

Kirk Girard, Community Development Director
Carolyn Ruth, County Counsel
Michael Wheeler, Planner

April 20, 2009

Re: Moss Subdivision and the cumulative Trinidad Limited Liability Corporation Development

Dear Mr. Girard, Ms. Ruth, and Mr. Wheeler:

This letter is written to you in the interest of being timely in submitting the following concerns and issues. By providing this information now, it is hoped that this will save the county, its consultant, the client, and the community, significant time and money. Focusing studies and reports on the true nature of this project from the beginning can help avoid the situation of developing inadequate studies, mitigation measures, and reports, that must later be added to, modified, or thrown out at great expense in time and money.

Lets be smarter than that. It is in everyone's interest and can also be a great example for our county and communities of how to responsibly develop these transitional timberlands that are adjacent to existing communities.

The community, the county, and the client all know that this project is part of a much larger development and is not just a 4-parcel subdivision. If it were truly just a minor subdivision then it would already be a done deal. It is in fact a part of a much larger development of 680 acres of land with significant cumulative impacts. The Trinidad Limited Liability Corporation (TLLC), previously the Nelson Howard Trust (NHT), is behind the larger development.

There are many aspects to this project that relate to "new information", but perhaps the most important is the fact that the project applicant has changed a very significant parameter having a direct impact on cumulative impacts previously unstudied and unmitigated. In the 1997 and 2004 applications, which are as the court has said the same project, the project applicant Mr. Moss has stated that this is just a 4-parcel subdivision and no further development is planned. But by the applicants own actions this foundational condition has changed.

The existing file on this project is nearly a foot thick when all of the documents relating to it are stacked up on a table. This would not be the case if this were a simple 4-parcel subdivision. In a recent meeting with LACO and Associates while discussing the Moss project, representatives from LACO stated that they did not understand why this project has taken over 15 years to get to this point. I explained to them that it was because it was not a simple 4-pacel subdivision. I explained that this was a four-parcel subdivision that was being used in an attempt to set a precedent for the development of over 680 acres without any

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cumulative impact analysis or community planning. That was why the file is so thick and why it has taken 15 years to get to this point.

Complicating things are the fact that the TLLC continues to sell off the county approved patent parcels and one by one these individuals have been coming forward to subdivide as well (i.e. Ghera), if there parcel is 40 acres or larger and zoned 20 acre minimums. This failure on the part of the county in 1995 to follow CEQA and require sound environmental analysis and community planning is now unfolding as a piecemeal project without good planning that has several significant unmitigated effects.

The following is some of the evidence that the developers are not just doing a 4-parcel subdivision. Based on this evidence the county must consider these cumulative impacts and require the appropriate studies and mitigation measures to fully avoid environmental impact. The county has no choice but to require a full environmental impact report and all appropriate mitigation for the cumulative development impact. In fact the planning director has stated in public several times that the very next element of discretionary development related to these TLLC properties would require an EIR. That is how they have treated Gheras 2005 application, but in fact, because Moss is no longer the same project, they can require it here and now on this Moss application. Perhaps in 1995-97 it was not clear that Moss was part of a larger development effort, but that statement can no longer be made. Any attempt otherwise would be to defraud the public and would cause significant unmitigated environmental impact, violating numerous CEQA and coastal act codes.

Irrefutable Evidence of a Larger Development:

1. **TLLC share significant portion of costs for \$800K mitigation measure:** The 1995 Moss project (93 acres) was required as part of the 1997 subdivision approval to upgrade Fox Farm Road to a Category 4 standard for supposed fire safety. The fact is the TLLC shared in the costs of this \$800,000 mitigation measure (statement by Bob Morris 4/09) because they were interested in getting the Moss application approved with only this required mitigation. Then once approved, the remaining 590 acres or so could be sold at a value as if they had automatic 20 acre development rights, without doing any additional mitigation for the 680 development. No considerations for Trinidad's water or others who currently draw limited water from creeks that flow out of the TLLC lands, or for increased traffic on Westhaven Drive and at the freeway interchange, nor consideration for the increase in demand for school, police, and fire emergency services
2. **TLLC shares in Moss Legal and planning costs:** The Moss Project legal and planning costs have been paid in part by the TLLC as part of an arrangement that has misled the county and the public.

3. **Moss agrees to mitigation measures costing as much as the development is worth:** At the original appeal hearing before the County Board of Supervisors in 1995 the Board asked Harless McKinney, their Director of Real Property Services, a branch of the Department of Public Works, what was the deal with this Moss subdivision. Here the Board had public members and those that were familiar with the project stating that a larger development was underway, but the applicant was saying only a 4-parcel subdivision was planned. County planning was acting deaf and dumb because a deal had been struck by the previous planning Director to allow development with only the Fox Farm road upgrade. So the Board asked Harless what was up? He said that in all his years working for the county he had never had a developer agree to a mitigation measure that cost as much as the so-called development was worth. His point was that for someone to agree to such an expensive mitigation cost they had to have substantial financial assistance from someone who hoped to gain financially from such an arrangement.
4. **Over 100 perk tests:** Over 100 perk tests have been completed on the TLLC properties of which Moss was part to set the stage for development of the entire area. No permits were secured for this work.
5. **Water supply studies to develop the whole property:** Water supply studies have been completed to develop the whole TLLC properties.
6. **Major road upgrades completed without permits:** Road upgrades have been completed on Moss and all over the TLLC property all with no permits. This was validated by CDF in 1998, but neither the County nor CDF have done anything about this extensive unpermitted grading work, even though I have submitted multiple complaints. The county has refused to investigate or enforce this illegal subdivision road building, as is the case with CDF even though Bob Morris (one of the owners of the TLLC) says the road work was covered under a series of Timber Harvest Plans (THP's). When in fact a review of these THP's shows that the TLLC never had permission for the major upgrades completed on miles of subdivision standard road systems. Miles of grading, tens of thousands of yards of grading and road rocking with no permits. In fact, Bob Morris (acting as a Registered Professional Forester) made statements in every approved THP for the TLLC lands that they were only going to be doing minor brushing and grading of existing roads. This was another act of fraud to avoid cumulative impacts analysis as required by the California Forest Practices Act. This is also a violation of the Professional Code of Ethics for Foresters who are supposed to act in the best interest of the environment as well as for their client.

7. **Road paving and underground utility installation without permits:** Road paving and underground utilities (irreversible momentum)
After completing the illegal road improvements the TLLC also paved the main roads in their development and laid underground conduit for future development to a five acre parcel level.
8. **Ghera subdivision:** One of the TLLC's 9 patents was sold to a Mr. Ghera who made a public statement at the Moss appeal hearings in 1997 that he never intended to split his 40 into 2-20 acre parcels. This statement was made in an effort to support Moss's and TLLC's statement that no other development was planned other than the Moss subdivision. Since 2005 Mr. Ghera has been trying to subdivide his 40 acre parcel but the county has required an EIR and so nothing has happened yet.
9. **All patents for sale and developing, not just MOSS:** Of the 9 patents created from the original 680 acre NHT property, 5 have sold and are developed or developing. The remaining 440 acres for sale with statements of development rights and PUD potential. See attached sales brochure.
10. **More subdividing:** A recent sale of one of the patents, an 80 acre parcel, had the new owners calling me several times to discuss options for subdividing, and the larger issues of fire, traffic, sewage, and water.
11. **Hydrologic effects from land conversion:** One sale of a 29 acre patent parcel by TLLC involved the new owner converting over 10 acres from forestland to open meadow which can have dramatic negative effects on the hydrology of the Luffenholtz Creek. These levels of timberland conversion to meadow in TLLC sold properties is five to ten times the level of clearing seen in the clustered development at the top of Fox Farm Road. The net effect is that the unplanned and unpermitted developments of the TLLC to date have led directly to significant negative hydrologic impacts to Luffenholtz and other local streams. **Peak flows and turbidity are increased in the winter and low flows are decreased in the summer.** With Trinidads water supply already being listed as existing in an "Impaired Watershed" this is serious. They are already dealing with excessive sediment and turbidity issues that create expensive and health threatening affects to their water system.
12. **Fire Danger has increased from so-called fire safety implementation:** Fire safe road improvements have in fact made the road less fire safe. The only significant mitigation measure required of

the original Moss application in 1997 was the upgrade of Fox Farm Road to a Category 4 road based on CDF's fire safe standards. Vegetation transects and photo documentation confirm that in fact the so-called mitigation measures have made Fox Farm Road more fire prone and have made our neighborhoods less safe rather than safer. The improvements are a generic set of requirements that CDF has developed that themselves can have undesired negative affects. The idea is that with new development a wider road is needed to allow for safer ingress and egress during a fire situation. For Fox Farm Road and its environs has a fire return interval of 50 years or longer due to the normally wet coastal environment. The last significant fires in the area were in the late 30's and early 40's. So rather than develop a less impacting pull out plan along the road for ingress and egress, the existing road right of way was clear stripped, widened, and paved. The outcome has been that the previous road, which was narrow and had near misses occasionally, but no serious accidents, has been converted from a road lined by fire resistant vegetation to one lined by fire prone vegetation. The vegetation was converted from predominantly rhododendron, huckleberry, salal, to mostly scotch broom, pampas grass, and tall grasses. So, now it is safer to get in and out during a fire that will probably happen more often. In fact there have been several fires along the road in this fire prone vegetation since the road improvements have been completed.

13. **Non-motorized transportation safety was compromised:** Before the Moss road construction so-called mitigation measure, the road was narrow and tree-lined and people walked along the road or road bikes on a regular basis. These activities have become more dangerous with the straightening and widening that has sped up traffic and made things more dangerous. This project did not consider transportation equity.
14. **Road improvements did not receive a CEQA or Coastal Act review:** Furthermore, the Fox Farm Road improvements were not evaluated under CEQA or under the coastal zone requirements even though the lower end of the improvements are in the coastal zone. The county made the decision that no evaluation was needed because it was a mitigation measure for other impacts. This was a violation of CEQA and must be remedied this time around. The road project itself is a significant element of "irreversible momentum" and is required to be evaluated by CEQA, especially because a part of the project is in the coastal zone.
15. **Difference of opinion amongst experts:** A final point is that some of the above information was presented during all phases of the Moss application as "Expert opinion" but was completely disregarded simply

because the information provided was in opposition to the project being piecemealed by the County. CEQA is clear that disagreement among experts is enough to trigger the requirement for an EIR. The county must adhere to this requirement. I have lived in the watershed in question for 35 years and have a Bachelors Degree in Natural Resources and am currently in my final year of a Masters program in Watershed Management focused on hydrologic effect in watersheds. My thesis work on water quality relationships to land use practices is expected to be complete in 2010 and focuses on Luffenholtz Creek. I am an expert in these areas.

16. **Project has been changed by developer thus the county is not constrained by the courts narrow ruling.** The above information was not in front of the court. The whole 680 is developing. There is substantial evidence for this as documented in the files, on the ground, and by Mr. Moss's and TLLC's own actions over the past 15 years.

Moss Specific Impacts

The following are impacts that are specific to the Moss Project in addition to all of the above reasons for denial of this project in its current form. These impacts are evidence of the lack of concern for the local community and watershed by Mr. Moss.

Carcass dumping

For the past ten years there has been illegal dumping of bear, lion, deer and other animal carcass at several spots around the property, according to neighbors and based on evidence visible from the county road.

Stolen vehicle dump

For the past 15 years the roads on the Loss property has been un-gated and unsecured leading to the illegal dumping described above and the dumping of stolen vehicles as well, according to the Highway Patrol. These unsecured and unmaintained roads have also experienced significant erosion with failed waterbars and gullies visible from the county road.

Unchecked erosion

The addition of more homes in the North Fork of Luffenholtz Creek will reduce available water to the City of Trinidad via direct withdrawals and from land conversion, which will affect the hydrology and water supply negatively as described above.

More sediment

More roads and development in the steep slopes of the inner canyon of the North Fork will mean more sediment in the stream and more turbidity for Trinidad's water supply.

More fires

More development means a higher potential for forest fire starts and the impacts of a fire in the watershed would be devastating to Trinidad's water supply.

More traffic

More development means more traffic. It is a joke to think that widening Fox Farm Road in any way deals with the existing issues on Westhaven Drive and at the freeway interchanges. Traffic equity issues are huge here as it has become so dangerous less and less people walk or ride along the road creating even more dependency on automobiles.

Less Fish

More development, more roads, more septic and sediment runoff, higher flows in the winter, and lower flows in the summer are all potentially significant impacts to the fisheries of Luffenholtz Creek.

Less Water

Water quantity is a huge issue for the City of Trinidad and for residents of Westhaven along Westhaven Drive below the Moss and TLLC development. A review of the files at the City Hall shows that there are varying data regarding the available quantity of water. Data collected in the drought years of the 1970's showed that the creek was running dry and the City was considering a emergency water conservation moratorium. The Cities recent Water Feasibility study 2003) states that, "the actual flow in the creek may not be sufficient under some low flow conditions. It appears based on reports from the 1977 drought that flow in the creek could drop below 280 gpm. This would allow only about 210 gpm for the City to use considering the required bypass flows. This is slightly above the projected 2021 maximum day demand rate of approximately 200 gpm.

The Engineering report also states that "riparian rights have a higher priority than appropriative rights. If water becomes limited, priority goes to riparian users first then to appropriative users in the order in which they filed for their water right permit. The implication of this is that the existing appropriative rights could essentially be negated by future riparian uses. In a small watershed like Luffenholtz, this issue is worthy of consideration, because a few riparian users could reduce stream flow during critical periods to a point where there is not enough water for the Trinidad system".

So, not only can new riparian owners use up the water first, but with land conversion from forest cover that aids in rainfall infiltration, to meadows that increase winter runoff and reduce summer low flows, they can seriously reduce the available water.

Therefore any additional withdrawals, threatens the Cities water supply. Furthermore, with Steelhead already listed as threatened any more water

reductions would be a direct take of species in violation of the Endangered Species Act.

Dead Man Gulch Water

One of the Moss parcels is in the Dead Man Gulch watershed. Water quantity is already to minimal to provide for existing riparian users. A survey of the property owners at the bottom of the watershed shows that all of the current users experience a lack of available water in summer low flows. High turbidities from upslope illegal road construction have also been a significant problem. One of the TLLC patent parcels has already installed two large pumps into Dead Man Gulch above the existing users further drying out their supply. These two new wells are taking water from Dead Man Gulch for use in a separate watershed without any appropriative rights for diversion. The county has been negligent in its oversights of these development impacts. Development of the Moss project would further reduce the available water for these downstream riparian users.

Cumulative Impacts

Impacts to these endangered steelhead have been so severe that it could be argued that any impact is to much given the severity of their condition from existing land use practices let alone more development.

Fish Species in Luffenholtz Creek

Regardless of what the court has said in regards to what fish species to evaluate for the supplemental EIR, this does not change the requirements of the Endangered Species Act (ESA) nor does it change the facts as to what species of fish exist in Luffenholtz Creek. The fact is that there are anadromous and resident steelhead and cutthroat trout using Luffenholtz Creek. This has been documented recently by the SRAMP program of Cal Fish and Game, and I have also personally observed both Steelhead and Cutthroat Trout in Luffenholtz Creek. Steelhead are a federally listed species and cutthroat are a candidate species for listing. I have been involved in water quality monitoring throughout the Luffenholtz Creek watershed for the past three years. In the process of doing all of this sampling I have had many trout sightings at various locations in the watershed.

Documentation

All of the above is documented in the Moss project files and I can validate all claims. If there are any questions or you require additional proof please contact me.

Conclusion

I hope that the above information makes it clear that a full EIR is required and that the sooner the county requires this, based on the applicants own significant changes to the substance of their application, the sooner good planning that follows the law can be achieved. It would be a waste of everyone's time to

continue with this charade and unfair business practices on the part of the TLLC when others have followed the law and paid for the costs.

Sincerely,

Stephen Sungnome Madrone

cc. Hugh Scanlon, California Department of Forestry
Mark Van-Hatterm, California Department of Fish and Game
Regional Water Board
Dan Free, NOAA Fisheries, NMFS
Mayor and Council, City of Trinidad
Bill Verrick, Attorney at Law