

**PLANNING COMMISSION  
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 02064

A. P. # 133-181-011-000M

**FINDINGS AND DECISION**

In the matter of the application of  
**Duke Energy Moss Landing LLC (PLN020098)**

WHEREAS: The Planning Commission, pursuant to regulations established by local ordinance and state law, has considered, at public hearing, an amendment of the existing Combined Development Permit PLN990233 consisting of the demolition of 19 above ground oil tanks and 150,000 cubic yards of grading and an amendment to the Moss Landing Power Plant Master Plan to allow the proposed demolition and grading, located fronting on and easterly of Highway 1, on the north side of its intersection with Dolan Road, Moss Landing, North County area, Coastal Zone, came on regularly for hearing before the Planning Commission on October 30, 2002.

WHEREAS: Said proposal includes:

- 1) utilizing Tank #13 as temporary storage for an additional two years, and
- 2) decanting 32,000 cubic yards of dredge material and transport of decanted material to the Marina Landfill.

WHEREAS: Said Planning Commission, having considered the application and the evidence presented relating thereto,

**FINDINGS OF FACT**

1. **FINDING:** The Combined Development Permit amendment consists of utilizing tank #13 as temporary storage for an additional two years and decanting and transport of approximately 18,500 cubic yards of dredge material to the Marina Landfill. The amended Combined Development Permit includes: an Amendment to the Moss Landing Power Plant Master Plan; and, a Coastal Development Permit for removing 19 Moss Landing Power Plant oil tanks, Grading (approximately 150,000 on 74 acres) and site restoration. The parcel is located 12 miles northwest of Salinas, California, in Monterey County at the intersection of Highway 1 and Dolan Road, east of the Moss Landing Harbor and south of the Elkhorn Slough (Assessor's Parcel Number(s) 133-171-003 and 133-181-011), in the North Monterey County area of the Coastal Zone. The proposed project is consistent with County ordinances and land use regulations and is subject to the terms and conditions of this Coastal Development Permit. Neither the uses nor the construction allowed by this permit shall commence unless, and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. The project area is approximately 239 acres zoned Heavy Industrial, "HI (CZ)". The project as described with the accompanying materials contained in the application file, and as conditioned, is consistent with the plans, policies, requirements and standards of the North County Local Coastal Program, the North County Coastal Implementation Plan (Part 2) and the Monterey County Coastal Zoning Ordinance (Title 20).

**EVIDENCE:** Staff reviewed the project as contained in the application and accompanying materials for consistency with:

- 1) The certified North Monterey County Land Use Plan;
- 2) Chapter 20.146 of the Monterey County Coastal Implementation Plan (Part 2)-Regulations for Development in the North County Land Use Plan Area; and
- 3) The certified Monterey County Coastal Implementation Plan (Part 1)-Regulations for Public/Quasi-Public Zoning Districts or “HI (CZ)” Districts.
- 4) Chapter 20.70.105 of the Monterey County Zoning Ordinance, Amendments to Coastal Development Permits.

EVIDENCE: Plans and materials contained in File Nos. PLN990233 & PLN020098.

EVIDENCE: The North Monterey County Coastal Land Use Advisory Committee recommended approval of the original project with a vote of 6 to 0 on October 18, 1999.

EVIDENCE: The North Monterey County Coastal Land Use Advisory Committee recommended approval of the amendment with a vote of 6 to 0 on June 17, 2002.

EVIDENCE: The proposed development has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Environmental Health Division, Parks and Recreation Department, Monterey Bay Unified Air Pollution Control District (MBUAPCD) and North County Fire District. There has been no indication from these agencies that the site is not suitable for the proposed development. Necessary public facilities are available to the project site. Staff verification of the Monterey County Planning and Building Inspection Department records indicated that no violations exist on subject property. The Initial Study demonstrates that no physical or environmental constraints exist that would indicate the site is not suitable for the proposed development. Each agency has recommended conditions for improvements.

EVIDENCE: Written and verbal public testimony submitted at public hearings before the Monterey County Planning Commission.

EVIDENCE: Other evidence as needed such as visual impacts, geological report, biological report, tree removal, slope issues, contained in the Initial Study.

EVIDENCE: The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in the project files (PLN990233, PLN020098).

EVIDENCE: The on-site inspection by the project planner on April 14, 2000 to verify that the proposed project complies with the North Monterey County Area Coastal Implementation Plan (Part 2).

EVIDENCE: Staff verification of the Monterey County Planning and Building Inspection Department records indicated that no violations exist on subject property.

EVIDENCE: The recommended conditions regarding landscaping have been applied to eliminate increased erosion as required in Chapter 20.144.040 of the adopted and certified Monterey Coastal Implementation Plan (Part 2), and Policy 26.1.20 of the Monterey County General Plan.

EVIDENCE: A ten-foot public access easement for the Coastal Trail is required as a condition of approval for a Coastal Development Permit for this project.

EVIDENCE: The Master Plan amendment includes the Tank Farm Demolition Project.

2. FINDING: The project is consistent with the Archaeological Resources Development Standards of the Implementation Plan (Part 2). Pursuant to Section 20.144.110, the project required an archaeological report because the project site is located in a high archaeological sensitive area.
- EVIDENCE: An Archaeological Report prepared by M. Doane and G. Breschini, 1999. concluded that the site contains evidence of significant archaeological resources. However the project area is not within the cultural resource area. Nevertheless, a condition, number 64 was included as a mitigation in the event that cultural, archaeological, historical or palentological resources are uncovered at the site during the tank demolition.
- EVIDENCE: Plans and materials contained in File Nos. PLN990233 & PLN020098.
3. FINDING: The project is consistent with the Visual Resource Development Standards of the Implementation Plan (Part 2). Pursuant to Section 20.144.030, the project was evaluated in terms of the impact on the Highway 1 viewshed, a designated scenic highway, and no significant visual impacts were identified in the context of the existing operation.
- EVIDENCE: A site inspection conducted by the project planner on April 14, 2000.
- EVIDENCE: Plans and materials contained in File Nos. PLN990233 & PLN020098.
- EVIDENCE: The Land Use Advisory voted 6-0 in favor of the proposed projects.
4. FINDING: The site is suitable for the use proposed.
- EVIDENCE: There has been no testimony received either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Monterey Bay Unified Air Pollution Control District (MBUAPCD), Public Works Department and Health Department. There has been no indication from those agencies that the site is not suitable. There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the proposed tank farm demolition.
- EVIDENCE: Plans and materials contained in File Nos. PLN990233 & PLN020098 and Conditions of Approval for PLN990233 & PLN020098.
5. FINDING: The proposed project, including all permits and approvals, will not have any significant adverse impacts on the environment and a Mitigated Negative Declaration has been adopted. Potential environmental effects have been studied and there is no substantial evidence in the record, as a whole, that supports a fair argument that the project, as designed and mitigated, may cause a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County based upon the findings and conclusions drawn in the Initial Study and in consideration of testimony and information received, and scientific and factual data presented in evidence during the public review process. Mitigation measures identified in the Initial Study have been incorporated into the project, and agreed to by the applicant, to reduce any impact to an insignificant level. All applicable mitigation measures are included in the conditions of approval, which are hereby adopted as a mitigation monitoring and reporting program.
- EVIDENCE: Staff updated the original Initial Study/Mitigated Negative Declaration to include the potential adverse traffic impacts from the proposed amendment. The updated Initial Study/Mitigated Negative Declaration was circulated for 30 days through the State Clearinghouse. No Comments were received.
- EVIDENCE: The analysis in the updated Initial Study of the proposed amendment provided substantial evidence that the project, as modified by the proposed amendment and as mitigated, would not have significant environmental impacts.

**EVIDENCE:** Studies, data, and reports prepared by staff from various County departments, including Planning and Building Inspection, Public Works, Environmental Health, and the Water Resources Agency, support the adoption of a Negative Declaration for the project. The custodian of the documents and materials that constitute the record of proceedings upon which the adoption of the Negative Declaration is based is the Monterey County Planning and Building Inspection Department, 240 Church Street, Salinas. No facts, reasonable assumptions predicated on facts, testimony supported by adequate factual foundation, or expert opinion supported by facts have been submitted that refute the conclusions reached by these studies, data, and reports. Nothing in the record alters the environmental determination, as presented by staff, based on investigation and the independent assessment of those studies, data, and reports.

**EVIDENCE:** County staff prepared an Initial Study for the project in compliance with the California Environmental Quality Act (CEQA), its Guidelines, and the Monterey County CEQA Guidelines. The Initial Study provided substantial evidence that the project, with the addition of mitigation measures, would not have significant environmental impacts. A Mitigated Negative Declaration was filed with the County Clerk on May 5, 2000 and noticed for public review. All comments received on the Initial Study have been considered as well as all evidence in the record, which includes studies, data, and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented or discussed during public hearings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced studies, data, and reports; application materials; and expert testimony. Among the studies, data, and reports analyzed as part of the environmental determination are the following: Site Plan; Master Plan Amendment; Department of The Army letter dated September 23, 1999; Duke Energy Letter to the U.S. Fish and Wildlife Service dated July 19, 1999; "Biological Resources Report," TRC Environmental Solutions, Inc.; "Cultural Resources Report," M. Doane and G. Breschini, 1999; "Geologic Hazards & Resources Report," TRC Environmental Solutions, Inc.; California Regional Water Quality Control Board (Central Coast Region) letter, February 8, 2000; Storm Water Pollution Prevention Plan & NPDES Permit; "Noise Report," TRC Environmental Solutions, Inc.; "Traffic Report," Higgins Associates; "Transportation Management Plan," Higgins Associates; "Construction Emissions and Impact Analysis" (CEIA) Sierra Systems, March, 2000; "CEIA Peer Review for Monterey County, March 20, 2000" Jones & Stokes; Existing Site Drainage Plan; Proposed Site Drainage Plan.

**EVIDENCE:** Monterey County staff reviewed all comments to the Initial Study and recommended additional mitigation measures and conditions based on this review process. In addition, Monterey County staff held several meetings with commenting staff to formulate mitigation measures and new conditions.

**EVIDENCE:** Potential secondary impacts resulting from the Caltrans' project at Highway 1 and Dolan Road can be mitigated to a level of no significance by redesigning the project so that the impacted area is avoided.

**EVIDENCE:** Monterey County staff reviewed all comments to the Initial Study and recommended additional mitigation measures and conditions based on this review process. In addition, Monterey County staff held several meetings with commenting staff to formulate mitigation measures and new conditions.

**EVIDENCE:** Potential secondary impacts resulting from the Caltrans' project at Highway 1 and Dolan Road can be mitigated to a level of no significance by redesigning the project so that the impacted area is avoided.

6. **FINDING:** The proposed project is consistent with policies of Chapter 20.144.040 of the adopted and certified Monterey Coastal Implementation Plan (Part 2), dealing with development adjacent to environmentally sensitive habitats.

**EVIDENCE:** The Biological Report prepared for the site by TRC Environmental Solutions, Inc., 1999 states no significant negative impact will result from this development. A condition has been added which requires the applicant to comply with the mitigation contained in the Biological Report.

7. **FINDING:** The project is consistent with the Hazardous Area Development Standards-Geologic Hazards of the Implementation Plan (Part 2). The parcel is located in a high seismic zone. Pursuant to Section 20.144.100.A.1.B, a Geotechnical Report was prepared by TRC Environmental Solutions, Inc., 1999. The report concluded that no geologic hazards were present other than potential earthquake activity, and made recommendations which are incorporated as conditions of approval.

**EVIDENCE:** Monterey County Coastal Implementation Plan (Part 2), Section 20.144.100.A.1.B, Hazardous Area Development Standards, Geologic Hazards.

**EVIDENCE:** Plans and materials contained in File Nos. PLN990233 & PLN020098 and Conditions 17 and 18 of PLN990233.

8. **FINDING:** The project is consistent with the Transportation Development Standards of the Implementation Plan (Part 2). Section 20.144.120 requires major development projects that impact Highway 1 contribute toward Highway 1 improvements. The project site is accessible from Dolan Road by way of Highway 1 and does require access improvements near Highway 1. The project will have an interim impact on Highway 1 traffic and is subject to Highway 1 improvements that are included in the Transportation Plan which mitigate potential impacts to a level of no significant adverse impacts.

**EVIDENCE:** A site inspection conducted by the project planner on April 14, 2000.

**EVIDENCE:** Plans and materials contained in File Nos. PLN990233 & PLN020098.

9. **FINDING:** For purposes of the Fish and Game Code, the project will have a potential for changes on fish and wildlife resources upon which the wildlife depends.

**EVIDENCE:** Staff analysis contained in the Initial Study and the record as a whole indicate the project may or will result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations which include: native and non-native plant life and the soil required to sustain habitat for fish and wildlife; rare and unique plant life and ecological communities dependent on plant life, and; listed threatened and endangered plant and animals and the habitat in which they are believed to reside; and all species of plant or animals listed as protected or identified for special management in the Fish and Game Code, the Public Resources Code, and the Water Code, or regulations adopted thereunder.

10. **FINDING:** The establishment, maintenance, or operation of the use or structure applied for will not, under the circumstances of the particular case, be detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvement in the neighborhood, or to the general welfare of the County.

**EVIDENCE:** The project as described in the application and accompanying materials was reviewed by the Department of Planning and Building Inspection, Environmental Health Division, Public Works Department, the North County Fire District, Monterey Bay Unified Air Pollution Control District (MBUAPCD), and the Water Resources Agency. The respective departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood; or the County in general.

**EVIDENCE:** Adoption of the Negative Declaration includes mitigation measures that address potential cumulative impacts.

- EVIDENCE: File and application materials, Initial Study with mitigation measures, and Mitigated Negative Declaration contained in the project file.
11. FINDING: The proposed project is consistent with public access policies Chapter 6.4 of the certified North Monterey County Land Use Plan.  
EVIDENCE: A ten-foot public access easement for the Coastal Trail is required as a condition of approval for a Coastal Development Permit for this project.
12. FINDING: The Coastal Development Permit amendment, as approved by the Planning Commission, is appealable to the Board of Supervisors and the Coastal Commission.  
EVIDENCE: Sections 20.86 of Title 20 the Monterey County Coastal Implementation Plan (Part 1).

### DECISION

THEREFORE, it is the decision of said Planning Commission that the Updated Mitigated Negative Declaration be adopted and said application be granted as shown on the attached sketch, subject to the following conditions of approval and Amended Mitigation Monitoring and/or Reporting Program.

1. All conditions of the original Combined Development Permit (File No. PLN990233) shall remain in effect and are not changed by this amendment. **(Planning And Building Inspection Department)**
2. The applicant shall record a notice that states: “A permit Amendment (File No. PLN020098) was approved by the Monterey County Planning Commission for Assessor's Parcel Number 133-181-011-000 on October 30, 2002. The permit was granted subject to 4 conditions of approval, which run with the land. The conditions of approval for the original application (File No. PLN990233) remain in effect and are not changed and apply to this amendment. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department.” Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of a building permit or commencement of the use. **(Planning and Building Inspection Department)**
3. The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring Plan. The Plan shall be submitted to the Director of Planning and Building Inspection Department for approval prior to issuance of building and/or building permits. **(Planning and Building Inspection)**

### **Condition from the updated Mitigated Negative Declaration**

4. In order to avoid potential adverse traffic impacts from the transport of dried dredge material from tank #13 to the Marina Landfill, no loaded trucks shall be allowed to travel on Highway 1 between Dolan Road and Castroville (Highway 183 intersection). Truck traffic to the landfill shall utilize the route recommended by the April 16, 2002 Traffic Impact Evaluation report by Higgins Associates which includes a left turn out of the project site onto eastbound Dolan Road turning right onto southbound Castroville Boulevard, a right turn onto westbound Highway 156 merging onto southbound Highway 1. Access to the landfill would then be gained by exiting Highway 1 at Del Monte Boulevard and turning left at the landfill. In addition, project related truck traffic to and from the landfill shall not be allowed between 07:00 A.M. and 09:00 A.M., and between 3:00 and 6:00 P.M.

### **MONITORING ACTION**

Prior to the commencement of dredge material transport, the applicant shall submit to the Director of Planning and Building Inspection Department for approval two copies of an amended traffic management plan that includes the provisions of this mitigation measure. In addition, the applicant shall submit to the Director of Planning and Building Inspection Department evidence that the contract with the trucking company to carry out the hauling of material stipulates the provisions of this mitigation measure. Within 30 days after completion of material transport, a letter from

the trucking company covered by a letter from Duke Energy shall be submitted to the Director of Planning and Building Inspection Department. The letter shall state that the trucking company has complied with the requirements of this condition. Failure to submit the letter shall constitute a violation of this permit subject to enforcement action.

**PASSED AND ADOPTED** this 30th day of October, 2002 by the following vote:

AYES: Errea, Sanchez, Hawkins, Brennan, Parsons, Diehl, Engell, Wilmot  
NOES: None  
ABSENT: Pitt-Derdivanis, Hernandez

Original Signed By:

ALANA KNASTER, SECRETARY PRO TEM

Copy of this decision mailed to applicant on

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

This decision, if this is the final administrative decision is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90<sup>th</sup> day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Marina.

2. The construction or use authorized by this permit must start within two years of the date of approval of this permit unless extended by the Director of Planning and Building Inspection pursuant to Section 20.140.100 of the Coastal Implementation Plan.

