

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 8/21/2012	(3) CONTACT/PHONE John McKenzie, Senior Planner\ (805)781-5452	
(4) SUBJECT Continued hearing to consider an appeal by Excelaron, LLC of the decision of the Planning Commission to deny its application for Conditional Use Permit DRC2009-00002			
(5) RECOMMENDED ACTION Staff recommends that your Board: Adopt and instruct the chairperson to sign the resolution affirming the decision of the Planning Commission and denying Conditional Use Permit DRC2009-00002 based on the findings set forth in Exhibit 3 – Exhibit A from the May 15, 2012 Staff Report (Attachment 2).			
(6) FUNDING SOURCE(S)	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT { } Consent    { } Presentation <input checked="" type="checkbox"/> Hearing (Time Est. 120 min.)    { } Board Business (Time Est. _____)			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions    { } Contracts    { } Ordinances    { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5th's Vote Required    { } N/A	
(14) LOCATION MAP  N/A	(15) BUSINESS IMPACT STATEMENT?  No	(16) AGENDA ITEM HISTORY  { } N/A    Date <u>1st Hearing: 5/15/12</u>	
(17) ADMINISTRATIVE OFFICE REVIEW			
(18) SUPERVISOR DISTRICT(S) District 4 -			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / John McKenzie, Senior Planner

VIA: Jason Giffen, Director, Department of Planning and Building

DATE: 8/21/2012

SUBJECT: Continued hearing to consider an appeal by Excelaron, LLC of the decision of the Planning Commission to deny its application for Conditional Use Permit DRC2009-00002

## Recommendation

Staff recommends that your Board:

Adopt and instruct the chairperson to sign the resolution affirming the decision of the Planning Commission and denying Conditional Use Permit DRC2009-00002 based on the findings set forth in Exhibit 3 – Exhibit A from the May 15, 2012 Staff Report (Attachment 2).

## Discussion

### Previous Hearing – Board Direction

After considering staff and applicant presentations and public comment at the May 15, 2012 hearing, the Board asked staff to research and respond to a list of questions, and continued the hearing to August 21, 2012. The Board also directed staff, at the request of the Applicant, to have at least three meetings with the applicant to discuss the proposed changes along with any additional information provided by the applicant.

Since the last hearing, four meetings have been held with the applicant and one meeting with the Huasna Valley Foundation, which was subsequent to the four applicant meetings.

Attachment 1 provides a detailed list of the Board's issues raised at the last hearing and staff's responses. The following is a brief summary of the main issue areas and staff's general response:

1. Mineral Rights – It is possible for mineral rights to be held as individual property interests and, where any such rights are involved, the Board should consider them when enforcing the County's land use ordinance and general plan policies.
2. Revised Project – Staff does not believe an additional EIR alternative or EIR recirculation is necessary for the revisions that were proposed during the Board hearing on May 15, 2012 or the information submitted by the applicant on August 7, 2012. The EIR would not be certified if your Board upholds the Planning Commission's denial of the project. Even if your Board were to reverse the Planning Commission's denial and approve the applicant's revised project, the changes proposed are consistent with the proposed project when the whole project is considered.
3. Project-related Elements
  - a. Spill statistics – depending on assumptions used a spill event could occur as often as once every 46 years or as infrequent as once every 4,800 years.
  - b. Odors – Staff believes odors are likely to occur, based on knowledge of other oil facilities and the occasional problems that occur leading to the creation of odors.

- c. Oil output – due to limited data available, it is very difficult to state with certainty how much each well will produce; staff believes the range evaluated in the EIR of between 650 and 1,000 barrels per day is an appropriate range.
  - d. Cumulative Effects – staff believes, through the EIR analysis, that the cumulative effects have been adequately considered; any further characterization of the oil field and its potential development is speculative at this point. Furthermore, staff requested of the applicant any additional information about their future plans or other information to either further characterize the oil field or provide information on their future plans. They stated they had no additional information regarding this oil field’s potential.
  - e. Greenhouse gas (GHG) – direct and indirect project GHG emissions from the project were analyzed; potential emissions from future refining or use is not a part of the project and is not required to be analyzed under CEQA.
  - f. Water Availability – the City of Santa Maria has an outside water user program and has stated they are able and willing to provide water to the project.
  - g. Fire Safety (Fire Suppression & Analysis Adequacy of Fuel Modification Impacts) – the EIR-analysis calculated and recommended 360,000 gallons of fire water storage was needed to meet existing Codes and Guidelines; the long dead-end access road to a future tank would need to be improved to meet CalFire’s road standards; due to the tank’s location at the canyon bottom, it would need to pump water up to the elevated Pads 1 and 2; due to its location and accessibility, it would not be practical to make this fire water available to others.  
On fuel modification, the EIR adequately analyzed fuel modification requirements for all project elements, and these were factored into the visual analysis.
  - h. Porter Ranch Road (Flooding) – When Porter Ranch Road closes occasionally due to flooding, the proposed oil facility can shut down and minimize the potential to use Huasna Road; should the project site be inaccessible via Porter Ranch for more than 160 days, a propane truck would need to access the site using Huasna Road; should there be any other need for maintenance-related vehicles (e.g., access road, facility maintenance, etc.) during this period, Huasna Road would be the only all-weather access road to the site.
  - i. Porter Ranch Road (Design standards) – As a private road, the County (Public Works) has no road standards that would apply to this road; however, CalFire does review such roads for fire safety access; in this case, CalFire reviewed this as a secondary access road, and suggested several improvements to satisfy their concerns; were the project to be approved, construction and ongoing monitoring by County staff could be included to ensure that these measures were implemented and maintained.
  - j. Well closure and restoration – a County-approved cost estimate, bonding and ongoing monitoring could be conditions to minimize potential problems with well abandonment, and provide the greatest assurance that restoration efforts would be implemented.
  - k. Economic impacts – due to the extent, complexity and variability of economic inputs, and the lack of staff expertise, no economic forecasting was conducted.
4. Permitting Authority – the County retains its ability to impose land use and environmental conditions but generally cannot regulate “down hole” components of oil well drilling, which may be preempted by state law.

Health Commission Letter. A letter from the County Health Commission was also received expressing concerns over several aspects of the proposed project. The letter and detailed response can be found in Attachment 3. In summary, the Health Commission raises concerns over the level of EIR analysis for 1) certain potentially toxic hydrocarbons (Poly Aromatic Hydrocarbons), 2) the lack of a produced water spill assessment, and 3) the potential use of a diluent. Staff has reviewed these concerns and questions and concludes the following:

Poly Aromatic Hydrocarbons - without specific information about the crude to be extracted, it is difficult to state with certainty these impacts; the health risk assessment performed for the project did consider PAH to be a constituent of this crude; the proposed vapor recovery system would substantially reduce the adverse health impacts this hydrocarbon might otherwise generate.

Produced Water Spill Assessment – The EIR considered a potential Produced Water spill in the Hazards, Biological Resources and Water sections of the EIR. Staff disagrees with some of the assumptions applied and believes the potential spill to be much smaller than suggested.

Use of Diluent – Diluents are not being proposed; however, blend stock will be used, which is a lighter oil to be blended with the heavy crude to improve the viscosity for transport. The EIR includes the following mitigation to further address this issue: Spill Prevention Plan, Oil Spill Contingency Plan.

Staff concludes that the Final EIR has adequately evaluated the issues raised by the Health Commission.

#### Additional Correspondence

On August 7, 2012, staff received an additional request from the applicant to consider another project alternative, which was accompanied by a continuance request (see Attachment 5). The applicant requested a continuance to allow for the most recent revisions to be considered an 'Alternative' under CEQA, and that this 'Alternative' receives additional environmental review. In light of the latest applicant proposed alternative, the Board has two principle options, summarized below:

1. **Deny the applicant the continuance request** – if the Board chooses to deny the project, based on the public testimony and new information provided, staff does not believe any additional information is needed. Denial of a project does not require the certification of an EIR, and no further environmental analysis is necessary. Findings for denial have been provided with this staff report.
2. **Consider Additional Information** – The Board may choose to direct staff to continue the project to consider additional information or conduct additional environmental analysis before the Board makes a decision. If the Board chooses this option, there are a number of steps that staff will be prepared to discuss at the hearing.

#### **Other Agency Involvement**

County Counsel reviewed and approved the resolution as to form and content.

#### **Financial Considerations**

The appellant has paid the appeal fee of \$850 to partially offset staff time required to prepare this staff report. The balance of funding comes from the Department's general fund support.

#### **Results**

Denial of the Appeal and upholding the Planning Commission's decision to deny the project would result in no testing for or establishment of oil wells at this location in the Huasna area.

Attachment 1 – Board Questions and Staff Responses  
Attachment 2 – (Exhibit 3) – Resolution and Findings  
Attachment 3 – Health Commission Letter and Detailed Response  
Attachment 4 – CEQA Section 15088.5 – EIR Recirculation  
Attachment 5 – Applicant Letter – Request for Continuance