

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

RESOLUTION NO. 03030

A.P. # 131-051-023-000

FINDINGS AND DECISION

In the matter of the application of
Union Pacific Railroad (PLN010294)

for a Coastal Development Permit in accordance with Title 20.1 (Monterey County Coastal Implementation Plan Ordinances) Chapter 20.140 (Coastal Development Permits) of the Monterey County Code, to construct a new bridge to replace an existing railroad bridge within an environmentally sensitive habitat, located at the confluence of Parson's Slough and Elkhorn Slough, North County area, Coastal Zone, came on regularly for hearing before the Planning Commission on May 28, 2003.

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

1. FINDING: CONSISTENCY - The Project, as conditioned is consistent with the North County Land Use Plan, (Part 2 of the Coastal Implementation Plan), Part 6 of the Coastal Implementation Plan, and the Monterey County Zoning Ordinance (Title 20).

EVIDENCE: (a) PBI staff has reviewed the project as contained in the application and accompanying materials for consistency with the North County Land Use Plan, (Part 2) of the Coastal Implementation Plan, and Part 6 of the Coastal Implementation Plan. PBI staff has reviewed the project as contained in the application and accompanying materials for conformity with the Monterey County Zoning Ordinance (Title 20) and has determined that the project is consistent with the North County Land Use Plan which designates this area as appropriate for resource conservation development. Staff notes are provided in Project File PLN010294.

(b) Project planner conducted an on-site inspection on September 20, 2002 to verify that the project on the subject parcel conforms to the plans listed above.

(c) The project for the repair of a public utility facility is a conditionally allowed use in accordance with Section 20.36.050.B.

(d) The parcel is zoned Resource Conservation, Coastal Zone "RC (CZ)." The project is in compliance with Site Development Standards for a Resource Conservation District in accordance with Section 20.36.060.

(e) **LAND USE ADVISORY COMMITTEE:** The North County Coastal Land Use Advisory Committee recommended approval of the project by a vote of 5-0. LUAC meeting minutes dated August 5, 2002 (Exhibit "D").

(f) The project is consistent with the Monterey County Coastal Implementation Plan for North County; Subsection 20.14.040: Environmentally Sensitive Habitat Development Standards because mitigations measures contained in the biological reports prepared for the project have been included in the condition of project approval.

(g) 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 Project File PLN010294.

2. FINDING: NO VIOLATIONS - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County's zoning ordinance. No violations exist on the property, and all zoning violation abatement cost, if any, have been paid.

EVIDENCE: (a) Staff reviewed Monterey County Planning and Building Inspection Department records and is not aware of any violations that exist on subject property.

3. **FINDING: HEALTH AND SAFETY** - The establishment, maintenance or operation of the project applied for will not under the circumstances of this particular case, be detrimental to the 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 improvements in the neighborhood or to the general welfare of the County.

EVIDENCE: (a) The project was reviewed by Planning and Building Inspection, Public Works Department, Water Resources Agency, Environmental Health Division, Parks Department and North County Fire Protection District. The respective departments and agencies 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. The applicant has agreed to these conditions as evidenced by the application and accompanying materials and conditions.

(b) Technical reports have been provided by consulting geotechnical engineers, biologist, archeologist and other environmental experts. The recommended conditions and modifications contained in the project reports provide additional assurances regarding project safety. A complete list of reports prepared for the project is included in finding No. 5, below. Reports are in Project File PLN010294.

4. **FINDING: SITE SUITABILITY** - The site is suitable for the use proposed.

EVIDENCE: (a) The project has been reviewed for suitability by Planning and Building Inspection, Public Works Department, Water Resources Agency, Environmental Health Division, Parks Department and North County Fire Protection District. Conditions recommended have been incorporated.

(b) Technical reports by outside archaeology, geology and geotechnical, and other consultants indicate that there are no physical or environmental constraints such as geologic or seismic hazard areas or similar areas that would indicate the site is not suitable for the use proposed. A complete list of reports prepared for the project is included in finding No. 5, below. Reports are in Project File PLN010294.

(c) Staff conducted an on-site visit on September 20, 2002 to verify that the site is suitable for this use.

(d) Necessary public facilities are available and will be provided, when applicable.

5. **FINDING: CEQA:** On the basis of the whole record before the Planning Commission there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The mitigated negative declaration reflects the independent judgment and analysis of the County.

EVIDENCE: (a) The Monterey County Planning and Building Inspection Department prepared an Initial Study pursuant to CEQA. The Initial Study identified several potentially significant effects, but the applicant has agreed to proposed mitigation measures that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. The Initial Study prepared for File No. PLN010294 is on file in the office of PB&I and is hereby incorporated by reference. All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval. (Exhibit C)

(b) A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure

compliance during project implementation. Applicant must enter into an “Agreement to Implement a Mitigation Monitoring and/or Reporting Plan as a condition of project approval (Condition No. 3, Exhibit “H”)

(c) Evidence that has been received and considered includes:

- 1) The application;
- 2) IS/MND for the Union Pacific Railroad Parson’s Slough Bridge Replacement Project – SCH #2003041047. April 1, 2003.
- 3) Klienfelder, Inc., January 23, 2002. *Geotechnical Engineering Investigation for Union Pacific Railroad Bridge Replacement Project at Parson’s Slough in Monterey County, California.*
- 4) Harding ESE, July 3, 2002. *Initial Study, Union Pacific Railroad Parson’s Slough Bridge Replacement Project.*
- 5) Harding ESE, August 6, 2002. *Revised Project Description and General Project Overview, Union Pacific Railroad Parson’s Slough Bridge Replacement Project.*
- 6) Harding ESE, June 17, 2002. *Marine Resources Study, Union Pacific Railroad Parson’s Slough Bridge Replacement Project.*
- 7) Harding ESE, June 20, 2002. *Biological Evaluation, Union Pacific Railroad Parson’s Slough Bridge Replacement Project.*
- 8) Harding ESE, June 17, 20002. *Noise Impact Study, Union Pacific Railroad Parson’s Slough Bridge Replacement Project.*
- 9) Harding ESE, July 19, 2002. *Construction Strom Water Pollution Prevention Plan, Union Pacific Railroad Parson’s Slough Bridge Replacement Project.*
- 10) Harding ESE, June 24, 2002. *Wetlands Assessment and Waters of the United States, Union Pacific Railroad Parson’s Slough Bridge Replacement Project.*
- 11) Harding ESE, June 17, 2002. *Visual Resources and Aesthetics Study, Union Pacific Railroad Parson’s Slough Bridge Replacement Project.*
- 12) David Chavez and Associates, October, 2001. *Cultural Resources Investigation for the Union Pacific Railroad Parson’s Slough Bridge Replacement Project.*
- 13) Harding ESE, March, 2003. *Post-Construction Biological Monitoring Report for Union Pacific Railroad Parson’s Slough Bridge Replacement Project.*
- 14) Staff reports that reflect the County’s independent judgment;
- 15) Information and testimony presented during public hearings.

These reports are on file in the offices of PBI (PLN010294) and are incorporated by reference herein.

- (d) The mitigated negative declaration was circulated for public review from April 5, 2003 to May 6, 2003).
- (e) No comments from the public were received.
- (f) The Monterey County Department of Planning and Building Inspection, located at 2620 1st Avenue, Marina CA, 93933, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the negative declaration is based

6. FINDING: PUBLIC ACCESS - The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with

any form of historic public use or trust rights (see 20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

- EVIDENCE**
- (a) The subject property is not described as an area where the Local Coastal Program requires access.
 - (b) The subject property is not indicated as part of any designated trails or shoreline access as shown in Figure 6, the Shoreline Access/Trails Map, of the North County Land Use Plan.
 - (c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
 - (d) Staff site visit on September 20, 2002.

7. **FINDING: APPEALABILITY** - The project is appealable to the Board of Supervisors and California Coastal Commission.

EVIDENCE: (a) Section 20.86.080.A.3 of the Monterey County Coastal Implementation Plan (Part 1).

DECISION

THEREFORE, it is the decision of the Planning Commission of the County of Monterey that the Mitigated Negative Declaration and Program for Monitoring and/or Reporting on Conditions of Approval be adopted and said application for a Coastal Development Permit be granted as shown on the attached sketch and subject to the following conditions:

1. The subject Coastal Development Permit follows an Emergency Coastal Development Permit issued August 8, 2002 authorizing the construction of a new reinforced concrete girder bridge, including driving new support pilings, reconstructing concrete bulkheads that support the bridge, placement of a prefabricated concrete girder bridge, raising the level of the train tracks, removing the old bridge structure and installing new tracks.

Prior to the Issuance of Grading and Building Permits:

2. The applicant shall record a notice which states: "A permit (Resolution #010294) was approved by the Planning Commission on May 28, 2003 for Assessor's Parcel Number 131-051-067. The permit was granted subject to 16 conditions of approval, which run with the land. 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 building permits or commencement of the use. **(Planning and Building Inspection)**
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)**
4. Pursuant to the State Public Resources Code, State Fish and Game Code and California Code of Regulations, the applicant shall pay a fee to be collected by the County of Monterey in the amount of **\$1,275. This fee shall be paid within five days of project approval**, before the filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. **(Planning and Building Inspection)**
5. Prior to the issuance of any grading and/or building permits, a construction plan shall be prepared by a registered civil engineer to include erosion protection for the bridge approaches and abutments. The approach

and abutment fill material shall be properly compacted, and protected with armor, if necessary. Plans shall identify subsurface materials under the abutments and approaches, and how fill material will be keyed into the subsurface. **(Water Resources Agency)**

6. Prior to the issuance of any grading and/or building permits, the applicant shall submit an application for a FEMA Conditional Letter of Map Revisions (CLOMR), including a check for the associated fee, to the County Water Resources Agency. **(Water Resources Agency)**
7. (Mitigation Measure No. 1). Submit evidence to the Director of Planning and Building Inspection that demonstrates that a Biologist has been retained to implement the mitigation measures contained the mitigation measures contained in the biological reports prepared for the project. **(Planning and Building Inspection)**
8. (Mitigation Measure No. 2) Submit a project construction schedule demonstrating that construction shall occur outside of the March 1 to August 31 nesting season for passerine birds. **(Planning and Building Inspection)**
9. (Mitigation Measure No. 3) Submit a project construction schedule demonstrating that construction shall occur outside of the March 15 to June 15 pupping season for harbor seals. **(Planning and Building Inspection)**
10. (Mitigation Measure No. 8) Submit a project construction schedule demonstrating that pile driving will occur between 7:00 a.m. and 7:00 p.m. only. **(Planning and Building Inspection)**

Prior to Commencement of Construction:

11. (Mitigation Measure No. 4) The applicant shall conduct, and document the results of, a survey of the project site for California Red-Legged Frog 48 hours prior to commencement of construction. If CRF are found, construction shall not commence until an appropriate plan to protect CRF is developed. **(Planning and Building Inspection)**
12. (Mitigation Measure No. 5) Prior to commencement of construction the applicant shall submit evidence that the construction staging areas have been delineated with protective fencing to prevent damage to adjacent salt marsh habitat. **(Planning and Building Inspection)**

Prior to Final Permit Clearance:

13. (Mitigation Measure No. 6) Within one year of completion of the project, implement a restoration plan for the project staging areas. **(Planning and Building Inspection)**
14. (Mitigation Measure No. 7) Within one year of completion of the project, the project biologist shall submit a restoration plan to restore any salt marsh habitat disturbed by construction. **(Planning and Building Inspection)**
15. If required by FEMA, the applicant shall submit an application for a FEMA Letter of Map Revision (LOMR), including a check for the associated fee, to the County Water Resources Agency. The applicant shall obtain the LOMR prior to final inspection. **(Water Resources Agency)**

Continuous Permit Conditions:

16. If during the course of construction activity on the subject property, cultural, archaeological, historical, paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted

immediately within 50 meters (165 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. **(Planning and Building Inspection)**

PASSED AND ADOPTED this 28th day of May, 2003, by the following vote:

AYES: Errea, Sanchez, Hawkins, Padilla, Brennan, Parsons, Diehl, Gonzalves, Rochester, Wilmot
NOES: None
ABSENT: None

Original Signed By:

JEFF MAIN, SECRETARY

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 90th 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. This permit expires 2 years after the above date of granting thereof unless construction or use is started within this period.