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Planning Services Division

Agenda Item No. 1

**MEMORANDUM:**

TO: Solano County Zoning Administrator

FROM: Eric Wilberg, Planner Associate

SUBJECT: Marsh Development Permit MD-14-01 (Wayward South Kirby)

MEETING DATE: December 3, 2015

I. Recommendation:

APPROVE applicant's request of a one year extension to exercise Marsh Development permit MD-14-01, pursuant to Section 28.104(J) of the Solano County Zoning Ordinance.

II. Discussion:

On December 9, 2014 the Planning Commission adopted resolution No. 4614 approving marsh development permit MD-14-01 of Wayward Enterprises, Inc. to construct a well site and drill two exploratory natural gas wells located 8 miles southeast of Suisun City, near Montezuma Slough, APN 0090-070-420. The permit was granted with the provision that the permit be exercised within a one year period. The applicant has submitted a request for a one year time extension as detailed in Attachment A.

Section 28.104(J) of the Zoning Ordinance allows for a one-time, one year extension to exercise the permit in any case where a marsh development permit has not been exercised within one year after the date of approval. The applicant has submitted this request within one year of December 9, 2014; therefore staff recommends that the Zoning Administrator grant the extension to exercise.

**Attachments**

- A – Wayward South Kirby, LLC extension request letter
- B – Marsh Development Permit MD-14-01

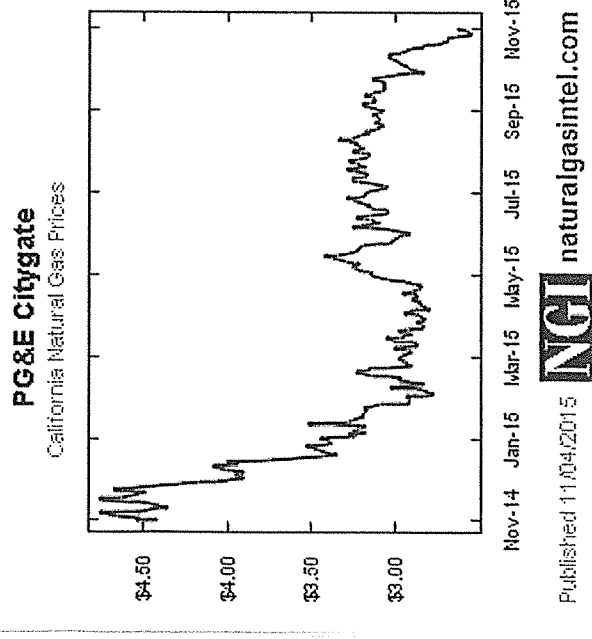
**Wilberg, Eric J.**

**From:** Jim Hussey <jim-hog@bak.rr.com>  
**Sent:** Wednesday, November 04, 2015 11:17 AM  
**To:** Wilberg, Eric J.  
**Cc:** Monte Doris  
**Subject:** RE: Extension for Marsh Development Permit No. MD-14-01  
**Attachments:** Marsh development Permit No MD-14-01.PDF

Eric:

Thanks for the quick response to my e-mail message.

Wayward South Kirby, LLC respectfully requests a one time, one year extension to exercise Marsh Development Permit No. MD-14-01 (*See attached copy*). The drop in gas prices over the last year, as depicted on the following plot of PG&E Citygate California Natural Gas Prices, caused some uncertainty as to the best time to drill the well in order to maximize economic benefit:



Despite the recent trend in gas prices, current plans are to spud the initial test well shortly after April 15, 2016 - the end of the 6 month drilling moratorium period. Please let me know when the extension has been granted. Thanks in advance for all your efforts on our behalf!

Best Regards  
Jim

**Hussey Oil & Gas Inc.**

**Jim Hussey - President**

Petroleum Engineer – California License No. P-1718  
8504 Brissac Court, Bakersfield, CA 93311  
Cell: (661) 330-4130

**E-Mail: [jim-hog@bak.rr.com](mailto:jim-hog@bak.rr.com)**

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**From:** Wilberg, Eric J. [<mailto:EJWilberg@SolanoCounty.com>]  
**Sent:** Wednesday, November 04, 2015 8:29 AM  
**To:** Jim Hussey <[jim-hog@bak.rr.com](mailto:jim-hog@bak.rr.com)>  
**Subject:** RE: Extension for Marsh Development Permit No. MD-14-01

Hello Jim

Our Zoning Ordinance allows for a one time, one year extension to exercise the permit. To initiate this step please send over a message (email is ok) for this request and provide a brief statement for the reason for extension. The permit would then be automatically extended for a one year period at the next available Zoning Administrator meeting.

Eric

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**From:** Jim Hussey [<mailto:jim-hog@bak.rr.com>]  
**Sent:** Tuesday, November 03, 2015 3:42 PM  
**To:** Wilberg, Eric J.  
**Cc:** Jeffrey Sultan; Welner, Jon; Peter Seisenbacher; Monte Doris  
**Subject:** Extension for Marsh Development Permit No. MD-14-01

Eric:

Please advise me as to what steps I need to take in order to obtain an extension on the attached Marsh Development Permit so that a well can be drilled after April 16, 2016. Thanks in advance for your help with this matter.



Department of Resource Management  
675 Texas Street, Suite 5500  
Fairfield, CA 94533  
(707) 784-6765

\*mailed 12/19/14

**MARSH DEVELOPMENT PERMIT NO. MD-14-01**

WAYWARD SOUTH KIRBY, LLC  
(South Kirby Natural Gas Exploration Project)

*(permittee)*

To construct a well site and drill two exploratory natural gas wells located 8 miles southeast of the City of Suisun City, near Montezuma Slough, in an "A-SM-160" Suisun Marsh Agricultural Zoning District, APN: 0090-070-420.

*(Land use, location and zone district)*

In addition to the zoning regulations, the building laws, other ordinances, and provisions of the Suisun Marsh Preservation Act of 1977, the Findings and Conditions of granting this permit are identified in Planning Commission Resolution No. 4614 attached and made a part of this permit which is issued wholly or partly as a permit required by the Suisun Marsh Protection Act of 1977.

Granting or conditional granting of this permit does not release the permittee from complying with all other county, state or federal laws. Failure to comply with all the aforementioned provisions and conditions will be cause for the revocation of this Permit by the County Planning Commission.

Failure, neglect or refusal to exercise this Permit within a period of one (1) year from the date of granting thereof, shall automatically cause the same to become and remain null and void.

Appeals from action to grant this permit may be filed by any person within ten (10) days of the date granted by the County. An appeal may be filed with the San Francisco Bay Conservation and Development Commission (BCDC) by an aggrieved person within twenty (20) working days after notification of the permit's issuance has been received by BCDC. Any such appeal shall stay all proceedings until determination of the appeal.

Date Granted December 9, 2014

**SOLANO COUNTY PLANNING COMMISSION**

Issued by: Bill Emlen  
Bill Emlen, Director/Secretary

ATTACHMENT B

## SOLANO COUNTY PLANNING COMMISSION RESOLUTION NO. 4614

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**WHEREAS**, the Solano County Planning Commission has considered Marsh Development Permit Application No. MD-14-01 of **Wayward Enterprises, Inc. (South Kirby Natural Gas Exploration Project)** to construct a well site and drill two exploratory natural gas wells located 8 miles southeast of the City of Suisun City, near Montezuma Slough, in an "A-SM-160" Suisun Marsh Agricultural Zoning District, APN: 0090-070-420, and;

**WHEREAS**, the Commission has reviewed the report of the Department of Resource Management and heard testimony relative to the subject application at the duly noticed public hearing held on December 9, 2014, and;

**WHEREAS**, after due consideration, the Planning Commission has made the following findings in regard to said proposal:

1. **That the application process complies with the California Environmental Quality Act of 1970, as amended.**

Pursuant to the California Environmental Quality Act, a Negative Declaration has been prepared and circulated through the State Clearinghouse (SCH # 2014112020) with the public review period having ended December 8, 2014. The Negative Declaration found that the construction and operation of the project would result in less than significant impacts on the environment.

2. **That the establishment, maintenance, or operation of the use is in conformity with the County General Plan with regard to traffic circulation, population densities and distributions, and all other pertinent aspects.**

The project site is designated Agriculture by the Solano County General Plan Land Use Diagram. General Plan Policy RS.P-55 allows for the responsible extraction, storage, and transportation of natural gas resources that minimize the impact on the natural environment. Natural gas exploration and production are consistent with the General Plan's goals and policies within the Suisun Marsh.

During the drilling phase there will be a temporary increase in traffic. The applicant expects approximately 25 truck trips will be required to mobilize drilling equipment to the site over a two to three day period. During the temporary drilling operation approximately 20 to 25 vehicle trips to the site per day can be anticipated. The applicant anticipates that approximately 5 of these trips will require a tractor trailer to haul materials to the site and to remove cuttings and drilling mud from the site. The remainder of the vehicle trips will be either car or pickup truck trips necessary for transporting personnel to and from the site. Upon completion of the drilling phase, approximately 25 truck trips will be required over a two to three day period to demobilize drilling equipment from the site. The above activities are short-term and temporary in nature.

During the long term production phase there will be a slight increase in traffic. The applicant anticipates that one pickup truck trip per day will be required for site inspections and routine maintenance. The applicant also anticipates that one tank truck trip per week may be required to remove production water from the site for offsite disposal. The increase in traffic during the

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production phase is minimal and the Negative Declaration found impacts to be less than significant.

The project site will be completely uninhabited. It involves establishment of equipment only. There will be no need for additional housing and no population growth will be induced by this project.

The proposed project is in conformity with the General Plan in regard to traffic circulation, population densities and distribution and other pertinent impacts.

- 3. That adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided.**

No utilities are required for the project. Access to the project site is from an existing private dirt road located off of Birds Landing Road. The existing road is adequate to serve the project. A grading permit is required of the applicant to ensure appropriate drainage of the site.

- 4. That the applicant has exhibited proof that such use will not constitute a nuisance or be detrimental to the health, safety, comfort, or general welfare of the people of the County, or be detrimental to adjacent property or improvements to the neighborhood.**

As outlined in the Negative Declaration, environmental impacts have been considered to be less than significant and the project would not constitute a nuisance or be detrimental to the health, safety, comfort, or general welfare of the people of the County, or be detrimental to adjacent property or improvements to the neighborhood.

- 5. That the proposed development shall be consistent with the certified Suisun Marsh Local Protection Program. Where the proposed development is located in both the Secondary and Primary Management Areas, all portions of the proposed development shall be consistent with the certified Suisun Marsh Local Protection Program.**

As previously discussed, the Local Protection Program includes various policies extracted from the Solano County General. It also includes various policies and regulations extracted from the Solano County Zoning Ordinance. As discussed above, the proposed project is consistent with the relevant General Plan policies and Zoning and the Suisun Marsh Local Protection Program.

**BE IT, THEREFORE, RESOLVED**, that the Planning Commission of the County of Solano does hereby adopt the Negative Declaration and approve Marsh Development Permit Application No. MD-14-01 subject to the following conditions of approval:

1. The permitted land use shall be established in accord with the plans and information submitted with Marsh Development Permit application No. MD-14-01 and as approved by the Solano County Planning Commission. Any change of use or intensification of use will require a new or revised permit and potentially further environmental review. Any deviation from the project description or requirements of the Planning Commission will subject the marsh development permit to review and possible revocation.
  2. All production facilities shall be painted camouflage or an earthen tone to blend in with the environs and to prevent glare.
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3. The permittee shall obtain approval from the Building and Safety Division prior to construction, erection, enlargement, altering, repairing, moving, improving, removing, converting, demolishing any building or structure, fence or retaining wall regulated by the Solano County Building Laws. Submit three sets of plans to the Building and Safety Division for plan review and permits prior to beginning any improvements.

#### **Natural Gas Well Land Use Standards**

4. Security satisfactory to the Public Works Engineering Division of Resource Management shall be posted as security for payment of repairs to County roads and highways damaged by well-drilling activities, including transportation of equipment to and from the site.
5. Drilling operations shall conform to the regulations of the California Division of Oil and Gas designed to prevent damage to natural resources.
6. The drilling operation shall be confined to as small an area as practical and shall not cause irreversible damage to unique vegetation or fish and wildlife habitats.
7. After drilling is complete, all drilling muds, tail wastes, wastewater and other fluids shall be removed from the site and disposed of in a manner that does not adversely affect other areas.
8. Measures shall be taken to prevent any significant pollution of ground water, surface water or watercourses.
9. Derricks shall be removed when wells are brought into production.
10. If wells are abandoned, they shall be sealed in accordance with Division of Oil and Gas regulations, and the drilling or production facilities will be removed.
11. Necessary measures shall be taken to prevent dust, noise, light, glare, odor, and other objectionable elements from adversely affecting the surrounding area beyond acceptable limits.

#### **Biological**

12. A qualified biologist shall conduct an employee environmental awareness training program for all construction and drilling personnel working on the proposed project. The environmental training program shall include the occurrence and distribution of listed species and other sensitive resources in the project area, measures being implemented to protect these sensitive resources during project actions, and applicable definitions and prohibitions under state and federal ESAs. Sign-in sheets shall be maintained to document that project personnel have completed environmental training.
  13. Pre-construction nesting surveys shall be conducted for special-status avian species in the project disturbance zone and buffer area. Pre-construction surveys will be conducted prior to the implementation of the specific phases of the proposed project during the appropriate survey periods for each species. Surveys will follow required CDFW and USFWS protocols where applicable. A qualified biologist will survey suitable habitat for the presence of these species.
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If a special-status bird species is observed and suspected or known to be nesting, an exclusion buffer area will be established to avoid impacts on the active nest. If no nesting special-status avian species are found, project activities would proceed. If active nesting sites are found, the following exclusion buffers will be established, and no project activities will occur within these buffer zones until young birds have fledged:

Western Burrowing Owl

The burrowing owl nesting season begins as early as February 1 and continues through August. If burrowing owls are located or become established within the project site or buffer area at the time of the final pre-activity biological survey and are using burrows within the project site or buffer area, a qualified biologist will consult with CDFW; the following actions would be implemented:

- a. Wayward will follow recommendations included in CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) including avoidance of occupied burrows by implementation of a no-construction buffer zone of a minimum distance of 500 meters, unless a qualified biologist approved by CDFW verifies through non-invasive methods that either; 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.
- b. On-site passive relocation of burrowing owls should be implemented if owls are using the burrows after August 31. Passive relocation is defined as encouraging owls to move from occupied burrows to alternate natural or artificial burrows that are beyond 150 feet from the impact zone and that are within or contiguous to a minimum of 6.5 acres of foraging habitat for each pair of relocated owls. Relocation of owls should only be implemented during the non-breeding season.
- c. Owls should be excluded from burrows in the immediate impact zone and within a 150 feet buffer zone by installing one-way doors in burrow entrances. One-way doors should be left in place 48 hours to insure owls have left the burrow before each excavation. One alternate natural or artificial burrow should be provided for each burrow that will be excavated in the project impact zone. The project area would be monitored daily for one week to confirm owl use of alternate burrows before excavating burrows in the immediate impact zone.
- d. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe or burlap bags should be inserted into burrow tunnels to prevent tunnel collapse while soil is excavated around that portion of a tunnel.

Swainson's Hawk

Pre-construction nesting surveys shall be conducted for Swainson's hawk at potential nest trees within a 0.5-mile radius of the proposed project. Swainson's hawk nesting surveys would be completed during the appropriate survey periods for nesting activities and will follow CDFW protocols (CDFG 1994) and Swainson's Hawk Technical Advisory Committee (TAC) guidance (TAC 200) where applicable. If no nesting Swainson's hawks are observed, project activities would proceed. If active nesting is identified within a 0.5-mile radius of the proposed project, consultation will occur.

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Project related disturbance at active Swainson's hawk nesting sites should be reduced or eliminated during critical phases of the nesting period (March 1 to September 15). If construction or other project related activities which may cause nest abandonment or forced fledging are necessary within a 0.5-mile buffer zone, monitoring of the nest site (funded by the project sponsor) by a qualified biologist (to determine if the nest is abandoned) would be required. Routine disturbances such as agricultural activities, commuter traffic, and routine facility maintenance activities within a 0.25-mile of an active nest would proceed.

#### White-Tailed Kite

White-tailed kites typically nest and rear young from mid-February through June. In order to avoid and minimize impacts on white-tailed kites, a 250-foot buffer will be established around active nests. No project related activities would be allowed to occur within this buffer until young have fledged or the species are no longer attempting to nest. The buffer area can be removed prior to June if a qualified biologist determines that all juveniles have fledged from occupied nests.

#### Ferruginous Hawk

Ferruginous hawk typically nests and rear young from early April through August. If this species is found to be nesting, impacts will be avoided and minimized by establishing a 250-foot buffer around active nests. No project related activities would occur within this buffer until young have fledged or the species are no longer attempting to nest. The buffer area can be removed prior to August if a qualified biologist determines that all juveniles have fledged from occupied nests.

#### Migratory Song Birds

Migratory bird species typically nest and rear young from February through August. In order to avoid and minimize impacts on migratory bird species, a 250-foot buffer will be established around active nesting sites when construction activities will occur during their active nesting period. No project-related activities will occur within this zone. The buffer area can be removed prior to August if a qualified biologist determines that all juveniles have fledged from occupied nests.

14. Wayward shall implement the following best management practices during project implementation to minimize adverse effects to special-status wildlife species and sensitive habitats:
- Hazardous materials, fuels, lubricants, or solvents that are accidentally spilled during construction and drilling activities should be cleaned up and disposed of immediately and according to applicable federal, state and local regulations.
  - The speed of project-related vehicular traffic shall be limited to 15 miles per hour once vehicles have left paved roads and are traveling along unpaved dirt roads to and from the well site.
  - All equipment storage during site development and operation shall be confined to the project area or to previously disturbed off site areas that are not habitat for sensitive species. Staging areas shall be approved by a qualified biologist prior to use for staging activities.
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- To prevent entrapment of wildlife species during the implementation of the project, all excavated, steep-walled holes and trenches in excess of 3 feet in depth shall be provided with one or more escape ramps constructed of earthen fill or a wood/metal plank. If wildlife proof barricade fencing is available, it should also be utilized where appropriate. Escape ramps shall be no more than a 45 degree angle. Trenches and pits shall be inspected for entrapped wildlife each working day before construction activities resume. Before such pits and trenches are filled, they shall be thoroughly inspected for entrapped animals. If any wildlife species are discovered, they should be allowed to escape voluntarily, without harassment, before construction activities resume, or removed from the trench or hole by a qualified biologist and allowed to escape unimpeded.
- All construction pipes, culverts, or similar structures that are stored at a construction site overnight shall be thoroughly inspected for trapped animals before the pipe is buried, capped, or otherwise used or moved. Pipes laid in trenches overnight should be capped. If an animal is discovered inside a pipe, that section of pipe should not be capped or buried until the animal has escaped.
- All trash items such as wrappers, cans, bottles, and food scraps generated both during construction and subsequent operation shall be disposed of in closed containers only and regularly removed from the site. Food items may attract animals onto the project site, consequently exposing such animals to increased risk of injury or mortality. No deliberate feeding of wildlife shall be allowed.
- Night lighting may have an adverse effect on sensitive habitats and wildlife species near the project site. If night lighting is required, the lighting shall be directed downward at the facilities and equipment and not at adjacent areas.
- Impacts associated with wild fires can be minimized by maintaining firefighting equipment on site during project related activities. The use of shields, protective mats or use of other fire preventive methods during grinding and welding activities will prevent or minimize the potential for fire. Personnel shall be trained regarding fire hazard for wildlife and their habitats.
- Any take (harming, harassment, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or any attempt to conduct the previous), injury or illness of species of special concern, threatened, or endangered species shall be reported promptly to the Solano County Department of Resource Management, CDFW, and the USFWS.

**Permit Term**

15. The permit shall be in effect for a five (5) year period with a provision that a permit renewal may be granted if said request is received prior to the expiration date of December 9, 2019, depending upon the circumstances at that time.

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I hereby certify that the foregoing resolution was adopted at the special meeting of the Solano County Planning Commission on December 9, 2014 by the following vote:

AYES:	Commissioners	<u>Cayler, Walker, Hollingsworth and Chairman</u>
		<u>Boschee</u>
NOES:	Commissioners	<u>None</u>
EXCUSED:	Commissioners	<u>Rhoads-Poston</u>

By:   
Bill Emlen, Secretary