



# COUNTY OF HUMBOLDT

For the meeting of: 8/30/2022

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File #: 22-1088

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**To:** The Humboldt County Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

**SUBJECT:**

Pacific Gas and Electric (PG&E) appeal of the Planning Commission's denial of a Coastal Development Permit for the installation of three utility poles and a voltage regulator along Patrick's Point Drive.

**RECOMMENDATION:**

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant (applicant), and public; and
2. Close the public hearing; and
3. Adopt the resolution (Resolution 22-\_\_). (Attachment 1) which does the following:
  - a. Finds that project exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines; and
  - b. Finds that the proposed project is inconsistent with the Trinidad Area Local Coastal Plan; and
  - c. Denies the Appeal submitted by Pacific Gas & Electric; and
  - d. Denies the Coastal Development Permit.
4. Direct the Clerk of the Board to give notice of the decision to the appellant, the Planning and Building Department, and any other interested party.

**SOURCE OF FUNDING:**

The Appellant has paid the fee associated with filing this appeal (1100277-608000).

**DISCUSSION:**

*Executive Summary*

This item is an appeal of the Humboldt County Planning Commission's July 7, 2022 denial of a Coastal Development Permit for Pacific Gas & Electric (PG&E) by a unanimous vote (YES: McCavour, Mulder, Newman, Bongio, Mitchell, O'Neill, ABSENT: Levy). PG&E believes that the Planning Commission made an error and committed an abuse of discretion in denying the Coastal Development Permit application. The Planning Commission action was based on the scenic character

of Patrick's Point Drive and that PG&E did not present options or reasons as to why this was the only feasible design. The Planning and Building Department does not support the appeal.

Project Description

Pacific Gas & Electric (PG&E) requested a Coastal Development Permit to allow an after-the-fact electrical distribution facility constructed without county approval of a Coastal Development Permit. PG&E did obtain an encroachment permit from Humboldt County prior to installation within the county right-of-way along Patrick's Point Drive but failed to apply for the required Coastal Development Permit. As part of the Coastal Development Permit requested modifications to the facility are proposed which consist of the following:

- a) Relocation of one 45-foot-tall utility pole and replacement with a 55-foot-tall pole,
- b) Replacement of two 45-foot-tall utility poles with 55-foot-tall poles and
- c) Three platform-mounted voltage regulators.

The poles were installed within the county right-of-way and near the driveway that serves parcel 517-041-016. An existing utility pole is located 8 feet south of the existing driveway and will remain in place.

The design standards for allowable pole sizes for platform-mounted voltage regulators has changed from 45-foot-tall polls to 55-foot-tall poles, driving the need for the height increase of the existing facility. PG&E is proposing to install three 55-foot-tall poles in accordance with these standards. These new poles would be 10 feet taller than the existing 45-foot-tall poles. Additionally, the height of the conductor and distribution line would change from 39 feet to 47 feet. The voltage regulators and other equipment will remain at approximately the same height. The development does not qualify for the repair and maintenance exclusion under Coastal Act Section 30610(d) because the new poles are an expansion of the existing pole layout that supports the existing electric distribution line. No major vegetation removal occurred as part of the installation of the existing poles.

Project History

Every year PG&E obtains an annual encroachment permit from the Humboldt County Department of Public Works for all activities that occur within the county rights-of-way. Under the 2017 encroachment permit, PG&E installed a new utility pole and a new voltage regulator in the county right-of-way on the east side of Patrick's Point Drive, adjacent to APN 517-041-016. Although this location is in the Coastal Zone and the facility is not exempt from the requirements to obtain a Coastal Development Permit, no such permit was sought or obtained prior to the installation. The county Planning and Building Department was made aware of the construction of this facility through a complaint filed by a property owner in the area. The county's Code Enforcement Unit filed a Notice to Abate to PG&E on April 24, 2018, for the unpermitted coastal development and, on Sept. 11, 2018, PG&E filed the subject Coastal Development Permit application.

This project was initially heard during the May 12 Planning Commission hearing where several concerns were raised by the Planning Commission and members of the public about the project design

and siting location. Without adequate information available or a representative from PG&E present, it was decided to continue the project to the June 16 hearing date to provide PG&E with enough time to respond to the concerns expressed during the May hearing. A representative of PG&E was not available at the June 16 Planning Commission hearing and so it was continued to the July 7 hearing at the request of PG&E to allow for the project engineer to be available at the hearing. Unfortunately, no representative of PG&E was present at the July 7 hearing.

According to PG&E, the electric distribution line regulator bank was installed at this location on the Trinidad 1102 circuit along Patrick's Point Drive to avoid extended outages and improve service reliability to PG&E customers served by the Trinidad 1102, Orick 1102, and Orick 1101 circuits when there is planned and unplanned work at Big Lagoon Substation. In order to have the desired effect on service reliability, the electric distribution line regulators needed to be installed within a specific geographic area, which included the length of Patrick's Point Drive. Because the Trinidad 1102 circuit runs along Patrick's Point Drive, there were few opportunities other than this location that would avoid placing the equipment within a designated coastal scenic corridor or vista. In fact, the entire section of Patrick's Point Drive from approximately 0.5 miles north of the City of Trinidad to its terminus at Highway 101 is designated a Coastal Scenic Area under the Trinidad Area Coastal Plan with the exception of a single section, approximately 1,000 feet in length, which contains the proposed facility location.

According to PG&E, the engineering team performed several site visits to evaluate locations where the equipment could be installed, and subsequently evaluated several alternatives. After considering all the alternatives, the project site was found to be the most suitable due to availability of existing right-of-way, accessibility, and environmental constraints. For example, other feasible locations would have required right-of-way acquisition, were not accessible for line trucks and construction equipment, and/or had environmental constraints, such as waterways or substantial initial vegetation clearing for construction and routine vegetation management for operations and maintenance. Additionally, installing the line regulator bank at the project site avoided the need for additional aboveground PG&E facilities to improve service reliability, which could further impact the scenic character of the area. For these reasons, the project location was determined to be the least impactful to land and environmental resources. According to PG&E, this project has provided improved service reliability to 1,226 electric meters in the coastal area and without it these customers could experience extended outages during planned and unplanned (emergency) work at the Trinidad, Big Lagoon and Orick substations.

The Planning Commission denied the application based on two findings.

1. The proposed development and conditions under which it would be operated would be detrimental to the public health, safety, and welfare because it would be located along a narrow roadway which presents conflicts with vehicle traffic along Patrick's Point Drive and entering and exiting the adjoining properties, and that the above-ground facility would constitute a fire hazard due to its placement near a highly flammable Coniferous Pine Forest.

2. The above-ground utility is in an area that is highly scenic, and the elevated utility infrastructure detracts from the scenic nature of the area, and that the applicant had failed to demonstrate that there were no other feasible locations or designs for the facility.

### Appeal

The appellant filed a timely appeal of the Planning Commission decision on July 20, 2022. The appellant believes that the Planning Commission decision was made in error and was an abuse of discretion.

### Appeal Argument:

1. The project is not a threat to motorists because the project was designed according to local traffic design standards that were designed for traffic safety and the project was approved by the Humboldt County Department of Public Works.
2. The project location is not in a designated scenic area and while the area may in fact be a scenic resource the voltage regulators cannot be installed underground.
3. The Planning Commission committed an abuse of discretion because only the Public Utilities Commission has jurisdiction over the design, construction, and location of PG&E's facilities. The county's jurisdiction is only in determining whether the project is consistent with the Local Coastal Plan policies and associated regulations.

### Staff Response:

1. The project was approved by the county Public Works Department and is consistent with the Public Works design standards intended for traffic safety. The proposed facility would be a minimum of 15 feet from the utility pole face to the road fog line and as proposed would be a minimum of 18 feet from the nearest utility pole to nearest private driveway apron. The location of the facility is consistent with Public Works standards intended to provide for adequate traffic safety. Regarding fire safety, the design of electrical infrastructure including voltage regulators is regulated by the Public Utilities Commission.
2. PG&E appears to have made a significant effort to locate the facility outside of the designated scenic areas in an attempt to maintain consistency with the Trinidad Area Plan and preserve the scenic character of the area. However, while the location is not in a designated scenic area, the Trinidad Area Plan requires application of the Coastal Scenic policies to parcels immediately adjacent to and visible from the designated scenic area, such as the proposed project site. The stated intent of the Trinidad Area Plan Scenic Resource is "*that all development be subordinate to the character of the designated area, and to the scenic use and enjoyment of public recreational lands within these areas.*" Section 3.40B.3 specifically limits new public facility development to "*Underground utilities, telephone lines, and above-ground power lines less than 30KV.*" The

existing power line circuit is 12KV and would be permitted underground in these areas; however, the installation of the new voltage regulators would be required to be undergrounded pursuant to this section. The Trinidad Area Plan states that proposed development that cannot satisfy these standards may be approved if found to be in conformance and compatible with the goals and objectives of the visual resource section and the area plan. PG&E has stated that the voltage regulators may not be located underground, however, has been unable to provide a citation to any such standards or regulations to support this and correspondence with the Public Utilities Commission indicates that they may in fact be able to be located underground (Attachment 5). Accordingly, it is appropriate for the county to require that the regulators be installed underground to comply with the policies of the Trinidad Area Plan.

3. Public Utilities Commission General Order 131-D states that local authorities are preempted from regulating anything subject to the PUC's jurisdiction. Courts have generally held that local authorities may regulate the location in accordance with adopted Local Coastal Plans; however, local authorities may not require things contrary to the Public Utilities Commission design requirements. CPUC General Order 131-D also explicitly allows for local agencies discretion in land use matters, though it notes, any inability of a local agency and public utility to reach an agreement regarding land use matters is appealable to CPUC for further consideration. PG&E is correct that the county cannot require undergrounding of the voltage regulators if such requirement would violate the PUC requirements; however, to date PG&E has submitted no evidence that PUC requirements prohibit the facility from being undergrounded. To the contrary, the county has received correspondence from CPUC indicating that undergrounding of the facility may be possible. Accordingly, the above-ground facility is not consistent with the visual resource protection policies of the Local Coastal Plan and the Planning Commission's decision to deny the application is appropriate.

#### Recommendation

While staff is in agreement with some of the appeal arguments raised by the appellant, particularly regarding the potential traffic and fire safety impacts of the project, the Local Coastal Plan does specify that new public utilities should be undergrounded in designated coastal scenic areas and areas adjacent to designated coastal scenic areas. The project location is directly adjacent to a designated coastal scenic area of significant importance to Humboldt County and the appellant has not been able to demonstrate that undergrounding of the facility is not feasible. Accordingly, staff recommends that the Board deny the appeal and deny the Coastal Development Permit.

#### FINANCIAL IMPACT:

The Appellant has paid the fee associated with filing this appeal (1100277-608000). The cost of appeals are not completely covered by the appeal fees. The difference between the collected fee and the actual cost is borne by the General Fund.

#### STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents

**OTHER AGENCY INVOLVEMENT:**

None

**ALTERNATIVES TO STAFF RECOMMENDATIONS:**

The Board could choose to approve the appeal and approve the Coastal Development. If the Board decides to take this action staff recommends giving direction of how to address the scenic resource policies of the LCP and continuing the item to allow adequate findings and conditions to be prepared.

**ATTACHMENTS:**

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolution and Findings for Record No. PLN-17854
2. Grounds for Appeal filed by PG&E
3. Planning Commission Staff Report
4. Planning Commission Resolution
5. Email from the California Public Utilities Commission to Bob Bronkall
6. Public Comment

**PREVIOUS ACTION/REFERRAL:**

Board Order No.: N/A

Meeting of: N/A

File No.: N/A