



May 7, 2009

Mr. Michael E. Wheeler  
Senior Planner  
Humboldt County Planning and Building Department  
3015 H Street  
Eureka, California 95501-4484

**RE: Notice of Preparation for a Draft Environmental Impact Report (SCH # 2009042051) for the Moss Minor Subdivision, Trinidad, Humboldt County, California**

Dear Mr. Wheeler:

On April 14, 2009, the Department of Fish and Game (DFG) received from the Humboldt County Department of Community Development Services (Lead Agency) a Notice of Preparation (NOP) for a Draft Supplemental Environmental Impact Report (DSEIR, State Clearinghouse #2009042051) for the Moss minor subdivision (Project) near the City of Trinidad, Humboldt County, California.

As a trustee for the State's fish and wildlife resources, DFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and their habitat. As a responsible agency, DFG administers the California Endangered Species Act (CESA) and other provisions of the Fish and Game Code that conserve the State's fish and wildlife public trust resources. DFG offers the following comments and recommendations on this project in our role as a trustee and responsible agency under the California Environmental Quality Act (CEQA, California Public Resource Code §21000 *et seq.*).

### **Project Site and Description**

The Project proposes to subdivide a 94-acre parcel into four parcels ranging in size from 20.11 to 32.11 acres. Each parcel would then be developed with a single family residence (SFR). As proposed, water would be diverted from Deadman Creek for Parcel One, and water would be diverted from Luffenholtz Creek for Parcels Two-Four. An unnamed ephemeral stream is also mapped on Parcel Two.

Based on information DFG received from the Lead Agency the Project was initially reviewed for potential environmental impacts pursuant to CEQA and approved by the Humboldt County Planning Commission (Commission) on November 20, 1997. Its approval was then appealed to the Board of Supervisors on December 8, 1997, which

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upheld the Commission's decision. Subsequent to approval, the Lead Agency was sued and the project is now being re-reviewed pursuant to CEQA in the form of a court-ordered DSEIR. The scope of the DSEIR is limited to: 1) potential effects of water diversion on the City of Trinidad, and 2) potential effects on resident and anadromous salmonids, specifically coastal cutthroat trout (*Onchorhynchus clarki clarki*). In addition to commenting on the scope of the DSEIR, the intent of this letter is to provide the Lead Agency with guidance on protective measures intended to minimize potential Project-related impacts to the greatest extent possible. DFG offers this guidance based on its collective experience with local watersheds and knowledge of aquatic species' life histories and habitat needs.

### **Listed and Special Status Species**

DFG maintains files on the historic abiotic and biotic condition of streams. DFG's fisheries stream files show that stream surveys were conducted on Deadman and Luffenholtz creeks. Coastal cutthroat trout, a State Species of Special Concern (SSC), is present in both streams and steelhead trout (*O. mykiss*), listed as threatened pursuant to the federal Endangered Species Act (ESA), is present in Luffenholtz Creek. Other aquatic-dependent SSC that could be impacted by the Project include the foothill yellow-legged frog (*Rana boylei*), western tailed frog (*Ascaphus truei*), and southern torrent salamander (*Rhyacotriton variegatus*). Other SSC may occur in slow or slack waters within streams, wetlands, and adjacent forests in the Project area including the northern red-legged frog (*Rana aurora*).

DFG designates certain vertebrate species as SSC because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction or extirpation in California. Though not listed pursuant to the ESA or CESA, the goal of designating taxa as SSC is to halt or reverse these species' decline by calling attention to their plight and addressing the issues of conservation concern early enough to help secure their long-term viability. Hence, the ultimate goal of the SSC designation is to avoid CESA or ESA listing by protecting these species populations or the habitats they require.

### **Stream Diversion**

Much of California has a Mediterranean climate with the majority of rainfall occurring from October through April and is subject to short-term and long-term periods of drought. Based on the State Water Resources Control Board database (Electronic Water Right Management System) one appropriative water right exists in Deadman Creek for the diversion of 350 gallons per day. Other residential users are diverting this stream under riparian claim. Luffenholtz Creek is the municipal water supply for the City of Trinidad, which has two appropriative water rights for diverting water from the stream.

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One appropriate water right is for 0.3 cubic feet-per-second (cfs) and the other is for 0.26 cfs, for a combined total of 0.56 cfs. The season of diversion is year-round for both water rights. Additionally, other SFRs divert water from Luffenholtz Creek under riparian claim for residential use.

In DFG's Luffenholtz Creek fisheries stream files, DFG has documented concerns over the impacts of stream diversions during low-flow periods and recommends limiting rates of diversion and timing of diversion to protect aquatic species. Specifically, in a 1981 DFG CEQA NOP comment letter for a minor subdivision to the Lead Agency, DFG stated "no diversion should be allowed for the period of July 1 through October 31 during normal water years, with special restrictions for years of abnormally low rainfall."

The water availability analysis for the Project prepared by Hunt Surveying and Forestry consists of two pump draw down tests. These tests are inadequate to show the Project has sufficient water supply, or will not affect other water users or fish and wildlife resources. The water pump test indicates the stream could be dewatered during pumping given the flows in Luffenholtz Creek were as low as 0.033 cfs and in Deadman Creek were 0.019 cfs while the pumps withdrew water at a rate of 0.668 cfs.

According to State Water Code Title 23, California Code of Regulations (CCR) §1257, all beneficial uses of water must be considered and the water users (diverters) must provide for all downstream beneficial uses. Pursuant to Fish and Game Code §1600 *et seq.*, a Lake or Streambed Alteration Agreement (LSAA) is required before substantially diverting water from a stream. The current water availability analysis for the Project does not show adequate water for: 1) the Project's anticipated use, 2) the beneficial use of all existing riparian and appropriate users, and 3) the beneficial use of cold freshwater habitat including support of coastal cutthroat, steelhead, and SSC amphibians during low-flow or drought conditions. To show water is available for all beneficial uses and the Project, the water availability analysis must include an analysis of all diversions under all seasons of diversion. This analysis must also show that stream flows are sufficient to support all life stages of fish and aquatic species including attraction flows for migration, spawning, and rearing as well as periodic channel forming flows.

Water use should be based on the estimated water duty per person per day. The State Water Code defines use as: 55 to 75 gallons a day and 18.5 gallons per day per 100 square feet of irrigation, not including water for fire suppression. Thus for four parcels with an estimated three people per parcel and 1,000 square feet of garden each, the Project would use an estimated 1,400 to 1,640 gallons per day. If water storage is required for a typical low-flow period of July 1 to October 15 (107 days), then 149,800 and 175,480 gallons (37,450 to 43,870 gallons per parcel) of water would be required to meet domestic use excluding fire suppression.

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To prevent instream impacts to aquatic species from this Project, water may be stored during periods of high winter flow for use during low-flow conditions. Stream diversion should not occur during the low-flow period from July 1 to October 15. Given the aquatic species present, other existing diversions from both streams, and low-flow conditions in summer months, the diversion from Deadman and Luffenholtz creeks appear substantial. Therefore, each resident would be required to notify DFG pursuant to Fish and Game Code §1600 *et seq.* Storage of water for more than 30 days, regardless of whether doing so would be for domestic or fire suppression use requires a Small Domestic Use Registration pursuant to Title 23 CCR §657.

### **Future Development**

The Lead Agency is currently updating the County General Plan. The SDEIR should also forecast (CCR §15144) what potential development pressure may exist as a result of the current Project proposal such as second units (if allowed), and/or all other future densities anticipated under projected alternatives in the General Plan update. As expressed in recent correspondence to the Lead Agency regarding the General Plan update and other project-specific communications, DFG is concerned Humboldt County is limited in surface water availability including quantities needed to conserve aquatic resources.

### **Stormwater Management and Non-point Source Pollution**

DFG recommends that the Project use low-impact development (LID) strategies such as permeable pavement, vegetated stormwater bio-swales and retention basins to treat, retain and infiltrate stormwater runoff on site. Ideally post-project stormwater run-off volume, rate and duration will match pre-project conditions and no hydromodification will occur as a result of the Project. DFG supports the use of LID strategies because they minimize impacts to aquatic habitats by filtering out pollution, preventing increased peak flows and related erosion, and because they increase ground water recharge and therefore help maintain biologically-important summer low flows.

### **California National Diversity Database (CNDDDB) Reporting**

DFG recommends any special status species detected during surveys for this Project be reported to the CNDDDB. The CNDDDB field survey form can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to the CNDDDB at the following address: [cnddb@dfg.ca.gov](mailto:cnddb@dfg.ca.gov). Species that should be reported to the CNDDDB include SSC, rare species as defined by the California Native Plant Society, species proposed for listing or candidate species, or species listed as threatened or endangered pursuant to the State- or federal endangered species acts.

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If you have any questions or comments regarding this matter, please contact Environmental Scientist Michael van Hattem at (707) 445-5368 or Staff Environmental Scientist Jane Arnold at (707) 441-5671 at 619 Second Street, Eureka, California 95501.

Sincerely,



**GARY B. STACEY**  
Regional Manager

#### References

Department of Fish and Game (DFG), 1981. Letter from A. E. Naylor, DFG Regional Manager to Stanley R. Mansfield, Planning Director, Humboldt County Planning Director regarding the preparation of an Environmental Impact Report for minor subdivision Nos. PMS-68-81 and PMS-92-81.

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