

WRITTEN TESTIMONY OF THOMAS P. INFUSINO
BEFORE THE AMADOR COUNTY BOARD OF SUPERVISORS
ON FEBRUARY 12, 2008
REGARDING STATUS OF KIRKWOOD SPECIFIC PLAN MITIGATION

Back in June of 2007, the Board of Supervisors approved the Martin Point Tentative Map on the condition that Kirkwood meet the Specific Plan conditions of approval and mitigation requirements. The Planning Department is recommending that the BOS find Kirkwood in “substantial compliance” with the Specific Plan conditions of approval, and issue a final map for Martin Point. On behalf of the Foothill Conservancy, I reviewed the Kirkwood Specific Plan mitigation reports on file with the County. Below I have provided the County with a list of outstanding issues that the Board of Supervisors need to resolve regarding the Specific Plan conditions of approval, the mitigation measures, and the monitoring and reporting practices. In addition, I have provided suggestions regarding approaches the County can take to help reduce impacts and to enhance public participation and confidence in Specific Plan implementation.

Conclusions:

- 1) Both County staff and Kirkwood staff have completed a number of mitigation reports since the Board made their completion a condition of approval for the Martin Point subdivision;
- 2) The Board should promptly take action in accord with the findings, recommendations, and implications of the mitigation reports that have been provided to date;
- 3) Kirkwood continues to not comply with mitigation requirements;
- 4) The Board has the authority to deny approval of the Martin Point Final Map, until Kirkwood demonstrates further compliance with the Specific Plan conditions of approval and mitigation measures; and
- 5) The Board has the obligation to revisit mitigation measures that have not been completed by the County and others.
- 6) The Board should support efforts to restore the Kirkwood Creek and meadow.

Issues & Responses:

A) Specific Plan Conditions Kirkwood Needs to Meet

1) Kirkwood Lakes Resource Protection Interpretive Program:

The Situation: The Specific Plan calls for the creation of an interpretive program to educate users of the resources at Kirkwood Lake and to explain how the users can help to protect these resources. (Specific Plan Mitigation, 4.12(c); Condition of Approval 140.) Although the issue has been discussed in e-mails, there was no evidence in the record that the program has been developed. (Exhibit A-1.)

Requested BOS Response: Since this condition has not been met, the BOS has the authority to deny approval of the Final Map for Martin Point, until this Specific Plan mitigation is completed. At least, the Board should set a deadline for completion of the interpretive program, and should refuse to issue building permits or occupancy permits until the program is in place. In this way, the Board would avoid adding new residents to the area and new users to the lake until the educational materials they need have been developed.

2) Heritage Resource Survey:

The Situation: The old Heritage Resource survey of 80 acres back in 1997 expected that construction in the area would encounter no heritage resources. The August 2007 survey report looked at 150 acres and surprisingly identified 83 individual heritage resources at 53 heritage sites/isolated finds. (Exhibit A-2.) The next step is a follow up report to recommend mitigation. There was no follow up report in the record identifying the appropriate mitigation.

Requested BOS Response: No further ground disturbing activities should be allowed in the survey area until the mitigation recommendations are made and carried out. (Mitigation 4.5(b).)

3) Violations of Wetland Permits and Martin Point Recommendations:

The Situation: In October 2007, a letter by the Army's Corps of Engineers identified wetland permit violations with regard to development at Kirkwood. (Exhibit A-3.) These include the unauthorized fill of 500 feet of Drainage 64 and unauthorized fill of Drainage 75. The letter also recommended wider streamside buffers (100-150 feet) for drainage 20 in the Martin Point subdivision. The permit violations are failures to comply with mitigation measures of the specific plan (Mitigation Measure 4.3.3 (b).)

Requested BOS Response: Since this Specific Plan condition has not been met, the BOS has the authority to deny approval of the Final Map for Martin Point until these permit violations are rectified. In addition, the BOS should review the Martin Point Tentative Map, to see if the map, the CC&Rs, and/or the conditions of approval need to be adjusted to take into account the Army Corps' suggested setbacks for Drainage 20.

4) Parking:

The Situation: The Specific Plan calls for Kirkwood to have 2500 parking spaces for day-user. The Map provided by Kirkwood identifies 2,704 available spaces. However, according to testimony by Kirkwood resident Reid Bennett, the data used to calculate spaces is flawed in many ways. The 79 spaces counted for West Village parking are in the process of disappearing as the Expedition Lodge is under construction at that site.

The 283 spaces in the KMA lot are deed restricted for use on only 5 days per year, so they are not available the entire season. The 125 spaces at Kirkwood Inn are north of Highway 88, and should not be counted for day users. The 17 spaces at Sun Meadows are not all day parking, but limited time parking, and therefore should not be counted for day-users. Also, the 185 spaces counted for the Chair 7 lot will be lost when the multifamily and commercial development the area is zoned for is undertaken. Finally, the capacity of other lots is overestimated based upon the vehicle size, county parking standards, and the parking habits of the day users.

Requested BOS Response: Adequate parking is the key to traffic congestion relief and traffic safety in at Kirkwood. The Board should not add more cars to the risky mix without resolving the parking issue. The Board should direct Planning Staff, Tri-Tac, Kirkwood, and the concerned public to review the actual day use parking capacity, and to develop a long-term plan for meeting the parking requirements, prior to the final map approval of further development, or to the issuance of building or occupancy permits for further new development.

5) BMPs & Mactec Daily Reports:

The Situation: It remains a constant struggle for monitors (Mactec, PMC, & County staff) to get Kirkwood's and other contractors to put BMPs in place. The records indicate that contractors frequently fail to comply with BMPs in significant ways. Mactec inspectors are on-site daily to identify mitigation problems and to suggest that contractors correct mistakes. However, the records indicate that while some contractors respond to inspector requests, others do not. This system has many flaws. First, even when mistakes are pointed out, Mactec and PMC can only make suggestions to contractors to fix the problems. Further, the Mactec daily reports do not consistently confirm whether or not Mactec's suggestions for correction are implemented. For example, Mactec makes "punch lists" of things that should be fixed, but does not later confirm that they are fixed. Finally, when there are chronic and obvious problems, Mactec has no authority to stop work or to correct the problem. For example, contractors continued earthmoving activities (and even started new ones!) after their October 31 deadline, and during wet weather events, and Mactec just continued to monitor the activity. Also, Mactec identified new procedures to respond to thunderstorms, but there has been no action by the County to institute those procedures. (Exhibit A-5.)

Requested BOS Response: Direct Mactec to consistently report back on whether its correction suggestions have been adopted by the contractors, and to place those reports on the PMC website. Enforce the October 31 earthmoving deadline in 2008 and years following. Order more frequent (weekly) vacuuming of construction dust. Direct Planning Staff, Tri-Tac, Kirkwood, and the concerned public to review the Mactec storm response procedures, and to take steps to institute those procedures.

6) Hazardous Spill Prevention Plans:

The Situation: The Specific Plan calls for the completion of hazardous material spill prevention plans. (Mitigation Measure 4.11(j), Condition of Approval 137.) KMR contracted with Geocon to do the spill prevention plans for the powerhouse, the gas station, the wastewater treatment plant, and the MU, etc. **None of the plans on file with the County have been signed by the facility managers who would be responsible for implementing the plans.** The most interesting plan is for the Kirkwood Powerhouse, which had a 400-500 gallon diesel fuel spill onto the surface snow on November 29, 2006. The impacted soils were removed in July/August of 2007 after the groundwater level and surface run-off had subsided. (Spill Prevention control Plan, pp. 3-4.) The Spill Prevention Plan calls for seven mandatory upgrades including security fencing, spill containment pallets, spill containment materials, overfill prevention devices, concrete spill containment berms, and repair of leaking fuel lines. (Exhibit A-6.)

Requested BOS Response: Direct staff to get signed copies of the Spill Prevention Plans from each of the responsible facility managers. Although the Powerhouse is located in Alpine County, it is on the valley floor, and its spills could affect the water supply for the greater KMR development. Do not issue final development permits, building permits, or occupancy permits until the mandatory measures are implemented by the Powerhouse to ensure the health and safety of Kirkwood residents.

B) Specific Plan Mitigation Issues the County Must Resolve

1) Well 2's Impact on Kirkwood Creek During Water Shortage Events:

Situation: KMPUD was supposed to develop a system by summer of 2003 for limiting or ceasing the use of shallow Well #2 when a Water Stage Alert is in effect, to minimize impacts on Kirkwood Creek stream flows (Specific Plan Mitigation 4.2(h).) While KMPUD continues to issue "will serve" letters to Kirkwood development (Specific Plan Mitigation 4.14(c)), KMPUD admits that it does not have capacity to limit or cease pumping from Well #2 as required by the mitigation measure in dry years. "The District currently does not have sufficient well water capacity to limit or cease pumping from Well #2, as directed in this Mitigation Measure." (See, Lishman e-mail to McLaughlin, 9/12/07.) This casts great doubt on the validity of the will serve letters.

Requested BOS Response: Do not provide further approvals to development projects at Kirkwood until dry year water management issues can be resolved in accord with the Specific Plan mitigation requirement.

2) Wildlife Impact Mitigation:

Situation: The Specific Plan mitigation included expanding CC&Rs and other restrictions to keep pets on a leash, to feed them indoors, to store garbage in wildlife-

proof containers, and to limit wildlife feeding. (Mitigations 4.3.2 (a-e), Specific Plan Conditions 58-62.) The record indicates that the CC&Rs have not been adopted. (Exhibit, B-2.)

Requested BOS Response: Because the mitigation was not adopted, the Specific Plan environmental documentation is in error. In the absence of CC&Rs, establish another tool (e.g. ordinance, etc) to establish enforceable restrictions on pets, garbage, and wildlife feeding.

3) Fire Mitigation Fee:

The Situation: The County was supposed to adopt a fire impact fee for new development at Kirkwood to help fund Kirkwood Municipal Utility District's fire capital improvement plan. (Condition of Approval, 157.) KMPUD has an existing development fee. The record indicates that the KMPUD board declined the County's offer to set an additional development fee. (Exhibit B-3.) However, there is no analysis to show that the additional service capacity necessitated by Kirkwood will be met in the absence of the County's additional fee.

Requested BOS Response: Because the mitigation has not been adopted, the Specific environmental documentation is in error. The BOS should direct staff to determine if the increased service capacity necessitated by Kirkwood development will be met with the current KMPUD capital improvement plan and financing. (Condition of Approval, 145.) If so, document this in an EIR amendment. If not, come back to the Board with a means of bridging the fire fighting capacity shortfall.

4) Wood Stove Ordinance:

Situation: The County was supposed to pass an ordinance to reduce particulate emissions from wood-burning stoves by January 2004. County staff has developed a draft ordinance, but has not completed reviewing the draft ordinance. (Condition of Approval 80, Mitigation 4.4(a).)

Requested BOS Response: Until the ordinance is adopted, do not approve the installation of a stove that does not meet EPA Phase II certification requirement, or stricter requirements. Approve an ordinance as soon as possible.

C) Active Stream & Meadow Restoration is Needed:

Situation: According to U.S. Forest Service review of the Kirkwood Creek watershed, the creek and meadow are in need of active restoration. However no agency is willing to take a step forward to initiate this restoration without leadership at the County level. The Sierra Nevada Conservancy is giving out millions of dollars of watershed protection

grants to numerous similar projects throughout the Sierra, but will not act on grant requests not supported at the County level. (Exhibit C-1.)

Requested BOS Response: Send a letter to Kirkwood, the other property owners, the USFS, the Army Corps of Engineers, the Regional Water Quality Control Board, and the Department of Fish indicating your interest and support for efforts to restore the creek and meadow. Direct staff to work with landowners, cooperating agencies, and non-profits to develop a restoration plan and to seek funding for its implementation.

D) Improved Monitoring Needed

1) Grazing:

Situation: There is a grazing management plan with conditions including fencing animals away from the creek, and providing off-creek water troughs. (Exhibit D-1) The plan is to be implemented. (Mitigation Measures 4.2(ac) & 4.3.1 (ff).)

Requested BOS Response: Please have the implementation of these measures confirmed by monitoring staff and posted on the PMC website.

2) Timber Removal:

Situation: The number of trees being removed at Kirkwood without any public review of cumulative impact analysis is increasing. In 2004, there were 31 trees removed under the “dead, dying, or diseased” exemption. However, in 2006 there were 159 trees removed under the “dead, dying, and diseased” exemption, and the definition of “diseased” was expanded to include red fir trees with damaged or multiple tops (a typical characteristic of mature red fir trees that have survived droughts, storms, and insect attacks). Another exemption used in 2006 was the 3-acre conversion exemption. One such exemption is allowed in a five year period. However, in September 2006 Kirkwood applied for 2 such exemptions at Kirkwood, one requested by KMR and one by their affiliate Kirkwood Expedition Partners. This subterfuge is not consistent with the intent of the legislation, which is to preclude such abuse of the exemption that avoids review of the impacts of the overall project.

Requested BOS Response: Direct Kirkwood and its affiliates not to apply for any more 3-acre exemptions in the Specific Plan area until September of 2011. Provide public notice and a field trip to review the mark for the “dead, dying, and diseased” trees prior to any harvest, to help ensure that the exemption is not abused.