

**SUPPLEMENTAL INFORMATION  
No. 13**

For Planning Commission Agenda of:  
June 3, 2010

- |                                     |                               |   |       |
|-------------------------------------|-------------------------------|---|-------|
| <input type="checkbox"/>            | Administrative Agenda Item    | } |       |
| <input checked="" type="checkbox"/> | Continued Public Hearing Item | } | No. 6 |
| <input type="checkbox"/>            | New Public Hearing Item       | } |       |
| <input type="checkbox"/>            | Old Business Item             | } |       |
| <input type="checkbox"/>            | New Business Item             | } |       |

Re:    Applicant:    John and Katrin Homan  
      Case Nos.:    FMS-08-02  
      File No.:     APN: 515-191-37

Attached are additional public comment letters.

Humboldt County Planning Commission  
Homan, John and Katrin File No.: APN 515-191-37 (Trinidad area)  
Case No.:FMS-08-02/CDP-08-25/SP-08-94

May 26, 2010

Planning Commissioners,

**Subject:**

**NEW EVIDENCE OFFERED AT THE MARCH 4<sup>TH</sup> HEARING.**

- Failure to consider written public testimony as significant,
- Improper application of jurisdictional authority in the Coastal Zone.
- Omission of critical environmental impacts to the ASBS.
- Agency referrals overlooked in preparing MND.
  - Coastal Commission      Comments not considered.
  - NCRWQCB                    Mitigation modification not incorporated.
  - City of Trinidad            Comments not considered.
  - NCIC                            Not referred to.

**1      QUESTIONS ASKED OF THE PLANNING STAFF AND THE PLANNING DIRECTOR PRIOR TO PUBLIC TESTIMONY**

Commissioner Faust:

*..is it the view of staff, that the opponents did not present any evidence in support of their objections. .... ..I want to ask staff whether it received or considered any of the evidence of the opponents...*

Planning Staff Response:

*.. there is very little to offer substantial evidence that the claims in the most recent letters have any bearing on the project. There has been, I'd say a handful of evidence submitted that; but kind of spotty over the 2 years."*

Community Development Director Response:

*..we would not be recommending [approval], if we had evidence in the record that is patently inconsistent and would be recommending modifications. There is a lot of evidence that goes to degrees of conformance and goodness of fit with the neighborhood resources, and there has been a tremendous amount of testimony in that realm and that's where I think the judgment of the commission comes in."*

**Comment:**

Between Feb 19<sup>th</sup>, and March 3<sup>rd</sup>, over 100 letters or comments, were submitted by the opponents as evidence in support of their objections. This does not include 150 names on petitions.

**CEQA has determined: "members of the public hold a "privileged position" in the CEQA process. Such status reflects both a "belief that citizens can make important contributions to environmental protection and [ ] notions of democratic decision making".**

## WHY THIS IS NECESSARY FOR THE PROJECT, THE APPLICANT, AND THE PUBLIC

- The public evaluated the MND, researching the facts, and preparing thoughtful substantive comments which focused on the analytical, factual, and procedural errors in the MND. As evidence in support of their objections they cited the Trinidad Area Plan, California Resource Code, Coastal Act, and inconsistencies with CEQA.
- Expert testimony by the public holds no greater or lesser weight than expert testimony provided by the applicant. Where a Negative Declaration appears to be appropriate but the project has resulted in significant public controversy, a court may find that an EIR should have been prepared. In *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, the court stated that “the existence of serious public controversy in itself indicates that preparation of an EIR is desirable.”
- Failure to take public comments seriously almost undoubtedly renders the MND inadequate. The courts have ruled that a project’s falling below a threshold of significance “does not relieve a public agency of the duty to consider the evidence under the fair argument standard.”

## 2. QUESTIONS ASKED OF THE APPLICANT’S REPRESENTATIVE, MIKE NELSON

### Commissioner Faust:

*“Some of the concerns I am hearing are in the comments from the opponents, the written comments I have received so far seem to raise issues with respect to the water quality of the cove which are issues that are addressed in the Public Resource code sections 30230 30231. **And I am wondering if you have dealt with that; whether you had studies done or how you have dealt with that?**”*

### Mr. Nelson, LACO:

Mr. Nelson stated that “since it was not a specific issue that was raised to us by a resource agency or commenting agency we don’t have any specific studies that address the code sections you mention”. Mr. Nelson went further to state, “we have had no direct engagement with the Coastal Commission beyond the first referral comments, which were very **minimal**”.

### Applicable Code:

Section 30230 of the Coastal Act states: Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states: The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.:

### Commissioner Mayo:

Raised concerns “about the function-ability of the septic system that are already there and have you talked to anyone concerning” that. Mr. Nelson responded, “**We did not in terms of a regional perspective**”.

## Commissioner Krebs

Raised concerns about the cumulative impacts outside the property with respect to water quality. Mr. Nelson indicated that he needed to know the “parameters” of the information Commissioner Krebs wanted, Commissioner Krebs responded, “everything that enters College Cove”.

### **3. THE WETLAND TRANSITION LINE AND DELINEATION REPORT BY WINZLER AND KELLY IS INCONSISTENT WITH THE COASTAL COMMISSION’S DEFINITION OF A WETLAND.**

The above Delineation Report used the following guidelines to determine the wetland on the Homan parcel:

- a. The Trinidad Area Plan (1995)
- b. California Department of Fish and Game (1994)
- c. The Corps of Army Engineers (ACOE) 1987 Manual

Using ACOE delineation methodology, “the wetland edge was determined as the line where the three components of hydric soil at 10 inches or less, wetland plant dominance and wetland hydrology occur. The delineation report also states: *In this case, the creek itself is an apparent seasonal drainage, (class III) and a 100’ setback would occur above the top of its immediate stream bank. The 100’ foot setback is considered adequate in this case to protect the habitat values of the creek and adjoining wetlands.*” Winzler and Kelly page 377 of staff report.

The study concludes with the following: *Verification of the delineation by jurisdictional agencies is necessary **prior** to the use of this report for development purposes (COE, County of Humboldt, DFG, and California Coastal Commission). **An agency stamped delineation map and jurisdictional approval letter is required to signify confirmation of delineation results.*** Winzler and Kelly page 380 of staff report.

- The ACOE definition, used by Winzler and Kelly is often referred to as a “three parameter definition” because three key parameters: hydrology, soil, and vegetation must all occur in order for a location to be classified a wetland. The Coastal Act uses a “one parameter definition” to establish wetland conditions. The Coastal Commission has jurisdiction over all Coastal Wetlands and setbacks to wetlands.
- The least environmentally protective setback was established at the minimum 100’. The 100’ setback cannot be considered sufficient or adequate since it was established by using methodology other than required by the Coastal Act, which establishes a buffer up to 200 feet. (TAP 3.30 B d.)
- **The Coastal Commission did not submit an approval letter as required.** An agency stamped delineation map and jurisdictional approval letter is required to signify confirmation of delineation results.
- **The Coastal Commission referral made a clear distinction between ACOE and CC jurisdictions.**
  - “Did the wetlands investigation delineate Coastal Wetlands (as well as Federal Army)”
  - “What about project impact on offsite wetlands/stream”
  - “Has the water availability issue been adequately addressed”

**4. MITIGATION MEASURE 17 WAS REQUIRED BY THE NCRWQB TO BE MODIFIED. THIS WAS NOT DONE PRIOR TO THE HEARING, PROVIDING NO OPPORTUNITY FOR PUBLIC REVIEW AS REQUIRED BY CEQA.**

From John Short, Thursday, March 04,-2010 8:30AM  
To Trevor Estlow:

"..... And that the language in your previous email regarding storm water runoff treatment using Low impact Development techniques will be added either to the MND or as a condition of approval for the project. Given this, our concerns about the project's potential impacts to water quality have been addressed "

The NCRWQCB stipulated that Low Impact Development techniques will be added either to the MND or as a condition of approval for the project. This language was never added to MND 17 or the Staff Report, given this, the MND is incomplete and has not been reviewed by a concerned public.

- The applicant's analysis fails to identify significant environmental impacts to the following:
  - The northern most creek that flows into College Cove, (referred to as Elk Head Creek).
  - The Trinidad Area of Statewide Biological significance, (ASBS). Coastal Marine Resources.
  - Adjoining off-site wetlands and ESHA of Trinidad State Park/College Cove.
  - On site and off site impact to Cultural Resource.
  
- Where the agency has failed to produce crucial information," [d]eficiencies in the record may actually enlarge the scope of fair argument by lending plausibility to a wider range of inferences." Sundstrom v. Mendocino County (1988) 202 Cal.App.3d 296.
  
- And "[t]he agency should not be allowed to hide behind its failure to gather relevant data," because "CEQA places the burden of environmental investigation on government rather than on the public."
  
- A letter to planning, (supplemental 3) requesting a re-circulation of the MND was submitted on March 3<sup>rd</sup>. A subsequent e-mail was sent to John Short of the NCRWQB expressing frustration of not having an opportunity to review the modified language to MND 17.

3/22/2010 1:46 PM John Rotter wrote:

The frustration on part of the public is that a MND or staff report that identifies what storm water issues need to be mitigated and the mitigated measures to be used, was not available to the PC or the public to review at the initial PC meeting. Hopefully the mitigation measures you mentioned will become available to the public.

On 3/22/2010 3:03 PM, John Short replied: John - I agree that a good CEQA document would have had these mitigation measures clearly identified for full public review.

**5. NORTH COAST INFORMATION CENTER (NCIC)**

- Referral *Agency Comments and Recommendations* reports approval by the NCIC. The NCIC was not contacted about the project before you. Therefore an incomplete MND was submitted to the Planning Commission without agency or public review. Page 38 of the Staff Report.

6. **SUMMARY**

- Mr. Short in his NCRWQB email, (received the day of the March 4<sup>th</sup> hearing), **stipulated**, that new mitigation measures **“will be added”** to the MND or the Conditions of Approval. Neither was done and an incomplete MND was submitted to the Planning Commission without public review.
- Comments from referral agencies were not addressed, thus failing to look at significant environment impacts of the following: Trinidad ASBS, Coastal Resource Protection of ESHA, wetlands (on and off site) and Marine Resources and NCIC Cultural Resources Protection.
- There are confusing and inconsistent definitions for wetlands and other ESHA. TAP definition of ESHA should mirror Coastal Act §30107.5; similarly the definition of wetland should be that of §30121 of the Coastal Act and §13577(b) of the Calif. Code of Regulations (CCR).
- The 19 acre parcel has been designed ***“to accommodate a maximum wastewater loading rate of 750 gpd . The maximum allowable load rate is intended to provide future owners with the flexibility to develop each parcel, exclusive of Lot 8, with a three-bedroom primary residence and secondary two bedroom residence, or a single residence with four to seven bedrooms”***, LACO Sewage Disposal Design Addendum. Page 517 of the Staff Report.
- By excluding the existing home on the 2.25 acre lot 8, **16.40 acres remain** for the following development:
  - **40 bedroom maximum build out.** ( 3BR +2BR x 8 lots)
  - **54 bedroom maximum build out.** ( 7BR X 8 lots )
  - **Discharge of 6000 gpd of effluent into the ground.** ( 750 gpd x 8 lots)
  - **Drawdown of 5760 gpd from the domestic wells.** (720 gpd x 8 lots)

7. **CONCLUSION:**

- Does the evidence before you demonstrate that the site can support such a large development?
- Have all the significant environmental impacts been identified, and those identified, have they been mitigated to a level of less than significant?
- Have all referral agency concerns been addressed?
- Does the discussion of cumulative impacts reflect the severity of the impacts and the likelihood of their occurrence?

The <sup>1</sup>**discretionary element** of the permitting process allows the Planning Commissioners to work with the applicant and the concerned public to address the above questions and forge a project that will be successful.

1. All discretionary projects require CEQA review. A “discretionary” project is one where the permitting agency has the discretion to approve, disapprove, or require changes to a project before granting a permit (CEQA Sec. 21080).

Sincerely,

John Rotter  
Trinidad

Larry Goldberg  
1225 Stagecoach Road  
Trinidad, CA 95570  
(707) 677-0822

May 25, 2010

Humboldt County Planning Commission  
c/o Trevor Estlow  
Humboldt County Community Development Service  
3015 H Street  
Eureka, CA 95501

Re: Homan Major Subdivision  
APN: 515-191-037

Dear Planning Commission Members:

I am writing regarding the proposed subdivision on the above referenced property and the proposed Mitigated Negative Declaration. I have several concerns and objections to the proposed development and a finding of Negative Declaration. I plan to address two key concerns in this letter. I have conducted extensive research on this topic and have findings that I believe will demonstrate the need for an EIR to evaluate environmental impacts from this project.

My two primary areas of concern are the following:

1. The density proposed is significantly out of character with the neighborhood. As stated in the Trinidad Area Plan (July 31, 2006):

**The area south of Martin Creek and east of Stagecoach Road to the Trinidad City limit line includes about 100 acres. The current average size (arithmetic mean) is three acres. The modal average (most frequently occurring parcel size) is two acres. The area is planned for a one unit per two acre density.**

This project is inconsistent with the Trinidad Area Plan due to significantly higher densities than surrounding properties and is the most significant development in the general area for the past 30+ years. This development is a bad precedent for the area and may lead to further inappropriate subdivision leading to urbanization of surrounding properties.

2. One of the most significant impacts from the proposed lot size and density of the project is the wastewater pollution from septic tanks to the College Cove creek. College Cove creek is a fragile environment which is already impacted from upstream pollution documented in Oscar Larson Wastewater study in 1990. This proposed project will likely increase risk of pollution to the creek due to septic wastewater. Documented evidence of high water tables coupled with clay soils in surrounding area and existing failing septic in surrounding area is sufficient to reject this project.

## **Introduction**

Due to the fact that this project is seen in a “vacuum” of a stand-alone project without the benefit of looking at the existing neighborhood and watershed wastewater problems, no cumulative effects of this project have been investigated and thus the full impact of this project cannot be ascertained with the proposed mitigation measures. I believe that the environmental analysis is skewed in favor of the applicant and contrary to the law; it deprives the public the opportunity to evaluate what really would be allowed under the law for this project when seen in the context of the larger community and watershed.

In this report I will present substantial evidence of those errors, and how the proposed project could significantly impact the environment and neighborhood. This project should not be approved based on the record before you, and at a minimum requires an environmental impact report (EIR) in order to fully and properly examine and mitigate the significant environmental effects related to it.

## **Lot density analysis**

One of the arguments being offered by the developer is that this major sub-division is consistent with the Trinidad Area Plan and meets the density requirements of the zoning. This report is an analysis of the “average” lot size density of the proposed Homan Subdivision.

The principal document governing the development of the Trinidad area is the Trinidad Area Plan.

In this plan it defines our neighborhood as “The area south of Martin Creek and east of Stagecoach Rd. to the City limit line... the current average lot size is 3 acres. The modal average is 2 acres. The area is planned for one unit per two acre density.”

The Trinidad Area Plan states that “the average density of new development created by such divisions shall not exceed that established by the policies ... which are based on:

- a) the average size of parcels planned for the same use within the neighborhood of the subject parcel, and
- b) A size adequate to prevent individual or cumulative significant adverse effects to coastal resources including water resources, environmentally sensitive habitats, and coastal views.

After reviewing the submitted documents from LACO, I conducted a study of all the properties in the neighborhood of the Homan property, and here’s what I found:

- 1) The TAP, as the basis for defining the density characteristics of the “neighborhood” is arbitrary and inconclusive. It never defines an eastern boundary for the area, thus is open to interpretation.
- 2) The TAP area, as defined by LACO, includes 4 different planning zones. It is inappropriate to compare a proposed residential major sub-division project with different zoning densities.
- 3) The TAP does not address the fact that a significant number of parcels in each area were grandfathered into the zoning and are inconsistent with current zoning. In

this case, **65% of parcels within the residential zone of this neighborhood are out-of-compliance with existing zoning**. It should be the rule of the Planning Commission that *just because there exist properties that are degraded within a community doesn't mean that a developer can build to the degraded standard.*

The Trinidad Area Plan (TAP) states:

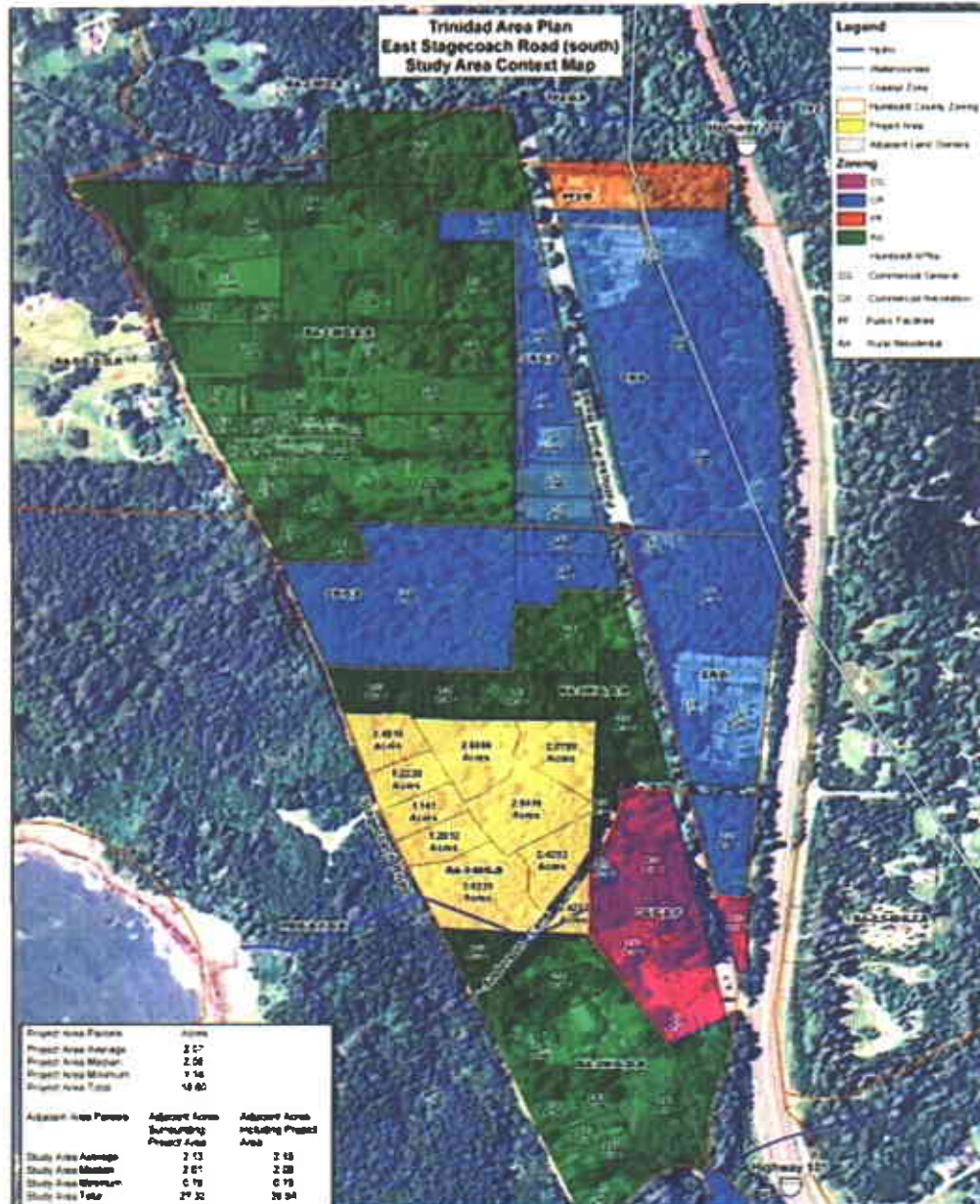
“The average density of new development created by such divisions shall not exceed that established by the policies... which are based on:

- 1) Average size of parcels planned for the same use within the neighborhood of the subject parcel
- 2) A size adequate to prevent individual or cumulative significant adverse effect to coastal resources including water resources, environmentally sensitive habitats, and... coastal views.”

I will argue that the proposed Homan sub-division project does not meet the TAP requirements for appropriate neighborhood density and should be rejected.

To illustrate my points, I have several graphic examples to offer:

**Here's the TAP neighborhood as described by LACO:**



Please note the following:

- 1) The area as defined by LACO goes to Hwy. 101. The coastal zone extends beyond Hwy. 101. The TAP never defined the eastern boundary of the “neighborhood” but clearly spoke of Stagecoach Rd. and never discussed Patrick’s Pt. Blvd. and points east.
- 2) The LACO area includes three separate zoning areas – Rural Residential (RR), Commercial-General, Commercial-Recreation (CR) and Public Facilities (PF)
- 3) The LACO defined TAP area includes a significant amount of non-compliant zoned parcels.