DISCUSSION/ACTION AGENDA ITEM X.1
Date: August 11, 2010

Item: **PLANNING APPLICATION 2010-06 REGARDING THE REQUESTED REMOVAL OF CONDITIONS ON THE TRINIDAD BAY BED AND BREAKFAST**

Background: In 1985, the Trinidad Planning Commission and the City Council approved a request to establish a bed and breakfast inn at the residence at 560 Edwards Street. The approval included two conditions, and the current owner has filed an application requesting that those conditions be removed.

During the public review at the Planning Commission at its July, 2010 meeting, it was pointed out that, since the original approval and conditions were placed by the City Council, it would be appropriate for the current City Council to either remove, modify, or confirm the conditions that were placed in 1985.

The Planning Commission did complete its discussion of the item and agreed with the applicant to remove the conditions placed in 1985. In their place, the Commission recommended three new conditions that are included on page 6 of the attached report.

The applicant will be present to express his opinions as to these new conditions.

Staff Recommendation: Approve the applicant's request to remove the 1985 conditions, and add three new conditions as recommended by the Trinidad Planning Commission.

Attachments:
- Staff Report dated July 8, 2010, from Trever Parker;
- Response email from the County Health Department regarding its acceptance of removal of the 1985 conditions; and
- Proof of work done on the septic system at the Trinidad Bay Bed and Breakfast since the Planning Commission meeting on 7/21/10.

Filed:	July 8, 2010
Staff:	Trever Parker
Staff Report:	July 9, 2010
PC Hearing Date:	July 21, 2010
Commission Action:	Rcmd Cond'l Approval
CC Hearing Date:	August 11, 2010
City Council Action:	

STAFF REPORT: CITY OF TRINIDAD

APPLICATION NO:	2010-06
APPLICANT (S):	Michael Morgan
AGENT:	NA
PROJECT LOCATION:	560 Edwards Street
PROJECT DESCRIPTION:	Modification of an existing Conditional Use Permit for the Trinidad Bed and Breakfast to remove two conditions previously placed on the original project approval in 1985 that (1) a commercial linen service must be used, and (2) that the use permit will be suspended if the septic system were to fail.
ASSESSOR'S PARCEL NUMBER:	042-101-07
ZONING:	PD – Planned Development
GENERAL PLAN DESIGNATION:	PD – Planned Development
ENVIRONMENTAL REVIEW:	Categorically Exempt from CEQA per § 15305 of the CEQA Guidelines exempting minor alterations in land use limitations.

APPEAL STATUS:

Planning Commission action on a coastal development permit, a variance or a conditional use permit, and Design Assistance Committee approval of a design review application will become final 10 working days after the date that the Coastal Commission receives a "Notice of Action Taken" from the City unless an appeal to the City Council is filed in the office of the City Clerk within that time. Furthermore, this project is____ / **is not _X_** appealable to the Coastal Commission per the City's certified LCP, but may be appealable per Section 30603 of the Coastal Act.

STAFF COMMENTS:

Because of the nature of this request, most of the staff report discussion items do not apply, and so this is an abbreviated form of a staff report.

Background

The Bed and Breakfast was originally converted from a single-family residence in 1985 by previous owners of the property. According to file information, the project was rather controversial at the time, and residents were adverse to the idea of a commercial establishment in this location. Conditional Use Permits do not expire (unless written as such) and run with the land, meaning they transfer to new property owners. Only two conditions were placed on the original issuance of the Use Permit: (1) that "a commercial linen service must be used;" and (2) that "if the septic system fails, this permit shall be discontinued until the system is brought up to standards or replaced; a compliance check shall be made by the City Building Inspector." The applicant is requesting that both conditions be removed at this time. A discussion from staff's perspective is included below under 'sewage disposal.' Also see the letter submitted by the applicant for additional reasoning and support.

SITE CHARACTERISTICS:

The subject property is located on the corner of Trinity and Edwards Street. It is developed with a large, 5-bedroom residence and outbuildings that have previously been approved for use as a bed and breakfast. The site is generally flat, and access is from Edwards Street. The project will not result in any changes to the physical characteristics of the site.

ZONING ORDINANCE/GENERAL PLAN CONSISTENCY

A bed and breakfast is an allowable use with the granting of a use permit in the PD zone (§17.36.020). A use permit to run a 5-bedroom bed and breakfast was granted by the City in accordance with the certified Local Coastal Plan (LCP) in 1985. Within the PD Zone, all uses require a use permit (even a single-family home) and all use permits in the PD Zone must be approved by the City Council after a recommendation by the Planning Commission. The proposed project will not change any structures or the use of the property that would affect zoning, setbacks, etc.). This request could be considered a change in the intensity of the use, but still meets the requirements of the LCP. The Use Permit findings are included below, but they should be considered just in terms of removing the conditions, not the existing use as a bed and breakfast.

SLOPE STABILITY:

The property where the proposed project is located is outside of any areas designated as unstable or questionably stable based on Plate 3 of the Trinidad General Plan.

SEWAGE DISPOSAL:

Condition 1

When looking at all the facts surrounding the situation, this condition could be considered somewhat unreasonable. I can find no evidence that this condition was based on any real data or professional recommendation. There was quite a bit of involvement in this project from the County Division of Environmental Health (DEH), and they never had any objections (thought they did have concerns) with the project, and this condition was not a recommendation of DEH. The septic system was upgraded in 1989 to add a larger tank and additional leachlines. However, it still does not meet current standards were a new system for a new business to be installed today, but is still better than it was in 1985. The system is being well maintained according to documentation submitted by the applicant showing pumping records from Steve's Septic Service. The current owner has the system pumped annually in order to protect it. The property does not appear to use significantly more water than neighboring properties. In addition, the condition was intended to reduce the amount of water going into the system, so there should be no restriction on the property owner taking the laundry to his adjacent property and doing the wash there. There would also be no restriction on the owner paying some other nearby resident to do the laundry, which would not reduce the amount of water going into the ground in general.

Although DEH did have some concerns since the system is undersized for the use, they determined that they had no objections to the removal of the condition to use a commercial laundry service as long as a record of an annual wet weather season inspection of the system is provided to DEH. In addition, the Planning Commission noted that the City's OWTS Management Program, that should be implemented some time this year, is designed to protect such systems as this, and will require its own rigorous inspection and maintenance schedule. The Planning Commission also included a condition to require that an effluent filter be installed if not already to protect the leachfield from keeping solids out of it.

Condition 2

The second condition placed on the project that the business must cease if the septic system fails is covered by other laws. If the system were to fail the County Division of Environmental Health (DEH) would take immediate enforcement action. This situation is also covered by the City's recent OWTS Management Program ordinance. I don't see how the condition adds any more protection or enforcement ability since other mechanism are already in place. However, this condition was a recommendation of the DEH as part of the referral process for the use permit processing in 1985. Conditions may have been different then and the County did not have as many options for enforcement. But at this point, the DEH has no issue with removing this condition.

LANDSCAPING AND FENCING:

There is no landscaping or fencing associated with this project.

DESIGN REVIEW / VIEW PROTECTION FINDINGS:

Because the project will not alter any structures, and will not change the topography of the site by more than 2 feet, no Design Review is required.

USE PERMIT FINDINGS:

The following findings, as may be revised, are required in order to approve this project. As usual, the findings are written in a manor to allow approval of the project, but if the Planning Commission disagrees with any of the findings, or public testimony presents conflicting information, then the findings should be reworded accordingly.

A. *The proposed use at the site and intensity contemplated and the proposed location will provide a development that is necessary or desirable for and compatible with the neighborhood or the community.* Response: The use of the site as a bed and breakfast has already been established. The removal of the conditions relating to the septic system will not alter the use.

B. *Such use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity or injurious to property improvements or potential development in the vicinity with respect to aspects including but not limited to the following:*

1. *The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;* Response: There is no evidence that utilizing the existing septic system for laundry will adversely affect the function of the system.

2. *The accessibility of the traffic patterns for persons and vehicles, and the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;* Response: The proposed project will not affect traffic or parking.

3. *The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;* Response: The proposed project will not involve any emissions. Other legal safeguards are already in place to project public health and the environment should the OWTS fail or malfunction.

4. *Treatment given, as appropriate, to such aspects as landscaping, screening, open space, parking and loading areas, service areas, lighting and signs;* Response: The proposed removal of conditions will not affect any of these items.

C. *That such use or feature as proposed will comply with the applicable provisions of this title, will be consistent with the policies and programs of the general plan*

and will assist in carrying out and be in conformity with the Trinidad coastal program. Response: As discussed above, under the Zoning Ordinance / General Plan Consistency section, the proposed project can be found to be consistent with the City's Zoning Ordinance, General Plan and Local Coastal Program.

D. *That the proposed use or feature will have no significant adverse environmental impact or there are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available which would substantially lessen any significant adverse impact that the actions allowed by the conditional use permit may have on the environment.* Response: Removal of conditions is exempt from CEQA per § 15305 of the CEQA Guidelines exempting minor alterations to land use limitations.

E. *When the subject property is located between the sea and the first public road paralleling the sea or within three hundred feet of the inland extent of any beach or of the mean high tide line where there is no beach, whichever is the greater, that:* Response: The project is not located between the sea and the first public road, therefore the following findings are **not** applicable.

1. *The development provides adequate physical access or public or private commercial use and does not interfere with such uses.*

2. *The development adequately protects public views from any public road or from a recreational area to, and along, the coast.*

3. *The development is compatible with the established physical scale of the area.*

4. *The development does not significantly alter existing natural landforms.*

5. *The development complies with shoreline erosion and geologic setback requirements.*

PLANNING COMMISSION RECOMMENDATION:

Based on the above analysis, the project is consistent with the City's Zoning Ordinance and General Plan and other policies and regulations, and the necessary findings for granting approval of the project can be made. The Planning Commission agreed with staff's recommendation and found that the Use Permit Findings could be made, and recommended conditional approval of the project with the following motion:

Based on application materials, information and findings included in this Staff Report, and based on public testimony, I move to adopt the information and required findings in this staff report and recommend that the City Council approve the project as conditioned herein.

CONDITIONS OF APPROVAL

1. The property owner shall have the septic system inspected annually during the wet weather season and the results provided to DEH each year. This inspection schedule may be modified under implementation of the City's OWTS Management Program with written approval from DEH.

2. The owner recognizes that if the septic system fails, steps will be taken by the City and / or DEH to rectify the situation, which may include suspension of the Use Permit or temporary closure of the business until the system is repaired to the satisfaction of DEH.

3. The next annual inspection, to occur in the upcoming wet season, shall conform to the requirements for a performance inspection under the City's OWTS Management program verifying the function of the entire system, including the leachfield and confirming the presence of absence of an effluent filter. If an effluent filter is not already installed, one shall be installed at the time of inspection.

Attention - Pat Morales

APN: 042-101-07
DATE: July 5, 2010
APPL. # 2010-06

APPLICATION REFERRAL FORM

FROM: Trever Parker, City Planner
Phone: (707) 822-5785; FAX: (707) 822-5786; email: trever@streamlineplanning.net

TO:
___ City Engineer
_X_ Co. Health Department
___ CA Department of Fish and Game
___ Building Inspector
___ CA Coastal Commission
___ U.S. Army Corps of Engineers

RE:
___ Design Review
_X_ Use Permit
___ Other _____
___ Variance
___ Minor/Major Subdivision

RECEIVED

DATE NEEDED BY: July 14, 2010 (Please call if comments cannot be prepared by this time. Otherwise it will be assumed that you recommend approval. Please send comments to Trever Parker, City Planner at: STREAMLINE Planning Consultants, 1062 G St. Suite I, Arcata, CA 95521)

APPLICANT: Mike Morgan

COPY
FYI

PROJECT LOCATION: 560 Edwards Street, Trinidad, CA

PROJECT DESCRIPTION: Modification of an existing Conditional Use Permit for the Trinidad Bay Bed and Breakfast to remove a previous condition placed on the original project approval in 1985 that all laundry must be done off-site.

CEQA STATUS: _X_ EXEMPT ___ NEGATIVE DECLARATION ___ EIR

APEALABLE TO THE COASTAL COMMISSION? _X_ YES ___ NO

TO BE COMPLETED BY RECIPIENT

CHECKLIST OF ITEMS NEEDING TO BE ADDRESSED: ___ NONE

1. ___ ZONING
2. ___ WATER
3. ___ SEPTIC
4. ___ ELECTRIC
5. ___ ACCESS
6. ___ EASEMENTS
7. ___ SETBACKS
8. ___ SIDEWALKS
9. ___ GRADING
10. ___ DRAINAGE
11. ___ ENCROACHMENT
12. ___ VEG. CLEARING
13. ___ CREEKS, WETLAND
14. ___ SURVEYS
15. ___ ST. LIGHTING
16. ___ HAZ. MATERIALS
17. ___ PUBLIC SAFETY
18. ___ POLICE CONCERNS
19. ___ OTHER _____

PROPOSED CONDITIONS OF APPROVAL, COMMENTS & RECOMMENDATIONS:

7/15/10 DEH HAS NO OBJECTION TO THE AFOREMENTIONED MODIFICATION UNDER THE CONDITION THAT A RECORD OF AN ANNUAL INSPECTION OF THE SEPTIC SYSTEM IS PROVIDED TO THE DIVISION OF ENV. HEALTH

COMMENTS CONTINUED: ___ ON REVERSE SIDE ___ ATTACHED ___ NONE

STEVE'S SEPTIC SERVICE

#1 IN THE #2 BUSINESS !

1810 Murray Road
McKinleyville, CA 95519

Invoice

Date	Invoice #
6/1/2010	9154

Bill To
Trinidad Bed & Breakfast P.O. Box 849 Trinidad, CA 95570-0849

P.O. No.	Terms	Due Date	Location
	Net 15	6/16/2010	

Serviced	Item	Description	Qty	Rate	Amount
6/1/2010	Pump Septic-C	Pump 1500 gallons from septic tank		600.00	600.00
6/1/2010	Discounts			-25.00	-25.00

TERMS:A Finance Charge of 1.5% per month (18% per annum) will be charged on past due accounts

Total	$575.00
Payments/Credits	$0.00
Balance Due	$575.00

Phone #	Fax #	E-mail
(707) 839-2270	(707) 839-2112	sssllc2112@sbcglobal.net

Aug 03 10 11:37a Teresa Green 707-839-2112 p.2

STEVE'S SEPTIC SERVICE

#1 IN THE #2 BUSINESS !

1810 Murray Road
McKinleyville, CA 95519

Invoice

Date	Invoice #
8/3/2010	8996

Bill To
Trinidad Bed & Breakfast P.O. Box 849 Trinidad, CA 95570-0849

P.O. No.	Terms	Due Date	Location
	Net 30	9/2/2010	560 Edwards Street Trinidad

Serviced	Item	Description	Qty	Rate	Amount
8/3/2010	20" Lid-Plastic	20" Round Riser Lid	4	20.00	80.00T
8/3/2010	Riser-6x20	6" High x 20" Diameter Riser	4	20.00	80.00T
8/3/2010	4" Effluent Filter	4" Effluent Filter w/ T-Baffle Housing	1	45.00	45.00T
8/3/2010	Couple PVC S&D 4...	Couple PVC S&D 4" HxH	1	25.00	25.00T
8/3/2010	Misc. Fittings	Bags of Hydraulic cement	5	20.00	100.00T
8/3/2010	Materials-Septic NIP	Quick Concrete	2	10.00	20.00T
8/3/2010	Labor	Repair outlet pipe to install filter		145.00	145.00
8/3/2010	Labor	Water test; repaired crack on gray water tank		180.00	180.00
		Sales Tax		8.25%	28.88

TERMS:A Finance Charge of 1.5% per month (18% per annum) will be charged on past due accounts

Total	$703.88
Payments/Credits	$0.00
Balance Due	$703.88

Phone #	Fax #	E-mail
(707) 839-2270	(707) 839-2112	sssllc2112@sbcglobal.net

STEVE'S SEPTIC SERVICE
#1 IN THE #2 BUSINESS !
1810 Murray Road, McKinleyville, CA 95519
(707) 839-2270 / Fax: (707) 839-2112
E-mail: sssllc2112@sbcglobal.net

Onsite Wastewater Treatment System Inspection Report

Jason

Ordered by Whom: Trinidad Bed+Breakfast Date/Time Scheduled: 8/3/10 9am

Send Copy to: Same Fax to:

Site Address: 560 Edwards Street Trinidad

Billing Address: P.O Box 849 Trinidad

Phone: 845-9040 Phone: 677-0840

A. General Information: (Obtain as much as possible when inspection ordered)

1.) Age of wastewater treatment system: ? years.
Was a Homeowner Questionnaire completed? ○Yes ○No
○Water softner ○Garbage disposal ○Whirlpool bath ○Cleaning service
In-Home Business: type_____
Flow Meter:

2.) Number of people occupying dwelling: Currently: _____ Anticipated: _____
If currently unoccupied, for how long has it been vacant? _____ months

3.) Number of bedrooms in dwelling: _____
Design: _____ Listing: _____

4.) Has there ever been a backup in the house? ○Yes ○No

5.) List any known repairs made to the system: _____

6.) Has the system recently been inspected by others? ○Yes ○No

7.) Is there a service contract for system components? ○Yes ○No
Company: _____

8.) Date the treatment tank last pumped: _____ ○Never to my knowledge
At what frequency?: _____ Company: _____

The above information is true to the best of my knowledge.

Owner Date

Aug 03 10 11:38a Teresa Green 707-839-2112 p.4

B. System Type

1.) Components of Wastewater Treatment System (complete as necessary)

Pretreatment Unit 1: _____ [1200] [gallons or gpd]
~~Pump: Pump Tank 1~~: _____ / _____ gpm/tdh [_____] [gallons]

Pretreatment Unit 2: _____ [800] [gallons or gpd] Grey water
~~Pump: Pump Tank 2~~: _____ / _____ gpm/tdh [_____] [gallons]

Soil Treatment Unit: Leach [?] [square feet]

Additional Components:

3.) Gray-water run-off or drainage system?

○None ○Surface ☒Subsurface Discharge

Comments: Pasted water Test OK!

C. Evaluation Procedures: (Check the appropriate boxes)

Locate, access and open the septic tank cover	☒Yes	○No
If at grade, is the cover "secure?"	☒Yes	○No
Can surface water infiltrate into the tank?	○Yes	☒No
Any indicators of previous failure?	○Yes	☒No
Inspect lid, inspect level, measure sludge and scum, check effluent screen	☒Yes	○No
Run an operation test	○Yes	○No
Gallons added in the test 300 gallons Both Tanks		
If applicable, pump out primary treatment tank	○Yes	☒No
Listen and observe for backflow into the tank from the outlet pipe		
Comments: Sealed + Repaired + Installed Risers + filter		

Caution: Do not pump treatment tank if there is evidence of a malfunction in any portion of the system.

Inspect the condition of the primary treatment tank Repaired	☒Yes	○No
(i.e. cracks, infiltration, deterioration or damage) Crack in Grey water Tank.		
Inspect the integrity of the inlet and outlet baffles	☒Yes	○No
(i.e. deterioration or damage)		

Does the system contain a dosing or pump tank, ejector or grinder pump?	○Yes	○No
If so, did you check integrity of the tank (cracks, infiltration, etc?)	○Yes	○No
Is the pump elevated off the bottom of the chamber?	○Yes	○No
Does the pump work?	○Yes	○No
If there is a check valve, is a purge hole present?	○Yes	○No
Is there a high water alarm?	○Yes	○No

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Does the alarm work? ○Yes ○No
Do electrical connections appear satisfactory? ○Yes ○No
Did you clean the pump tank? ○Yes ○No

Probe the soil treatment area ☒Yes ○No
check for excessive moisture, odor and/or effluent

Type of Distribution: ☒Gravity ○Pressure

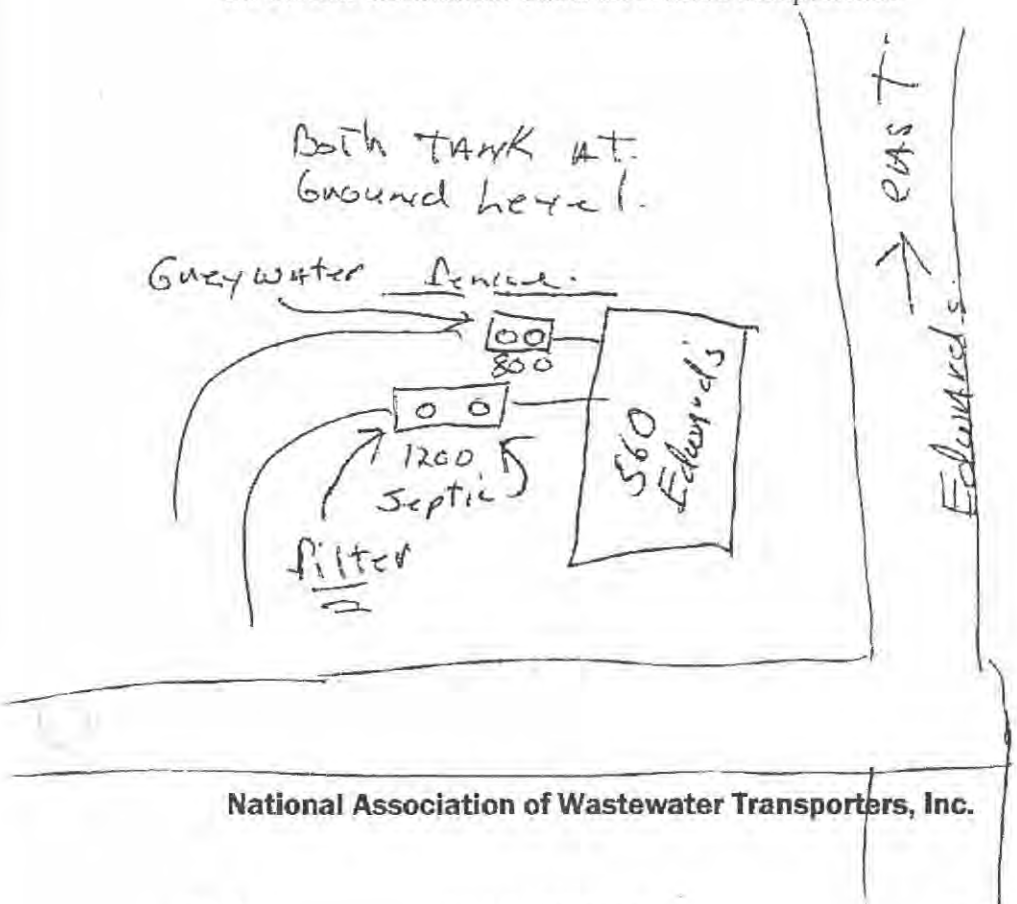
Is There:
Any indication of a previous failure? ○Yes ☒No
Seepage visible on the lawn? ○Yes ☒No
Lush vegetation present? ○Yes ☒No
Ponding water in the distribution media? ○Yes ☒No
Even distribution of effluent in the field? ☒Yes ○No

Determine approximate distance between water well and soil treatment area.
Approximate distance is Com. water feet.

Explain answers as necessary:
Both are old systems but working Good!
filter on 1200 Tank need cleaning once a year

D. Sketch of System

For reproducible results, show dimensions from structures that will not change, such as corners or the house. Show details, such as the rod, in relation to the house to get the correct orientation. Show all located components.



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E. Checklist Summary

1.) Pretreatment Unit 1 is in	☒Acceptable	○Unacceptable	condition.
Pretreatment Unit 2 is in	☒Acceptable	○Unacceptable	condition.
Comments:			
2.) Soil Treatment area is in	☒Acceptable	○Unacceptable	condition.
Comments:			
3.) Pump and pump tank is in	○Acceptable	○Unacceptable	condition.
Comments:			

F. Disclaimer

Based on what we were able to observe and our experience with onsite wastewater technology, we submit this Onsite Wastewater Treatment System Inspection report based on the present condition of the onsite wastewater treatment system. Steve's Septic Service has not been retained to warrant, guarantee, or certify the proper functioning of the system for any period of time in the future. Because of the numerous factors (usage, soil characteristics, previous failures, etc.) which may effect the proper operation of a wastewater treatment system, this report shall not be construed as a warranty by our company that the system will function properly for any particular buyer. Steve's Septic Service DISCLAIMS ANY WARRANTY, either expressed or implied, arising from the inspection of the wastewater treatment system or this report. We are also not ascertaining the impact the system is having on the environment.

STEVE'S SEPTIC SERVICE
#1 IN THE #2 BUSINESS !
1810 Murray Road, McKinleyville, CA 95519
(707) 839-2270 / Fax: (707) 839-2112
E-mail: ssslle2112@sbcglobal.net

Signature

Kent T Tuter
Print Name

Aug 03 10 11:39a Teresa Green 707-839-2112 p.7

AGENDA ITEM #2

SUPPORTING DOCUMENTATION FOLLOWS WITH: PAGES

2. City Comments on the Moss Subdivision

DISCUSSION/ACTION AGENDA ITEM X.2
Date: August 11, 2010

Item: **CITY COUNCIL COMMENTS ON THE DSEIR FOR THE PROPOSED MOSS SUBDIVISION PROJECT**

Background: The public notification for the preparation of a Draft Supplemental Environmental Impact Report (DSEIR) for the Moss subdivision was published in mid-2009. The DSEIR was prepared by LACO Associates under contract to the Humboldt County Planning Department over the past year, and the draft report was made available for public comment on July 8, 2010. The 45-day comment period ends on August 23, 2010.

The City of Trinidad has a long history of commenting on the Moss Subdivision. As now proposed, the project would subdivide a 94 acre parcel into four 20+ acre parcels. The DSEIR specifically looks at the proposed project's environmental impacts on the City of Trinidad's water supply and the impacts on the coastal cutthroat trout.

Staff is offering to the Council areas of potential comments in the attached staff memo from Trever Parker. With Council and public input, the general content of this memo is proposed to be the basis of an eventual formal letter of comment from the City of Trinidad. Public input at the Council meeting may result in additional areas of comments, at the direction of the Council to staff

Staff Recommendation: Discuss the attached staff memo on the DSEIR, and give direction toward the content of a letter of Comment from the City of Trinidad to the Humboldt County Planning Commission.

Attachments: Staff memo dated August 5, 2010; and
(Correspondence from Sungnome Madrone regarding the DSEIR.., WAS NOT RECEIVED BY THE PACKET DEADLINE) -GA

Note: The DSEIR is available for review at Town Hall or online at County Planning Commission website.

Notice of Availability for the Draft Supplemental Environmental Impact Report for the Moss Parcel Map Subdivision, Trinidad Area

Notice is given pursuant to Section 15087 of the California Environmental Quality Act (CEQA) Guidelines of the availability for public review of the Draft Supplemental Environmental Impact Report (EIR) for the Moss Parcel Map Subdivision.

Name of Project: Moss Parcel Map Subdivision
Case Numbers: PMS-03-14
File Number: 515-131-23

Project Description:
A Parcel Map Subdivision of an approximate 94 acre vacant parcel, into four (4) parcels. Proposed Parcel 1 will be approximately 20.11 acres, proposed Parcel 2 will be approximately 21.02 acres, proposed Parcel 3 will be approximately 32.11 acres and proposed Parcel 4 will be approximately 21 acres. All parcels will be served by on-site water and septic systems.

List of Significant Environmental Effects: The proposed project would not result in significant impacts.

Project Location: THE PROJECT SITE IS LOCATED IN HUMBOLDT COUNTY, IN THE TRINIDAD AREA, ON BOTH SIDES OF FOX FARM ROAD, APPROXIMATELY 0.91 MILE NORTHEAST FROM THE INTERSECTION OF FOX FARM ROAD WITH NORTH WESTHAVEN DRIVE, ON THE PROPERTIES KNOWN AS 900, 1180, 1190 AND 1199 FOX FARM ROAD.

Lead Agency: Humboldt County Department of Community Development Services (CDS)

Direct Comments To: Michael E. Wheeler, Senior Planner
County of Humboldt
Department of Community Development Services, Planning Division
3015 H Street, Eureka, CA 95501
EMAIL: mwheeler@co.humboldt.ca.us

Review Period: Comments will be accepted 45 days from the start of the review period, which starts July 8, 2010 and runs through August 23, 2010.

The Draft Supplemental EIR is available for review at the following locations:

- Humboldt County Community Development Services Department, Planning Division, 3015 H Street, Eureka, CA 95501. **Phone:** (707) 445-7541. **Hours:** 8:30 am- 5pm.
- Humboldt County Library, 1313 Third Street, Eureka, CA 95501. **Phone:** (707) 269-1900
- FedEx/Kinkos Eureka, 2021 Fifth Street, Eureka, CA 95501. **Phone:** (707) 445-3334
- Humboldt County Planning's website: www.co.humboldt.ca.us/planning

COPY

CITY of TRINIDAD

MEMORANDUM

TO: Trinidad City Council

FROM: Trever Parker, City Planner

DATE: August 5, 2010

RE: Comments on
Moss Subdivision Draft Supplemental Environmental Impact Statement

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Overall, the Draft Supplemental Environmental Impact Report (DSEIR) is generally thorough in its analysis of the two issues at hand, and also covered alternatives and cumulative impacts. It seemed to cover most of the potential development scenarios, including additional subdivisions and build-out in Luffenholtz Creek as well as the recent request by CDF to acquire City water. Most of the conclusions and assumptions seem reasonable (e.g. estimates of daily water use per residence). In general, staff feels that the document was well done.

However, there are still uncertainties for the future, and it is understood that many people have concerns about this project. Though this particular project consists of only three new lots (four total parcels), which partially limits the direct impacts, this subdivision can set future precedence for other subdivisions and development proposals in the area. There are two main areas where staff feels that some comments and recommendations to the County by the City Council should be considered. These include additional mitigation and enforcement measures and the preferred alternative. I have numbered the issues / concerns and given each suggestion for comment a letter for ease of discussion purposes and to make directing staff in providing specific comments easier.

Background

Chapter one, subsection 1.1 (project background and history) of the DSEIR provides a good background on the project, which has significant history; I suggest reading 1-1 through 1-4 of the DSEIR for a detailed summary. An application for this project was originally submitted in 1995, and no significant impacts were identified under the California Environmental Quality Act (CEQA) by an initial study in 1997. However, the subdivision approval was allowed to expire prior to finalizing it. Some lawsuits ensued, but the applicant was required to submit a new application for the same project, which was done in 2003. The County reviewed the request as a new application and completed a new environmental study that concluded there may be significant impacts.

Another lawsuit was filed alleging that the original study that did not identify impacts should stand since it was the same project. The First District Court of Appeal of California found that the 1997 CEQA Initial Study did stand except for two specific issues where conditions have changed since that time. These are: (1) water supply for the City of Trinidad, and (2) impacts to coastal cutthroat trout. So keep in mind that the County, and City staff review, has been limited to these two issues, and other issues have already been settled by the Court.

Mitigation

The following are some points of consideration for the City Council followed by suggested additions to the existing project mitigations.

Concern 1 – Future Uncertainties
There are many uncertainties in terms of future water use, and stronger protections may be needed to ensure that future development does not impact the water supply for downstream users, including the City of Trinidad, and fish. These uncertainties include drought conditions, altered weather patterns from climate change and the fact that these parcels may utilize their riparian rights beyond just a single-family residence, including for agriculture. Dry weather flow testing was done on a limited basis of a few different years, which may not represent the lowest possible flow conditions. In addition, there is a history of well failures in the area, generally from septic pollution, which requires the development of surface water sources or connection to a public water system; this means that some existing development may utilize these sources in the future, not just new development. Secondary dwelling units are another uncertainty that is discussed further below.

The City's draft General Plan contains the following policy in consideration of expanding water service in the area, which may affect future water withdrawals.

LU-8.2 If capacity and / or storage is adequate, study the feasibility of forming a Water District that includes the area to the east and southeast of the City on either side of the freeway, where some properties are already connected to the system, to allow for additional connections outside the City, as the system allows. Eventual annexation should be considered. An 'annexation agreement' (agreeing not to object to future annexation) with the City is a minimum requirement for providing any new connections outside of City limits. Areas to the north of the City should be part of such a district if services are to be provided there in the future.

Concern 2 – Future Development and Increased Water Demand
The 'project demand' (DSEIR p. 3-15) was estimated based on only three units in the Luffenholtz Creek watershed and one in Deadman Creek. It is noted that the AE zone *"generally... permits a maximum of one residential unit per parcel"* (DSEIR p. ES-3). Though the cumulative analysis section of the document recognizes the potential for second units, it is generally considered "too speculative" to include in this analysis. The DSEIR is not clear whether secondary dwelling units on these lots would be ministerial

or require a discretionary permit. It is also not clear whether the dry-season water storage mitigation requirement would apply to any future second units. Therefore, additional mitigation may be warranted. However, the County Planner since informed me that in the AE zone, the maximum density, regardless of State housing laws is one unit per 20 acres, which would not allow second units on the Moss parcels.

Concern 3 – Water Quality

Luffenholtz Creek is considered a "Critical Water Supply Area," which is defined by the Humboldt County General Plan as *"used by a specific municipality or community for its water supply system, which is so limited in area that it is susceptible to a potential risk of contamination from development activities."*

The DSEIR notes (p. 3-6) that: *"Concentrated run-off from developed portions of the site has the potential to increase erosion along the stream banks, carrying silt and soil into the streams. Runoff from developed areas may contain contaminants, including landscape chamicals (pesticides, fertilizers, etc.) and roadway contaminants."* The DSEIR concentrates all of its analysis on quantity impacts to the water supply of the City, but does not adequately address the water quality impacts, which could also impact cutthroat trout. Large lots such as those proposed are often converted from forest to pasture or garden space. Often dirt roads and paths are created such as for off-road vehicles and site access. These activities can have hydrologic impacts to the stream resulting in more runoff and less storage as well as increased erosion and siltation and introduction of foreign materials, including polluted runoff into the creek.

The City's draft General Plan includes the following policy:

Program LU-9.5.1: Pursue adoption of a public education program regarding pesticides and other hazardous chemical, and when feasible, enter into a non-binding Memorandum of Understanding, or other agreement with property owners within the "Critical Water Supply Area" to minimize the use of these chemicals and reduce contamination of water supplies.

Suggested additions to existing proposed mitigation:

A. IS MM 4 – (site revegetation) should specify 'with native vegetation' (this is a requirement for revegetation within Streamside Management Areas (SMAs), IS MM 7, but should be required throughout the site). This recommendation is related to Concern 3.

B. IS MM 5 – regarding runoff from impervious surfaces should additionally specify that runoff be directed away from the septic system. This recommendation is related to Concern 3.

C. IS MM 7 / EIR MM 1 – regarding SMAs should be enforceable long-term. As currently written, it only applies to the building stages, but should be applied to the parcels into the future. The mitigation measure includes restrictions on development,

disposal and the use of chemicals in the SMAs. This mitigation should be included in a landowner agreement or deed restriction (also see suggested additional mitigation below). This recommendation is related to Concern 3.

D. EIR MM 2 and EIR MM 3 – regarding dry-weather storage and pumping, staff has some concerns about enforcement. These may be difficult provisions to enforce, though the DSEIR makes a commendable attempt at enforcement measures. But what happens after 5 years and property is sold? There should at least be a deed restriction recorded so that future property owners are made aware of the restrictions. There also should be remedial measures in place should the conditions not be complied with. The City may also want the opportunity to review the pumping records annually beyond the five years to ensure that these conditions continue to be followed (also see suggested additional mitigation below). It should be specified that the permanent flow meters have, at a minimum, daily recording capabilities and that these records be submitted annually. This is related to Concern 1 and 2.

E. EIR MM 4 – Staff strongly supports this mitigation measure and future policy, including for any secondary dwelling units even if ministerially approved. Staff feels that this policy can be applied as a standard to be met even for ministerial projects to be verified through a building permit process and that this provision should be added to the condition / mitigation. Staff also has some concerns about enforcement of this mitigation and the timing. The Planning Commission and Board of Supervisions could reject such a policy, or it may not be a priority for an agenda item. Therefore, it should be completed prior to approval of Final Map or Waiver rather than within 12 months. This recommendation is related to Concern 1 and 2.

<u>Suggested additional mitigation:</u>

F. Consider recommending additional mitigation measure(s) that requires landowner agreements or deed restrictions to restrict the use of chemicals such as fertilizers and the amount of land clearing and conversion such as from forest to pasture or to non-native vegetation for the entire parcel, not just the SMAs. This recommendation is related to Concerns 1 and 3.

G. Consider an additional mitigation that requires any future secondary dwelling units to demonstrate that the development will not reduce instream water flow below that necessary for maintaining necessary flows in Luffenholtz Creek similar to EIR MM 4. In addition, clarify that all secondary dwelling units will be required to comply with EIR MM 2 and EIR MM 3 regarding dry-season water storage. This is related to Concern 2, but note that may not be necessary if second units are not allowed in the AE zone. However, this still could be included as a mitigation should the zoning be changed in the future.

H. Consider addition of a condition / mitigation that public works inspection records of metered flows be provided to the City each year for review. This recommendation is related to Concern 2.

Alternatives

Concern 4 – Preferred Alternative

Alternative 2 – Alternative Water Supply (Wells)
The determinations that this alternative would have impacts "less than project" for biological and water resources are unsupported by the facts. Even the description of this alternative acknowledges this: *"Another concern raised in the 2005 Initial Study is that any such well could be directly linked to Deadman Creek, or Luffenholtz Creek, essentially drawing from subsurface flows of those watercourses. In that circumstance, there is the potential that the proposed alternative would cause reductions in surface flows similar to those which would occur under the proposed project."* Then, without any additional supporting information the DSEIR goes on to state: *"Alternative 2 has the potential to maintain existing flows in both watercourses on the subject site, limiting effects both to natural communities and to the water supply which ultimately reaches the City of Trinidad."* Even if this alternative were mitigated so that the new parcels were required to give up their riparian rights, as suggested in the first paragraph describing this alternative, there is no evidence that any wells would not be hydrologically connected to the creeks. Even if the connection were not direct subsurface flow, groundwater storage is what provides the stream's baseflow, which is especially important during the dry season.

Alternative 3 – Clustered Development
Water impacts were found to be similar to those of the proposed project. However, it is also recognized that by clustering the development, land disturbance impacts are minimized. If a large remainder parcel were to be preserved from future development, it is more likely to retain its native cover. With four 20 acre parcels, it is likely that much of the forest land will be converted to pasture land and non-native vegetation and other development such as gardens and trails, which can significantly affect the hydrologic cycle within the watershed – e.g. grasslands tend to store less water, which could affect dry season flows in Luffenholtz Creek. Therefore, this alternative should be considered to be "less than the project."

More generally, most of the effects related to this project were considered to be "similar to the project." However, as mentioned above, clustered development is recognized to have less land disturbance, which reduces several types of impacts to a project. Clustered development is generally considered more walkable and less car-oriented, which could reduce air quality and traffic impacts. Because the clustered development would result in less land disturbances, biological impacts would also be assumed to be less than the proposed project. Also by clustering development, there is increased efficiency in delivering public services (e.g. police and fire), with fewer utility and lines and roads needed. This decreases impacts to aesthetics, cultural resources, public services, utilities and hazards. Fire hazards should also be less since less land would be disturbed.

Staff believes that Alternative 3 should be considered the most environmentally superior alternative and would like to see it further developed and incorporated into the project. Even though this project only involves four lots, it sets precedence for future development in these upper watershed areas that will have larger and lasting effects in the future. Although the DSEIR found that this alternative would have "greater than the project" impacts to land use because the smaller lots are not consistent with General Plan and zoning regulations, these restrictions can be changed through proper permitting process and analysis. In addition, the County is currently going through a General Plan update and policies and zoning that encourage or require clustered development in this area can more easily be incorporated for other areas in the future. The Council should consider suggesting that this alternative be the one that is required to be developed for the project. Note that such a change may necessitate changes to the DSEIR and may also alter the proposed conditions and staff recommendations regarding the conditions above.

AGENDA ITEM #3

SUPPORTING DOCUMENTATION FOLLOWS WITH: 4 PAGES

3. Council Policy for Commenting on County Land Use Issues

DISCUSSION/ACTION AGENDA ITEM X.3
Date: August 11, 2010

Item: **CITY COUNCIL POLICY FOR COMMENTING ON COUNTY LAND USE ISSUES**

Background: This agenda item was continued from the Council meeting on July 14, 2010.

In June, the City Council again discussed how and when the City of Trinidad should comment on land use proposals in the adjacent County areas. Staff had proposed written policy direction. After lengthy discussion, the Council requested that staff return with a more simplified approach to the policy statement.

Two basic questions are addressed in the proposed policy:

- What type proposals being made to the County merit comment from the City of Trinidad?

  and

- Who should comment on a proposal (staff, Planning Commission, or City Council).

The City of Trinidad receives a limited number of referrals for comment on land use or environmental review actions that are within the County's jurisdiction. There is no mandate that the City respond to a notification of a review period, and in fact most notification that have been received in the past at Town Hall have not generated a formal response from Trinidad.

Some proposed actions that are within the County's jurisdiction are still very important to the city of Trinidad. These may rise to a level where the City may want to, at minimum, point out to the County that some potential impact needs to be addressed in the County's review process. For example, a project which may impact drinking water quality or quantity, surface drainage, traffic, municipal services, or other environmental issues may deserve attention from the City. On the other hand, a project proposal which is likely only to impact the specific property, such as a variance from a side-lot setback requirement, would have minimum if any impact on the City of Trinidad.

Most jurisdictions leave the determination of whether or not to comment up to its professional planning staff. It is rare to see one jurisdiction actively support or oppose the actions of another jurisdiction unless a highly controversial proposal is involved. That has been the case only two times in the last three years in Trinidad, so this review and comment process is not likely to happen often. If the review process is intended to bring to light project impacts and potential problems, then the comment period is the City's opportunity to do just that.

The Council discussed the proposed policy at its July 14 meeting but chose to delay action. One change has been made to the proposed policy due to that discussion and public comments, and that change is shown in **BOLD** in the policy,

Staff Recommendation: Approve or amend the proposed policy, or take whatever other action is deemed appropriate by the members of the City Council.

Attachments: Revised proposed policy regarding commenting on Land Use Proposals in the adjacent Humboldt County jurisdiction..

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Steve Albright, City Manager

Date: July 14, 2010 and August 11, 2010

To: Trinidad City Council

From: Steve Albright, City Manager

Subject: Draft **Revised** Policy:

COMMENTING ON LAND USE PROPOSALS IN ADJACENT JURISDICTIONS

The purpose of this policy is to give guidance to elected officials, appointed officials, and staff in Trinidad when requested to provide comments on land use proposals or environmentally related documents in adjacent jurisdictions. Requests for comments are typically received from Humboldt County either as a courtesy or as a legislative mandate due to the proximity to Trinidad of the project proposal.

Initial Screening: Requests for Comments (RFC) are normally received in the City Clerk's Office. The RFC will be date stamped and forwarded to the City Manager. The City Manager will determine whether to forward the RFC for comment to the City Planner or have it filed for information purposes only. Those filed for information purposes only will be kept for one year and available for review by the public in a binder in the City Clerk's Office.

Staff Comment: A RFC on a project which has the potential to impact in some manner the City of Trinidad or an environmentally sensitive area for which Trinidad has some responsibility will be reviewed, and a letter expressing the City of Trinidad's concerns will be forwarded to the County of Humboldt (normally the County Planning Department). Comment letters will be drafted by the City Planner, reviewed by the City Manager **and the Chair of the Planning Commission, and signed by the City Planner and/or the Chair of the Planning Commission.** Typical areas of concern will be water resources, water quality, surface drainage, traffic, or demand for municipal services. Other environmental concerns may be present for specific projects.

Planning Commission Review and Comment: There will be a limited number of RFCs that relate to projects of special significance to the City of Trinidad. Special significance may relate to the historic interest in a project, the size of the project, the potential for environmental impacts, or the potential impact on City-provided

services. Those projects will be forwarded for review by the Trinidad Planning Commission, and the Planning Commission's comments will then be reflected in a letter of comments drafted and signed by the City Planner.

Follow-Up: On a case by case basis, the staff or the Council may choose to attend a public meeting where decisions on significant projects are being discussed. This would be for the purpose of personally reporting the actions of the Trinidad Planning Commission.

The City Council would only become involved if requested by the City Planning Commission of if requested specifically by the members of the Council.

This policy is proposed for comment on projects which are outside the City of Trinidad's jurisdiction. Therefore, there is no legal requirement regarding how, when, or if the City chooses to comment. This is solely at the discretion of the City Council in the implementation of this policy.