



Board Report

File #: RES 19-028, Version: 1

PLN160131 - PACIFIC GAS & ELECTRIC (CONTINUED FROM FEBRUARY 26, 2019)

Public hearing to consider an appeal by Friends, Artists & Neighbors of Elkhorn Slough (FANS) from the December 6, 2018 Zoning Administrator decision adopting a Mitigated Negative Declaration and approving a Coastal Development Permit to allow grading on slopes of 25 percent or greater, and a Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat for earthwork associated with increasing ground clearance for existing Pacific Gas & Electric Company powerlines.

Project Location: Upland landform located south of Strawberry Canyon Road and north of Tucker Road, 490 and 500 Strawberry Canyon Rd; and 95 and 123 Tucker Road, on an upland landform located between the two roads, North County Land Use Plan, Coastal Zone.

Proposed CEQA Action: Adopt a Mitigated Negative Declaration.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Deny the Appeal of the Zoning Administrators decision by Friends, Artists & Neighbors of Elkhorn Slough (FANS);
- b. Adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan; and
- c. Approve a Combined Development Permit consisting of:
 1. A Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat, consisting of grading approximately 106 cubic yards over an area of approximately 895 square feet; and;
 2. Coastal Development Permit to allow grading on slopes in excess of 25 percent;
- d. Grant FANS' request to waive provision of stamped envelopes.

A draft resolution, including findings and evidence, is attached for consideration (**Attachment B**). Staff recommends approval subject to 17 conditions, including 4 Mitigation Measures.

PROJECT INFORMATION:

Project Owner: Pacific Gas & Electric (easement over various parcels, various property owners)

APNs: 129-281-007-000, 129-281-008-000, 129-281-009-000, and 129-281-017-000.

Zoning: Rural Density Residential, 5 acres per unit (Coastal Zone) [RDR/5 (CZ)]

Parcel Size: Four parcels with a cumulative 28.54 acres

Flagged and Staked: N/A

SUMMARY:

Pacific Gas & Electric Company (PG&E) submitted an application requesting to increase the vertical clearance between the ground and the existing overhead powerlines to meet federal safety guidelines, in order to help prevent wildfires created by sparking power lines during windy conditions. PG&E's project scope includes grading activities to remove up to 10 vertical feet or 106 cubic yards of soil over an area of approximately 895 square feet transecting four (4) parcels. The limit of disturbance ("LOD"), is approximately 6,880 square feet including the specific grading location as well as area utilized for stockpiling reserved topsoil and plants, maneuvering of equipment, and the redistribution of the cut (graded soils) on an existing service road.

An Initial Study/Mitigated Negative Declaration (MND) was prepared for the project pursuant to the California

Environmental Quality Act (CEQA) to address potential impacts to sensitive plants and plant communities from the proposed construction activities. No comments were received during the 30-day review period. However, comments were received October 9, 2018, four days after the comment period expired. Based on comments, the Zoning Administrator recommended clarification and amplification of mitigation measures at the Zoning Administrator hearing to improve the clarity and effectiveness of the measures.

On December 6, 2018, the Zoning Administrator adopted the MND and approved the project with the updated mitigation measures. The Zoning Administrator's approval was timely appealed to the Board of Supervisors by Friends Artists and Neighbors of the Elkhorn Slough (FANS) on January 2, 2019. In their appeal, FANS contend that there was a lack of a fair or impartial hearing, the findings and decision were not supported by the evidence, and the decision was contrary to law. Primary contentions raised in the appeal include:

1. The proposed development is not allowed in Environmentally Sensitive Habitat under the Local Coastal Program.
2. Mitigations are inadequate and do not mitigate impacts to less than significant
3. There were inadequate and improper cumulative impacts analysis; and
4. The County's processing of the project had procedural problems.

The appellant also declined to provide stamped envelopes for notice to the property owners within 300 feet of the project site and filed a fee waiver request protesting this requirement. The appeal is attached as **Exhibit H**. Staff has reviewed the appeal contentions. Those contentions and staff's responses are summarized in the following discussion, with more detail in the attached draft resolution (**Exhibit B**).

DISCUSSION:

Under the County's Local Coastal Program, permits are required for development in the coastal zone. Even though the proposed activity is for fire fuel management purposes, which is exempt from permit requirements, the proposed work involves grading on slopes over 25% and within environmentally sensitive habitat areas (ESHA), which is non-exempt development.

The appeal contends that the project is not consistent with the North County Land Use Plan, which is part of the County's Local Coastal Program certified by the California Coastal Commission. Staff's determination is that the project is consistent with the North County Land Use Plan. The PG&E grading project is limited to 106 cubic yards of grading over an area of 895 square feet. This is the minimum amount of grading required to accomplish the goal of meeting minimum Federal ground clearance standards between the ground and overhead powerlines. The existing ground clearance is 30 feet. The Federal minimum clearance is 36 feet, 4 inches. This project will create a 40-foot ground clearance. PG & E is proposing to restore the native vegetation in the disturbed areas following grading activities. With restoration, the project balances fire fuel management with the long-term maintenance of native plants and plant communities.

The appeal contends that mitigation measures are not adequate to mitigate project impacts to a less than significant level. An Initial Study was prepared for the project to address potential impacts to sensitive plants and plant communities (biology) pursuant to Section 15102 of the CEQA guidelines. This study identified mitigation measures that reduce potential impacts to a less than significant level and a corresponding Mitigated Negative Declaration was prepared pursuant to 15070(b) with proposed mitigation measures. The mitigation measures have been incorporated into all applicable construction plans. The measures include removing approximately 20 special-status plants for salvage, storing the salvaged plants in pots with soil and watered, removing and stockpiling the upper (6) inches of top soil and stockpiling on site on plastic sheets so as to

isolate the soil from any weed seeds, and then reapplying the soil to the disturbed area once the grading objectives are met. The salvaged special-status plants would be replanted in the disturbed area. The project also includes harvesting seed stock from the special-status plants for germination at an off-site nursery and then planting the seedlings over the project site during Fall 2019. Complimentary mitigation measures include habitat enhancement by removing non-native and invasive plants from the project area, within the Limits of Disturbance (LOD). The project also includes Success Criteria and an Adaptive Management component should restoration and enhancements efforts fall short of target criteria established in the Success Criteria during the prescribed monitoring period.

Pursuant to Section 15105 of the CEQA Guidelines, the Initial Study was subject to a public review period of 30 days which commenced on September 5, 2018 and concluded on October 5, 2018. No public comments or outside agency comments were made to Monterey County RMA during this review period. However, comments were received October 9. The comments contend that the Initial Study is inadequate and that there is a fair argument that the project would have an environmental impact. FANS's appeal makes similar contentions. Staff has reviewed and addressed the appeal contentions and clarified and amplified the analysis and mitigation measures as appropriate. As further explained in the draft resolution, it is staff's conclusion that there is no substantial evidence supporting a fair argument that the project would have a significant effect on the environment and that the IS/MND is therefore appropriate.

Mitigations applied to the project are sufficient to minimize impacts to a less than significant level. Project alternatives considered in review of the project, including replacing the existing PG & E tower with a taller tower, would result in more disturbance than the proposed grading. Without the project, the minimum clearance to avoid health and safety risks from fire will not be achieved. Mitigation requires restoration and enhancement of the sensitive plant community following grading activities. No other potentially significant effects have been identified.

The appeal also contends that the cumulative impact analysis was inadequate. Cumulative impacts were considered in the MND and by the Zoning Administrator as part of the decision. PG & E carries out multiple types of activities for repair, maintenance, and improvements of power and gas generation and transmission. As it relates to Federal minimum fire clearance activities, PG & E has indicated that they are conducting similar projects (lowering the ground rather than raising the towers to achieve the required vertical clearance) in approximately five (5) other locations throughout the state. None of these projects are located in Monterey County. The geographic scope for the cumulative impact analysis is the area within the North County Land Use Plan bounded by Hall Road to the north, Castroville Boulevard to the south, San Miguel Canyon Road to the east, and Elkhorn Road to the west. This project will not have cumulatively considerable environmental impacts on the environment when taking into account past, present, and reasonably probable future projects in this geographic area (see draft resolution, findings 6 and 10). Native vegetation in the 895 square feet area impacted by grading for fire safety will be restored and there will be no net loss of habitat.

Procedurally, the County has complied with all required noticing, hearing, and disclosure requirements. Public notice of the intent to adopt the MND was provided in accordance with CEQA, public notice of the Zoning Administrator hearing was provided in accordance with County and State laws, plans and information have been provided to the public, and all parties had the opportunity to be heard at the Zoning Administrator. The "procedural problems" cited by FANS are alleged lack of notification about the fact that the project is in the coastal zone. To the extent FANS alleges that it submitted comments late on the Initial Study because it was unaware that the project is in the coastal zone, there has been no prejudice to FANS because County received and considered their comments. FANS also alleges that County did not disclose that a biological report was submitted by the applicant. A biological report was submitted by a biologist under contract with PG & E (the

applicant). RMA staff has not claimed ownership of the report. The report was listed as a reference to the Initial Study and a copy of the report was provided to FANS upon request. RMA is not deliberately “hiding” facts and has written separately to FANS’ attorney concerning her allegations. (See attached letter, **Exhibit D**)

Comments have been considered and have not changed the conclusions or recommendation of staff. Draft findings and evidence for denial of the appeal of the Zoning Administrator decision and approval of the project are attached for consideration by the Board.

OTHER AGENCY INVOLVEMENT:

The following County agencies or departments reviewed this project:

- RMA-Public Works
- RMA-Environmental Services
- Environmental Health Bureau
- North County Fire Protection District
- Water Resources Agency

The project was referred to the North County Land Use Advisory Committee (LUAC) for review (**Exhibit C**). The LUAC reviewed the project at a public meeting on April 18, 2018 and voted 7 - 1 (7 ayes; 1 no) to support the project as proposed, with one vote against the project as proposed with concerns over erosion control. The project includes incorporation of Best Management Practices (BMPs) during the grading activities followed by restorative measures described above at the conclusion of the grading activity as a means of minimizing possible erosion.

FINANCING:

Funding for staff time associated with this project is included in the FY18/19 adopted budget for RMA-Planning. As a standard practice, the Clerk of the Board appeal application requires submittal of pre-addressed, stamped envelopes for noticing of appeals, at the time an appeal is filed. Among other notice requirements for public hearings on land use entitlement applications, Title 20 (coastal zoning ordinance) requires notice of the public hearing to be mailed or delivered “to all owners and legal residents of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the public hearing” (the so-called “300 foot list”) (Monterey County Code, sec. 20.84.040). Title 20 also provides that, when filing an appeal, the appellant is required to pay “the required filing fee as established from time to time by the Board of Supervisors” while not required to pay an “appeal fee” for Coastal Development Permits that are appealable to the Coastal Commission (MCC, sec. 20.86.030.D). The County’s appeal form requires appellants to submit the stamped addressed envelopes for the 300-foot list to the Clerk of the Board at the time an appeal is filed. FANS did not provide the stamped envelopes and requested a waiver of this requirement as “illegal and unauthorized.”

The project is located in the coastal zone. Pursuant to the Coastal Act, local agencies cannot require appeal fees. If a fee is applied, the Coastal Act allows parties to appeal directly to the Coastal Commission. No appeal fee was required; however, appellant filed a request to waive the requirement/cost for providing pre-addressed, stamped envelopes.

With a fee waiver, RMA’s standard practice/policy is to afford one of two options: 1) submit the fee and allow

the process to continue parallel with the waiver request; or 2) not pay the fee and process the waiver request ahead of the application. In this case being an appeal by a second party, the real party of interest would be harmed to delay processing until appellants provide the stamped envelopes.

Staff finds that it is debatable whether or not requiring self-addressed, stamped envelopes constitutes an appeal fee. Coastal staff opined that requiring stamped envelopes does constitute an appeal fee, even though this has been the County's practice for decades and has been adhered to, including appellants legal counsel, without contention until now. RMA staff disagree with Coastal staff and feel that this is indeed a filing fee; recognizing though that there may be ambiguity, staff recommends granting the appellant's request to not provide stamped envelopes. Staff intends to address the stamped envelope issue on a broader policy basis in the future, in conjunction with updating land use application fees.

Planning staff costs are funded by permit revenue, supplemented by the General Fund. Waiving fees impacts revenue projected to offset expenditures. Expenditures include staff time as well as direct outside costs (advertising notice, postage, etc). Advertising costs average about \$1500-2000 per project. Postage fees vary in each case depending on the number of notices required. In this case, the postage fee was approximately \$10.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our RMA customers. Processing this application and appeal in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- ☐ Economic Development
- ☒ Administration
- ☐ Health & Human Services
- ☐ Infrastructure
- ☐ Public Safety

Prepared by: R. Craig Smith, Associate Planner, x6408

Reviewed by: Craig Spencer, Interim RMA Planning Services Manager

Approved by: John M. Dugan, FAICP, RMA Deputy Director of Land Use and
Development Services

The following attachments are on file with the Clerk of the Board:

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| Exhibit A | Vicinity Map |
| Exhibit B | Draft Resolution, including: <ul style="list-style-type: none">• B-1 Recommended Conditions of Approval• B-2 Site Plan, grading plan |
| Exhibit C | North County LUAC Minutes (April 18, 2018) |
| Exhibit D | RMA Letter to Molly Erickson dated February 6, 2019 |
| Exhibit E | REVISED Initial Study/Mitigated Negative Declaration |
| Exhibit F | Biological Assessment (LIB160313) |
| Exhibit G | Updated Biological Assessment (LIB180398) |
| Exhibit H | Appeal |
| Exhibit I | Correspondence |

cc: Front Counter Copy; Monterey County Fire Protection District; RMA-Public Works; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; R. Craig Smith, Associate Planner; Brandon Swanson, RMA Services Manager; Pacific Gas & Electric / Paul Marotto, project owner; Friends, Artists, and Neighbors of the Elkhorn Slough (Molly Erickson); Monterey Bay Chapter of the California Native Plant Society; LandWatch; Project File PLN160131.