

Attachment A

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ATTACHMENT A
Discussion

Project Description and Background

Vehicle dismantling businesses have operated at the Dolan Industrial Park project site on Dolan Road in Moss Landing since the early 1970's. The site is comprised of three separate parcels:

Parcel A - APN 131-054-001 – 7.5 acres – owned by S&S Land Development

Parcel B – APN 131-054-002 - 4.5 acres – owned by Pick-n-Pull Auto Dismantlers

Parcel C – APN 131-054-003 - 5 acres - owned by Gerard & Deborah Cutler

Parcel D (APN 131-054-004) - 70 acres – owned by the Loan Exchange Group is not included in this application.

Permits for the auto dismantling businesses were issued in 1995 for a period of 10 years. Permits for Parcels A, B, and C were extended for 10 years in 2005. On March 11, 2015, the Planning Commission unanimously approved 10-year extensions of the Coastal Development Permits (CDP) for the operations on Parcels A, B and C. Pick-n-Pull Auto Dismantlers presently manages operations on all three parcels and is the applicant for the extension of the permit for Parcel B and the agent for the owners for the extension of the permits for Parcels A and C.

In 2005 the permit extensions also permitted infrastructure improvements including water system connections and improvements for fire-suppression, drainage improvements, septic improvements and a 212,000 gallon water tank. These infrastructure improvements have been implemented. The 2015 Permit extensions, would not allow for any new development or improvements to, nor expansion or intensification of, the previously-approved uses.

The analysis prepared for the Planning Commission focused on whether the sites were in compliance with the conditions of approval. No violations have been identified, and the Planning Commission approved the extensions. The Ecological Rights Foundation (ERF) presented information, including water sample data, to the Planning Commission at the March 11, 2015 hearing. There was not time at the hearing to evaluate the information presented by ERF.

Project Issues

The subject site is in a sensitive location given its proximity to Elkhorn Slough, which is considered an Environmentally Sensitive Habitat Area (ESHA). This is acknowledged in the Special Treatment Area designation for the site and the North County Land Use Plan. Parcel B is zoned “AC (CZ)” [Agricultural Conservation (Coastal Zone)], and Parcels A and C are split-zoned “AC (CZ)” and “LI (CZ)” [Light Industrial (Coastal Zone)]. All three of the project parcels are included within a designated “Special Treatment Area” pursuant to the North County Land Use Plan (underlining added):

4.3.2 Land Use Locations

Industrial development in the rural areas of the coastal zone is generally not appropriate. However, there is a coastal-dependent industry, PG&E, in the planning area on Dolan Road. An oil tank farm is located on this property. This site and a portion of an adjacent property containing auto wrecking yards is recommended for Heavy Industry and Light Industry Categories. Also, agricultural related industries such as greenhouses, warehouses, packing sheds, storage facilities for farm related equipment, etc. may be appropriate in the

*Agricultural Industrial Category. The industrial uses allowed must be compatible with agriculture and the preservation of the resources of Elkhorn Slough. The Armstrong Ranch area east of Highway 1 is designated for Light Industry. Special Treatment Areas are designated for the Dolan property and the Armstrong Ranch. Agriculture-related or coast-dependent industries are recommended for these light industrial special treatment areas. In the case of the Dolan property, this designation is not intended to prohibit the wrecking yards from continued operation. Renewal of use permits for these operations will be based on the merits of the specific proposal and feasible mitigation measures to offset any adverse impacts of continued operation. **AMENDED JUNE 9, 1993***

The original permit approved in 1995 specified operation criteria (Best Management Practices, BMPs) as conditions of approval that have continued to be brought forward, both in the 2005 extensions and are recommended by staff for these extension. These requirements include:

- Auto dismantling must occur on impervious surfaces with secondary containment features for the removal of fluids.
- Un-usable auto remnants are transported off-site for disposal
- A comprehensive stormwater management plan has been implemented which directs runoff to controlled areas on each parcel where pollutants are separated from the drainage water, collected and disposed of off-site.
- Drainage and erosion control improvements including detention basins and earthen berms are installed and must be maintained.
- Regular inspections are conducted by the Environmental Health Bureau and State Water Resources Control Board to ensure on-going compliance with the Best Management Practices.
- Reporting requirements:
 - o Annually for the duration of the permit, each owner (Parcel A, B and C) shall submit an inspection report of the screening and vegetation by a qualified arborist or registered forester to the Director of RMA-Planning for review and approval. The arborist or forester shall evaluate the conditions and health of the trees and vegetation and certify that any necessary maintenance or replacement of trees has been completed for the respective parcels.
 - o Annually for the duration of the permit, each owner shall provide documentation by September 1 of each year to the Director of RMA-Planning certifying that each operator is in compliance with their stormwater permit and that each operator has submitted their annual report to the Regional Water Quality Control Board (RWQCB) along with any necessary copies of water tests or current permits. In the event of a new operator, the parcel owner shall submit documentation that the new operator has obtained a stormwater discharge permit from RWQCB prior to the start of any operations.
 - o Annually for the duration of the permit, the applicant shall submit documentation to the Director of RMA-Planning for review and approval that a qualified engineer has inspected the access road and parking areas and that any necessary repairs, maintenance and/or additional improvements have been completed
 - o In order to minimize visual impacts, vehicles shall not be stacked higher than eight (8) feet from the ground. All new structures including but not limited to water tanks, fences, trailers, canopies, shall be painted a natural, earth-tone color subject to review and approval by the Director of RMA-Planning.

The Conditions of Approval recommended to be brought forward for these extensions, from the existing Coastal Development Permits, are included in Attachment B.

As a matter of standard practice, all vehicles upon arrival are drained of fluids (gasoline, freon, etc.), which are put into holding tanks and disposed of at a later time according to regulatory requirements. Removal of any potentially hazardous materials, including batteries and mercury switches, is also completed before vehicles are placed in the parts sales area. Vehicles in the sales yard are placed on stands with underlying mats on top of a gravel base in order to minimize ground contact and potential drainage contamination.

The site is not a vehicle “junkyard” in the traditional sense, as majority of the on-site stock is turned over approximately every 30-60 days. Prior to removal, most vehicles are “de-cored” and anything that can be recycled or re-conditioned (alternators, compressors, wiring harnesses, etc.) are removed before the vehicles are crushed and trucked from the site.

These conditions of approval are required, and implemented, to protect off-site areas from pollutants running off the site. The Regional Water Quality Control Board also has significant oversight and permit authority over stormwater and pollution controls.

Environmental Review

A Mitigated Negative Declaration was adopted in 2005 for the previously-approved Combined Development Permits. This document is attached as **ATTACHMENT D**, for reference. For the extensions, staff drafted an addendum to the 2005 Mitigated Negative Declaration to specifically address potential impacts resulting from greenhouse gas emissions.

In addition to the conditions of approval listed above, all Mitigation Measures which were implemented in 2005, and remain relevant to ongoing operations, were carried over to the extensions approved by the Planning Commission. Said Mitigation measures require ongoing annual reports regarding maintenance of roads, drainage facilities and screening vegetation. The “Best Management Practices” as outlined in the 2005 Mitigations, would also continue to be observed pursuant to project conditions.

Appeal

An appeal to the Planning Commission’s approval of the Coastal Development Permit Extensions was received from the Ecological Rights Foundation (ERF) on March 26, 2015 (**ATTACHMENT C**). The majority of the appeal centers on ERF’s claims that recent stormwater samples taken from the site’s drainage system, as tested by ERF, contain contaminants at levels which greatly exceed Environmental Protection Agency (EPA) benchmark standards.

The appellant raises three specific objections in the appeal. These are stated and responded to as follows:

- 1. Reliance on the 2005 Mitigated Negative Declaration violates the California Environmental Quality Act in that 1) new and existing information about pollutant discharges from these facilities to environmentally sensitive habitats in and around Elkhorn Slough, command the need for a complete environmental impacts analysis before the CDP extensions may be granted;*

On the day of the Planning Commission hearing, new information was presented by ERF, including:

- Recent (December 2014) test results submitted by the appellant (ERF) from stormwater samples taken at the site's storm drain release point, contain contaminants at levels which greatly exceed Environmental Protection Agency (EPA) benchmark standards.
- The northern half of "Parcel A" has been paved subsequent to the 2005 Mitigated Negative Declaration, constituting new development which was not analyzed in the 2005 Mitigated Negative Declaration.
- The ERF appeal indicates reports of an increase in the number and frequency of protected species inhabiting the immediate area of the project.

These issues warrant further investigation. It needs to be determined whether or not the samples taken by ERF can be substantiated by additional sampling. It is known that there are exceedances of the EPA benchmarks. The water sampling is reported to the Regional Water Quality Control Board as part of their permitting. The RWQCB updates the permit every year to require modifications to the site in order to improve water quality. The overall ambition has been to continue to improve the water quality. This may not be new information to the RWQCB, but rather is information that County has to weigh as a policy decision under County policies, as further discussed below.

The ERF appeal also identifies that the Elkhorn Slough supports an increased population of Sea Otters which may be affected by contaminants from the site. This is not substantiated in the appeal letter and requires additional analysis.

Additional independent testing of appellant's assertions will enable staff to determine whether there is substantial evidence of potential new impacts or more severe impacts than previously analyzed.

The appeal also contends that the Environmental Health Bureau (EHB) was aware of alleged contamination as communicated to the EHB, by the owner of neighboring "Parcel D," in 2008 and 2009. The Environmental Health Bureau reviewed the appeal and determined that the Pick-N-Pull site was in substantial compliance with Hazardous Materials Management Services (HMMS) regulations during their last inspection, November 14, 2014. EHB records do not indicate any stormwater complaints since the January 5, 2010 letter from Mr. Hafen to EHB, referenced in the Appellant's letter of appeal.

The pavement placed on the Northern half of parcel A is new development which was not previously evaluated in any environmental document. The increase in impervious area is likely to result in increased run off and the impact of this should be evaluated.

The new information that is being referred to in the appeal is largely information submitted into the record by the appellant, but due to the sensitive nature of the site adjacent to Elkhorn Slough it is recommended that the Board provide time for County staff to further evaluate and independently access this information.

2. The record before the Commission was insufficient to support its findings and in fact shows the Facility's non-compliance with prior conditions;

The appeal claims that the applicant has not been in conformance with the conditions of the Coastal Development Permit. The appeal focuses on "auto dismantling" not being done on paved surfaces. It seems that the appeal is confusing the initial procedure of removing all fluids and other hazardous materials from all newly-arriving vehicles, prior to being placed in the sales yard, with vehicles being displaced for part removal. These areas are separate from the sales yard and are referred to as "dismantling areas and waste and impound areas" in the Mitigation Measures. "Dismantling" occurs only under canopies and on impervious surfaces in specially-designated areas. Further, the intent of the condition was clearly not to require this standard to be applied to the sales yard, which would require that the majority of the 15-acre project site be paved and under canopy.

The appeal also seems to imply that the exceedance of EPA Benchmarks is a violation of a condition of approval. An exceedance of EPA Benchmarks does not constitute a violation of a condition of approval. As mentioned, the applicant is reliant upon an annual Stormwater Discharge Permit as issued by the Regional Water Quality Control Board (RWQCB). A Mitigation Measure requires that the applicant, on an annual basis, provide evidence of possession of a current Permit:

MITIGATION MEASURE #2 (Stormwater Facilities):

Annually for the duration of the permit, each owner shall provide documentation by September 1 of each year to the Director of RMA-Planning certifying that each operator is in compliance with their stormwater permit and that each operator has submitted their annual report to the Regional Water Quality Control Board (RWQCB) along with any necessary copies of water tests or current permits. In the event of a new operator, the parcel owner shall submit documentation that the new operator has obtained a stormwater discharge permit from RWQCB prior to the start of any operations.

The applicant has consistently been in conformance with this Mitigation Measure and all other Mitigation Measures and Conditions of Approval as outlined in the 2005 Permits. Stormwater discharge reports have been submitted by the applicant to the RWQCB on an annual basis. The RWQCB has no record of any violations by the applicant, nor have there been any known delays in the issuance of the annual stormwater permit.

3. The auto dismantling and recycling operations and consequent discharges of polluted stormwater to Elkhorn Slough are incompatible with the Coastal Act's and the County's Local Coastal Program's policies and objectives.

The appellant has appropriately identified the Local Coastal Plan Policies that apply to this site. The Elkhorn Slough is by definition environmentally sensitive habitat. Most of the policies cited in the appeal relate to new development. The nature of these applications is that of an extension to ensure that the sites continue to function in compliance with the conditions of approval and to insure NCLUP Policy 4.3.2, which provides, "*Renewal of use permits for these operations will be based on the merits of the specific proposal and feasible mitigation measures to offset any adverse impacts of continued operation,*" is carried out. In addition the appeal partially quotes NCLUP Policy 2.3.3.B.8, but the actual policy in full states:

Oil and other toxic substances shall not be allowed to enter or drain into the estuarine system. Oil spill and toxic substance discharge contingency plans shall be developed by the appropriate agencies of Monterey County to coordinate emergency procedures for clean-up operations of all foreseeable conditions. New development shall be permitted adjacent to estuarine areas only where such development does not increase the hazard of oil spill or toxic discharge into the estuaries.

This policy is really intended to restrict new development. As noted above the subject site has been working at improving its water quality over time, and is considered in compliance with its conditions.

In order to adequately address the policy issues being raised additional information is necessary. The added information would include additional water quality analysis, which would be very difficult to conduct without some wet weather testing. It is also necessary to look at the biological resources around the outfalls of the site to determine what the actual biological impacts would be at that location. This cannot be accomplished in a short period of time and will likely take at least a year.

Recommendation

Staff recommends that the hearing on this item be continued for a fifteen month period to allow the staff to obtain the necessary information related to water quality and biology. It is expected that this will result in the preparation and circulation of an updated Initial Study. The cost of the added studies and the cost of the Initial Study will be borne by the applicant.

In the meantime, the facilities would be allowed to continue to operate under the 2005-approved Coastal Development Permits. Allowing the operations to continue during the pendency of the appeal is consistent with County practice of allowing operations to continue under a discretionary permit that was set to expire, so long as the applicant timely requested the extension of their permit and the County is still processing the extension request, both of which occurred in this case.