

MONTEREY COUNTY PLANNING COMMISSION

Meeting: July 30, 2008 Time: 9:00 a.m.		Agenda Item No.: 3
Project Description: Amendment to an approved Coastal Development Permit (PLN010504/Nature Conservancy) for the repair of three existing tide gates leading to culverts under a union pacific railroad line. The amendment revises the design from earthen berms to construction of a post & rail type fence allowing adjustment of height ranging up to six feet tall depending on the tide level.		
Project Location: Azevedo Marshes west of Elkhorn Road and north of Kirby Park, Elkhorn Slough, Coastal Zone		APN: 181-011-002-000
Planning File Number: PLN080294		Agent: Elkhorn Slough Foundation (Kim Hayes) Owner: The Nature Conservancy (Laura Smith)
Plan Area: North County Coastal Land Use Plan		Flagged and staked: No
Zoning Designation: : Agricultural Conservation (AC)/Resource Conservation (RC), Coastal Zone (CZ)		
CEQA Action: Addendum to Negative Declaration, adopted 8/27/03 amended July 15, 2008		
Department: RMA - Planning Department		

RECOMMENDATION:

Staff recommends that the Planning Commission:

- 1) Adopt a revised (addendum) Negative Declaration (adopted August 27, 2003 and amended July 15, 2008); and
- 2) Approve PLN080294 Amending an approved Coastal Development Permit (PLN010504) as described above based on Findings and Evidence (**Exhibit B**) and subject to proposed conditions (**Exhibit C**).

PROJECT SUMMARY:

The Elkhorn Slough Foundation is requesting amendment of a Coastal Development Permit to repair three existing tide gates in two ponds (marshes) leading to culverts under a Union Pacific Railroad (UPRR) line. The amendment revises the design from earthen berms to construction of a post & rail type fence allowing adjustment of height ranging up to six feet tall depending on the tide level. This project is identified as one of the projects of the Elkhorn Slough Wetland Management Plan adopted by the County of Monterey in 1989. These three gates are considered necessary to maintain adequate tidal flow from the farmland into the slough and to prevent excessive tidal inundation that could increase the threat of salt water intrusion at the ranch property.

Each of the three culverts in the railroad embankment adjoining the work sites will be blocked during low tide with sandbags in order to prevent tidal water from entering the marshes while work is being performed on the tide gates. Residual water will be pumped into a temporary flexible pipe so that excess water at the work sites can be discharged into the slough. Repair of the southern tide gate includes hand-shoveling a 90-foot long channel to remove approximately 10 cubic yards of sediment. A temporary coffer dam will need to be installed upstream of this work site to prevent marsh water from flowing into the work area as a new berm is being built. This dam will be completely removed upon project completion.

Staff prepared and circulated an initial study to assess potential environmental impacts. Temporary impacts will occur by blocking tidal flows while work is being performed. These repairs will take place during the summer months when the rainfall and surface drainage is not

accumulating in the marshes. This project will benefit existing agricultural operations on the property by removing the threat of salt water intrusion caused by uncontrolled tidal flows into the marshes. Staff finds that the project design along with the long-term benefits of the project reduces potential impacts to a less than significant level; and therefore, a Negative Declaration has been prepared.

OTHER AGENCY INVOLVEMENT:

There were no conditions presented from any of the reviewing agencies. The proposed project was reviewed by the North County Coastal Land Use Advisory Committee on May 19, 2003. This Committee recommended approval of the project with a 7-0 vote.

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July 21, 2008

Note: This project may be appealed to the Board of Supervisors and the California Coastal Commission.

cc: Front Counter Copy; Planning Commission Members (10); County Counsel; North County Fire; Public Works Department; Parks Department; Environmental Health Division; Water Resources Agency; Coastal Commission; Carl Holm, Planner; Carol Allen; Kim Hayes, Applicant; File PLN080294.

Attachments:	Exhibit A	Project Data Sheet
	Exhibit B	Recommended Findings and Evidence
	Exhibit C	Recommended Conditions of Approval
	Exhibit D	Vicinity Map
	Exhibit E	Project Plans
	Exhibit F	Revised Negative Declaration

EXHIBIT B

RECOMMENDED FINDINGS AND EVIDENCE

1. **FINDING:** **CONSISTENCY** – The project, as described in Condition No. 1 and as conditioned, conforms to the policies, requirements, and standards of the Monterey County General Plan, North County Land Use Plan, and the Monterey County Coastal Implementation Plan, Part 2 (Chapter 20.144 MCC), which designates this area as appropriate for development.

- EVIDENCE:**
- (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.
 - (b) The site is designated as Agricultural Conservation/Wetlands and Coastal Strand, North County Coastal Land Use Plan, Local Coastal Program. The subject site is located within the “AC/RC(CZ)” or Agricultural Conservation/Resource Conservation zoning district in the coastal zone.
 - (c) The project site is approximately 135 acres in size and the zoning designation requires a minimum of one acre for parcels in this district.
 - (d) The Resource Conservation zone allows resource conservation uses including facilities under an approved management plan as a conditional use subject to a Coastal Development Permits for retail shops (Section 20.36.050.F CIP).
 - (e) Visual Resources (Section 20.144.030 NC LUP). The project is consistent with policies of the North County Implementation Plan (NC CIP) dealing with visual resources. An on-site inspection by the project planner determined that this marsh is not located wholly or partially within a public viewshed as defined by Section 20.144.020.SSS. The project area is on the east side of the railroad berm and is not visible from the slough area. In addition, the topography of the ranch make it so that the work area is generally not visible from Elkhorn Slough Road.
 - (f) Environmentally Sensitive Habitat (Section 20.144.040 NC LUP). The project is consistent with policies of the North County Implementation Plan (NC CIP) dealing with environmentally sensitive habitat. Staff reviewed multiple reports and studies addressing wetland enhancement and biological issues for the Elkhorn Slough area. These reports support the concept of tide gates to facilitate tidal flows in areas where the flow has been altered (e.g. UPRR). Policy 2.4.3.2 (NCLUP) encourages marsh recovery including repair of all tide gates under the railroad levee. Although the project is located within an ESHA, the applicant has incorporated the following measures to avoid impacts: All work will be done during the summer when there is little or no rainfall; the areas around the construction will be re-seeded with native wetland plant materials; all work is limited to the inland side of the railroad levee to avoid impact to the slough itself.
 - (g) Water Resources (Section 20.144.070 NC LUP). Policies for water resources are designed to protect groundwater quality and reducing sediment in wetland areas. This project will allow more fresh water from rainfall and runoff to be retained in the marshes in the rainy months, thus significantly diluting the saline content of the marshes caused by tidal inflows.

- (h) Hazards (Section 20.144.100 NC LUP). No geologic report is required for the subject project based on criteria in Section 20.144.100.A.1. North County Fire reviewed the project and has no comments or conditions to recommend. The project is located within the 100-year floodway, so work will take place during the summer months.
- (i) Water, Sewer, Traffic (Section 20.144.140 NC LUP). Public Works and Health Departments have reviewed the project and recommend approval subject to conditions.
- (j) LUAC. On May 20, 2003, the North County Coastal Land Use Advisory Committee voted 7-0 to recommend approval of the project. The Committee found that the applicant had met all requirements and no conditions were recommended.
- (k) No testimony, either written or oral, was received during the course of the public hearing process to indicate that there is any inconsistency with these plans or policies.
- (l) No Violation. Staff verified that the subject property is in compliance with all rules and regulations pertaining to the use of the property, that no violations exist on the property and that all zoning abatement costs, if any have been paid.
- (m) Materials in project file PLN080294.

2. **FINDING: SITE SUITABILITY** – The site is physically suitable for the use proposed.
EVIDENCE: (a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department. There has been no indication that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
(c) Staff conducted an on-site visit on May 14, 2003 to verify that the site is suitable for this use.
(d) Materials in Project File PLN080294.
3. **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. Zoning violation abatement costs, if any, have been paid.
EVIDENCE: (a) Staff reviewed Monterey County RMA - Planning Department and Building Services Department records and is not aware of any violations existing on subject property.
4. **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) Preceding findings and supporting evidence.
5. **FINDING: PUBLIC ACCESS:** The proposed project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976 and Section 20.144.150 of the North County Coastal Land Use Plan and Coastal Implementation Plan. 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 site is not located seaward of the first public road. There is no historic access from any coastal areas including the Elkhorn Slough. Kirby Park immediately south of the site provides public access to the slough area.
- (b) The Shoreline Access/Trails Map illustrated in Figure 6 of the North County Coastal Land Use Plan does not indicate any access/trails within or near the project area.

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

EVIDENCE:

- (a) The Monterey County Planning Department prepared an Initial Study pursuant to CEQA. This Initial Study identified no potentially significant impacts. The proposed project design includes mitigation that reduces the effects to a point where clearly no significant impact would occur. The Initial Study is on file in the office of RMA-Planning and is hereby incorporated by reference.
- (b) This amendment revises the design from earthen berms to construction of a post & rail type fence.
- (c) Evidence that has been received and considered includes:
 - 1) Project Application.
 - 2) Staff Report that reflects the County's independent judgment.
 - 3) Studies, Reports and Management Plans for wetland enhancement in the Elkhorn Slough area.
 - 4) The mitigated negative declaration was circulated for public review from July 21, 2003 to August 20, 2003. The County received no comment during the public review period.

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

EVIDENCE:

- (c) Section 20.86.030 of the Monterey County Zoning Ordinance (Board of Supervisors).
- (d) Section 20.86.080.A.3 of the Monterey County Coastal Implementation Plan, Part 1 (Coastal Commission).

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
2.		<p>PD002 - NOTICE-PERMIT APPROVAL The applicant shall record a notice which states: "A permit (Resolution _____) was approved by the Planning Commission for Assessor's Parcel Number 181-011-002-000 on July 30, 2008. The permit was granted subject to 5 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of the RMA - Planning Department prior to issuance of building permits or commencement of the use. (RMA - Planning Department)</p>	Proof of recordation of this notice shall be furnished to the RMA - Planning Department.	Owner/ Applicant	Prior to the issuance of grading and building permits or commencement of use.	
3.		<p>PD003(A) – CULTURAL RESOURCES – NEGATIVE ARCHAEOLOGICAL REPORT If, during the course of construction, cultural, archaeological, historical or 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 a qualified professional archaeologist can evaluate it. The Monterey County RMA - Planning 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. (RMA - Planning Department)</p>	Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County RMA - Planning Department and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered. 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.	Owner/ Applicant/ Archaeologist	Ongoing	

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4.		<p>PDSP001 – EROSION CONTROL (NON-STANDARD) Implement the following erosion control measures:</p> <ul style="list-style-type: none"> a. Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil condition, and wind exposure. b. Cover stockpiles of debris, soil, sand or other materials that may be blown by the wind. c. Landscape or cover completed portions of the site as soon as construction is complete in that area. <p>(RMA - Planning Department)</p>	<p>A. Copy control measures onto the building plans for review and approval of the Planning Department.</p> <p>B. Submit a program for how these measures will be implemented during construction activities</p>	Owner/ Applicant	As soon as construction is complete in each area	
5.		<p>PDSP002 – NATIVE PLANTING (NON-STANDARD) The applicant shall install biotic plantings native to Elkhorn Slough (e.g.; hydrophytic ground cover) in disturbed areas. (RMA - Planning Department)</p>	Submit report with photos summarizing planting to the satisfaction of the Director of Planning	Owner/ Applicant Biologist	Within three weeks of completing construction at each of the three work sites	