



COUNTY OF HUMBOLDT

For the meeting of: 4/15/2025

File #: 25-468

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

Vote Requirement: Majority

SUBJECT:

Hearing to Consider Revocation or Modification of a Conditional Use Permit Granted to Kernen Construction for a Rock Aggregate Processing and Materials Storage and Handling Yard Facility.

RECOMMENDATION(S):

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the permit holder (also referenced herein as Applicant) and testimony from the public on any of the additionally submitted information; and
2. Close the public hearing; and
3. Adopt the resolution (Attachment 1) which does the following:
 - a. Finds that the permit has been exercised contrary to the terms or conditions of approval but adding new or modified conditions of approval can address this; and
 - b. Finds that the use for which the permit was granted is so conducted as to be a nuisance but adding new or modified conditions of approval can address this; and
 - c. Modifies the Conditional Use Permit to require relocation of the recently constructed stormwater protection berm and add conditions related to noise and operational hours; and
4. Direct the Clerk of the Board to provide a certified Board Order to the Planning and Building Department to be included with the notification of decision to the appropriate parties.

STRATEGIC PLAN:

This action supports the following areas of your Board's Strategic Plan.

Area of Focus: Safe & Healthy Communities

Strategic Plan Category: 9999 - Core Services/Other

DISCUSSION:

Executive Summary

This is a request by the Planning and Building Department for the Board of Supervisors to modify an issued Conditional Use Permit for Kernen Construction, to require relocation of an unpermitted stormwater protection berm, and to add conditions of approval to the Conditional Use Permit to set hours of operation and noise limitations. This is a continuation from the Dec. 3, 2024 meeting where the department recommended revocation of the use of the northern yard, but the hearing was continued to allow staff and the permit holder to search for alternative solutions to address the issues. There has not been an agreed upon approach between staff and the permit holder, but staff is recommending the permit be modified to relocate the berm installed along Noisy Creek, and to add conditions to address noise and hours of operation. This recommendation would be a modification to the permit for both

yards instead of removing the use of the northern yard and would require relocation of an unpermitted berm away from noisy creek and clarify noise generation restrictions.

Unpermitted grading within the Northern Yard

The original recommendation from the Planning and Building Department was to modify the permit to eliminate the use of the northern yard area, consisting of APNs 516-151-008 and 516-151-016, and add operational conditions to the southern yard located on APN 516-141-017. The primary reason for this recommendation is that the northern yard has been the location of unpermitted grading in the form of constructing a stormwater catchment basin (built as a berm) and a separate berm to redirect storm flows around the site. The water retention basin was constructed so that there would be no runoff leaving the site. The berm was constructed to prevent floodwater from flowing across the northern yard. The berm redirects floodwater flowing across Glendale drive from entering the site and prevents water in Noisy Creek from overflowing onto the site in addition to preventing onsite stormwater from entering Noisy Creek. Portions of the unpermitted stormwater protection berm have been constructed within the Streamside Management Area, as close as 8 feet from the top of bank for Noisy Creek, which is a perennial watercourse that hosts native salmonids.

Some of this flooding along Glendale Drive can be attributed to undersized culverts under Glendale Drive at Noisy Creek and at Hall Creek. Water leaves the channel and flows across Glendale Drive and the subject site.

Shortly before the hearing on Dec. 3, 2024, the permit holder presented the county with a proposal that included replacement of the Noisy Creek culvert for a very low cost. The hearing was continued to Feb. 4, 2025, to allow staff to review the proposal. The Feb. 4, 2025, hearing was continued to April 8, 2025, to allow further review of the proposal and continued again to April 15, 2025, due to a scheduling conflict.

After discussion with Kernen Construction and Humboldt County Public Works, it is unlikely that an agreement could be reached that would allow the completion of the culvert replacement by Kernen as a component of this permit modification. There are many items that need to be considered: cost of design and permitting, use of county funds requiring prevailing wage thus increasing cost, and lack of county funds for participation in this work. These all complicate the proposal beyond what is feasible. This is not a reflection of Kernen, it reflects the cost and complexity of county road projects involving stream crossings.

Kernen Construction has prepared and submitted a Buffer Enhancement and Vegetation Plan for this stormwater protection berm and is proposing that the berm be permitted in its current location, which in some areas is as close as 8 feet from the channel edge of Noisy Creek. As Noisy Creek is a perennial watercourse, the county's Streamside Management Area regulations currently require all new development to be a minimum of 100 feet from the top of bank or edge of riparian vegetation, *whichever is greater*. In this area, the riparian vegetation encroaches further towards the berm than the top of the bank and in some locations the riparian dripline extends beyond the streamside edge of the berm. At the time of the issuance of the Conditional Use Permit for the use of this property as a construction and materials yard, the Streamside Management Area regulations required a minimum of 25 feet from the top of bank of a perennial watercourse and a while the approved site plan is lacking in detail, it shows a buffer from Noisy Creek and the permitted operations that clearly delineates all operations in the yard being outside of the riparian zone. Any activity in this area is technically a violation. Accordingly, the placement of the berm within the riparian dripline is a violation of the approved permit. It is also unclear if the entire berm construction has occurred on the Kernen property or whether any work occurred on the adjacent property to the south.

The current location of the berm along the edge of Noisy Creek does not provide suitable habitat protection for fish and wildlife and should be moved to at least meet the requirements in effect at the time the CUP was issued. This is a fish-bearing stream as observed during a review of the site with Kernen, CDFW, RWQCB and county staff when salmon were seen in the creek. The use of this site included a Special Permit to allow fill of wetlands with the requirement to mitigate for those wetlands impacted. A permit was not issued to allow encroachment within the SMA of Noisy Creek. Any encroachment into this area is a violation of the County Code.

It is recommended a compromise of a 25 feet setback from the Riparian Dripline (edge of tree canopy) be used to establish the SMA at this location. This recommendation recognizes the historic SMA while also using the current starting point of the SMA as the edge of the riparian dripline which is the current standard in the Zoning Ordinance and General Plan. The area of the berm and the area between the berm and the stream should be planted to enhance the riparian corridor. The result of this would require the access road into the lower construction yard to be moved away from Noisy Creek.

In addition to relocating the berm, some remediation work should be done in the creek channel. An inspection by CDFW found a substantial amount of asphalt in the creek channel (Attachment 12). The asphalt in the creek is a detriment to fish and wildlife and is a violation of Fish and Game Code 5650 and 5652. Given this is a fish-bearing stream the asphalt should be removed as this is a material that could have detrimental effects on salmon in the stream.

The removal of vegetation along Glendale Drive was also a violation of the permit. The approved site plan called for the retention of the alders, willows and Himalayan berries as a vegetative buffer to separate the use of the yard from Glendale Drive. Much of this vegetation has now been removed, leading to extensive views of the industrial operation from the public road and residential properties across the road.

Included in Attachment 1A are recommended conditions of approval that would require the property line along Noisy Creek to be surveyed, the berm removed and relocated a minimum of 25 feet from the edge of riparian vegetation, a restoration and replanting plan that provides sufficient noise and light attention, and removal of the asphalt debris in the stream channel and riparian area.

Hours of Operation

Beginning in the Summer of 2023 the Planning and Building Department began receiving complaints of operations and excessive noise occurring on the Kern Construction site up to 24 hours a day. The approved Conditional Use Permit included a limitation on hours of operation from 7 a.m. to 6 p.m. weekdays and from 7 a.m. to 5 p.m. Saturdays, as stated in the project description, and included a condition of approval requiring Kern to adhere to the approved operation plan. Ultimately Kern Construction ceased operating outside of these hours. It was later determined that the approved operations plan included those limited hours only for the rock crushing and aggregate processing portion of the operation, and the Planning and Building Department determined that enforcing the hours in the project description which were not included specifically as conditions of approval or in the approved operations plan would be infeasible. Kern Construction has continued to adhere to these hours for nearly all aspects of their operation, with some minor exceptions. Nonetheless, in order to ensure that there are no adverse impacts to the public's general welfare, the permit should be modified to include a specific restriction on hours for all operational activities. Included in Attachment 1A is a recommended condition limiting the hours of operation to 7 a.m. to 6 p.m. on weekdays and 7 a.m. to 5 p.m. on Saturdays.

Noise

The original permit also included a restriction on noise, which was that noise generated by operations shall not exceed 60 Ldn at nearby residential properties. Ldn is a weighted measurement of noise over a 24-hour period. This standard is not particularly useful for an operation that typically does not operate during nighttime hours. One of the primary offending sources of noise are the back-up beepers that are required for occupational safety. There are more advanced and accepted warning systems to those developed in the 1960's. Beepers which produce noise that dissipates quickly over distance has a much lower impact on the community than the traditional beepers. There are still other uses in the area that use the traditional back up beepers. The permit should be modified to include a noise restriction that is more useful for determining compatibility with surrounding residences. Included in Attachment 1A is a recommended condition of approval requiring that noise generated by the operation not exceeds 70 decibels at nearby residential properties. An alternative would be to require conversion of all the back-up beepers to beepers that are much quieter.

SOURCE OF FUNDING:

There is no identified funding source for this action. This is funded by the General Fund Contribution to department operations.

FINANCIAL IMPACT:

There is no identified funding source for this action. This is funded by the General Fund Contribution to department operations.

OTHER AGENCY INVOLVEMENT:

California Department of Fish and Wildlife
North Coast Water Quality Control Board

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board Discretion

ATTACHMENTS:

Attachment 1: Draft Resolution

Attachment 1A: Exhibit A - Revised Conditions of Approval

Attachment 2: December 3, 2024, Board Report

Attachment 3: CUP-00-27 Original Conditions of Approval August 16,2021

Attachment 3A: Site Plan

Attachment 3B: Operations Plan

Attachment 3C: Planning Commission Staff Report

Attachment 4: Notice of Permit Revocation letter, October 24, 2024

Attachment 5: Notice of Violation

Attachment 6: Table of Complaints Received

Attachment 7: October 18, 2024, Inspection Report

Attachment 8: Email from Corporal Joshua Boyer to Director John Ford

Attachment 9: Response to Notice of potential Conditional Use Permit Revocation dated November 8, 2024

Attachment 10: County Reply to Kernan Response to NOV dated November 14, 2023

Attachment 11: County reply to March Pre-Application submittal

Attachment 12: Images from January 13, 2024

Attachment 13: Submittal from Lynne Owens

Attachment 14: Submittal from Linda Miller

Attachment 15: CDFW Comments

Attachment 16: CDFW Field Notes

Attachment 17: Proposed Grading Plan

Attachment 18: Proposed Buffer Enhancement Plan

Attachment 19: CDFW Comments and Recommendations on Buffer Enhancement Plan

PREVIOUS ACTION/REFERRAL:

Meeting of: December 3, 2024, February 4, 2025, April 8, 2025

File No.: 24-1533, 25-144, 25-459