



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 028-09

6401 HOLLISTER AVENUE

MITIGATED NEGATIVE DECLARATION ADOPTION, COASTAL DEVELOPMENT PERMIT

JULY 23, 2009

**APPLICATION OF ELVA ROGERS, AGENT FOR CHEVRON ENVIRONMENTAL
MANAGEMENT COMPANY, 6401 HOLLISTER AVENUE, 073-045-003, G-S-R, S-D-3,
GOLETA SLOUGH RESERVE AND COASTAL OVERLAY ZONES, GENERAL PLAN
DESIGNATION: RECREATIONAL OPEN SPACE (MST 2008-00432, CDP2009-00005)**

The project consists of the installation of two groundwater monitoring wells in wetlands south of Hollister Avenue on Santa Barbara Airport property in the appealable jurisdiction of the Coastal Zone. Installation of these wells is required by the Santa Barbara County Fire Department as part of the site assessment for MTBE contamination associated with a former Chevron gas station that was located at 6470 Hollister Avenue. The 6-inch diameter wells would be manually drilled to a depth of approximately 10 feet. Soil samples would be collected from the boring material, and the wells would be completed with 2-inch diameter Schedule 40 PVC casings that would extend above the ground and be encased in a well monument set into a small concrete pad so that the wells can be located year-round. The proposed wells would be fully removed after one year of quarterly monitoring, or as directed by the County Fire Department. The area occupied by the wells would then be filled in and replanted with native wetland vegetation. The proposed project also includes the restoration of eight square feet of habitat to mitigate the temporary loss of wetland habitat associated with the installation of the two wells.

The Planning Commission will consider approval of the Mitigated Negative Declaration prepared for the project pursuant to the California Environmental Quality Act Guidelines Section 15074.

WHEREAS, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, no one appeared to speak in favor of the application, and no one appeared to speak in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, July 16, 2009
2. Site Plans
3. Correspondence received in opposition to the project:
 - a. Paula Westbury, Santa Barbara, CA

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

- I. Approved the subject application making the following findings and determinations:

A. **FINAL MITIGATED NEGATIVE DECLARATION ADOPTION (CEQA GUIDELINES §15074)**

1. The Planning Commission has considered the proposed Final Mitigated Negative Declaration together with any comments received during the public review period process.
2. The Planning Commission finds on the basis of the whole record before it (including the initial study and comments received) that there is no substantial evidence that the project, as mitigated, will have a significant impact on the environment. The Final Mitigated Negative Declaration dated July 6, 2009 is hereby adopted.
3. The Planning Commission finds that the Final Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis.
4. The Planning Commission finds that the Final Mitigated Negative Declaration has been prepared in compliance with CEQA, and constitutes adequate environmental evaluation for the proposed project.
5. A mitigation monitoring and reporting program for measures required in the project or made a condition of approval to mitigate or avoid significant environmental effects has been prepared.
6. The location and custodian of the documents or other materials which constitute the record of proceedings upon which this decision is based is the City of Santa Barbara Community Development Department, 630 Garden Street, Santa Barbara, California.
7. The California Department of Fish and Game (DFG) is a Trustee Agency with oversight over fish and wildlife resources of the State. The DFG collects a fee from project proponents of all projects potentially affecting fish and wildlife, to defray the cost of managing and protecting resources. The project is subject to the DFG fee, and a condition of approval has been included which requires the applicant to pay the fee within five days of project approval.

B. **GOLETA SLOUGH COASTAL DEVELOPMENT PERMIT (SBMC §29.25.020)**

1. The project is consistent with the policies of the California Coastal Act, because it has been designed to minimize environmental impacts to the extent feasible as described in Section VII of the staff report (Coastal Act Section 30236).
2. The project is consistent with all applicable policies of the City's Local Coastal Plan, all applicable implementing guidelines, and all applicable provisions of the Code, because it would be constructed in previously disturbed areas and would not adversely affect cultural or biological resources (Policies F-3 and C-12) as described in Section V of this staff report.

3. The project is consistent with the Chapter 3 (commencing with Section 30200) Policies of the Coastal Act regarding public access and public recreation, because it would not introduce a new impediment to public access as it would not impede travel on any existing trail or roadway.
4. The project use is dependent upon the resources of the environmentally sensitive area, consistent with Section 30233 of the Coastal Act because the testing of groundwater at another location would not provide adequate information about the level of contamination in the Goleta Slough.
5. The project has been designed to prevent impacts which would significantly degrade environmentally sensitive habitat by restricting the use of vehicles and restoring eight square feet of wetland habitat compatible with the existing environment.
6. The project does not maintain a buffer area between itself and delineated wetlands because a buffer area around the two monitoring wells would be infeasible.
7. The project will be carried out in a manner that will sustain the biological productivity of coastal waters and maintain healthy populations of all species of marine organisms by restricting use of vehicles and requiring that all material be hauled out of the wetland upon completion of the well installation and habitat restoration.
8. The project includes adequate impact avoidance and mitigation measures to ensure protection of rare, threatened, or endangered species, that are designated or candidates for listing under State or federal law through the incorporation of Mitigation Measure BIO-1 and the Conditions of Approval.
9. There is no less environmentally damaging alternative to the proposed development, all feasible mitigation measures have been provided to minimize adverse environmental effects, and all spoils shall be removed from the wetland area to avoid significant disruption to wildlife habitat and water circulation.
10. Archaeological or other culturally sensitive resources within the Goleta Slough are protected from impacts with the implementation of Mitigation Measures CR-1-4.
11. Sedimentation from the proposed development has been reduced to a minimum and is compatible with the wetland area.
12. The project enhances public educational or recreational opportunities at the Goleta Slough by restoring habitat to a natural state in an area outside of the Airport Operations Area security fence.

II. Said approval is subject to the following conditions:

- A. **California Department of Fish and Game Fees Required.** Pursuant to Section 21089(b) of the California Public Resources Code and Section 711.4 et. seq. of the California Fish and Game Code, the approval of this permit/project shall not be considered final unless the specified Department of Fish and Game fees are paid and filed with the California Department of Fish and Game within five days of the project approval. The fee required is \$1,993.00 for projects with Negative Declarations. Without the appropriate fee, the Notice of Determination cannot be filed and the project approval is not operative, vested, or final. The fee shall be delivered to the Planning Division immediately upon project approval in the form of a check payable to the California Department of Fish and Game.
- B. **Written Agreement.** Prior to the issuance of a Public Works permit for the project, the Applicant shall execute a written instrument, which shall be reviewed as to form and content by the City Attorney, Community Development Director and Public Works Director and shall include the following:
1. **Approved Development.** The development of the Real Property approved by the Planning Commission on July 23, 2009 is limited to a two groundwater monitoring wells, and eight square feet of wetland habitat restoration shown on the submitted plans signed by the chairman of the Planning Commission on said date and on file at the City of Santa Barbara.
 2. **Geotechnical Liability Limitation.** The Applicant understands and is advised that the site may be subject to extraordinary hazards from landslides, erosion, retreat, settlement, or subsidence and assumes liability for such hazards. The Applicant unconditionally waives any present, future, and unforeseen claims of liability on the part of the City arising from the aforementioned or other natural hazards and relating to this permit approval, as a condition of this approval. Further, the Applicant agrees to indemnify and hold harmless the City and its employees for any alleged or proven acts or omissions and related cost of defense, related to the City's approval of this permit and arising from the aforementioned or other natural hazards whether such claims should be stated by the Applicant's successor-in-interest or third parties.
- C. **Community Development Requirements with Public Works Permit Application.** The following shall be submitted with the application for a Public Works permit and finalized prior to Public Works Permit issuance:
1. **Project Environmental Coordinator Required.** Submit to the Planning Division a contract with a qualified representative for the Applicant, subject to approval of the contract and the representative by the Planning Division, to act as the Project Environmental Coordinator (PEC). The PEC shall be responsible for assuring full compliance with the provisions of the Mitigation Monitoring and Reporting Program (MMRP) and Conditions of Approval to the City. The contract shall include the following, at a minimum:

- a. The frequency and/or schedule of the monitoring of the mitigation measures.
 - b. A method for monitoring the mitigation measures.
 - c. A list of reporting procedures, including the responsible party, and frequency.
 - d. A list of other monitors to be hired, if applicable, and their qualifications.
 - e. Submittal of monthly reports during demolition, excavation, grading and footing installation and monthly reports on all other construction activity regarding MMRP and condition compliance by the PEC to the Community Development Department/case planner.
 - f. The PEC shall have authority over all other monitors/specialists, the contractor, and all construction personnel for those actions that relate to the items listed in the MMRP and conditions of approval, including the authority to stop work, if necessary, to achieve compliance with mitigation measures.
 - g. The PEC shall monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holiday and weekend periods when construction work may not be in progress. The name and telephone number of such persons shall be provided to the Air Pollution Control District upon request (*Required Mitigation Measure AQ-8*).
2. **Neighborhood Notification Prior to Construction.** At least twenty (20) days prior to commencement of construction, the contractor shall provide written notice to all property Applicants, businesses, and residents within 300 feet of the project area. The notice shall contain a description of the project, the construction schedule, including days and hours of construction, the name and phone number of the (Project Environmental Coordinator (PEC) and) Contractor(s), site rules and Conditions of Approval pertaining to construction activities and any additional information that will assist the Building Inspectors, Police Officers and the public in addressing problems that may arise during construction. The language of the notice and the mailing list shall be reviewed and approved by the Planning Division prior to being distributed. An affidavit signed by the person(s) who compiled the mailing list shall be submitted to the Planning Division.
 3. **Contractor and Subcontractor Notification.** The Applicant shall notify in writing all contractors and subcontractors of the site rules, restrictions, and Conditions of Approval. Submit a copy of the notice to the Planning Division.
 4. **Restoration Plan.** Applicant shall submit final landscaping and restoration plans for the project to be reviewed by City staff. The plans should include restoration of all temporarily disturbed habitat areas with native riparian and

wetland species and creation of eight sq. ft. of additional wetland habitat area onsite to mitigate the permanent loss of habitat. Initial planting shall occur in concert with or immediately following construction activities associated with the project. An eight square foot area of the noxious weed Harding grass (*Phalaris aquatica*) shall be removed from the area surrounding the well installations. The disturbed areas shall be immediately be seeded with local native wetland and transitional wetland species as specified in the Wetland Delineation Report for the project dated November 14, 2007. Well installation and weeding and seeding shall be implemented in the dry season (late summer/early fall) to minimize impacts to wetlands (*Required Mitigation Measure BIO-1*).

5. **Archaeological Monitor Required.** The following language shall be reproduced on the construction plans submitted for building plan check and the directives of this mitigation measures followed:
 - a. Prior to the issuance of a public works permit, the applicant shall contract with a City-approved archaeologist to provide for monitoring of additional ground disturbing activities, and, as may be determined to be necessary based on the results of the surface survey. The archaeologist shall include a City qualified Native American monitor who shall be required to be on-site during all excavation activities. Contract(s) shall be subject to the review and approval of the Environmental Analyst.
 - b. The General Contractor shall schedule a construction conference. The conference shall include representatives from the Public Works Department, Building Division, Planning Division, the Property Owner and Contractor. Prior to the start of any vegetation or paving removal, demolition, trenching or grading, contractors and construction personnel shall be alerted to the possibility of uncovering unanticipated subsurface archaeological features or artifacts associated with past human occupation of the parcel. If such cultural resources are encountered or suspected, work shall be halted immediately, the City Environmental Analyst shall be notified and a City-approved archaeologist shall be consulted. The latter shall be employed to assess the nature, extent and significance of any discoveries and to develop appropriate management recommendations for archaeological resource treatment, including but not limited to redirection of grading and/or excavation activities. If the findings are potentially significant, a Phase 3-recovery program shall be prepared and accepted by the Environmental Analyst and the Historic Landmarks Commission. That portion of the Phase 3 program, which requires work on-site, shall be completed prior to continuing construction in the affected area. If prehistoric or other Native American remains are encountered, a Native American representative shall be contacted and shall remain present during all further subsurface disturbances in the area of the find.

- c. All construction personnel shall be informed that in the event cultural resources may be present. If any archaeological artifacts, exotic rock (non-native) or unusual amounts of shell or bone are uncovered during any on-site grading, trenching or construction activities, all work must stop immediately in the area and a City-approved archaeologist retained by the applicant to evaluate the deposit. The City of Santa Barbara Environmental Analyst must also be contacted for review of the archaeological find(s).
 - d. If any archaeological artifacts, exotic rock (non-native) or unusual amounts of shell or bone are uncovered during any on-site grading, trenching or construction activities, all work must stop immediately in the area and a City-approved archaeologist retained by the applicant to evaluate the deposit. The City of Santa Barbara Environmental Analyst must also be contacted for review of the archaeological find(s). If the discovery consists of potentially human remains, the Santa Barbara County Coroner and the California Native American Heritage Commission must also be contacted and State procedures followed. Work in the area may only proceed after authorization is granted by the Environmental Analyst (*Required Mitigation Measures CR-1-4*).
6. **Construction During Dry Season.** Construction activity in the area where flows occur in the channel shall be limited to the dry season months of July through October. (*Required Mitigation Measure WE-1*).
- D. **Public Works Permit Plan Requirements.** The following requirements/notes shall be incorporated into the construction plans submitted to the Engineering Division for Public Works permits.
1. **Mitigation Monitoring and Reporting Requirement.** Applicant shall implement the Mitigation Monitoring and Reporting Program (MMRP) for the project's mitigation measures, as stated in the Mitigated Negative Declaration for the project.
 2. **Conditions on Plans/Signatures.** The final Planning Commission Resolution shall be provided on a full size drawing sheet as part of the drawing sets. Each condition shall have a sheet and/or note reference to verify condition compliance. If the condition relates to a document submittal, indicate the status of the submittal (e.g., Archaeologist contract submitted to Community Development Department for review). A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide by any and all conditions which is their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

Property Applicant	Date
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Contractor	Date	License No.
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Architect	Date	License No.
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Engineer	Date	License No.
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E. **Construction Implementation Requirements.** All of these construction requirements shall be carried out in the field by the Applicant and/or Contractor for the duration of the project construction.

1. **Construction Parking/Storage/Staging.** Construction parking and storage shall be provided as follows:

- a. During construction, free parking spaces for construction workers and construction shall be provided on-site or off-site in a location subject to the approval of the Public Works Director. Construction workers are prohibited from parking within the public right-of-way, except as outlined in subparagraph b. below.
- b. Parking in the public right of way is permitted as posted by Municipal Code, as reasonably allowed for in the 2006 Greenbook (or latest reference), and with a Public Works permit in restricted parking zones. No more than three (3) individual parking permits without extensions may be issued for the life of the project.
- c. Storage or staging of construction materials and equipment within the public right-of-way shall not be permitted, unless approved by the Transportation Manager.

F. **Prior to Project Completion.** Prior to issuance of the Certificate of Occupancy, the Applicant shall complete the following:

- 1. **Repair Damaged Public Improvements.** Repair any damaged public improvements (curbs, gutters, sidewalks, roadways, etc.) subject to the review and approval of the Public Works Department per SBMC §22.60.090. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of a qualified arborist.
- 2. **Archaeological Monitoring Report.** A final report on the results of the archaeological monitoring shall be submitted to the Planning Division within 180 days of completion of the monitoring or prior to the issuance of the Final Inspection, whichever is earlier.

3. **New Construction Photographs.** Photographs of the new construction, taken from the same locations as those taken of the story poles prior to project approval, shall be taken, attached to 8 ½ x 11" board and submitted to the Planning Division.
 4. **Mitigation Monitoring Report.** Submit a final construction report for mitigation monitoring.
 5. **Biological Monitoring Contract.** Submit a contract with a qualified biologist acceptable to the City for on-going monitoring.
- G. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

NOTICE OF GOLETA SLOUGH COASTAL DEVELOPMENT PERMIT TIME LIMITS:

Pursuant to Section 28.44.230 of the Santa Barbara Municipal Code, work on the approved development shall commence within two years of the final action on the application, unless a different time is specified in the Goleta Slough Coastal Development Permit. Up to three (3) one-year extensions may be granted by the Community Development Director in accordance with the procedures specified in Subsection 28.44.230.B of the Santa Barbara Municipal Code.

This motion was passed and adopted on the 23rd day of July, 2009 by the Planning Commission of the city of Santa Barbara, by the following vote:

AYES: 6 NOES: 0 ABSTAIN: 0 ABSENT: 1 (White)

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I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Planning Commission at its meeting of the above date.



Julie Rodriguez, Planning Commission Secretary



Date

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.