

HEARING BODY: Planning Commission
MEETING DATE: October 19, 2022
PREPARED BY: H. Gurewitz
PRESENTED BY: H. Gurewitz

AGENDA ITEM SUMMARY REPORT

APPLICATION NO.: Coastal Development Permit 4-21 (CDP 4-21)

OWNER: Hussein Alzghoul

APPLICANT: Hussein Alzghoul

AGENT: Michael Hamdi

PROJECT: Remove two underground gasoline storage tanks

LOCATION: 225 N. Main Street

APN: 008-151-16

LOT SIZE: 0.34 acres

ZONING: Central Business District

ENVIRONMENTAL DETERMINATION: Categorically Exempt under CEQA Guidelines 15330 Minor Actions Taken to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances (b) Minor Clean Up (1) Removal of Sealed, non-leaking drums or barrels of hazardous waste or substances that have been stabilized, containerized, and are designated for a lawfully permitted destination.

SURROUNDING LAND USES: NORTH: Commercial (retail, offices, and restaurant)
EAST: Mixed commercial uses
SOUTH: Retail/Commercial
WEST: Alley and GP Mill Site

APPEALABLE PROJECT: Can be appealed to City Council
 Can be appealed to California Coastal Commission

SITE/PERMITTING HISTORY

On February 12, 2019 the Planning Commission considered a zoning ordinance interpretation regarding the continuance of a non-conforming use at 225 N Main Street. The property operated for many years as a gas station and/or an auto repair shop in the Central Business District. The service station closed in 2016 and the property owner did not have control of the property. Typically, non-conforming status of a non-conforming use is lost if the non-conforming use is discontinued for a period of 12 months or more. The Planning Commission decided to interpret the zoning ordinance to allow the pre-existing non-conforming use to continue. The basis for the determination was: 1) the uncertainty surrounding when the previous business actually closed; and 2) the lack of site control by the owner to re-establish the non-conforming use given the foreclosure process.

On March 11, 2020 the Planning Commission considered and granted a second (and final) 12 month extension of the non-conforming use at 225 N. Main Street. The applicant failed to submit the required building permit application and plans required to bring the site up to standards and continue the nonconforming use, Service Station. Thus, the non-conforming use expired on March 11, 2021. Underground storage tanks and fuel dispensers must be removed after 90-days of closure. A coastal development permit is required to remove the underground gasoline storage tanks (USTs), as well as adherence to the requirements of the Mendocino County Environmental Health Department.

Permitting History

The City's records indicate that the former gas station located at 225 N. Main predates building records but that the current tanks were installed in 1974. In 1989, a Coastal Development Permit and Scenic Corridor Review were approved for the construction of a portable building for tire and tool storage. A major renovation of the site was conducted in 1990 including upgrades to the underground storage tank gasoline distribution system. There are no planning entitlement records for this activity but a building permit was approved. In 2007, an additional Coastal Development Permit and a Use Permit were issued for the construction of a remediation compound and 25 remediation wells and in 2019, the City issued a Coastal Development Permit Exemption for 9 soil borings to monitor soil and soil vapor conditions required by the North Coast Regional Water Quality Control Board. An additional 13 soil borings were exempted from a CDP in 2020 and an exemption was also issued for the destruction of the soil borings after completion of the monitoring.

PROJECT DESCRIPTION

The proposed removal of the USTs is required by the Mendocino County Environmental Health Department to prevent them from becoming abandoned underground tanks.

Abandoned tanks left in place can degrade overtime and become an environmental hazard through the release of gasoline into the environment.

Municipal Code Section 6.12.040(O) states that *specialty structures which have been constructed for a highly specific single use only, and which are not enclosed or shielded, and which are unfeasible to convert to other uses, and which are abandoned, partially destroyed or are permitted to remain in a state of partial destruction or disrepair and constitute a hazardous condition including, but not limited to: tanks for gas or liquid, boat housing and storing facilities, boat hoisting and docking facilities, boat mooring pilings, lateral support structures and bulk-heads, utility high-voltage towers and poles, utility high-rise support structures, electronic transmitting antennas and tower, structures which support or house mechanical and utility equipment and are located above the roof lines of existing buildings, high-rise freestanding chimneys and smoke stacks, drive-in movie screens, recreational structures such as tennis courts and cabanas, and all other specialty structures not listed in this subsection but determined to be a specialty structure by the City.* Thus, the removal of the tanks is also a requirement of the City of Fort Bragg.

On September 21, 2021, the applicant submitted an application for a Coastal Development Permit. The application was deemed complete on August 10, 2022. It was sent for agency review to:

- California Coastal Commission
- California Department of Fish and Wildlife
- California Water Boards
- CalTrans District 1
- Sherwood Valley Band of Pomo Indians
- Mendocino County Department of Environmental Health
- Mendocino County Building Department
- City of Fort Bragg
 - Code Enforcement
 - Police Department
 - Fire Protection Authority
 - Public Works

The Sherwood Valley Tribal Historic Preservation Officer requested a tribal monitor during earth moving activities and thus a special condition has been established to require tribal consultation and monitor onsite.

SPECIAL CONDITION 1: Once construction is scheduled, the applicant shall contact the City to request the referral for a Cultural Monitor. This shall be done at least three weeks prior to work commencing.

The California Water Boards determined that it was necessary to complete an inspection prior to providing any comments. On September 9, 2022, the California Water Resources Control Board along with the County of Mendocino Environmental

Health conducted a site visit and tested the USTs. According to their report (**Attachment 2**): *As-built drawings supplied by the City of Fort Bragg describe 10,000 gallon Xerxes tanks. Xerxes publishes two 10,000 gallon tank charts, 8 foot diameter and 10 foot diameter. The diameter of these tanks has not been confirmed. If the tanks are 8 in foot diameter, the data collected indicate there is 811 gallons of liquid (oil/water) in tank one (western) and 51 gallons of liquid in tank two (eastern). If the tanks are 10 foot in diameter, the data collected indicate there is 532 gallons of liquid (oil/water) in tank one (western) and 31 gallons of liquid in tank two (eastern).*

The applicant has provided a work plan from Redding Service Station Equipment General Engineering and Building Contractors. (**Attachment 1**). In follow up correspondence they identified that they will use a Hazardous Materials Certified Contractor such as Safety Kleen Inc. to discard any residual hazardous materials left in the tanks.

The applicant had expressed an interest in changing the use of the site, but has not provided any additional plans beyond the removal of the USTs. Thus, because this site is currently vacant with degrading structures onsite a number of conditions have been established for the future use of the site which will likely require an additional Coastal Development Permit.

GENERAL PLAN ANALYSIS

The project site, 225 N. Main Street is designated as Central Business District (CBD) in the General Plan. Uses and site development patterns in the Central Business District are typically pedestrian-oriented. This designation is intended to accommodate government and professional offices, retail stores, theaters, and other similar uses.

The removal of site infrastructure that is inconsistent with the CBD designation would be consistent with the General Plan Designation. With the existing tanks, this is an undesirable site because it cannot be developed without removal of the tanks. Thus, the removal of the tanks will allow future re-use of this site which makes it consistent with Policy LU-3.5 Re-Use of Existing Buildings as it will allow the existing site to be re-used.

There are no policies in the Coastal General Plan Element 3 - Public Facilities that apply to this project as it consists solely of the removal of the tanks. Future site usage will require a new Coastal Development Permit application.

The site is over 90% paved. It has been reviewed by the California Coastal Commission and the California Department of Fish and Wildlife who have confirmed that there are no environmentally sensitive habitat areas on the site and that it is of no biological value. Thus there are no goals, policies, or programs in General Plan Element 4, Conservation and Open Space that apply to this project. A permit from the Mendocino County Environmental Health Department is required for the removal of the tanks. This permit ensures that the work will not have impacts on water and air during and after removal. It also ensures the appropriate disposal of tanks and any liquid found during

excavation. Thus, in order to ensure there are no impacts on air or water resources, the following condition has been established.

SPECIAL CONDITION 2: The applicant shall provide the City a copy of the environmental health permit as proof that all work will be done to minimize any potential impacts on the environment.

Additionally, there are no policies that apply from the Coastal General Plan's Circulation Element, Community Design Element, nor Housing Element. Again, any future use of the site will require an additional Coastal Development Permit and additional review.

The City's Noise Element is intended to protect the public from unacceptable noise exposure. The process of removing the tanks will likely result in noise that exceeds the City's noise standards but it will be short term and temporary in nature. There are no residential units in proximity to the proposed project. And, as long as the construction activity is in compliance with the State of California regulations requiring that construction equipment is not left idling, the proposed project should conform with the City's Coastal General Plan Noise Element with the following special condition:

SPECIAL CONDITION 3: Tank removal and associated activities shall be limited to Monday-Saturday 7:00am to 10:00 pm. During tank removal and associated activities, equipment not in use shall not be left idling.

The proposed project is consistent with Coastal General Plan Element Safety Goal SF-8 to reduce hazards of transportation, storage, and disposal of hazardous materials and wastes. USTs can be a source for hazardous waste leakages and thus, the County Environmental Health Department requires their removal when they are no longer in use. The removal of the tanks will limit the potential for future exposure to environmental hazards.

The proposed project does not conflict with any goals, policies, or programs in the Coastal General Plan.

LAND USE AND DEVELOPMENT CODE ANALYSIS

The proposed project is to remove the underground storage tanks (USTs) associated with the former gas station at 225 N. Main Street. Because the Service Station land use is not an allowable use in the Central Business District, the removal of the tanks is consistent with the zoning district and allowable land uses and the following condition has been established to remove any remnants of the former use:

SPECIAL CONDITION 4: All equipment that pertains to the gas station or auto-shop both outside and inside the building shall be removed.

The applicants have not decided on the future use of the site. Thus, an additional analysis of the existing and potential future nuisance conditions on the site are addressed in the Municipal Code analysis below.

The following Site Planning and Project Design Standards apply to the removal of the USTs:

17.30.080(C) The use, handling, storage, and transportation of combustibles and explosives shall comply with the Uniform Fire Code, and California Code of Regulations, Title 19.

17.30.080(H) No liquid shall be discharged into a public or private body of water, sewage system, watercourse, or into the ground, except in compliance with applicable regulations of the Regional Water Quality Control Board.

SPECIAL CONDITION 5: Prior to commencing work, the applicant shall provide a copy of the contract with the certified hazardous waste handler. Upon completion, the applicant shall provide proof that the material was handled by a hazardous waste hauler and the final destination where the hazardous waste was disposed.

SPECIAL CONDITION 6: The applicant shall establish containment protocol to ensure that if spills or leaks take place during the movement of hazardous materials, they will not discharge into a public or private body of water, sewage system, watercourse, or into the ground.

Additionally, CLUDC Section 17.30.080(D) requires that activities that may generate dust emissions (e.g., construction, grading, commercial gardening, and similar operations) shall be conducted to limit the emissions beyond the site boundary to the maximum extent feasible. The following “appropriate methods of dust management” are required for compliance with this section.

SPECIAL CONDITION 7: The Applicant shall utilize the following dust management methods in the grading and earth moving activities associated with tank removal:

1. Grading shall be designed and grading activities shall be scheduled to ensure that repeat grading will not be required.
2. Clearing, earth-moving, excavation operations or grading activities shall cease when the wind speed exceeds 25 miles per hour averaged over one hour.
3. The area disturbed by clearing, demolition, earth-moving, excavation operations or grading shall be minimized at all times.
4. Graded areas that are not re-paved shall be vegetated as soon as possible, but within no longer than 30 days, to minimize dust and erosion. Disturbed areas of the construction site that are to remain inactive longer than three months shall be seeded and watered until grass cover is grown and maintained.
5. The construction site shall be watered during excavation to suppress dust.

The City's CLUDC Section 17.30.080(I) requires that noise emanating from the site shall comply with the City's noise standards in Municipal Code Chapter 9.44 (Noise). This is addressed by the previous **SPECIAL CONDITION 3**.

Chapter 17.34 provides standards for landscaping in relation to new and existing development. Because future development is expected on the site, no additional landscaping will be required as part of this coastal development permit. However, the following condition has been established to ensure the project is in compliance with this chapter:

SPECIAL CONDITION 8: The existing landscaped areas on the site shall be maintained. Additionally, if concrete or pavement is removed from the site and not replaced, those areas shall be landscaped with approved drought tolerant landscaping.

The existing site has two existing driveways. Because no future use is identified, there is no requirement to change the layout of the site, however, if the driveways are left intact, they will need to comply with CLUDC Section 17.36.100(D)(3) *which requires that each driveway shall be paved with concrete or asphalt for a minimum length of 20 feet from the public right-of-way.*

SPECIAL CONDITION 9: If tank removal activities result in the demolition of driveways that removes paving for the first 20 feet of the driveway that connects from Main Street, the driveway shall either be completely removed and the sidewalk reconstructed, or the driveway shall be repaved with a minimum length of 20 feet from the public right-of-way.

The proposed project will result in the disturbance of soils and the potential to create stormwater runoff pollution. Thus, the following special condition has been added:

SPECIAL CONDITION 10: Prior to excavation of the tanks, the applicant shall apply for a grading permit and provide a stormwater control plan for the removal process. The plan shall include measures to prevent the infiltration of disturbed soils and construction materials into the public storm drains.

MUNICIPAL CODE / NUISANCE CONDITIONS ANALYSIS

The proposed project location has a number of existing nuisance conditions. Because the applicant has not provided future plans for the site, the following CDP conditions have been established.

SPECIAL CONDITION 11: Upon approval of the Coastal Development Permit, the following conditions shall be remedied:

1. All graffiti shall be removed within and all walls shall be maintained graffiti free in perpetuity.
2. Site Maintenance. The site shall be cleared of trash or encampment paraphernalia prior to permit and then remain clear at all times thereafter.

3. The applicant shall provide the contact information and an agent authorization letter of their local maintenance personnel to the Police Department to ensure that the property remains in the Trespass Letter program and that any security issues for the property can be handled quickly and efficiently.
4. **Cease Non-Conforming Site Activities** Currently the two unpermitted activities listed below are taking place on site:
 - Storage - Outdoor.** The storage of various materials outside of a structure other than fencing, either as an accessory or primary use.
 - Storage - Warehouse, Indoor Storage.** Facilities for the storage of furniture, household goods, or other commercial goods of any nature. Includes cold storage.

SPECIAL CONDITION 12: Within 60 days of issuance of the Coastal Development Permit to remove the USTs, the following shall be resolved:

1. All equipment that pertains to the gas station or auto-shop both outside and stored inside the building shall be removed.
2. All bolts, ties, metal, and findings set in concrete on the site shall be either cut to be flush with the concrete or extracted and protected with a sufficient cover. Holes and voids throughout the site shall either be filled with concrete or dirt and seeded with non-invasive ground cover.
3. Exterior water spigots shall be sealed to prevent water theft.
4. All weeds shall be manually removed from the site and the property shall be maintained weed free. Weeds shall be properly disposed of in green waste and shall not be left open on the property.
5. The demolition site shall have a level surface of either, concrete, asphalt, vegetated dirt or other surface approved by the Public Works Department upon completion of all work.
6. The applicant shall consult with the City of Fort Bragg and the Mendocino County Planning and Building Services prior to any modifications to the exterior structures and concrete to ensure that all work is permitted per Building Code regulations.

Additionally, the property is a nuisance condition per Municipal Code 6.12.040 (N):

Any automobile service station which is closed, vacant, or inoperative for a period exceeding 60 days is declared to be a public nuisance. Inoperative is defined as the failure to sell gas, either retail or wholesale, during the 60-day period.

The applicant is proposing to remove the underground storage tanks. As conditioned this permit will require the applicant to remove the other exterior aspects of the gas station from the property and so the applicant will comply with this code requirement.

Further, in compliance with Municipal Code Chapter 10.72 any activities taking place in the public right of way will require an encroachment permit. Thus the following Special Condition has been established:

SPECIAL CONDITION 13: Applicant shall apply for an encroachment permit at least two weeks prior to commencing any activities that impede the public right of way.

COASTAL RESOURCES ANALYSIS

Natural Resources	It has been determined that the site is not considered an Environmentally Sensitive Habitat Area (ESHA) and that the site is of no biological value. Thus, as conditioned, the removal of the tanks would not result in impacts to natural resources.
Marine Resources	The proposed project is approximately 2,000 feet from the shore and is located more than 650 feet from estuaries (Pond 5 on the Mill Site) or creeks. Thus, the proposed project, as conditioned would not result in impacts to marine resources.
Scenic Resources	The proposed project involves the removal of underground storage tanks and replacement fill in the same location. The project, as proposed would not result in any changes to scenic resources on the site.
Cultural/Historic Resources	The Tribe has concerns about the earth movement for the tank removals. Although, the plans show very minimal dirt work, given the past history of very sparse archaeological documentation and the rich cultural resource in the surrounding area, the Tribe is requesting Government-To-Government Consultation and possible Cultural Monitor onsite when dirt work commences. This is addressed by Special Condition 1 (see above).
Recreational Resources	The proposed project location is not between the public right of way and access to the shoreline. Thus, the proposed project will have no impact on recreational resources.

ENVIRONMENTAL ANALYSIS

The purpose of the project is to remove the underground storage tanks (USTs) before they become an environmental concern. The scope of work for the project identifies that the liquids inside the tank will be put into a drum and disposal arranged for. The project has been conditioned to require that the applicant provide the name and location of appropriate disposal facility prior to commencing work.

Thus, as conditioned the proposed project meets the criteria for and is categorically exempt under CEQA Guidelines 15330 Minor Actions Taken to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste

or Hazardous Substances (b) Minor Clean Up (1) Removal of Sealed, non-leaking drums or barrels of hazardous waste or substances that have been stabilized, containerized, and are designated for a lawfully permitted destination.

RECOMMENDED PLANNING COMMISSION ACTION

Approve Resolution adopting findings and approval of CDP 4-21 as conditioned.

ALTERNATIVE PLANNING COMMISSION ACTIONS

1. Revise findings and/or add or remove conditions on the project and approve resolution.
2. Provide additional direction to staff and continue the hearing to a later date.

ATTACHMENTS

1. Application
2. California Water Boards Report
3. Mendocino County Environmental Health Permit Application
4. Draft Resolution