



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: Planning and  
Development  
Department No.: 053  
For Agenda Of: Set hearing on 9/20/16  
for 10/11/16  
Placement: Departmental  
Estimated Tme: 1 hour on 10/11/16  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors  
**FROM:** Department Glenn Russell, Ph.D. Director, Planning and Development  
(805) 568-2085  
Contact Info: Peter Cantle, Deputy Director, Energy and Minerals Division  
(805) 568-2519  
**SUBJECT:** **Pacific Coast Energy Company Appeal (16APL-00000-00020) of the County Planning Commission's Denial of the PCEC Orcutt Hill Resources Enhancement Plan Project, Case No. 13PPP-00000-00001, Fourth Supervisorial District**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

On September 20, 2016, set hearing for October 11, 2016 to consider Case No. 16APL-00000-00020, the Pacific Coast Energy Company (PCEC, or appellant) appeal of the County Planning Commission's June 29, 2016 denial of the Orcutt Hill Resources Enhancement Plan project (Case Nos. 13PPP-00000-00001).

On October 11, 2016, staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No. 16APL-00000-00020;
- b) Make the required findings for denial of the project, included as Exhibit 1 to this Board Letter;
- c) Find that denial of the project is exempt from CEQA pursuant to CEQA Guidelines Section 15270 as specified in Attachment B to the July 8, 2016 staff memo to the Planning Commission (Exhibit 2);
- d) Deny the project.

Staff also recommends your Board approve the Seep Can Only Alternative and take the following actions:

- e) Make the required findings for approval of the Seep Can Only Alternative, including CEQA findings, included as Exhibit 3 to this Board Letter;

- f) Certify the Supplemental Environmental Impact Report, Case No. 14EIR-00000-00001 (Attachment 4) for the Seep Can Only Alternative and adopt the mitigation monitoring program contained in the conditions of approval; and
- g) Grant *de novo* approval of the Seep Can Only Alternative, Case No. 13PPP-00000-00001, subject to the conditions included as Exhibit 5 of this Board Letter.

Alternatively, refer back to staff if your Board takes other than the recommended action for appropriate findings and conditions of approval.

**Summary Text:**

PCEC's Orcutt Hill Resource Enhancement Plan project was initially heard by the Planning Commission on May 11, 2016. The staff report from the initial hearing is included as Exhibit 6. At the conclusion of this initial hearing, the Planning Commission directed staff to return on June 29, 2016 and provide additional information. After receiving the June 9 (Exhibit 7) and June 28, 2016 (Exhibit 8) staff memos, and taking extensive public testimony on June 29, the Planning Commission directed staff to return on July 13, 2016 with findings for denial.

On July 13, 2016 the Planning Commission voted 3-2 (Blough and Ferini no) to deny the project. The Commission's findings for denial conclude that while significant adverse environmental effects of the project would be mitigated to the maximum extent feasible, the evidence did not support adopting a statement of overriding consideration, that the site is not able to accommodate additional oil and gas production and that the proposed development does not conform with the applicable provisions of the County's Land Use Development Code and Comprehensive Plan. Findings for denial are included in Attachment A to the July 18, 2016 Planning Commission action letter which is included as Exhibit 9 to this Board Letter.

On July 21, 2016, PCEC appealed the Planning Commission denial of the project to the Board of Supervisors.

**Background:**

PCEC currently operates 96 cyclic steamed oil wells and an oil production facility at the Project Site on Orcutt Hill. The proposed Project is a request for an Oil Drilling and Production Plan (Case No. 13PPP-00000-00001) which would permit an expansion of PCEC's cyclic steaming operation and allow 96 new cyclically steamed wells and 48 "replacement" wells, and act as a follow up permit for the Emergency Permits issued previously for 99 existing oil seep cans installed at the site to control surface oil seeps.

PCEC began their existing cyclic steaming operation in 2007. Oil seeps have historically occurred throughout the Project Site but increased in frequency with the beginning of steaming activities. Seeps are releases of crude oil at the ground surface originating from a shallow oil-bearing geologic zone known as the Careaga Formation (located above the diatomite portion of the Sisquoc Formation, which is the target formation for oil production). Although able to flow to the surface on their own, seeps can increase in frequency of occurrence and volume with the addition of water, steam and pressure. Although seeps are associated with the Careaga Formation, seep occurrence and location is unpredictable.

A seep can is a temporary receptacle placed vertically in the ground to collect and contain seep oil to prevent it from spreading and further damaging the environment. While installation of seep cans limits the direct impacts of oil on the environment, installation of the cans and associated access roads has resulted

in the removal of native vegetation and impacts to sensitive species. Installation of the existing seep cans began in 2008; as of August, 2016, 99 seep cans have been installed at the Project Site which has resulted in the direct removal of approximately 6.09 acres of sensitive habitat and 360 individuals of Lompoc yerba santa, a federally listed endangered plant species.

### Significant Environmental Impacts

The project EIR identified Class I (significant and unavoidable) impacts related to oil spills and oil seeps in two issue areas: biological resources and water resources (hydrology and water quality). Although the quantity and location of future seeps is impossible to predict, the proposed Project is predicted to increase the incidence of seeps relative to continued existing operations. Seeps, and their resulting cleanup efforts, have the potential to contribute to the degradation or loss of habitat for sensitive species including endangered California tiger salamander (CTS, *Ambystoma californiense*), and direct loss of sensitive plants, including the endangered Lompoc yerba santa. Oil spill and seeps could also occur in drainages and adversely impact water resources. Proposed mitigation measures would lessen the predicted impacts from oil spills and seeps, but they would continue to occur and their impacts would remain significant and unavoidable.

### Careaga Exclusion Alternative

The project EIR identifies an alternative, the Careaga Exclusion Alternative, which limits drilling to areas outside the Careaga tar zone. To minimize seep occurrences and the associated impacts to the environment, staff recommended to the Planning Commission that it approve this project alternative as detailed in the May 11, 2016 Planning Commission staff report (Exhibit 6) because this alternative would prohibit drilling through or under the Careaga tar zone where seeps are known to originate. The boundary of the Careaga tar zone and the locations of the proposed wells are shown on Attachment H of the Planning Commission staff report. The Careaga Exclusion Alternative is identified in the EIR as the Environmentally Superior Alternative and would effectively limit drilling of any of the 96 wells or 48 "replacement" wells to areas outside of the Careaga formation. While seeps would likely continue to occur under this alternative, they would be expected to occur at a significantly reduced rate relative to the proposed Project. By lowering the expected rate of future seep activity, this alternative would contribute to mitigating the potential biological and water resources impacts of the proposed project to the maximum extent feasible, while still allowing the project substantially to move forward.

### Seep Can Only Alternative

The project EIR identifies another reduced project alternative, the Seep Can Only Alternative. This alternative involves the permitting of existing and future seep cans only; and no new wells would be permitted. This alternative was developed because the existing seep cans, as well as additional seep cans that could be required in the future as a result of existing production, have not yet been permitted. Under this alternative, impacts related to the construction and operation of additional new wells would be avoided. Oil seeps and the installation of the seep cans due to existing operations have the potential to continue to impact biological resources and water quality and because they are the result of existing, approved development, there is no way to avoid the impacts associated with the installation of seep cans. These impacts would be significant and unavoidable (Class I), but less severe than the proposed project.

The County has issued Emergency Permits for the installation of all existing seep cans to date. Section 35.82.090.G of the County's Land Use Development Code requires that the issuance of an Emergency Permit be followed by the applicable land use permit. In this case, the required permit that must be approved for the seep cans is an Oil Drilling and Production Plan.

Because the existing seep cans have only been addressed with Emergency Permits, staff recommends that your Board approve the Seep Can Only Alternative and certify the EIR to provide the necessary follow-on planning permit for existing seep cans. Without approval of this alternative, the applicant would be required to seek a separate approval for a new Oil Drilling and Production Plan to permit the existing seep cans. The Seep Can Only Alternative would also permit the installation of future seep cans.

**Appeal Issues:**

The appellant has submitted a statement of grounds for the appeal along with their appeal application. The statement identifies and explains four specific issue areas that constitute the grounds for their appeal (see Exhibit 10). Those issues have been summarized below and are followed by staff's responses.

**Appeal Issue No. 1.**

The appellant claims that the rationale for denial of the Project is not supported by substantial evidence in the record.

“The Planning Commission’s findings make overly broad statements and conclusions that are not supported by the evidence in the record. Specific points noted in the findings, such as potential impacts to Lompoc yerba santa, for example, were explicitly countered by scientific evidence in the record, and such findings are not based on substantial evidence.” (Page 1 of Attachment A of PCEC’s appeal application)

**Staff Response:** The findings made by the Planning Commission for denial of the project are included in the Planning Commission action letter dated July 18, 2016 (Exhibit 9). The findings for denial conclude that uncertain benefits of the project do not outweigh the significant environmental impacts the project will cause, that the site is not able to accommodate additional oil and gas production and that the development is not in conformance with the applicable provisions of the County’s Land Use Development Code and Comprehensive Plan. The Commission’s findings are supported by evidence in the record and adequately substantiated by facts. The findings provide details regarding the significant and unavoidable impacts identified in the project’s EIR, including impacts to sensitive species and habitats that have occurred to date as a result of the installation of existing seep cans. More specifically, the findings cite that impacts from oil seeps have resulted in the destruction of approximately 6.09 acres of sensitive habitat, including Bishop Pine forest, central maritime chaparral, coastal sage scrub, oak woodland, as well as California Tiger Salamander upland habitat and the individual plants of federally endangered Lompoc yerba santa. With respect to Lompoc yerba santa, the applicant did provide evidence to the Planning Commission that the applicant claimed showed the Lompoc yerba santa population at the site has expanded over the last nine years. However, the Planning Commission’s findings for denial do not ignore that some limited areas of the Project Site have been recolonized with Lompoc yerba santa, the Commission’s findings rely on evidence in the EIR that shows significant adverse impacts have occurred to the species and that no known husbandry attempts have successfully propagated new populations. Finding 2.1.1 references both past and potential future impacts to the species and states that the effectiveness of restoration efforts for this species is uncertain because no known restoration of Lompoc yerba santa has occurred. In part, finding 2.1.1 states:

“The effectiveness of efforts to restore sensitive habitats and plant species are unknown and may be unsuccessful. For example, as discussed in Section 4.3 of the Final EIR and by the US Fish and Wildlife Service in its April 3, 2015 letter commenting on the Draft EIR, there are no known

attempts that have successfully propagated and established a new population of Lompoc yerba santa. The entire 285-acre proposed Project area is located within the Lompoc yerba santa Solomon Hills Critical Habitat Unit and represents approximately 13 percent of the unit.”

Therefore, contrary to PCEC's claim, the Planning Commission's denial is supported by substantial evidence in the record including specific facts concerning the endangered Lompoc yerba santa.

**Appeal Issue No. 2.**

The appellant claims that the Planning Commission's denial is based on unfounded speculation regarding largely hypothetical potential impacts which are remote, particularly in the context of the Careaga Exclusion Alternative.

“Staff recommended an alternative that would have precluded drilling through or under the Careaga tar sands, eliminating any such potential impact from seeps.” ...

“Lompoc yerba santa is thriving at the site. The total acreage of Lompoc yerba santa on the site in 2016 has increased to nearly 300% of the amount mapped in 2008, as documented by the Chambers Group biological survey report.” ...

“No California tiger salamander (CTS) has ever been seen within the proposed Project Site, and the Project Site does not contain any CTS breeding ponds.” (Page 2 of Attachment A of PCEC's appeal application)

**Staff Response:** The project's potential impacts to the environment are identified and analyzed in the EIR included as Exhibit 4 to this Board Letter. Such impacts include those that have been caused by the installation of 99 existing seep cans, as well as projected impacts from the potential for additional seeps to occur in the future. Many of the projected impacts of the project, including its Class I impacts to biological resources and water quality, are related to seeps.

As detailed in the May 11, 2016 Planning Commission staff report (Exhibit 6), staff did recommend the Careaga Exclusion Alternative as a means to reduce (rather than eliminate, as stated by PCEC) the proposed project's impacts on the environment. Under this alternative, seeps would likely continue to occur, but at a reduced rate relative to the proposed project. Because the incidence and location of future seeps is unknown, it is unpredictable how severe such impacts would be. However, it is known that 99 existing seep cans have been installed to date and that their installation has led to the direct removal of approximately 6.09 acres of sensitive habitat and approximately 360 individual Lompoc yerba santa plants, an endangered species.

With respect to CTS, the entire Project Site is located within CTS upland habitat. As such, impacts from all 99 existing seep cans have, and those resulting from all future installations would, occur within this habitat. Because many of the project's impacts are documented in the EIR, the Planning Commission's findings are supported by substantial evidence.

**Appeal Issue No 3.**

The appellant asserts the Planning Commission's denial does not adequately acknowledge that the natural occurrence of seeps is a historic feature of the area, likely dating back thousands of years, and they are a function of the local geology correlated with the Careaga tar zone.

"While the occurrence of seeps initially appeared to increase when PCEC initially started diatomite production, the incidence of seeps has decreased significantly since 2009, even as PCEC has tripled the number of wells and increased production proportionally." ...

"Seeps are a function of the local geology and have been naturally occurring at Orcutt Hill for centuries. The 1980 California Department of Conservation, Division of Oil & Gas publication entitled 'Onshore Oil & Gas Seeps in California' documents the use of seep oil by Native Americans for various purposes, identifies a number of California oil fields (including Orcutt) that were discovered by drilling near seeps, and provides data on the geology and occurrence of seeps throughout California." (Page 2 of Attachment A of PCEC's appeal application)

**Staff Response:** Evidence documenting the historic incidence of seeps is in the project EIR and the Planning Commission staff report dated May 11, 2016. The record shows that seeps have historically occurred at the Project Site and increased significantly when PCEC began steaming operations in 2007. Installation of seep cans began in 2008. As of August 2016, 99 seep cans (numbered 1 to 100) have been installed at the Project Site (number 80 is not used). The most recent seep can was installed on March 18, 2016, in the southern portion of the Project Site. Approximately 58 of the 99 seep cans are actively collecting oil while approximately 20 have been decommissioned and removed. The County has addressed the initial permitting of the existing seep cans through an Emergency Permit process and has issued Emergency Permits for the installation of all seep cans to date.

The incidence of seeps has decreased since 2009 due to the implementation of revised production practices developed at the insistence of the Department of Oil, Gas and Geothermal Resources (DOGGR). Nonetheless, seeps continue to occur, with eight in 2013, one in 2014, four in 2015 and two to date in 2016. Contrary to PCEC's assertion, the natural occurrence of seeps at the Project Site was adequately considered in the Planning Commission's denial and the evidence shows the occurrence of seeps has increased due to steaming to enhance oil production.

**Appeal Issue No. 4.**

The appellant asserts that the denial does not account for the substantial economic benefit of the Project.

"The Planning Commission's findings fail to properly consider the substantial economic benefits to the County in terms of jobs and ongoing annual tax revenues, as well as the direct, indirect, and induced economic output associated with Project construction and operations. Additional information and calculations substantiating the Project's economic benefits were presented to the Planning Commission in written information and testimony at the June 29, 2016 hearing." ...

"PCEC has paid over \$18.5 million (cumulative) in property tax to the County of Santa Barbara over the last five years, averaging approximately \$3.7 million a year" ...

“The denial fails to properly weigh the tangible benefits of the Project against the potential and largely hypothetical impacts conservatively addressed in the environmental analysis, and improperly concludes that the substantial economic benefits of the Project do not outweigh the potential impacts of the Project.” (Page 3 of Attachment A of PCEC’s appeal application)

**Staff Response:** Information detailing the economic benefits of the project was provided by staff to the Planning Commission in the May 11, 2016 staff report (Exhibit 6) and also in the June 9, 2016 memo to the Commission included as Exhibit 7 of this Board Letter. Additional information about the economic benefits of the project, including temporary jobs and tax payments provided, was presented orally by the applicant to the Commission at the public hearings on June 29 and July 13, 2016.

The Planning Commission discussed in detail and clearly considered the economic benefits of the project during their deliberations at the hearings of June 29 and July 13, 2016. The Commission was deliberate when they included the following in finding 2.1.1:

“The Planning Commission finds that while the project would create 35 to 75 temporary construction and drilling jobs, these are of limited benefit as they are only temporary jobs. The County Assessor’s office is unable to provide an estimate of the future tax benefits of the project, rendering any potential tax increases that would result from development of the project uncertain. While tax revenues produced by current PCEC operations range from \$2.7 million to \$4.7 million annually over the 2012-2015 time period, the Planning Commission finds this benefit does not outweigh the significant environmental impacts the project will cause. The Planning Commission finds that the stated overriding benefits of the project do not outweigh the significant and unavoidable effects on the environment. Therefore, it is the Planning Commission’s determination to deny the project.”

Therefore, the record indicates the Planning Commission clearly considered the potential economic benefits of the proposed project when taking their action of denial.

**Fiscal and Facilities Impacts:**

**Budgeted:** Yes

Total costs for processing the appeal are approximately \$6,000.00 (30 hours). All costs associated with processing of the appeal are paid directly by the appellant. Staff work to process the appeal is funded in the Planning and Development Permitting Budget Program, as shown on page D-289 of the adopted 2016-2018 FY budget.

**Special Instructions:**

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on October 11, 2016. The notice shall appear in the Santa Maria Times and Santa Barbara News-Press. The Clerk of the Board shall fulfill noticing requirements. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention: David Villalobos.

**Exhibits:**

1. Findings for Project Denial
2. County Planning Commission Staff Memorandum, July 8, 2016
3. Seep Can Only Alternative Findings
4. Environmental Impact Report 14EIR-00000-00001  
[http://www.sbcountyplanning.org/energy/projects/PCEC\\_FEIR.asp](http://www.sbcountyplanning.org/energy/projects/PCEC_FEIR.asp)
5. Seep Can Only Alternative Conditions of Approval
6. County Planning Commission Staff Report, May 11, 2016
7. County Planning Commission Staff Memorandum June 9, 2016
8. County Planning Commission Staff Memorandum, June 28, 2016
9. County Planning Commission Action Letter, July 18, 2016
10. PCEC Appeal Application, with Statement of Grounds for Appeal dated July 21, 2016
11. County Planning Commission Staff Memorandum, May 6, 2016
12. County Planning Commission Staff Memorandum, May 9, 2016

**Authored by:**

Errin Briggs, Energy Specialist, Planning & Development, Energy and Minerals Division, (805) 568-2047