, may be designated as IRR's. The Bureau of Indian Affairs and the Federal Highway Administration through an interagency agreement jointly administer the Federal Land Highway Program's IRR program (*Cher-Ae Heights Indian Community of the Trinidad Rancheria Tribal Transportation Plan 2006 - 2026*, Winzler & Kelly Consulting Engineers, March 15, 2006).

The Yurok Tribe's ancestral territory includes routes along State Highways 101, 299, 96, and 169 along with numerous other roads and routes throughout Humboldt and Del Norte Counties. State Highway 299 is already designated as a National Forest Scenic Byway (Smith River Scenic Byway) extending from Jedediah Smith State Park to the Oregon border in Del Norte County. State Highway 96 is also designated as a National Forest Scenic Byway (Big Foot Scenic Byway) extending from Willow Creek to Happy Camp in Humboldt County. Both of these scenic byways are administered by Six Rivers National Forest. State Highways are administered by the California Department of Transportation (Caltrans). Local county roads are usually administered by the county public works department (*A History of Transportation on the Yurok Indian Reservation, Humboldt and Del Norte Counties, California, Yurok Tribe*, Winzler & Kelly, Consulting Engineers, January 18, 2005).

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**Highway 101 Interchange Design Fair (August 2009)**

On May 17 - 21, 2009, the Trinidad Rancheria and the City of Trinidad invited Tribal members, community members, and other stakeholders to come together and share their vision for the future of the Trinidad Rancheria and surrounding communities by participating in a Community Design Fair. The four-day Design Fair focused on creating a community vision for a livable and walkable community, the incorporation of cultural values and highlighted the proposal for a new Highway 101 Interchange to the Trinidad Rancheria. The overall theme of the Design Fair was:

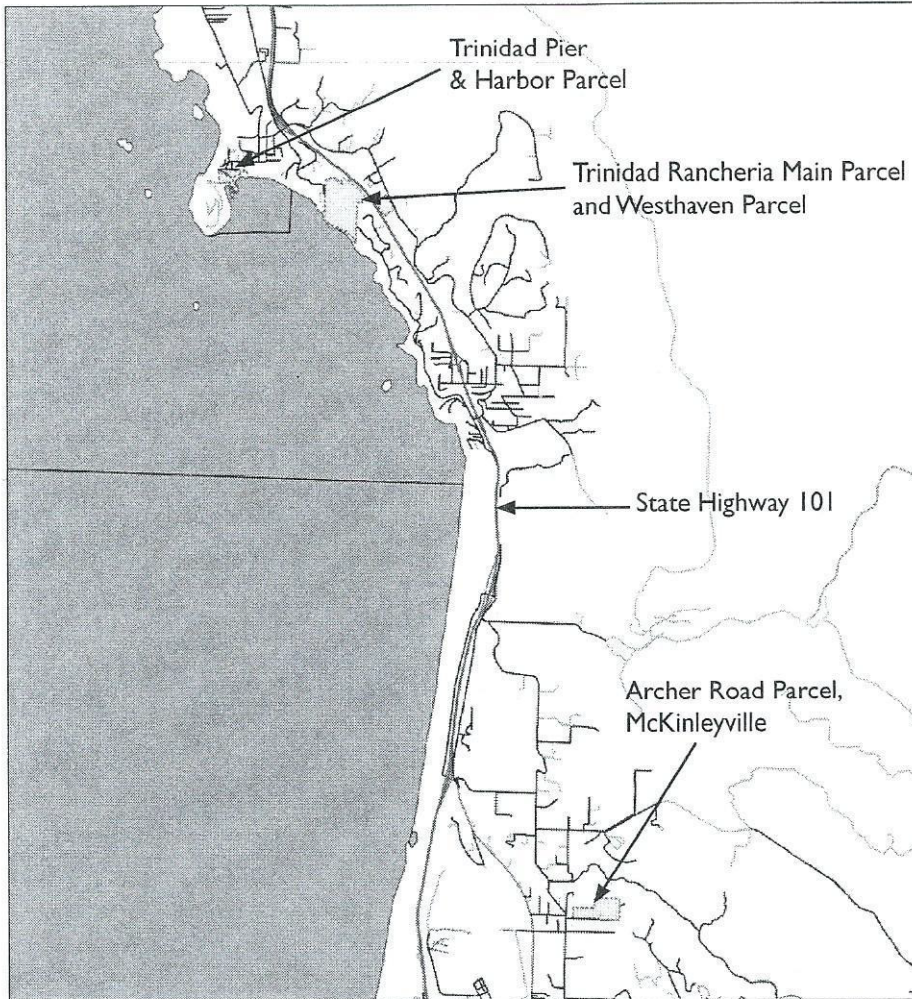
Noo-kwo-mey (Yurok) "Gather together, bring together"

The Trinidad Rancheria is developing a Comprehensive Plan that identifies long-range planning goals for member services, housing, economic development, land use, harbor planning, transportation, and environmental issues. The Trinidad Rancheria's proposal to construct an interchange from Highway 101 to the core landholdings of the Tribe, near the City of Trinidad, is pertinent to all other future planning efforts.

Currently, the only automotive access to the Rancheria is by way of Scenic Drive, a two-lane, three-mile-long road that parallels U.S. Highway 101 along the west side from the City of Trinidad to the north and Moonstone and Westhaven communities to the south. Scenic Drive was constructed in the early 1920s on the face of a steep bluff adjacent to the Pacific Ocean, and has experienced extensive damage associated with slope instability and



June 7, 2011



*Left: Map of Highway 101 access to Rancharia properties.*

bluff erosion at several locations. Scenic Drive is subject to regular road closures because of its inherent instability (*Honoring the Past...Looking toward the future, Trinidad Rancharia Highway 101 Interchange Community Design Fair, Local Government Commission, June 2009*).

The Design Fair followed a 4-step process to engage the community in identifying values, priorities, and general agreement on options.

Accordingly, the Design Team explored a variety of design geometries and proposed four different options:

- **Option 1** - Bicycle/pedestrian overpass
- **Option 2** - Overpass from Rancharia West to Westhaven Drive without on/off ramps
- **Option 3** - Interchange with On/Off Ramps and access to the Rancharia only.
- **Option 4** - Interchange with On/Off Ramps and a bridge that connects the Rancharia to Westhaven Drive.



Over the years, updated and expanded facilities of competitors (Blue Lake Rancheria, Bear River Band of the Wiyot Tribe) have placed the Trinidad Rancheria at a competitive disadvantage (*Preliminary Assessment of Development Opportunities on Tribal Coastal Property, Trinidad, Humboldt County, California*, Economics Research Associates, August 2007).

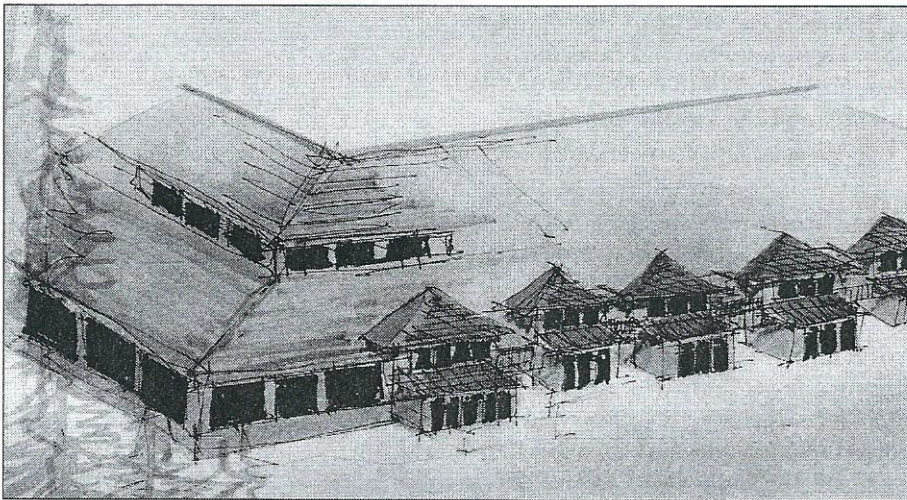
### New Casino Hotel

The study suggested that increasing competitiveness, mostly through facility improvement, could generate about \$11 million in gross gaming revenue from the regional day trip market, an increase of about 33 percent over current levels. Additionally, the opportunity exists to augment the market through capturing overnight visitors with a casino hotel.

Due to the differences in guest experience, the overnight market does not merely shift revenue away from the day trip market but adds to the day trip market (Economics Research Associates, August 2007).

The study further concluded that a 130-room casino hotel positioned as a 3.5 star property ranks highest among the uses and capital projects evaluated and promises a strong economic performance based on two factors: 1) the hotel would produce substantial incremental gaming revenue; and 2) the existing casino would somewhat reduce the building requirements of the hotel as the Sunset Restaurant already exists. The casino hotel would incorporate about 50 rooms for resort-oriented guests (Economics Research Associates, August 2007).

The study also looked at a smaller “boutique” hotel of 50-75 rooms, though the economics of a traditional resort-hotel are marginal. The economics could be improved by marketing the hotel units as condominiums. Another alternative involves broadening the casino hotel concept to a position as a resort-casino hotel, whereby the market for the boutique hotel can at least be partially captured (Economics Research Associates, August 2007).



*Left: An artist's sketch illustrates a new hotel built on top of the existing casino & bingo hall with expansive westerly views of the Pacific Ocean and coastline.*

Artist: Joan Briggs, Architect, 2009



# Comment Letter P5

SMALL TRAIL

1. C. E. A. MANNING  
2. W. J. SHULTZ  
3. L. E. MELENDY  
4. M. VIGNE ET AL.

White Rock

HAMMOND LBR. CO. SUBDIVISION

SEC. 23-24-43  
TWP. 8N, R. 15E, SEC. 30

31. L. E. MELENDY

32. J. B. WILLIAMS (LESS PT TO E. L. MELENDY & BARTON)

33. L. M. TIGHE

34. G. LANGFORD

35. J. W. HANCOCK

36. J. R. LAMNER (LESS PT TO J. B. MEADOWS)

37. C. LANGFORD ET AL. (LESS PT TO R. VALERIE)

38. J. LANGFORD

39. S. FRANK

40. J. B. MEADOWS (LESS N. 4 AC. TO E. TOLER)

41. D. PASINI

42. J. B. LANGFORD ET AL.

43. J. B. LANGFORD ET AL.

44. J. B. LANGFORD (LESS PT TO W. F. DRYDEN)

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## ***EXHIBIT B***

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### ***RESPONSES TO COMMENTS***

# EXHIBIT B

## RESPONSES TO COMMENTS

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Responses to comments are organized below in three sections. General comments regarding the project and issues that were raised by multiple commenters are addressed first in **Section 1.0**. **Section 2.0** provides individual responses to each unique comment. All comment letters were reviewed; similar and identical letters and/or comments were grouped together and responded to in a single response. All of the comments, which have been bracketed and numbered in the margin for ease of reference, are provided in **Exhibit A**. Refer to **Table A-1** of **Appendix A**, which provides an index of all of the comments received on the Environmental Assessment. Once an issue is addressed, subsequent responses to similar comments reference the initial response. This format eliminates redundancy where multiple comments have been submitted on the same issue. Changes to the EA are included as errata sheets in **Exhibit E** of the FONSI. Changes are provided in underline/strikeout for clarity.

### 1.0 TRIBAL COMMENT LETTERS

#### Response to Comment Letter T1 – Yurok Tribe

T1-01 All comments received on the EA are included within Appendix A and the responses to comments on the EA are addressed within this document. All required consultations, such as consultation with the State Historic Preservation Officer (SHPO), are being conducted prior to determination of a NEPA finding.

While not an issue addressed under the National Environmental Policy Act (NEPA), the Cher-Ae Height Indian Community of the Trinidad Rancheria (Trinidad Rancheria) is a federally-recognized Indian Tribe with ancestral ties to the Yurok, Wiyot, Tolowa, Chetco, Karuk, and Hupa peoples and is therefore eligible to have land taken into trust by the Department of the Interior. Under a 1906 Congressional act authorizing the purchase of land for “homeless Indians,” 60 acres were purchased in 1908 on Trinidad Bay for the original members of the Rancheria. Federal recognition was subsequently granted by the Department of the Interior in 1917, Articles of Association were enacted by 1961, and a new Tribal Constitution was passed in 2008. The Tribe currently has approximately 228 members.

Regarding participation in the trust acquisition process, as required by the BIA’s NEPA Guidelines, the Yurok Tribe has been given an opportunity to comment on the EA during the public comment period which is conducted prior to a NEPA finding for the trust acquisition. The eligibility of the Tribe to take land into trust is outside the scope of NEPA and is addressed through the trust application process.

T1-02/-03 Section 106 is a separate review process from NEPA and is not required to be completed in order to draft an EA and release the EA for public comment. Per BIA requirements, the consultation process under Section 106 of the National Historic Preservation Act (Section 106) will be completed prior to the FONSI being signed. The SHPO, and not the Yurok Tribal Historic Preservation Officer (THPO), is the consulting party concerning fee lands within the city of Trinidad, including Trinidad Harbor. Accordingly, the BIA initiated Section 106 consultations with SHPO on March 10<sup>th</sup> 2017. Furthermore, consultation with the Native American Heritage Commission (NAHC) was conducted in December of 2015. A list of tribal contacts that may have knowledge of cultural interests in the proposed trust lands was requested and obtained from the NAHC. Letters were sent to those contacts listed by the NAHC and to date, no responses have been received.

T1-04 Comment noted. As discussed in Section 2.0 of the EA, all portions of the parcels that are currently undeveloped would remain undeveloped after the trust transfer. Furthermore, as discussed in Section 4.1.5 of the EA, no known historic properties exist within the proposed development areas. The Cultural Resources Study identified known resources within the areas designated as open space. Because these resources would remain undisturbed, implementation of Alternative A would not adversely affect historic properties. The EA acknowledges that construction of Alternative A could significantly affect unknown sites during earth-moving activities. This is a potentially significant adverse effect, however, with implementation of Mitigation Measures 5.5.1, adverse effects to currently unknown cultural resources would be minimized.

There would be no significant impact to viewshed concerns as addressed in Section 4.1.13 of the EA. Yurok family village rights and tribal rights would be protected under the trust acquisition as these areas would not be disturbed by the Proposed Project and all existing access to the properties would be maintained.

T1-05 to 07 Comment noted. Refer to **Response to Comment Letter S3** regarding responses to the comments received from the California Coastal Commission. The parcel boundaries of selected parcels addressed in the EA were provided by the Tribe from data obtained through Bureau of Land Management surveys. The purpose of the EA is to assess the environmental impacts of the proposed trust transfer. Comments concerning ownership of lands and BIA trust authority are outside of the scope of the NEPA review. The details provided in Section 2.0 of the EA are considered adequate to allow the BIA to take a hard look at the potential environmental impacts of the trust action and Tribe's Proposed Project. For clarification, the trust action would encompass the requested lands, including the pier, up to the OHWM. Refer to **Exhibit E**. The updated trust boundary was developed by using Humboldt County Parcel GIS data (2013) and then adjusting the shorelines in accordance with the Ordinary High Water Mark from the most recently available update of the National Oceanic and

Atmospheric Administration's National Shoreline Dataset titled Updated Shoreline Product 1937-2011. The EA appropriately considers a reasonable range of alternatives that were determined with a consideration for each alternative's ability to meet the purpose and need (see Section 1.3 of the EA). The discussion in Section 2.1 of the EA provides the reasoning as to why some alternatives were not further considered. As stated therein, the only reasonable alternatives are to either take no action or take the requested parcels into trust on behalf of the Tribe. The Tribe has proposed the development of a visitors' center and formation of a Trinidad Harbor District (Proposed Project). There are no alternative lands available that would allow the Tribe to form the Trinidad Harbor District. Furthermore, all of the currently proposed lands are vital to the protection of the Trinidad Harbor District. Therefore, alternative locations for trust acquisitions are not evaluated within this EA. The Proposed Project would allow the Tribe to more effectively market, manage, and operate its harbor properties. Accordingly, without the Proposed Action, the Tribe would not have the funding available to implement the stormwater improvements.

T1-08      Comment noted. Please refer to the response to **Comment L1-01** concerning the status of the Trinidad Rancheria. The EA addresses the required environmental impacts in accordance with the BIA NEPA Guidebook and the Council on Environmental Quality's Regulations for the Implementation of NEPA.

### **3.0    STATE AGENCY COMMENT LETTERS (S)**

#### **Response to Comment Letter S1 – Scott Morgan, Director, State Clearinghouse**

S1-01      This comment letter is included in Table A-1 of Exhibit A as it is part of the administrative record. However, this comment letter requires no response as it is solely correspondence from the commenter regarding comment letters received at the State Clearinghouse during the comment period on the EA.

#### **Response to Comment Letter S2 – California Coastal Conservancy**

The California Coastal Conservancy requested an extension to the comment period, which was responded to and granted in a letter from the BIA to the California Coastal Commission.

#### **Response to Comment Letter S3 – California Coastal Commission**

S3-01      Comment noted. The BIA submitted a coastal consistency determination to the California Coastal Commission as required under the Coastal Zone Management Act. The determination included summaries of the specific provisions of Chapter 3, Articles 2 through 6 of the California Coastal Act of 1976 (CCA) and illustrates how the trust action by the BIA and Tribe's subsequent Proposed Project complies with the CCA. At its March 2019



- meeting, the Commission concurred with the consistency determination for development of the visitor center and stormwater improvements.
- S3-02 Once the parcels are taken into trust, jurisdiction over land development would be the responsibility of the Tribe with oversight from the BIA and other federal agencies (such as the Environmental Protection Agency). As discussed in Section 4.1.8 of the EA, the proposed visitors' center would replace existing commercial structures without resulting in a significant expansion of size. Accordingly, the Tribe would continue to provide limited commercial operations in compliance with the Harbor designation under the recent draft update of the Local Coastal Plan (LCP), developed in accordance with the Coastal Zone Management Act (CZMA). The Tribe's designation of a majority of the proposed trust properties as open space along with the limited development and improvements to the stormwater conditions on the existing parking lot, would protect the recreational and coastal dependent uses of the properties. Accordingly, the proposed development and trust acquisition are consistent with the most current draft of the LCP.
- S3-03-04 Comment noted. Any actions at the harbor requiring federal oversight and associated discretionary action would require additional federal consistency review by the California Coastal Commission under the federal consistency review requirements of the CZMA. For Tribal actions, the Tribe is required to comply with federal laws concerning coastal zone management. In addition, the Tribe would comply with its environmental ordinances as implemented by the Tribal Environmental Program. The Environmental Program currently administers requirements under federal and Tribal environmental programs, including those under the Clean Water Act and Clean Air Act.
- S3-05-07 Comment noted. The fee-to-trust process is vital to increasing self-determination and sovereignty for Tribes. The Tribe has shown a history of working with local governments and state agencies concerning the harbor and the BIA doesn't anticipate changes to those relationships if the lands are taken into trust. The California Coastal Commission outlines its multi-layered review process for fee-to-trust actions within the California Coastal Zone and no response is required. Furthermore, the BIA concurs that the proposed land use and development (visitors' center) by the Tribe are consistent with the intended uses of the harbor within the California Coastal Zone. Responses to the California Coastal Commission's specific comments on the EA follow.
- S3-08 The text in Section 1.0 and Figures 1-3 and 3-4 has been revised to consistently indicate that the trust acquisition consists of 9.35 acres of lands, with 3.24 acres of those being lands without assessor's parcel numbers. While the EA assessed the total acreage presented in the EA, the actual acreage will be slightly reduced as the trust boundary will incorporate the requested lands up to the OWHM. The total acreage presented in Section 1.0 does not

prevent the public from assessing the impacts of the trust acquisition nor would revising the acreages in the section require additional review by the public.

- S3-09-10 The lands were delineated by the Bureau of Land Management and the associated property boundaries and acreages in the EA are representative of those results. While the EA assessed the entirety of the parcel lines, the trust acquisition would only apply to lands, including the pier, up to the OHWM (**Exhibit F**). Determination of trust boundaries are completed by the BIA Realty Office and are outside of the scope of the EA and NEPA requirements. Issues regarding the eligibility for lands to be taken into trust are outside of the NEPA process and are addressed by the Office of Realty Services. The environmental impacts of the trust acquisition of the harbor and pier would be minimal as no new disturbance would result from the Tribe's proposed development. Changing the ownership status from fee to trust does not result in physical environmental impacts. Accordingly, the BIA took a hard look at the Tribal actions that would result after the land has been taken into trust, which would result in physical impacts to the environment.

Public access and use of the pier is vital to the economics of the Tribe's Harbor Properties. Therefore, BIA does not anticipate a situation where access to the pier would be denied (outside of typical maintenance or safety issues). The agreement dated April 18, 2012 between the Tribe and the CCC provides reasonable assurance concerning the Tribe's proposed use of the pier and intent to maintain public access. Conjecture as the future operation of the pier beyond 2032 is not required in the NEPA analysis. As stated in recent decision documents concerning BIA fee-to-trust acquisitions, the BIA is not required to speculate as to future uses of land beyond what the Tribe proposes (*Capay Valley Coalition v. Sally Jewell, et. Al*; Case No. 2:15-cv-02574-MCE-KJN). The Tribe has an interest, culturally and economically, to maintain public access to the Harbor Properties and there is no compelling evidence that the potential for changes to access to the properties would occur and should be included in the EA.

- S3-11 As stated above in response to **Comment S3-01**, the consistency request includes summaries of the specific provisions of Chapter 3, Articles 2 through 6 of the CCA and illustrates how the Tribe's Proposed Project and subsequent trust action by the BIA complies with the CCA. S3-12 Comment noted and the phrase "under the CZMA" has been removed from the sentence in Section 3.8.2. As noted above, the consistency determination request from the BIA addresses conformance to Chapter 3 of the CCA.
- S3-13 The discussion within Section 4.1.8 of the EA has been clarified to address the consistency determination request to be submitted by the BIA and the corresponding consistency with applicable provisions of Chapter 3 of the CCA.

- S3-14 The details provided in Section 2.0 of the EA and subsequently the Appendix are considered adequate to allow the BIA to take a hard look at the potential environmental impacts of the trust action and Tribe's Proposed Project. Higher quality versions of **EA Appendix B** are available upon request and were provided to the California Coastal Commission during the consistency determination process.
- S3-15 The number of visitors per day was estimated based on the Tribe's operational knowledge of the harbor properties. Please note that these would be considered "new" visitors who would utilize the harbor properties as a result of the construction of the visitor's center. The current rate of harbor properties visitors that would also visit the visitors' center are currently served by existing infrastructure (such as the existing restrooms facilities and wastewater treatment system).
- S3-16 The Tribe has stated that implementing the stormwater program on fee-status lands would be economically infeasible. The preparation of the EA is in response to the purpose and need as well as the Tribe's application to the BIA to pursue the trust action.
- S3-17/18 Comment noted. While not required to meet the purpose and need of the trust action, the BIA is aware that the Tribe is open to considering implementing additional projects in the future to improve the habitat and stormwater conditions at the harbor. However, none are being considered and this time and therefore no other projects are assessed in the EA.

#### **Response to Comment Letter S4 – California Coastal Conservancy**

The California Coastal Conservancy requested an extension to the comment period which was granted.

- S4-01 Comment noted. Refer to the responses to the individual comments on the EA below.
- S4-02/03 The EA has been prepared to address the impacts associated with the Tribe's application for the BIA to take the Tribe's Harbor properties into trust, which is the Proposed Action requiring assessment under NEPA. The proposed stormwater and visitor center projects are reasonably foreseeable results of the Proposed Action based on the Tribe's planned uses of the land as stated in the FTT application. While it is possible that the Tribe would pursue both the stormwater and visitor center projects on fee land in the future, the Tribe has not proposed to do so. Thus, it is conservatively assumed neither would occur under the no action alternative for the purposes of NEPA analysis. The EA was prepared in accordance with the CEQ Regulations for Implementing NEPA and the BIA NEPA Guidebook and addresses the potential impacts of the Proposed Action and proposed use of the site by the Tribe on all required resources. The EA provides adequate analysis to provide for a "hard look" at the trust acquisition's and proposed alternatives' environmental impacts. Preparation

of the EA is consistent with the level of environmental review and scrutiny provided for other similar BIA actions for trust acquisition.

The EA has been prepared to address all components of the Proposed Action and Proposed Project. The project description is provided in Section 2.0 of the EA, which clearly outlines the site plan being considered by the Tribe and engineering plans are provided as Appendix A for the stormwater improvements and as Appendix B for the visitors' center. The project description provides the necessary level of detail required to assess the potential environmental impacts of both alternatives and includes such details as a description of the proposed land uses on the project site; the proposed stormwater improvement program; a description of the proposed visitors' center including each component; and a site plan showing both features. Section 2.0 of the EA also includes details regarding the ancillary project components that would support the proposed development, such as water and wastewater demands, grading and drainage, project construction, and BMPs that would be incorporated into project design to reduce the environmental impact of development. Per the BIA NEPA Guidebook, the EA incorporates the required components of the project description, including the identification of the lead agency and the applicant, descriptions of the project alternatives, and timing considerations. The level of detail provided within Section 2.0 of the EA allows for the comparison of the project alternatives to the environmental baseline presented in Section 3.0 and the subsequent discussion and analysis of associated environmental impacts presented in Section 4.0 of the EA. For example, Section 2.0 provides a summary of various technical studies conducted to determine the appropriate supporting infrastructure required to develop each project alternative. These studies, including a Grading and Drainage Study (Sheet C4 of Appendix B), are referenced in Section 2.0 and included as appendices to the EA.

Furthermore, the BIA NEPA Guidebook (2012) states an "EA is the document that provides sufficient analysis for determining whether a proposed action may or will have a significant impact on the quality of the human environment and therefore requiring the preparation of an EIS. If the EA does not reveal any significant impacts, a FONSI is prepared... [whereas if] the analysis in the EA identifies significant impacts, then an EIS will be prepared" (BIA, 2012). Since the responses in the above-referenced sections and EA provide sufficient analysis to support the conclusion that the Proposed Action would not have a significant impact on the quality of the human environment, an EIS is not required.

Concerning the comment to separate the two projects, the trust acquisition is vital to the purpose and need to facilitate Tribal self-governance and self-determination by allowing the Tribal Government to exercise Tribal sovereign authority over the land. The trust acquisition is vital to allowing the Tribe self-governance over the stormwater and visitors' center projects. Concerning the Tribe's proposed use of the site, nothing requires the BIA to



consider the Tribe's need for the land to be in trust as opposed to fee. The EA does not need to explain why it would be necessary for the properties be in federal trust before the Tribe's Proposed Project is carried out (*Capay Valley Coalition v. Sally Jewell, et. Al*; Case No. 2:15-cv-02574-MCE-KJN). Regarding comments that the land could be developed in fee or that the Tribe does not need to have the land in trust for its objectives, it has long been held by the Interior Board of Indian Appeals (IBIA, the body that reviews appeals of BIA decisions) and various courts that it is unreasonable to require the Secretary of the Interior accepting land into trust to specify why holding the land in trust is more beneficial for tribes (*Yreka v. Salazar* 2011 WL 2433660 [2011]). Or, in other words, "the inquiry is whether the Tribe needs the land, not whether it needs the land to be in trust" (*Thurston County v. Great Plans Regional Director* 56 IBIA 296 [2013]). Accordingly, no revisions to the EA are required.

S4-04 As discussed in Section 2.1 of the EA, the proposed federal action is the trust transfer of the Tribe's harbor properties. Refer to the response to **Comment S4-02/03** concerning the adequacy of the analysis. The impacts of the federal action are adequately addressed in Section 4.0 of the EA. For example, as stated in Section 4.1.6 of the EA, the impact criteria for assessing socioeconomic environmental justice impacts specifically addresses ability of the local populace to obtain basic public health and safety services through loss of economic revenues or result in disproportionate and significant effects to an identified minority or low-income community. This impact is directly relatable to the trust transfer and removal of the parcels from local tax revenue streams. Furthermore, the impacts related to recreational opportunities are also addressed in Section 4.1.6. For example, the EA states that the construction of the proposed visitor center and accompanying facilities would serve the Tribe with needed informational and recreational resources, which would be a beneficial effect to a minority population.

Infrastructure impacts are adequately addressed in Section 4.1.10 Public Services. The criteria for assessing public services impacts states that to determine the impact on public services, the water supply, municipal wastewater, solid waste facilities, energy and telecommunications, law enforcement, and fire protection and emergency medical services demands for Alternative A are considered. A significant adverse effect would occur if project-related demands on a public services would cause an exceedance of system capacities that result in the need for new facilities or substantial renovation to existing facilities, the construction of which has the potential to significantly affect the physical environment.

As stated in Section 4.1.6 of the EA, the Tribe pays approximately \$46,000 a year in property taxes to the County. Since the payment is directly to the County, the EA assessed impacts to the County's ability to fund public services. Including sales tax (\$114,168 paid by the Tribe in 2015), the loss of tax revenue experienced by the County would be approximately 0.3

percent of the County's property and sales tax revenue. This impact is identical to the *de minimis* impact identified in the EA for loss or property taxes and no revision to the EA is necessary.

Furthermore, the County, in turn, returns a portion of the property taxes to the City; which, according to the City is approximately \$4,000. In addition, the City receives approximately \$5,000 a year in transient occupancy tax from the rental unit located on the harbor properties. According to the 2015-2016 Budget Audit, the City generated a revenue of \$952,458. Therefore, the Tribe's property taxes payments from the County are approximately .9 percent of the City's total revenue for 2016. With expenditures of \$904,076, the City observed an excess revenue of \$48,382 in 2016. These expenditures include general government spending, public safety (fire and police), public works, and capital improvement projects. The excess revenue was added to the net positive balance of the general fund, which was \$1,333,872 after fiscal year 2015. Therefore, the City's budget indicates that any loss of revenue from the property tax and transient occupancy tax would not adversely affect public service operations within the City. The amount of sale tax returned to the City from the Tribe's payment to the County is unknown. However, the excess revenue for the City during 2016 (\$48,382) less the loss of property and transient occupancy tax (\$9,000) would constitute approximately 34 percent of the total sales tax paid by the Tribe to the County, which is unlikely to be the percentage returned to the City based on other sales taxes throughout the state. Accordingly, the loss of up to 34 percent of sales taxes, property tax, and transient occupancy tax from the harbor properties would not constitute an adverse effect as the City would still have a balanced budget and maintain the excess revenue in the general fund. To offset a portion of this loss, there would be a minor increase in offsite tax revenue due to the increased visitation of the harbor. Furthermore, the Tribe has made significant contributions to the City including the contributions of a part time Crossing Guard for the Trinidad Elementary School, acquiring grant funds from Indian Health Services to improve water infrastructure totally over a million dollars in funding. Additionally, the tribe pays the operating costs and overhead costs to safely and efficiently maintain and operate the Harbor restrooms and wastewater treatment plant.

S4-05-09 Refer to the response to **Comments S3-09** and **10** concerning public access and future uses of the harbor properties. Public access to the pier would be maintained after the harbor properties are placed in trust for the Tribe.

S4-10 Comment noted and the Coastal Conservancy has been added to the mailing list for the EA.

### **Response to Comment Letter S5 – California State Lands Commission**

S5-01-04 Comment noted. Refer to the response to **S3-09** and **10** concerning the subject parcels and issues of ownership and ability to take parcels into trust on behalf of the Tribe.

## **4.0 LOCAL AGENCY COMMENT LETTERS (L)**

### **Response to Comment Letter L1 – City of Trinidad**

The City of Trinidad requested an extension to the comment period which was granted.

### **Response to Comment Letter L2 – City of Trinidad**

- L2-01      The commenter summarizes the Proposed Action and Proposed Project. No response required.
- L2-02      The commenter provides a history and description of the Trinidad Bay. No response required.
- L2-03-05    The comment is similar to comments received from the California Coastal Commission. Refer to the responses to **Comments S3-9** and **10** and **Comments S4-02** through **04**. If the project site is taken into trust, the Tribe would establish governmental control over the land through Tribal Council decisions as allowed for in the Tribe's constitution. Therefore, any future development on tribal lands would be at the discretion of the Tribe with environmental oversight provided by the Tribe, USEPA, and other federal agencies in accordance with applicable federal regulations such as the Clean Water Act and Clean Air Act. Speculation concerning the future environmental impacts regarding development that has yet to be proposed is beyond what is required within a NEPA document.
- L2-06-08    Comment noted. Refer to the response to **Comments T1-05** through **07** and **Comments S3-09** and **10** concerning the parcels assessed in the EA. State standards would not apply once the land is taken into trust. The Tribe and the EPA are responsible for establishing water quality standards on trust lands. Furthermore, the Tribe must ensure compliance with all provision of the Clean Water Act. The purpose of the Proposed Project is to improve stormwater runoff over current conditions and the operation of the trust lands with these improvements would lead to a beneficial impacts to off-reservation areas. The Tribe's current Reservation is adjacent to the City boundary and the harbor trust lands would operate under the same environmental rules and regulations as the Reservation. All environmental review is conducted in accordance with the applicable regulations.
- L2-09      Refer to the response to **Comments S3-09** and **10** concerning the parcels assessed in the EA and the proposed trust lands. The EA and responses to comments received on the EA provided adequate detail concerning the potential environmental impacts of the proposed trust acquisition. Based on the comments received and these responses, revision and recirculation of the EA is unwarranted.



- L2-10 Comment noted. The trust transfer of the parcels shown on Figure 1-3 constitutes the consolidation of the Tribe's harbor properties that would become the Tribe's Harbor District. The impacts of the trust acquisition are fully assessed in the EA. Refer to the response to **Comment S4-04**. Refer to the response to **Comments L2-03** through **05** concerning speculation of future environmental impacts.
- L2-11-14 The comment is similar to comments received from the California Coastal Commission. Refer to the responses to **Comments S4-02** through **04**. While there is state funding available, the funding does not cover the entire project, including the Tribe's required match percentage. The EA and responses to comments received on the EA provided adequate detail concerning the potential environmental impacts of the proposed trust acquisition. Based on the comments received and these responses, revision and recirculation of the EA is unwarranted. As stated by the commenter, the Tribe has agreed to maintaining public access the pier and open space areas. Refer to the response to **Comments S3-09/10**.
- L2-15 Easements are maintained during the trust acquisition process and access to Trinity Head would not be limited by the trust status of the access parcel.
- L2-16 As stated in Section 4.1.7 of the EA, implementation of the Proposed Project should the parcels be placed in trust would result in five new vehicle trips to the harbor properties per day. Such an increase over the course of a day would be considered a *de minimis* increase in peak hour traffic (assumed to be represented by one of the five daily vehicle trips). Accordingly, such an increase would not adversely affect the roadway network, including parking. As stated above, the Tribe has not indicated that it would charge for parking and speculation about future uses of the site (including such changes in operation when there is no indication that such changes would occur) are outside the scope of an EA.
- L2-17 The access to the beach and boat launch areas are vital to the operation of the Tribe's harbor properties and economic venture (restaurant). Based on the Tribe's trust application and purpose and need, there is no indication that the Tribe would close public access to the boat launch areas. As stated above, speculation about changes to the current operation, when there is no indication that such changes would occur, are outside of the scope on an EA.
- L2-18-19 The plans show the "0" tide elevation (refer to Sheet C2 of Appendix B of the EA). The visitors center base elevation would be approximately 22 feet above the "0" tide elevation. As shown in Section 7.0 of the EA, the flood map for the parcels was obtained utilizing the Federal Emergency Management Agency's (FEMA's) online web viewer for current Flood Insurance Rate Maps. A link was provided in the Section 7.0 and it was noted that the website was accessed on February 1, 2016. A review of the current flood map indicates that an update occurred September 21, 2017 identifying potential flooding from sea level rise encroaching up the parking lot from the boat launch. None of the existing or proposed

- structures (restaurant, rental home, bathrooms, or the proposed visitors' center) are located within the potential flood zone associated with sea level rise. Accordingly, no revision to the EA is required as no new impact would result from the updated FEMA map.
- L2-20 The anticipated number of visitors to the visitors' center was provided by the Tribe. The number was based on the Tribe's observed use of the harbor and current understanding of the operations. Typically, the number of visitors can be estimated by using a trip generation rate from the Institute of Transportation Engineers' Trip Generation Manual. The 9<sup>th</sup> edition of the manual does not include trip generation rates for land uses such as visitors' centers. The purpose of the visitors' center is to provide those already frequenting the harbor with information regarding Trinidad Bay and the Tribe.
- L2-21 As noted in Section 4.1.2 of the EA, the determination of water supply sufficiency to meet the demands of the visitors' center (the only new demand associated with the trust acquisition) was received from direct consultation with the Director of the Trinidad Water Department. Accordingly, the information concerning the City's water system and total number of connections would not change the conclusions of the EA and no revisions are required. It should be noted that according to the reference, the number of connections to the City's water system stated in Section 3.2.1 should be 325 instead of 315. Section 3.2.1 have been revised accordingly.
- L2-22 Commented noted. While the capacity of the Tribe's wastewater treatment system is mentioned in EA Section 4.1.2, Section 3.10.2 explicitly states that the system has a permitted capacity to discharge up to 4,750 gallons per day (gpd). The section further identifies that the averages flows were 2,102 gpd, or 50 percent of the capacity. Wastewater generation from the trust acquisition and corresponding visitors' center would be 30 gpd (as discussed in EA Section 4.1.2), below the remaining discharge capacity of approximately 2,600 gpd. As noted in Section 3.10.2 of the EA, the Harbor Properties are served by the onsite wastewater treatment system, which is owned, operated, and maintained by the Tribe. Oversight would be conducted by the USEPA.
- L2-23 Comment noted. The determination of impacts concerning greenhouse gas (GHG) emissions within a NEPA document is governed by federal policy and not state policy. To assess impacts concerning GHG emissions, the BIA reviewed current federal policy regarding such analysis. Accordingly, the EA's analysis complies with the governing policy for GHG analysis within NEPA documents. The state policies do not apply to the federal action.
- L2-24 Photos 1 through 3 of EA Section 3.13 represent views of the current buildings that would be replaced by the visitors' center. The photos clearly show that the group of buildings are currently visible from all angles of the harbor and block the views from the parking lot. The two main buildings are habitable and single story. The third consists of a storage container

- nearly as tall as the main office. As described in Section 4.1.13 of the EA, the visitors' center would cover a similar area as the existing group of buildings. Accordingly, the development of a continuous single-story building developed at the same location would not constitute an adverse impact to the visual resources of the harbor compared to existing (baseline) conditions.
- L2-25 Development of the building to meet the seismic requirements of California are a requirement of the visitors' center construction and are included in the project construction requirements listed in Section 2.2. The Tribe would ensure that the seismic provisions of the California Building Code are incorporated into design and construction of the visitors' center.
- L2-26 Comment noted; however, no specific example of indirect effects attributable to the Proposed Action are provided by the commenter. As stated in Section 4.4.1 of the EA, these effects were analyzed throughout the document and no indirect effects would result from the trust action that have the potential to adversely impact environmental resources. For example, under public services, there would be no impact to water supply. Accordingly, there is no need for additional conveyance systems that could indirectly affect the environment.
- L2-27 Comment noted. It is considered important to determine impacts of the demographics discussed within Section 3.6.1 regarding socioeconomics should the project require new housing and increases in population density to fill employment needs or the needs for goods and services. Updated population figures for the City would not alter the conclusions presented in Section 4.1.6 of the EA. The City demographics are referenced in Section 3.6.1 under population and employment and within Section 3.6.3 concerning Environmental Justice.
- L2-28 Refer to the response to **Comment S4-04** concerning City revenues from the harbor properties.
- L2-29 The commenter provides a summary of the comments provided within the letter. Refer above to the responses to the specific comments received.
- L2-30 Comment noted. All consultation requirements must be fulfilled before a decision on the trust acquisition can be finalized.

## **5.0 PRIVATE CITIZENS/COMMERCIAL ENTITIES COMMENT LETTERS (P)**

### **Response to Comment Letter P1 – Kimberly Tayes**

- P1-01 Comment noted. The notices published in the newspaper clearly state that the EA is for the proposed trust acquisition of nine acres for the Tribe.

- P1-02 Refer to the response to **Comment S3-02** through **04** concerning coastal management. The analysis within the EA is not required to speculate on future president administrations impacts on environmental regulations.
- P1-03 Refer to the response to **Comment S4-02/03** concerning the need for trust lands.
- P1-04 The statement referred to by the commenter means that the Tribe would not restrict public access to the pier once the properties are in trust.
- P1-05 Refer to the response to **Comment S3-09/10** concerning public access to the pier. As noted above, speculation about future uses of the site (including such changes in operation when there is no indication that such changes would occur) are outside the scope of an EA.
- P1-06 Refer to the response to **Comment L2-03** through **05** concerning jurisdiction over the project site. The commenter references summaries of the Clean Water Act provided in Section 3.2 of the EA; however, no specific comments are provided. The text the commenter is referencing summarizing the provisions of the Clean Water Act are applicable to the Proposed Action and Proposed Project as detailed in Section 3.2.3 of the EA.
- P1-07 Refer to the response to **Comment S3-02** through **04** concerning coastal management. Speculation about future conditions on the site and future alterations of environmental regulations are outside the scope of NEPA.
- P1-08 Refer to the response to **Comment L2-23** concerning visual resources.
- P1-09 The existing bait and tackle office use floodlights as exterior lighting. The new building would provide lighting similar to that of the restaurant, rental house, restrooms, and parking lot. For reference, the following (**Photo 1**) is an example of the existing lights within the parking lot. Accordingly, the addition of lights at the visitors' center that would replace the existing lights at the tackle and bait shop would not adversely affect the existing nighttime visual environment.



**Photo 1**  
**View to the West from the Harbor Parking Lot**



- P1-10 Comment noted. The exact types of materials to be utilized for siding are not considered essential to ensuring that impacts to visual resources are minimized. As shown above, the existing structures include prefabricated buildings and a metal storage container. The removal of these structures and development of a visitors' center will improve the existing visual setting of the harbor.
- P1-11 No signage for the visitors' center is proposed; therefore, no analysis was provided within the EA.
- P1-12 Comment noted, the existing conditions relating to ice plant do not constitute an adverse effect for the trust acquisition. The Tribe will work with the City to address these issues outside of the trust acquisition process.
- P1-13 Refer to the response to **Comment S4-04** concerning financial implications of the trust acquisition to the City. As noted there within, payments are made to the County and therefore the analysis within the EA assesses impacts to the body which the payments are made.
- P1-14 As noted above, speculation about future land use is not required within an EA.

### **Response to Comment Letter P2 – Elaine Weinreb**

- P2-01-05 Refer to the response to **Comment S4-04** concerning financial implications of the trust acquisition to the City. As noted there within, payments are made to the County and

therefore the analysis within the EA assess impacts to the body to which the payments are made.

### **Response to Comment Letter P3 – Mareva Russo**

P3-01      Comment noted. Please refer to **Response L1-01** regarding the ties between the Tribe and other local tribes. As stated in Section 2.0 of the EA, access for public use shall remain accessible.

### **Response to Comment Letter P4 – Marijane Beighley Poulton**

P4-01      Comment noted. Comment noted, the existing conditions relating to lighting on the pier and ice plant do not constitute an adverse effect for the trust acquisition. The Tribe will work with the City to address these issues outside of the trust acquisition process.

P4-02      Refer to the response to **Comment S4-04** concerning financial implications of the trust acquisition to the City. As noted there within, payments are made to the County and therefore the analysis within the EA assess impacts to the body to which the payments are made.

P4-03      Comment noted. However, as noted in Section 4.1.7 of the EA, the addition of five daily visitors would not be considered large enough as to impact the solid waste setting of the project site.

P4-04      Comment noted. However, as stated in Section 3.4.2 of the EA, the vegetative communities associated with the project site include ruderal/developed land and northern coastal scrub. There is native vegetation that borders the ruderal/developed areas, but as the commenter states, there is also invasive species such as ice plant.

### **Response to Comment Letter P5 – J. Bryce Kenny**

P5-01      Comment noted. Refer to response to **Comment S3-05** regarding relationships between local governments and the BIA. As stated in Section 2.0 of the EA, access for public use shall remain accessible.

P5-02      Comment noted. As stated in Section 2.0 of the EA, access for public use shall remain accessible.

P5-03      As noted above, speculation about future uses of the site (including such changes in operation when there is no indication that such changes would occur) are outside the scope of an EA.

P5-04-11    The commenter references various definitions included within 40 CFR §1508.3; however, the commenter does not provide a comment concerning the content within the EA. Section 4.0 of

the EA details the environment which would potentially be affected by the Proposed Project. Federal agencies must follow the requirements in the President's Council on Environmental Quality (CEQ) Regulations for Implementing NEPA, 40 CFR Part 1500, when responding to comments. The CEQ Regulations generally recommend that comments be addressed if they are: "1) Substantive and relate to inadequacies or inaccuracies in the analysis or methodologies used; 2) Identify new impacts or recommend reasonable new alternatives or mitigation measures; 3) Involve substantive disagreements on interpretations of significance and scientific or technical conclusions." According to 40 CFR 1500.1 and 1500.4, the goal of NEPA is to improve decision-making by providing decision makers and the public with pertinent and accessible information on potential project impacts to the environment. Comments received on the EA that further NEPA's purposes are included in the FONSI. Responses are not required for comments that do not raise a substantive environmental issue, such as comments merely expressing an opinion. However, such comments have been included within the administrative record and thus will be considered by the BIA in its decision on the project.

- P5-12      The purpose of the EA is to assess the environmental impacts of the Proposed Action: federal trust acquisition from fee-simple conveyance. The details provided in Section 2.0 of the EA are considered adequate to allow the BIA to thoroughly look at the potential environmental impacts of the trust action and Tribe's Proposed Project. Section 3.0 of the EA details the affected environment from the trust action and the Proposed Project. Section 4.0 details environmental consequences from the Proposed Project including those from the fee-to-trust action.
- P5-13      Comment noted. The BIA is assessing the purpose and need for the trust acquisition and will make the determination on the Proposed Action based on the legal requirements outlined in 25 CFR Part 151.
- P5-14      The purpose of the EA is to assess the environmental impacts of the proposed trust transfer. The definitions referred to by the commenter are incorporated into the EA as required by the BIA NEPA Guidelines and the CEQ Regulations for the implementation of NEPA.
- P5-15      Please refer to the response to **Comment S3-05**.
- P5-16      Please refer to the response to **Comments T1-05** through **07** regarding the parcels.
- P5-17      Comment noted. Comments concerning ownership of lands and BIA trust authority are outside of the NEPA review. As stated in Section 2.0 of the EA, for the project site shall remain accessible for public use.

- P5-18 Comment noted. Comments concerning ownership of lands and BIA trust authority are outside of the NEPA review.
- P5-19 Comment noted. Refer to the response to **Comment S3-09/10** concerning public access to the pier. As noted above, speculation about future uses of the site (including such changes in operation when there is no indication that such changes would occur) are outside the scope of an EA.
- P5-20 Refer to the response to **Comment P5-04** through **11** concerning comments that warrant response within the FONSI.
- P5-21 Comment noted. Refer to the response to **Comment S3-09/10** concerning public access to the pier. As noted above, speculation about future uses of the site (including such changes in operation when there is no indication that such changes would occur) are outside the scope of an EA. Note further that just because something is possible, doesn't make it reasonably foreseeable. Typically, a land use action is reasonably foreseeable if there is a planned project with an available funding mechanism.
- P5-22 Refer to the response to **Comment P5-04** through **11** concerning comments that warrant response within the FONSI.
- P5-23 Refer to the response to **Comment P5-04** through **11** concerning comments that warrant response within the FONSI.
- P5-24 Refer to the response to **Comment T1-02/-03** concerning Section 106 of the NHPA and associated consultation requirements.
- P5-25 Comment noted. Refer to the response to **Comment S3-09/10** concerning public access to the pier. As noted above, speculation about future uses of the site (including such changes in operation when there is no indication that such changes would occur) are outside the scope of an EA.
- P5-26 The BIA must comply with provisions of the National Historic Preservation Act (NHPA) and the Archaeological Resources Protection Act of 1979 (ARPA) for the protection of cultural resources. The Tribe must follow the federal regulations and Tribal ordinances concerning cultural resources.
- P5-27 Comment noted. There is no indication that the Tribe wishes to "significantly alter the historic uses of the subject property". Refer to the response to **Comment P5-04** through **11** concerning comments that warrant response within the FONSI.



- P5-28 Refer to the response to **Comment P5-04** through **11** concerning comments that warrant response within the FONSI. Conjecture as to the use of a property is not within the scope of the EA or the Proposed Action. The Proposed Project is described as proposed by the Tribe in Section 2.0 of the EA. Speculation does not constitute to a reasonably foreseeable use of the harbor properties.
- P5-29-32 As stated in Section 3.5.2 of the EA, AES contacted the NAHC and persons listed on the contact received from the NAHC via letters including the Tsurai Ancestral Society. No responses have been received from the individuals listed by the NAHC. Refer to the response to **Comment T1-02/-03** concerning Section 106 of the NHPA and associated consultation requirements.
- P5-33-36 Comment noted. Refer to the response to **Comment S3-09/10** concerning public access to the pier. Easements are maintained during the trust acquisition process and access to Trinity Head would not be limited by the trust status of the access parcel.
- .P5-37 The commenter provides a summary of the comment letter, please refer to the responses above to distinct comments presented in the comment letter.
- P5-38 Comment noted. Refer to the response to **Comment S4-02/03** concerning the adequacy of the EA.
- P5-39 Commenter's Exhibit 1 reviewed. Refer to the response to **Comment P5-04** through **11** concerning comments that warrant response within the FONSI.
- P5-40 Commenter's Exhibit 2 reviewed. Refer to the response to **Comment P5-04** through **11** concerning comments that warrant response within the FONSI.
- P5-41 Commenter's Exhibit 3 reviewed. Refer to the response to **Comment P5-04** through **11** concerning comments that warrant response within the FONSI.

## REFERENCES

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Humboldt County, 2017. Property Tax Distribution, Humboldt County. Tax Year 2015-2016. Available online at <http://humboldt.gov/ArchiveCenter/ViewFile/Item/1090>. Accessed October 3, 2017.

California Ocean Protection Council Science Advisory Team (OPC-SAT), 2017. Rising Seas in California: An Update on Sea-Level Rise Science. April, 2017. Available online at: <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>. Accessed October 4, 2017.

## ***EXHIBIT C***

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### ***MITIGATION MONITORING AND ENFORCEMENT PROGRAM***

# EXHIBIT C

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## MITIGATION MONITORING AND ENFORCEMENT PROGRAM

### INTRODUCTION

Pursuant to 40 C.F.R. 1508.13, a Finding of No Significant Impact (FONSI) has been prepared. The Council of Environmental Quality (CEQ) recommends that a Mitigation Monitoring and Enforcement Program (MMEP) be adopted and summarized in certain FONSI documents. The Bureau of Indian Affairs (BIA) is the lead agency for National Environmental Policy Act (NEPA) compliance purposes. In order to minimize or avoid potentially significant impacts that could occur as a result of the Proposed Action, mitigation measures have been developed and incorporated into this MMEP.

### TRIBAL MITIGATION MONITORING OVERVIEW

This chapter has been created to guide mitigation compliance before, during, and after implementation of the selected alternative, as required by NEPA. The mitigation measures described below were created through the analysis of potential impacts within the Final EA and in response to comment received on the Final EA. As specified in the following table, the compliance monitoring and evaluation will be performed by the Tribe as indicated in the description of each measure. In addition, the BIA has the duty to monitor mitigation to ensure all measures are implemented as required. The MMEP is included within the FONSI to provide:

- Requirements for compliance of the mitigation measures specifically created to mitigate impacts;
- List of responsible parties;
- Timing of mitigation measure implementation.

Mitigation measures included within the following table list the responsible party, the compliance standards, implementation timeline, and verification of completion. Where applicable, mitigation measures will be monitored and enforced pursuant to federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as the FONSI.



Mitigation Measure	Implementing Responsibility	Compliance Standards	Timing	Verification (Date/Initial)
<b>Land Resources</b>				
<p>Coverage under the General Construction National Pollutant Discharge Elimination System (NPDES) permit shall be obtained from the U.S. Environmental Protection Agency (EPA). As required by the NPDES permit, a Storm Water Pollution Prevention Plan (SWPPP) shall be prepared that addresses potential water quality impacts associated with construction and operation of the Proposed Project. The SWPPP shall make provisions for erosion prevention and sediment control and control of other potential pollutants. The SWPPP shall describe construction practices, stabilization techniques and structural Best Management Practices (BMPs) that are to be implemented to prevent erosion and minimize sediment transport. BMPs shall be inspected, maintained, and repaired to assure continued performance of their intended function. Reports summarizing the scope of these inspections, the personnel conducting the inspection, the dates of the inspections, major observations relating to the implementation of the SWPPP, and actions taken as a result of these inspections shall be prepared and retained as part of the SWPPP. The BMPs shall include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>▪ Stripped areas shall be stabilized through temporary seeding using dryland grasses.</li> <li>▪ Exposed stockpiled soils shall be covered to prevent wind and rain erosion.</li> <li>▪ 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.</li> <li>▪ Construction roadways shall be stabilized through the use of frequent watering, stabilizing chemical application, or physical covering of gravel or rip-rap.</li> <li>▪ Filter fences shall be erected at all onsite stormwater exit points and along the edge of graded areas to stabilize non-graded areas and control siltation of onsite stormwater.</li> </ul>	Tribe General Contractor	<p>NPDES permit shall be obtained from USEPA</p> <p>SWPPPs shall be completed for all construction and excavation activities</p> <p>Measures identified on the SWPPP shall be included in construction plans</p> <p>A copy of the SWPPP shall be current and remain on-site</p> <p>SWPPP practices shall be implemented on-site during construction</p> <p>Measures shall be included in construction specifications</p>	Planning and Construction Phases	

Mitigation Measure	Implementing Responsibility	Compliance Standards	Timing	Verification (Date/Initial)
<ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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.</li> <li>▪ The SWPPP shall address maintenance and repair of heavy equipment on site to remove the potential for pollution from oil, fuel, hydraulic fluid, or any other potential pollutant.</li> <li>▪ If construction occurs during wet periods, sub-grade stabilization shall be required. Mulching or netting may be needed for wet-weather construction.</li> <li>▪ 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.</li> <li>▪ 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.</li> <li>▪ Existing vegetation shall be retained where possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction.</li> <li>▪ Temporary erosion control measures (such as silt fences, staked straw bales, and temporary</li> </ul>				

Mitigation Measure	Implementing Responsibility	Compliance Standards	Timing	Verification (Date/Initial)
<p>revegetation) shall be employed for disturbed areas and stockpiled soil.</p> <ul style="list-style-type: none"> <li>Potentially hazardous materials shall be stored away from drainages and containment berms shall be constructed to prevent spilled materials from reaching water bodies.</li> <li>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.</li> <li>Disturbed areas shall be revegetated after completion of construction activities.</li> </ul>				
<b>Water Resources</b>				
<p><b>Construction Activities</b></p> <p>As required and enforced by the EPA under the Clean Water Act, prior to construction, a SWPPP shall be prepared that addresses water quality impacts associated with construction and on-going operation of the project. Permanent water quality maintenance features shall be incorporated into the project design and operation. Water quality control measures identified in the SWPPP shall include those listed above in <b>Section 5.1.1.</b></p>	Tribe	<p>NPDES permit shall be obtained from USEPA</p> <p>SWPPPs shall be completed for all construction and excavation activities</p> <p>Measures identified on the SWPPP shall be included in construction plans</p> <p>A copy of the SWPPP shall be current and remain on-site</p> <p>SWPPP practices shall be implemented on-site during construction</p> <p>Measures shall be included in construction specifications</p>	Construction	
<p><b>Operational Measures</b></p> <p>The following mitigation measures shall be implemented to</p>	Tribe General Contractor	Measure shall be included in construction specifications	Construction	

Mitigation Measure	Implementing Responsibility	Compliance Standards	Timing	Verification (Date/Initial)
minimize impacts to water quality from stormwater runoff: <ul style="list-style-type: none"> <li>Storm drain inlets shall also be labeled “No Dumping – Drains to Ocean.”</li> <li>Permanent energy dissipaters shall be included for drainage outlets.</li> </ul>				
<b>Biological Resources</b>				
<b>Special Status Species</b> The following mitigation measures shall be implemented to minimize impacts to special status species. <ul style="list-style-type: none"> <li>Although marbled murrelet nesting habitat is not found on the project site, some rifling may occur in the waters of Trinidad Bay. A qualified biologist shall conduct a pre-construction survey and in the event that marbled murrelet are identified on or near the project site, consultation with the USFWS shall be conducted to determine the appropriate buffer distances and measures from the species.</li> <li>A qualified biologist shall conduct a preconstruction survey within 100 feet around the vicinity of the project site for active western snowy plover nests should construction activities commence during the nesting season for western snowy plover (March through September). Following the preconstruction nesting bird survey, if any active western snowy plover nests are located within the vicinity of the project site, a no-disturbance buffer zone shall be established around the nests to avoid disturbance or destruction of the nest. The distance around the no-disturbance buffer shall be determined by the biologist in coordination with USFWS, if needed, and will depend on the level of noise or construction activity, the level of ambient noise in the vicinity of the nest, line-of-sight between the nest and disturbance, and the species at hand. The biologist shall delimit the buffer zone with construction tape</li> </ul>	Tribe	Measures shall be included in construction specifications	Planning and Construction Phases	



Mitigation Measure	Implementing Responsibility	Compliance Standards	Timing	Verification (Date/Initial)
<p>or pin flags. The no-disturbance buffer will remain in place until after the nesting season (to be lifted August-September) or until the biologist determines that the young birds have fledged. A report shall be prepared and submitted to the Tribe and the USFWS following the fledging of the nestlings to document the results.</p> <ul style="list-style-type: none"> <li>▪ Implement <b>EA Mitigation Measure 5.11.1</b> to limit construction noise to standard daytime hours to eliminate construction noise during hours that would be sensitive to the steller sea lion.</li> <li>▪ Implementation of steller sea lion training for all on-site workers and employees shall be conducted. If steller sea lion is discovered on or near the project site during construction activities, all construction activities will halt, the on-call biologist shall be notified immediately, and consultation with the NMFS and USFS shall determine appropriate measures for buffers or measures to be applied.</li> </ul>				
<p><b>Aquatic Habitats</b></p> <p>The following mitigation measures shall be implemented to minimize impacts to aquatic habitats.</p> <ul style="list-style-type: none"> <li>▪ As described above, prior to construction, an NPDES permit shall be obtained from the EPA and a SWPPP shall be prepared. The SWPPP shall describe construction practices, stabilization techniques and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport as outlined above.</li> <li>▪ The project site shall incorporate BMPs for stormwater runoff, including sedimentation basins, vegetated swales, and runoff infiltration devices if necessary, to ensure that the water quality of on-site or nearby waters does not degrade. Stormwater runoff from the project site shall be monitored according to BMPs to assess the quality of water leaving the project site.</li> </ul>	Tribe	<p>Setbacks will be delineated and monitored by a qualified biologist during construction activities</p> <p>A CWA 404 permit shall be obtained from the USACE if avoidance is not possible</p> <p>A CWA Section 401 Water Quality Certification permit shall be obtained from USEPA if avoidance is not possible</p> <p>Measures shall be included in construction specifications</p>	Planning and Construction Phases	

Mitigation Measure	Implementing Responsibility	Compliance Standards	Timing	Verification (Date/Initial)
<ul style="list-style-type: none"> <li>All equipment re-fueling and maintenance shall occur in an approved staging area and an BIA or EPA-approved spill prevention plan will be implemented by the contractor.</li> </ul>				
<b>Migratory Birds</b> The following mitigation measures shall be implemented to minimize impacts to nesting birds. <ul style="list-style-type: none"> <li>In accordance with the Migratory Bird Treaty Act, a qualified biologist will conduct a preconstruction survey within 100 feet around the vicinity of the project site for active nests should construction activities commence during the nesting season for birds of prey and migratory birds (between February 15 and September 15).</li> <li>Following a preconstruction nesting bird survey, if any active nests of migratory birds are located within the vicinity of the construction footprint, a no-disturbance buffer zone shall be established around the nests to avoid disturbance or destruction of the nest. The distance around the no-disturbance buffer shall be determined by the biologist in coordination with USFWS, if needed, and will depend on the level of noise or construction activity, the level of ambient noise in the vicinity of the nest, line-of-sight between the nest and disturbance, and the species at hand. The biologist shall delineate the buffer zone with construction tape or pin flags. The no-disturbance buffer will remain in place until after the nesting season (to be lifted August-September) or until the biologist determines that the young birds have fledged. A report shall be prepared and submitted to the Tribe and the USFWS following the fledging of the nestlings to document the results.</li> </ul>	Tribe	Section 7 of the Endangered Species Act	Planning and Construction Phases	
<b>Cultural Resources</b>				
The following mitigation measures shall be implemented to minimize impacts to cultural resources during construction:	Tribe General Contractor	Measures shall be included in construction specifications	Planning and Construction	

Mitigation Measure	Implementing Responsibility	Compliance Standards	Timing	Verification (Date/Initial)
<ul style="list-style-type: none"> <li>▪ Any inadvertent discovery of archaeological resources shall be subject to Section 106 of the National Historic Preservation Act as amended (36 C.F.R. § 800), the Native American Graves Protection and Repatriation Act (NAGPRA)(25 U.S.C. § 3001 et seq.), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. § 470aa-mm). Specifically, procedures for post review discoveries without prior planning pursuant to 36 C.F.R. § 800.13 shall be followed. The purpose of the following mitigation measures is to minimize the potential adverse effect of construction activities to previously unknown archaeological or paleontological resources in the case of inadvertent discovery:               <ul style="list-style-type: none"> <li>○ All work within 50 feet of the potential archaeological find shall be halted until a professional archaeologist, or paleontologist if the find is of a paleontological nature, can assess the significance of the find.</li> <li>○ If any archaeological find is determined to be significant by the archaeologist, or paleontologist as appropriate, then representatives of the Tribe shall meet with the archaeologist, or paleontologist, to determine the appropriate course of action, including the development of a Treatment Plan, if necessary.</li> <li>○ All significant cultural or paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist, or paleontologist, according to current professional standards.</li> <li>○ If human remains are discovered during ground-disturbing activities on Tribal lands, pursuant to NAGPRA, the Tribal Official and BIA representative shall be contacted immediately.</li> </ul> </li> </ul>			Phase	

Mitigation Measure	Implementing Responsibility	Compliance Standards	Timing	Verification (Date/Initial)
No further disturbance shall occur until the Tribal Official and BIA representative have made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the BIA representative shall notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.				
<b>Land Use</b>				
The Tribe shall adopt a Tribal Ordinance that commits to coordinating any future, currently unanticipated, development proposal or change in public access with the California Coastal Commission.	Tribe	Measures shall be included in construction specifications  Hazardous materials storage and disposal plan shall be developed in accordance with industry practices	Planning Phase	
<b>Noise</b>				
<p>The following mitigation measures shall be implemented to minimize impacts from noise during construction:</p> <ul style="list-style-type: none"> <li>Construction activities would only occur between the hours of 7:00 am to 6:00 pm Monday through Friday, and 9:00 am to 5:00 pm on Saturday. No construction activities would occur on any Sunday.</li> <li>Where feasible, the stationary construction equipment shall be located on the southern portion of the project site.</li> <li>All construction equipment over 50 horsepower shall be equipped with noise reducing mufflers.</li> </ul>	Tribe General Contractor	Measures shall be included in construction specifications  Hazardous materials storage and disposal plan shall be developed in accordance with industry practices	Planning and Construction Phases	



## ***EXHIBIT D***

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*CALIFORNIA OFFICE OF HISTORIC  
PRESERVATION CONCURRENCE LETTER*



**DEPARTMENT OF PARKS AND RECREATION  
OFFICE OF HISTORIC PRESERVATION**

Lisa Ann L. Mangat, Director

Julianne Polanco, State Historic Preservation Officer  
1725 23rd Street, Suite 100, Sacramento, CA 95816-7100  
Telephone: (916) 445-7000 FAX: (916) 445-7053  
[calshpo.ohp@parks.ca.gov](mailto:calshpo.ohp@parks.ca.gov) [www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

December 6, 2017

Reply In Reference To: BIA\_2017\_0313\_001

Amy Dutschke - Regional Director  
United States Department of Interior  
Bureau of Indian Affairs - Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

RE: Section 106 consultation for the *Fee to Trust Conveyance of 9 parcels totaling 6 acres for the Trinidad Rancheria, Humboldt County*

Dear Ms. Dutschke:

The Office of Historic Preservation (OHP) received BIA's submittal of 9 March 2017 initiating consultation pursuant to Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as amended, and its implementing regulation found at 36 CFR Part 800. BIA determined the above referenced action to be a Federal undertaking and, on behalf of the Trinidad Rancheria (Tribe), requests the SHPO's concurrence on a proposed finding of effect (FOE) of "*No historic properties affected.*"

On behalf of the Tribe, BIA submitted Section 106 documentation on the proposed fee-to-trust conveyance of 9-acres in Trinidad Bay to (1) construct a 1300 square-foot visitor center and to (2) maintain existing land uses. The Area of Potential Effects (APE) was determined to be the aforementioned acreage and was depicted in Figure-3 of the following study that was submitted as evidence of completing CHRIS and Native American Heritage Commission (NAHC) record searches, consultation with NAHC identified contacts, and field-survey:

- *Cultural Resources Study, Trinidad Rancheria, Fee-To-Trust and Interpretive Center Project, Humboldt County, CA* (Analytical Environmental Services 2017)

The proposed visitor center will be built in a public use area on the isthmus to Trinidad Head. As I understand it, the construction site currently supports a similar facility that consists of structures such as shipping containers, sheds, and utility boxes. The Tribe's study determined that the potential for buried cultural deposits at the construction site is low due to the presence of existing sewer manholes and fire hydrants. Field-survey completed for the submitted study did not include archaeological testing. There are no proposed changes in the current use of land for the remainder of the APE.

The submitted study identified the following historic properties in the APE:

1. P-12-2819 – the property is a cultural landscape consisting of five Traditional Cultural Properties (TCP). As described, two of the TCPs are in the APE but located outside of the construction site for the proposed visitor center. The submittal identified the resource as determined eligible under criteria A and B of the “*Criteria for evaluation*” found at 36 CFR Part 60.4 but contained no documentation supporting the determination. A search of records on file at OHP located no records confirming the SHPO’s consensus. The submitted study stated that none of the “TCP elements are within the actual visitor’s center footprint.”
2. P-12-2815 – the property is a historic resource consisting of four concrete skids that were used to hoist whales onto the shore. The resource is in proximity to the proposed the visitor center but described as not located within the construction site. The submittal identified the property as determined eligible under Criterion C of the “*Criteria for evaluation*” found at 36 CFR Part 60.4 but contained no documentation supporting the determination. A search of records on file at OHP located no records confirming the SHPO’s consensus.
3. P-12-2879 – the property is a historic resource containing a circa-1945/46 pier. The resource is in proximity to the proposed visitor center but is described as not located within the construction site. The resource has not been evaluated for the National Register of Historic Places (NRHP).
4. P-12-2810 – the property is a historic resource containing the remains of a mid-1800s trash dump. The resource is in proximity to the proposed visitor center but described as not located within the construction site. The resource has not been evaluated for the NRHP.
5. P-12-2923 – the property is a historic site that contains a single grave. The property is in proximity to the proposed the visitor center but described as not located within the construction site. The resource has not been evaluated for the NRHP.
6. P-12-2922 – the property is a historic site that, per the DPR-523 record, possibly contains a single grave. The property is in proximity to the proposed the visitor center but described as not located within the construction site. The resource has not been evaluated for the NRHP.
7. P-12-2877 – the property is a historic site that contains the remains of a circa-1953 railroad alignment and associated artifacts. The property is in proximity to the proposed the visitor center but described as not located within the construction site. The resource has not been evaluated for the NRHP.
8. P-12-2818 – the property is a prehistoric site that contains several large soapstone boulders. The property is in proximity to the proposed visitor center but described as not located within the construction site. The resource has not been evaluated for the NRHP.

Submitted materials have been reviewed and the SHPO offers the following comments:

1. Pursuant to 36 CFR Part 800.4(a)(1) have no objection to the APE.
2. Pursuant to 36 CFR Part 800.4(b)(1) I have no objections to the “*Level of Effort*”

identifying historic properties but, due to the proximity of the above mentioned cultural resources to proposed ground disturbing work, it appears it may have been judicious for field-work to have relied on more than simple surface survey.

3. Pursuant to Part 800.5(b), I find the FOE more consistent and can **concur** with “*No adverse effects*” as there are (potentially eligible) historic properties in the APE but none identified at the location of proposed ground disturbance at the visitor center construction site and because the undertaking proposes no changes in current land uses for all other portions of the APE. However, to better determine the presence or absence of buried cultural resources, and to avoid potential effects delays in the project implementation schedule, BIA may want to consider implementing the following additional conditions prior to and during project implementation:
  - A. Prior to constructing the visitor center complete a program of archaeological testing scaled to the size and scope of the facility to better ascertain the presence or absence of buried historic and prehistoric archaeological deposits and consult with the OHP on the results of the work.
  - B. Prior to construction of the visitor center engage in additional consultation with Native Americans identified by the NAHC as well as other contacts that may have information on historic properties in the APE.
  - C. During construction of the visitor center avoid potential effects to the cultural resources identified in the submittal by treating them as historic properties eligible for the NRHP for purposes of the proposed undertaking only and designating them as Environmentally Sensitive Areas (ESA).
  - D. During construction of the visitor center monitor ground disturbing work with a qualified archaeologist who meets the Secretary of the Interior’s professional qualification standards and, if requested, a pertinent Native American representative.
4. BIA may have additional future Section 106 responsibilities for the undertaking should it change in scope (such as including any of the potentially eligible historic properties in ground disturbing work) from the scope reviewed for this letter.
5. Pursuant to 36 CFR Part 800.13 for “*Post Review Discoveries*”, for any inadvertent find of a cultural resource BIA should consult with the OHP on the find’s potential for being a historic property.

BIA has taken into account the effects of its actions on historic properties and, on the part of the OHP, afforded the Advisory Council on Historic Preservation (ACHP) reasonable opportunity to comment. Please direct questions to Jeff Brooke, Associate State Archaeologist, at (916) 445-7003 or at [Jeff.Brooke@parks.ca.gov](mailto:Jeff.Brooke@parks.ca.gov).

Sincerely,



Julianne Polanco  
State Historic Preservation Officer



# ***EXHIBIT E***

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*ERRATA SHEETS*

### 1.3 LOCATION AND SETTING

The trust acquisition parcels addressed in this EA are located west of Highway 101 in Humboldt County, approximately 18 miles north of the City of Eureka and within the City of Trinidad (project site). The approximately 9.35-acre project site is located in Section 26 of the ‘Trinidad, CA’ U.S. Geological Survey (USGS) quadrangle within Township 8 North and Range 1 West, and unsectioned areas of Trinidad Bay. **Figures 1-1 and 1-2** show the regional location and vicinity of the project site. **Figure 1-3** shows an aerial photograph of the project site. The project site includes nine parcels, totaling approximately ~~six and a half~~ 6.11 acres, which are held partially or wholly in fee by the Tribe. These parcels are identified by Assessor Parcel Numbers (APNs) 042-07-101, 042-07-102, 042-07-105, 042-07-108, 042-07-112, 042-07-113, 042-07-114, 042-09-108, and 042-09-110. The project site also includes approximately ~~two~~ 3.24 ~~acres and a half acres~~ that do not have APNs. ~~for a total of nine acres of lands for the requested trust transfer.~~ Although these parcels are not contiguous with the current Rancheria, they are within approximately 0.5 miles of the Tribe’s Reservation.

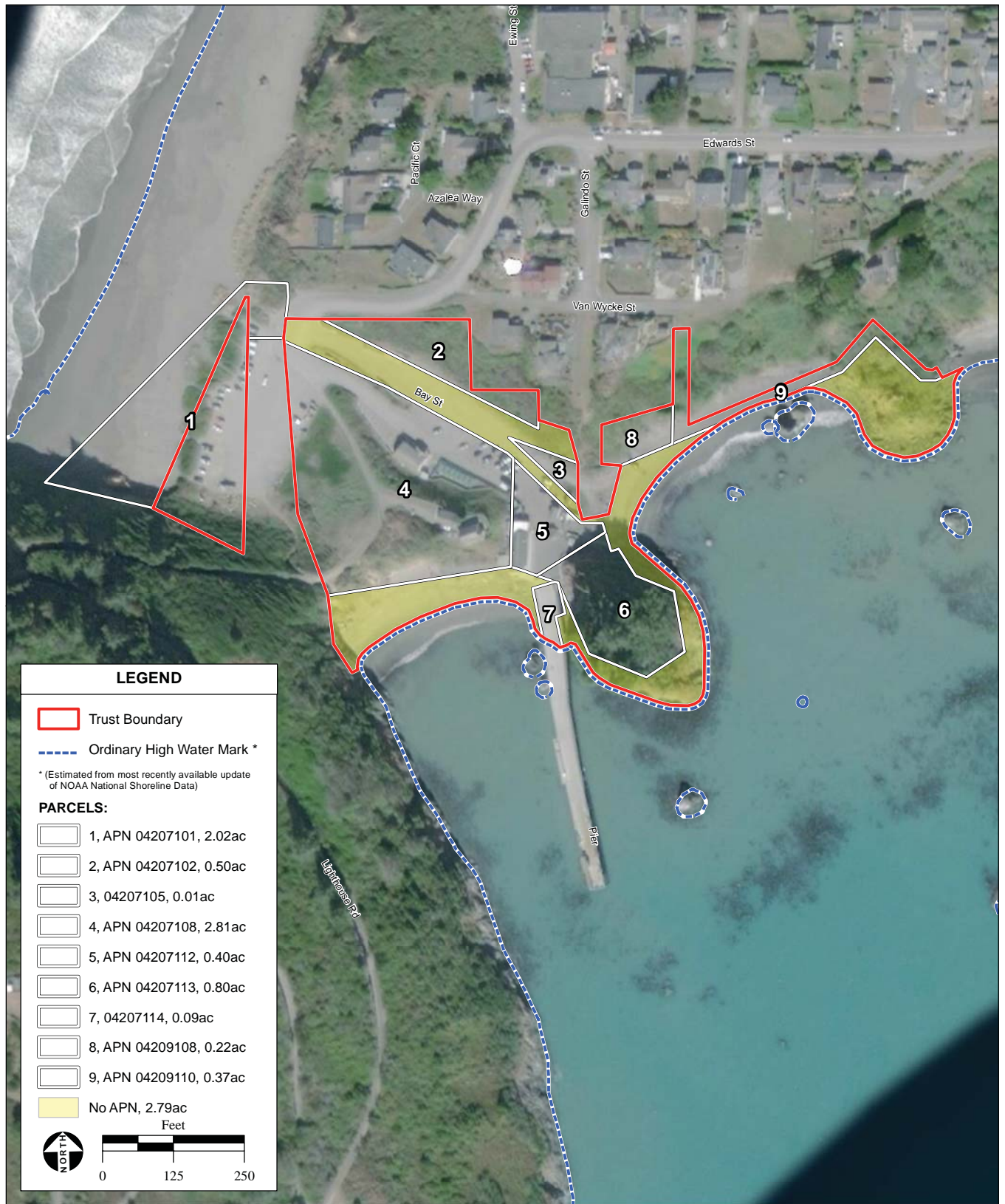
Regional access is provided by Highway 101, which travels in a general north-south direction and is located approximately 0.5 miles east of the site. Local access to the project site is provided by Lighthouse Road and Bay Street. Lighthouse Road is a two-lane road that runs adjacent to the northwestern half of the project site. Bay Street, which transitions from Lighthouse Road, runs northwest to southeast through the western half of the project site. Access to Lighthouse Road from Highway 101 is provided via Main Street, Trinity Street, and Edwards Street. Edwards Street parallels the northern border of the project site.

The project site is composed of a mosaic of ruderal and developed habitat, coastal dune grass habitat, beach, and two vegetated rock heads which project southwards into Trinidad Bay. The topography of the site consists of coastal beachfront and bluffs with elevations of 0 to 55 feet above mean sea level (amsl). Surrounding land uses include private residences, surface parking, Humboldt State University’s Marine Laboratory, Trinidad State Beach, and undeveloped parcels. The current Rancheria, approximately 0.5 miles east and opposite the bay from the project site, includes Tribal government center, Tribal housing, and a casino and associated facilities.

### 1.4 PURPOSE AND NEED FOR THE PROPOSED ACTION

The Tribe’s purpose for taking the approximately nine acres of land into trust is to:

- Facilitate Tribal self-governance and self-determination by allowing the Tribal Government to exercise Tribal sovereign authority over the land;
- Protect and enhance the economic well-being of Tribal resources further establishing economic self-sufficiency;
- Further the Tribe’s goal to restore its original land base;
- Further the Tribe’s goal to preserve the surrounding environment and cultural resources for future generations and the entire community;



SOURCE: Humboldt County Parcel GIS Data, 2013; NOAA Continually Updated Shoreline Product, 1937-2011; DigitalGlobe aerial photograph, 10/1/2017; AES, 2/1/2019

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**Figure 1-3**  
Aerial Photograph

### ***City Water Supply***

The City's water system serves approximately ~~345~~<sup>325</sup> connections within its sphere of influence using surface water as the source. The City has a domestic water right for supplies from Luffenholtz Creek, located approximately a 1.5 miles south of the City. Originally, homes in the City had individual wells or were served from an untreated water supply from Mill Creek (also referred to as Old Mill Creek). An infiltration gallery and water treatment plant were constructed to supply the City with water from Luffenholtz Creek when it became clear that Mill Creek could not meet long term needs.

The pumps located at the infiltration gallery that supply pressure to move water through treatment to the storage tanks were inundated with sediment a few years back. The pumps were rehabilitated, but have never worked as well as expected since their repair. The pumps should be capable of delivering 120 gallons per minute (gpm), but only deliver about 100 gallons per minute. The City of Trinidad has an operations and maintenance program that keeps the storage, treatment, and distribution systems in good condition. The storage tanks are regularly inspected and the steel bands tightened to prevent water losses. The City conducted leak detection testing on the distribution system in 2003 and tested all water meters in 2003. Major leaks detected have been repaired, and poorly functioning water meters are being replaced as funds become available (County of Humboldt, 2007).

### ***DRAINAGE***

Slopes on the project site range from 0 to 60 percent, with the proposed development area sloping to the west at approximately 5 to 6 percent and the steepest slopes being the coastal bluffs. Runoff across the parking surfaces is generated as sheet flow and follows the topography towards Trinidad Bay. This sheet flow is not collected, but drains onto the beach near the old boat launch to the south of the proposed development. Sheet flow from the coastal bluff immediately upslope of the proposed development area is conveyed via natural drainages in the cliff. This water also drains onto the beach.

### ***Pier Stormwater System***

Stormwater generated on the pier is collected in a series of gutters and piping where it is treated in a sedimentation chamber and filter system located adjacent to where the pier connects to land. All stormwater runoff from the new pier is directed thru the filters and into the infiltration chambers. Filter cartridges are removed and maintained once every two years as per the manufacturer's recommendations. The stormwater filter system treats runoff captured from the pier deck, thus eliminating potential sources of contamination from pier-generated petroleum products and other pollutants that result from activities on the pier. Treated stormwater is then diverted to subsurface percolation chambers located beneath the asphalt directly adjacent to the Seascapes Restaurant. The Tribe has implemented a *Contingency Plan for Failure of Stormwater Disposal System* plan and a *Maintenance and Monitoring of Stormwater Disposal System* plan to ensure adequate operation and maintenance of the stormwater system. Both plans and the storm drain plan sheet are included as **Appendix C**. Currently, only stormwater generated on the newly refurbished pier is collected and treated in the system.



direct federal actions--activities and development projects performed by a federal agency, or a contractor for the benefit of a federal agency; and (2) indirect federal actions--activities not performed by a federal agency, but requiring federal permits or licenses or other forms of federal approval, and federal financial assistance to states, territories, and local governments.

The objective is to ensure that federal agencies and applicants for federal approvals and funding adequately consider and comply with State CMPs. Under CZMA Sec. 307(C), each federal agency shall provide a consistency determination to the relevant State agency designated at the earliest practical time, but in no case later than 90 days before final approval of the federal activity (unless both the federal agency and the State agency agree to a different schedule).

### 3.8.2 EXISTING SETTING

The nine-acre property is characterized by ruderal/developed land with small portions of open space, a restaurant, one single-family residence (vacation rental), and numerous outbuildings such as a small bait shop, storage sheds, equipment storage, boat ramp, and the pier. The project site is located adjacent to the Trinidad Bay and portions of the open space are coastal bluffs and shoreline. Surrounding land uses vary from recreational trails to the west to residential on the north and northeast. The project site is located within the City and a portion of the project site is adjacent to the Trinidad Head public resource. The current City General Plan (1978) has the project parcels zoned as commercial. The most recent draft update to the City General Plan, which includes provisions that constitute the LCP ~~under the CZMA~~, has the project site with a land use designation of Harbor (H) (**Figure 3-4**) within the City limits. Trinidad Head and Trinidad Little Head are both zoned as Open Space (OS) while residences to the north have a land use designation of Urban Residential (UR). Although there is one residence near the project site, it is within the Harbor land use designation and is not zoned for residential. The Harbor zoning designation is intended to provide an area in which a mixture of limited commercial, industrial, and recreational uses can occur in the existing Trinidad Harbor area. All functions in this designation can continue to provide mixed uses as commercial fishing, recreational fishing, and the protection and reserve of coastal dependent and coastal related uses. No new residential dwelling units are allowed in this designation other than a caretaker unit.

## 3.9 AGRICULTURE

The approximately nine-acre site is not currently used for agricultural operations. With the exception of the coastal bluffs, the site is largely developed. The site does not provide adequate acreage for crop development or cattle grazing and has no history of agricultural uses.

### 3.9.1 WILLIAMSON ACT PROVISIONS

Under the provisions of the Williamson Act (California Land Conservation Act 1965, Section 51200), landowners contract with the County to maintain agricultural or open space use of their lands in return for reduced property tax assessment. Withdrawal involves a ten-year period of tax adjustment to full market





SOURCE: City of Trinidad, 2009; DigitalGlobe aerial photograph, 5/26/2016; AES, 9/27/2019

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**Figure 3-4**  
Land Use Designation of the Project Site



### **LAND USE CONSISTENCY**

Alternative A would be compatible with the mixed land use surrounding the project site which includes residential to the north and commercial to the west and southeast, and recreational/open space on all other sides. Once land is transferred into trust, County land use designations and zonings would no longer apply. As similar uses occur in the area and the property lacks a zoning classification, effects to land use would be less than significant. The proposed development is also consistent with the future zoning of the project site (harbor) proposed by the City (harbor). Therefore, land use effects from the implementation of Alternative A would be less than significant.

### **Coastal Zone**

While the project site is located in the Coastal Zone, the proposed visitor's center would replace existing commercial structures without resulting in a significant expansion in size and would continue to provide limited commercial operations in compliance with the Harbor designation under the recent draft update of the Local Coastal Plan (LCP) developed in accordance with the ~~Coastal Zone Management Act (CZMA)~~ California Coastal Act. The Tribe's designation of a majority of the proposed trust action as open space along with the limited development and improvements to the stormwater conditions on the existing parking lot, would further the LCP Harbor designation of the project site by protecting recreational uses and protecting the coastal dependent and coastal related uses of the site. ~~Accordingly,~~ The proposed development and trust acquisition is consistent with the most current draft of the ~~Local Coastal Plan (LCP)~~. Furthermore, the BIA is required to obtain a consistency determination from the California Coastal Commission under the Coastal Zone Management Act (CZMA). The request by the BIA details consistency with the applicable provisions of Section 3 of the California Coastal Act. Accordingly, ~~Implementation of Alternative A would result in a less-than-significant effect to coastal management.~~

## **4.1.9 AGRICULTURE**

### **IMPACT CRITERIA**

Significant effects to agriculture would occur if Alternative A would result in the conversion of agricultural lands designated as prime farmland, farmland of statewide importance, or farmland of local importance or impede local and regional planning efforts to protect agricultural lands.

### **IMPACTS TO AGRICULTURE**

Alternative A would not convert any agricultural lands as none exist on or adjacent to the project site. Accordingly, none of the parcels within the project site are under Williamson Act contracts. No impacts to agricultural resources would occur from Alternative A.