

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

July 14, 2020

By e-mail

Mayor Steve Ladwig
Trinidad City Council
City Hall; 409 Trinity St.
P.O. Box 409
Trinidad, CA. 95570

**Re: City Council Meeting, Tuesday, July 14, 2020, 6 p.m.
Discussion Agenda Item 6**

HARP Objects to Draft "Government to Government Meeting Policy".

- 1. Trinidad City Council must comply with California's Open Meetings Law -- The Brown Act -- which Precludes Closed Meetings, including meetings of Standing Committees with "continuing subject matter jurisdiction" such as the Council's committee that has been meeting with Trinidad Rancheria representatives and focused on Rancheria / City issues, including the Rancheria's hotel water request.**
- 2. The Brown Act makes no provision for behind-closed-doors "Government-to-Government meetings".**
- 3. Confidentiality for Indian Cultural, Historical, Religious and Burial Site Information is limited to SB-18 (General Plan) and AB-52 (CEQA) issues.**
- 4. The Brown Act's "real estate negotiations" exception does not apply to Anything other than real property being bought, sold, leased, or Exchanged by the local governmental entity, and then only to discussions between the local entity and its own negotiator.**

Dear Mayor Ladwig and Members of the Trinidad City Council,

The Humboldt Alliance for Responsible Planning ("HARP") objects to the draft "Government to Government Meeting Policy" (found at page 121 of Council's Agenda Packet for the July 14 meeting¹) because it does not comply with the open-public-meetings mandate of the California Constitution and the Ralph M. Brown Act. This letter follows-up on my letter to

¹ Agenda Packet for Trinidad City Council Meeting, July 14, 2020, at p. 121:
<https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/07-14-2020%20cc%20packet.pdf>

you on behalf of HARP, dated June 19, 2020², a copy of which is attached hereto and incorporated herein by this reference as **Exhibit 1**.

Many of your constituents share this objection. At its May 21, 2020 Special Meeting, the Council received 9 letters that raised objection to the Council's behind-closed-door meetings with the Rancheria. Copies of those prior letters – from Dorothy Cox, Kelly Lindgren, Aaron and Jennifer Hakenen, Tsurai Ancestral Society, Kimberly Tays, Ted Pease, Kathleen Lake, and David Hankin, and myself – are attached hereto as **Exhibit 2**.

1. Councilmembers' meetings with the Rancheria to discuss water and other City/Rancheria issues violate the Brown Act.

Meetings of the Trinidad City Council and all local government legislative bodies in California -- including meetings of their standing committees -- are governed by the open public meetings mandate of California's Brown Act, Government Code Sections 54950-54963.³

The Brown Act expands upon California Constitution, Article 1, Declaration of Rights, at Section 3, which declares, that **open public meetings of legislative bodies are a fundamental right of the people, to be broadly construed, with any limitations on public meetings to be narrowly construed:**

(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, **the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.**

(2) **A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.**⁴

The Brown Act mandates open meetings for California local governments, including the Trinidad City Council and its committees. Among other things, the Brown Act provides:

- (i) **"All meetings of the legislative body of a local agency shall be open and public,** and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter. . ." (Gov.C. 54953(a);

² Letter, J. Bryce Kenny, Esq. to Trinidad Mayor Steve Ladwig and City Council, June 19, 2020: <https://drive.google.com/file/d/1gBwXukzzzx8cE5f3BDguTHkzZUOFq2ri/view?usp=sharing>

³ California Government Code Sections 54950-54963
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=2.&title=5.&part=1.&chapter=9.

⁴ California Constitution, Art. I Declaration of Rights, SEC. 3.
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CONS§ionNum=SEC.%203.&article=I

- (ii) “As used in this chapter, **“local agency” means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency**” (Gov.C 54951);
- (iii) **“... standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, . . . are legislative bodies for purposes of this chapter”** (Gov.C. 54952(b);
- (iv) **“no closed session may be held by any legislative body of any local agency”** (Gov.C. 54962);
- (v) “At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.” (Gov.C. 54954.2(a)(1); and
- (vi) **“The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.”** (Gov.C. 54958)

Testimony at the May 21, 2020 Special Meeting of the Trinidad City Council established that over the past 1-2 years a committee consisting of the Mayor, Steve Ladwig, and the Vice Mayor, Jack West, together with the City Manager, Eli Naffah, have met privately on several occasions, recently including May 13, 2020, with representatives of the Trinidad Rancheria for the purpose of discussing relationships between the City and the Tribe, including the Tribe’s request for water from the Trinidad municipal water system for the Tribe’s proposed high-rise Hyatt hotel. Participants refer to these as “government-to-government” meetings.

Although this committee’s two city councilmen constitute less than a quorum of the City Council’s five total members, the committee’s **“continuing subject matter jurisdiction”** – issues relating to the Trinidad Indian Rancheria, including the hotel water issue – meets the definition of a “standing committee” under Government Code Section 54952(b)⁵. **Under provisions of Government Code Section 54953(a), all meetings of this standing committee are meetings of a “legislative body” which must be held in public.**⁶

⁵ Government Code Section 54952. “As used in this chapter, ‘legislative body’ means: . . . (b) . . . **standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.**” https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=54952.&lawCode=GOV

⁶ Government Code Section 54953(a) “All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.” https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=54953.&lawCode=GOV

2. **SB-18 and AB-52 provide some confidentiality protection for information about Indian cultural, historic, religious, and burial sites developed in the course of consultations regarding General Planning and CEQA processes. But these are narrowly drawn, and do not warrant the kind of behind-closed-doors meetings sought by the Rancheria for business discussions.**

The minutes of the City Council's May 21 Special Meeting quote City Manager Naffah as saying that the "State of California has Tribal Consultation Guidelines that require the local government to meet with less than a quorum of its members and establish procedures to allow tribes to engage with local government in a confidential setting."⁷ This is highly misleading.

The "Tribal Consultation Guidelines" referenced by City Manager Naffah is not a document of general applicability, but rather is a 2005 document from the Governor's Office of Planning and Research, published for the specific and limited purpose to provide "advisory guidance to cities and counties on the process for consulting with Native American Indian tribes **during the adoption or amendment of local general plans or specific plans, in accordance with the statutory requirements of Senate Bill 18** (Chapter 905, Statutes of 2004)."⁸ California Government Code Section 65352.3, which codifies Senate Bill 18, provides that the local government shall protect the confidentiality of information obtained by the government in course of the consultation, "concerning the specific identify, location, character, and use" of the following "places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code."⁹ Public Resources Code Section 5097.9 protects "any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property".¹⁰ Public Resources Code Section 5097.993 protects "a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or

⁷ Minutes, Trinidad City Council Meeting, May 21, 2020, at page 3
Found at Agenda Packet for June 9, 2020 City Council Meeting at 8/103:
<https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/06-09-2020%20cc%20packet.pdf>

⁸ State of California, Office of Planning and Research, Tribal Consultation Guidelines (Apr.2005), Director's Message, at unnumbered third page (3/44):
https://www.counties.org/sites/main/files/file-attachments/tribal_consult_guidelines_03-01-05.pdf?1344578588

⁹ Senate Bill 18 is codified in California Government Code Section 65352.3, which provides as follows:
65352.3. (a) (1) **Prior to the adoption or any amendment of a city or county's general plan**, proposed on or after March 1, 2005, **the city or county shall conduct consultations with California Native American tribes** that are on the contact list maintained by the Native American Heritage Commission **for the purpose of preserving or mitigating impacts to places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code** that are located within the city or county's jurisdiction. . . .
(b) Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Section 65040.2, **the city or county shall protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.**
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65352.3.&lawCode=GOV

¹⁰ Public Resources Code 5097.9:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.9.&lawCode=PRC

historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural, or sacred site".¹¹

Generally similar consultation process and confidentiality protections for Indian cultural, historical, religious, and graveyard sites apply to a local agency's environmental impact statement process under the California Environmental Quality Act.¹² But like the consultations and confidentiality provisions for the planning process under SB-18, the AB-52 confidentiality provisions are limited to locations of the specific cultural, historic, religious, and burial sites. California law does not throw a wider "confidentiality" blanket over other topics or subject matter that may be discussed in meetings between local governments and Indian Tribes.

And in any event, the Brown Act very specifically provides that its open public meetings mandate supersedes "the conflicting provisions of any other state law." (Government Code Section 54958, supra.)

3. The Brown Act's "real estate negotiations" exception does not apply to Anything other than real property being bought, sold, leased, or Exchanged by the local governmental entity, and then only to discussions between the local entity and its own negotiator.

The Minutes of the City Council's May 21, 2020 Special Meeting, at page 2, quote City Manager Naffah that "the Brown Act allows exceptions for confidentiality for real estate negotiations". And at page 3 the Minutes quote General Manager Naffah explaining the need for real estate negotiation confidentiality as follows: "Naffah explained that Hyatt developers would not want certain privileged information disclosed to its competitors." This is a mistaken understanding of the Brown Act. At Government Code Section 54956.8, the Brown Act allows a legislative body which is **itself** purchasing, selling, exchanging, or leasing real property **for its own account** to "hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency **to grant authority to its negotiator regarding the price and terms of payment...**"¹³ Government Code Section

¹¹ Public Resources Code 5097.993

[http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.993.&lawCode=PRC#:~:text=\(A\)%20On%20public%20land.,both%20that%20fine%20and%20imprisonment](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.993.&lawCode=PRC#:~:text=(A)%20On%20public%20land.,both%20that%20fine%20and%20imprisonment)

¹² Public Resources Code Section 20182(c)(1) Any information, including, but not limited to, the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with subdivision (r) of Section 6254 of, and Section 6254.10 of, the Government Code, and subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations...
[https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=21082.3.](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=21082.3)

¹² Minutes, Trinidad City Council Meeting, May 21, 2020, at page 3
Found at Agenda Packet for June 9, 2020 City Council Meeting at 9/103:
<https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/06-09-2020%20cc%20packet.pdf>

¹³ Government Code Section 54956.8:
[https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=54956.8.&lawCode=GOV,](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=54956.8.&lawCode=GOV)

54954.5(b) provides further that this **exception applies only where the real property subject to exchange, sale, or lease, is specifically described by "street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation."**¹⁴

Respectfully submitted,



J. Bryce Kenny

cc: Eli Naffah, Trinidad city Manager
Supervisor Steve Madrone, Humboldt County Board of Supervisors
Sarah Lindgren-Akana, Tsurai Ancestral Society
Jennifer Kalt, Humboldt Baykeeper
Kelly Lindgren
Humboldt Alliance for Responsible Planning Executive Committee

¹⁴ Government Code Section 54954.5(b):
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=54956.8#

EXHIBIT 1

Letter, J. Bryce Kenny to Mayor Steve Ladwig and City Council
June 19, 2020

<https://drive.google.com/file/d/1gBwXukzzzx8cE5f3BDguTHkzZUOFq2ri/view?usp=sharing>

EXHIBIT 2

May 21, 2020 Public Comment Packet,
Trinidad City Council

<https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/06-09-2020%20cc%20packet.pdf>

Letter, J. Bryce Kenny	Page 3
DorothyCox	23
David Hankin	33
Kathleen Lake	46
Kelly Lindgren	48
Ted Pease	54
Kimberly Tays	63
Tsurai Acestral Society	78
Aaron and Jennifer Hakinen	80