



## Board Report

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**File #:** RES 21-170, **Version:** 1

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**PLN160131 - Pacific Gas & Electric (CONTINUED FROM FEBURARY 26, 2019, and MARCH 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. Acknowledge changes to the project agreed upon to resolve contentions raised in the appeal of the Zoning Administrator's approval by Friends, Artists and Neighbors of the Elkhorn Slough;
- b. Adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan;
- c. Approve a Combined Development Permit consisting of:
  1. A Coastal Development Permit to allow grading approximately 400 cubic yards over an area of approximately 2,855 square feet to increase ground clearance for existing Pacific Gas & Electric Company powerlines within 100 feet of environmentally sensitive habitat; and
  2. Coastal Development Permit to allow grading on slopes in excess of 25 percent; and
- 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 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 400 cubic yards of grading to remove a knoll under the power lines (up to 10 vertical feet of soil) over an area of approximately 2,855 square feet. The work will occur at the intersection of four separate parcels. The limit of disturbance ("LOD"), is approximately 6,024 square feet including the grading area as well as areas utilized for stockpiling, staging of equipment, and the redistribution of the 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 a revised mitigated negative declaration. 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 **Attachment H**. The hearing on the appeal was delayed with consent from both the applicant and appellant in order to allow time for PG&E to discuss options with the appellant to settle the appeal. Discussions between the applicant and appellant have resulted in minor changes to the project that are intended to address the contentions raised in the appeal. Staff's analysis of the revised project and responses to appeal contentions are summarized in the discussion below and reflected in the attached draft resolution (**Attachment B**).

#### DISCUSSION:

PG&E has identified a landform or knoll located beneath power lines in the Strawberry Canyon and Tucker Road area that represents a relatively small area where the vertical clearance between vegetation on the ground and the power lines does not meet the minimum distance recommended for fire safety. As a result, PG&E would like to grade the area, flattening the knoll and increasing the clearance by lowering the ground. This work will require removal of vegetation and impact areas containing slopes greater than 25 percent. Under the County's Local Coastal Program, permits are required for development involving grading on slopes over 25 percent and within environmentally sensitive habitat areas (ESHA).

A permit for the proposed grading was granted by the Zoning Administrator (ZA) on December 6, 2018. The ZA's approval also included adoption of a mitigated negative declaration that identified potential impacts to biology and slopes. That decision was subsequently appealed by Molly Erickson representing FANS.

The FANS appeal contended that;

1. 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;
2. Mitigation measures were not adequate to mitigate project impacts to a less than significant level;
3. The cumulative impact analysis was inadequate; and

4. There was a lack of notification that the project is located within the Coastal Zone. After the appeal was filed, PG&E and the appellants representative agreed to postpone the appeal hearing before the Board of Supervisors to allow time to negotiate a resolution between the two parties. As a result of negotiations, PG&E has agreed to some project changes. Those changes include:

- Revising the grading plans to provide a 3:1 finish grade cut slope rather than the original 2:1 cut slope which increases the project footprint but decreases the potential for future erosion.
- Revise the revegetation plan to:
  - a. Substantially increase the number of special status plant species (Pajaro Manzanita, Hookers Manzanita, and Eastwoods Goldenbrush) to be replanted;
  - b. Extend the monitoring period after replanting from 3 years to 5 years; and
  - c. Revise the revegetation success criteria to require quarterly monitoring in year one and annual monitoring in subsequent years with a minimum plant survivability rate of 75 percent with corrective actions including additional planting and monitoring to achieve success criteria; and
- Include removal of invasive plant species within the project area and along the access road to the project area.

These project revisions have been incorporated into the project and reflected in updated mitigation measures. PG&E worked closely with FANS to formulate a clarified and amplified version of the final proposed Habitat Restoration Plan. With these revisions, the applicant believes that the appeal has been addressed and FANS is now in support of the restoration project. Regardless, staff's responses to contentions are described below and are included in the attached resolution.

*Plan Consistency:*

The project is consistent with the North County Land Use Plan. The North County Land Use Plan prohibits development within specified environmentally sensitive habitat areas. An exception to this policy includes activities for maintenance of existing structures and roads. This project includes maintenance of existing structures (power lines within a PG&E easement). The PG&E grading project is limited to 400 cubic yards of grading over an area of 2,855 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 and with restoration, the project will not adversely impact the long-term maintenance as demonstrated through biological investigations. The project balances fire hazards with the long-term maintenance of native plants and plant communities.

*Mitigation Measure Adequacy:*

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 project will remove healthy special-status plants from the grading area. Those plants will be stored and salvaged in pots including removing the upper 6 inches of topsoil during grading and stockpiling the soil and plant materials on plastic sheets so as to isolate the soil from any weed seeds. After grading, the soil will be re-disturbed and a minimum of 180 special-status plants will be added to revegetate the site with the addition of any salvaged plants prior to grading activity. 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 2021. Complimentary mitigation measures include habitat enhancement by removing non-native and invasive plants from the project area, within the Limits of Disturbance (LOD), and one-time weed abatement of 900 linear feet along the access

road to the project site. The project also includes success criteria, and an adaptive management component should restoration and enhancement efforts fall short of target criteria established in the Success Criteria during the prescribed monitoring period. These measures have been incorporated as conditions of approval to minimize impacts of the project 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.

*Cumulative Impact Assessment:*

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 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 is unique in its location, impacts, and vegetation. 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, Finding Nos.7 and 12). Native vegetation in the 2,855 square feet area impacted by grading for fire safety will be restored and there will be no net loss of habitat.

*Location and Notice:*

Procedurally, the County has complied with all required noticing, hearing, and disclosure requirements. The “procedural problems” cited by FANS are alleged lack of notification with clarity about the project location including location 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. HCD 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. 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. County staff has improved the location description in all notices after review of the comments.

*CEQA:*

An Initial Study/Mitigated Negative Declaration (IS/MND) was circulated for public review and comment prior to consideration by the Zoning Administrator. Comments received during, and shortly after the close of the comment period have been considered. Revisions to the project and revisions to the mitigation measures have been agreed upon by PG&E to minimize impacts on the environment to a less than significant level and to address comments received on the IS/MND. Corresponding revisions to the IS/MND are proposed and these revisions clarify and amplify the analysis contained in the IS/MND relating to the project description, updated and more effective mitigation measures, and amplification of the analysis in response to comments. No new or more severe impacts have been identified and staff recommends adoption of the IS/MND as clarified and

amplified. Staff has included a “Tracked Changes” version of the document (**Exhibit E-1**) for ease of identification of changes to text and as well as a “Clean Version” (**Exhibit E-2**) for consideration.

OTHER AGENCY INVOLVEMENT:

The following County agencies or departments reviewed this project:

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

*LUAC:* The project was referred to the North County Land Use Advisory Committee (LUAC) for review ( **Attachment 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 FY2021-22 adopted budget for HCD. 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) 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 (“MCC”) section. 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 section 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. 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 HCD 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: Kayla Nelson, Assistant Planner, x6408

Reviewed by: Craig Spencer, HCD-Chief of Planning

Approved by: Erik Lundquist, AICP, Director of Housing and Community Development

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

Attachment A - Vicinity Map

Attachment B - Draft Resolution, including:

- B-1 Recommended Conditions of Approval
- B-2 Site Plan, Site-specific Erosion and Sediment Control Plan
- B-3 Habitat Restoration Plan (April 2021 and September 2021)

Attachment C - North County LUAC Minutes (April 18, 2018)

Attachment D - HCD Letter to Molly Erickson dated February 6, 2019

Attachment E-1 - REVISED Initial Study/Mitigated Negative Declaration - Tracked Changes Version

Attachment E-2 - REVISED Initial Study/Mitigated Negative Declaration - Clean Version

Attachment F - Biological Assessment (LIB160313)

Attachment G - Updated Biological Assessment (LIB180398)

Attachment H - Appeal

Attachment I - Correspondence

cc: Front Counter Copy; North Monterey County Fire Protection District; Public Works; HCD-Environmental Services; Environmental Health Bureau; Kayla Nelson, Assistant Planner; Craig Spencer, HCD-Chief of Planning; 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.