



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: August 22, 2023  
Placement: Departmental  
Estimated Tme: 1.75 hours on August 22, 2023  
Continued Item: No  
If Yes, date from: N/A  
Vote Required: Majority

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TO: Board of Supervisors

FROM: Department: Lisa Plowman, Director, Planning and Development  
(805) 568-2086  
Contact Info: John Zorovich, Deputy Director, Energy & Minerals Division  
(805) 568-2519

SUBJECT: **Applicant Appeal of the Planning Commission Denial of the Lines 901/903 Valve Upgrade Project, Case Nos. 23APL-00022; 21AMD-00000-00009 & 22CDP-00000-00048, Third and Fourth Supervisorial Districts**

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County Counsel Concurrence

As to form: Yes

Other Concurrence:

N/A

Auditor-Controller Concurrence

As to form: N/A

**Recommended Actions:**

The Board could grant the appeal and approve the Project by taking the following actions:

- a) Grant the appeal, Case No. 23APL-00022;
- b) Make the required findings for approval of the Project, Case Nos. 21AMD-00000-00009 and 22CDP-00000-00048, including CEQA findings (Attachment 1-A to this Board Letter);
- c) After considering the environmental review documents included as Attachment C-1, C-2, and D of the February 2, 2023 Planning Commission Staff Report (Included in Attachment 2 of the July 18, 2023 Set Hearing Letter) [Addendum dated March 1, 2023 together with previously adopted EIR/EIS and the CEQA exemption Sections 15301(b) [Existing Facilities], 15303(d) [New Construction or Conversion of Small Structures], 15311 [Accessory Structures], and CEQA Statutes Section 15284 [Pipelines], determine that as reflected in the CEQA findings, no subsequent Environmental Impact Report or Negative Declaration shall be prepared for this project; and
- d) Grant *de novo* approval of the Project, Case Nos. 21AMD-00000-00009 and 22CDP-00000-00048, subject to the conditions of approval (Attachment 2 to this Board Letter).

Alternatively, the Board could deny the appeal and deny the project by taking the following actions:

- a) Deny the appeal, Case No. 23APL-00022;
- b) Make the required findings for denial of the project, Case Nos. 23APL-00022, 21AMD-00000-00009 and 22CDP-00000-00048 (Attachment 1-B to this Board Letter);
- c) Determine that denial of the appeal and project is exempt from CEQA pursuant to CEQA Guideline Section 15270(a), included as Attachment A of the Planning Commission Action Letter dated May 3, 2023 (included as Attachment 3 of the July 18, 2023 Set Hearing Letter) including CEQA findings.
- d) Deny the Project, Case Nos. 23APL-00000-00022, 21AMD-00000-00009 and 22CDP-00000-00048.

### **Summary Text:**

Staff is recommending that the applicant's appeal for the 901 and 903 pipeline valve upgrade project be granted and that the project be approved. On February 18, 1986 Santa Barbara County approved the Celeron/All American Pipeline Project under a Major Conditional Use Permit (83-CP-97z) and a Final Development Plan (85-DPF-066cz), which were subsequently revised in 1988 as 88-DPF-033 (RV01)z and 88-CP-60 (RV01). The approximately 122-mile pipeline system transports Outer Continental Shelf crude oil from the Santa Barbara and Santa Maria Basins to the Pentland destination point in Kern County. The pipeline system has been shut-in since Line 901 ruptured on May 19, 2015.

To prevent similar incidents as the Refugio Oil Spill from occurring on intrastate hazardous liquid pipelines, Governor Jerry Brown signed into law pipeline safety Assembly Bill 864 ("AB 864"). Overseen by the California Office of State Fire Marshal ("OSFM"), AB 864 requires pipeline operators to install Best Available Technology ("BAT") on all existing pipelines that have the potential to impact sensitive resources in the Coastal Zone by April 1, 2023 to reduce the volume of a potential release. In response to the bill, the operator of Lines 901 and 903 performed a risk analysis to identify measures that would reduce the amount of oil released in a potential future spill. The proposed Pipeline Valve Upgrade Project (herein after Proposed Project) includes the installation of 16 valves and would implement the risk analysis's conclusions, which were reviewed and accepted by the OSFM.

On August 22, 2022, the Zoning Administrator approved the Proposed Project. Three timely appeals of the Zoning Administrator's decision were filed on September 1, 2022 by Tautrim Revocable Trust, Gaviota Coast Conservancy and Grey Fox, LLC. On April 26, 2023, the Planning Commission upheld the appeals and denied the Lines 901/903 Valve Upgrade Project by a vote of 3 to 2. In support of their denial, the Planning Commission determined the proposed project to be incompatible with the established physical scale of the area, and detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood. The Commission's action is detailed in the Action Letter dated May 3, 2023 and included herein as Attachment 3 of the July 18, 2023 Set Hearing Letter.

On May 8, 2023, an appeal of the Planning Commission denial was filed by the Applicant, Pacific Pipeline Company (23APL-00022).

### **A. Proposed Project**

The proposed project would install 16 valves along the pipelines on various parcels spanning from the Gaviota Coast to the Los Padres National Forest within Santa Barbara County, on 14 different properties, zoned AG-II-320, AG-II-100 or AG-I-40. A detailed project description is included as Condition No. 1 in

Attachment B of the Planning Commission Staff Report dated February 2, 2023, included in Attachment 2 of the July 18, 2023 Set Hearing.

### **B. Appeal Issues and Staff Responses**

The appeal application (Included in Attachment 1 of the July 18, 2023 Set Hearing) contains a letter, dated May 8, 2023, that outlines the Applicant's appeal issues. Overall, the applicant argues the Planning Commission's denial was in error and constitutes an abuse of discretion. The various appeal issues and staff's responses are provided below.

#### **Appeal Issue No. 1: Applicant asserts denial contradicts purpose and findings of AB 864.**

The Planning Commission's determination is contrary to the express provisions and purposes of AB 864, its rulemaking, and intent of the state agency charged with implementation and exclusive statutory oversight to regulate pipeline safety. The Applicant contends that the purpose of the project is to comply with state regulation AB 864 where the OSFM has the sole responsibility for regulating pipeline safety and determining what constitutes the best available technology in this circumstance. The Planning Commission determined that the addition of the proposed safety valves would be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and environment. This finding is contrary to the express provisions and purposes of AB 864; OSFM's approval of the safety valves, the original Environmental Impact Report (EIR) which already addressed the risks and impacts associated with accidental releases of oil from the pipelines; and the OFSM approved hazards report which concluded installation of the proposed Best Available Technology (BAT) elements will reduce the baseline worst case spill volume of 3,622.20 bbls to 1,871.40 bbls, a 48% reduction from existing conditions.

#### **Staff Response:**

The County's role in land use matters is to ensure compliance with the County's codified requirements. AB 864 provides for State level requirements related to hazardous liquid pipeline safety. The County does not have a role or responsibility in determining compliance with AB 864, as the legislation assigns this responsibility to the OSFM. As stated, the applicant's risk analysis concluded that installation of the project components will reduce the worst case discharge volume of a potential spill when compared to existing conditions. The risk analysis was approved by the OSFM and the Proposed Project has been accepted as the best available technology and therefore most effective mechanism to decrease the volume of a potential spill. For the proposed project, the County is considering whether it complies with the County's code requirements and whether the findings required for Development Plan and Conditional Use Permit Amendments can be made. The findings required for the project are identified herein in Attachment 1-A of this Board Letter.

The County Planning Commission determined that Finding 1.1.e from the originally approved project does not remain valid to accommodate the project as revised with the new valves. Finding 1.1.e requires that the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding areas. The Commission found that the frequency of a potential future spill may be increased beyond what was previously analyzed in the originally approved project because of the intervening degradation of the pipeline's integrity which has been caused by a combination of several factors including inadequate inspection intervals, a lack of adequate anomaly repairs, internal corrosion, and corrosion under insulation (external corrosion). Therefore, the Commission found that risks of an oil spill would be elevated above what was previously considered in the original

approval and installation of the valves would be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and environment.

Important to note is that the 2020 Consent Decree entered between PPC's predecessor, Plains, and several state and federal agencies, outlines items the operator must complete prior to restart of the pipeline system. The list includes AB 864 compliance and approval of a State Waiver by the OSFM for the limited effectiveness of cathodic protection on Line 901 and Line 903. The State Waiver, or Special Permit, allows for alternative mechanisms to be used in order to meet the intent of standard regulations. OSFM would perform extensive technical analysis of any State Waiver application and would require alternative measures that provide an equal or greater level of safety than the standard regulations. The proposed project is before your Board under *de novo* review, which affords your Board the discretion to determine whether the findings for approval or denial can be made, based on the evidence in the record.

### **Appeal Issue No. 2: Applicant asserts Inland Valves denied with Coastal Findings.**

The County's Coastal Zoning Ordinance does not apply to those safety valves located outside the California Coastal Zone. The Applicant contends that the findings for denial associated with Coastal Zoning Ordinance (Article II)—Sections 35-169.5.3, 35-172.11.2, and 35-174.10.2 only apply to proposed developments within the Coastal Zone. However, the project includes nine (9) valves outside of the Coastal Zone. Therefore, the cited findings provide no basis to deny approvals for these particular valve installations.

### **Staff Response.**

Findings for each corresponding zoning ordinance are required because the proposed valves would be located in both the coastal and inland areas. The County Planning Commission made findings both in compliance with Article II Coastal Zoning Ordinance Sections 35-172.11.2 (Conditional Use Permit) and 35-174.10.2 (Final Development Plan) as well as findings for the inland area in compliance with County Land Use and Development Code Sections 35.84.040.D.3 (Conditional Use Permit) and 35.84.040.D.3 (Development Plan). These coastal and inland findings are essentially identical and require that the findings made from the initial approval of the original Development Plan and Conditional Use Permit, Case Nos. 85-DPF-066cz and 83-CP-97z, remain valid to accommodate the project as revised with the newly proposed project. Therefore, the findings made by the Commission were properly made for both inland and coastal valve sites.

### **Appeal Issue No. 3: Applicant asserts undisputed evidence demonstrates that the Motor Operated Valves within the Coastal Zone are compatible with the established physical scale of the area.**

The Applicant contends that the Commission's finding for denial 2.1.1.3 contradicts the only expert evidence provided on the record (PleinAire Design Group's Visual Station Impact Analysis dated September 29, 2022). The finding states that the proposed development (safety valves) will be incompatible with the established physical scale and surrounding rural landscape because some permanent above-ground equipment would be visible from public viewsheds,

### **Staff Response.**

As part of their application package, the Applicant provided a full Visual Impact Analysis prepared by PleinAire Design Group. The Analysis focused on six (6) of the proposed Motor Operated Valve stations

located near Highway 101 within the Gaviota Coast area that were potentially visible from public viewpoints (MOV1-210P, MOV1-220P, MOV1-610P, MOV1-790P, MOV1-890P, and MOV1-990P). The Visual Impact Analysis shows that none of the six (6) valves would be visible from any significant public locations such as Baron Ranch Trail, Gaviota State Park, or ocean view parking areas along Highway 101. Two (2) of the six (6) valves (MOV1-610P and MOV1-220P) would not be visible from Highway 101, three (3) of the six (6) valves may be minimally visible from Highway 101 (MOV1-790P, MOV1-990P, and MOV1-890P), and one (1) would be distantly visible to motorists traveling northbound on Highway 101 for almost 10 seconds (MOV1-210P). The three minimally visible stations would be distantly visible to a motorist along Highway 101 for less than 0.5 to 5.0 seconds and at distances from 200 to 700 feet when traveling at 65 miles per hour.

In denial finding 2.1.1.3, the Planning Commission found that the project would not be compatible with the established physical scale of the project area. As noted above in Appeal issue No. 1, the proposed project is before the Board under *de novo* review, which affords the Board the discretion to determine whether the findings for approval or denial can be made, based on the evidence in the record.

**Appeal Issue No. 4: Applicant asserts the County’s Coastal Zoning Ordinance Section 35-169.5.3 does not apply to check valves that are entirely below ground and invisible on the landscape.**

The Applicant contends that the finding for denial 2.1.1.3 has no bearing on the check valve in the Coastal Zone (CHK1-710P), which is below ground and would not be visible. Finding 2.1.1.3 states the project is not compatible with the established physical scale of the area because the Motor Operated Valve stations require above ground infrastructure.

**Staff Response.**

Coastal Development Permit finding 35-169.4.3 requires that the decision-maker find the proposed development will be compatible with the established physical scale of the area. The Applicant contends the finding does not apply to CHK1-710P because all check valves are located underground and would not be visible or have any above ground infrastructure and therefore would be compatible with established scale. The applicant initially had provided an independent application for each valve site but because all the valves together represent one project under CEQA, the Applicant acquiesced to a P&D decision to process all of the proposed Motor Operated Valve stations and check valves together. The findings apply to the project as a whole, and are not made for each valve site independently. The Commission determined the finding could not be made for the project as a whole.

**Appeal Issue No. 5: Applicant asserts it is outside the Commission’s jurisdiction to speculate on pipeline operations.**

The Applicant contends that the Planning Commission was without jurisdiction and had no basis to deny the safety valves based on speculative conclusions about the safety of future pipeline operations. The Applicant notes that the Planning Commission acknowledged that the severity of a potential future oil spill would be minimized through installation of the proposed sixteen new valves. However, the Applicant asserts that the Planning Commission speculated without any evidence in the record the “frequency of a potential future spill may be increased because of the degradation to the pipeline’s integrity that has occurred since it’s commissioning in 1994.” In addition to being wrong, such conjecture does not constitute substantial evidence.

On April 26, 2023, the Planning Commission cited the May 2015 release upland of Refugio Beach and made a finding that “[t]he risks of an oil spill are elevated above what was previously approved [EIR] and the project [safety valves] would be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and environment.” This statement was rendered without any evidentiary support, and is contrary to the Zoning Administrator’s original findings and the evidence presented on the effectiveness of the safety valves. The Applicant asserts that such speculative conclusions, particularly after staff and the Planning Commission have acknowledged the substantial safety benefits of the valves, was in error and constitutes an abuse of discretion.

**Staff Response.**

The 2015 Refugio spill led to creation of the 2020 Consent Decree, which outlines a list of corrective action items that the applicant must undertake prior to restart of the pipeline system. The Consent Decree requires amongst other items, compliance with AB 864, a restart plan, and approval of a State Waiver to compensate for the limited effectiveness of the existing cathodic protection system on Line 901 and Line 903. Restart of the pipeline would be approved by OSFM only in the event OSFM has confirmed the operator has completed all items identified in the Consent Decree and the Lines are determined to comply with all local, State, and Federal safety laws. The County does not have a role or responsibility in determining compliance with AB 864, as the legislation assigns this responsibility to the OSFM, nor does it have involvement in the approval of the State Waiver.

The Planning Commission received public testimony and comment letters indicating that the pipeline’s integrity has degraded since installation to a point of increasing the frequency of potential future spills. The conditions of the pipeline system, which led to the 2015 spill, are well documented in PHMSA’s incident report (Attachment 3 to this Board Letter). Although spills would continue to be a risk, the risk assessment conducted by the applicant concluded that with installation of the proposed BAT elements, the baseline worst-case spill volume would be reduced by 48%. The original EIR found that operation of the Lines would have a significant and unavoidable risk of a potential spill.

The County’s role in the project request is to determine compliance with the County’s codified requirements including the Land Use Development Code (inland areas) and Coastal Zoning Ordinance. The findings required for the project include findings related to CEQA (Exemption and use of an Addendum), and findings for a Coastal Development Permit and Development Plan and Conditional Use Permit Amendments. These findings are identified herein in Attachment 1-A. The Planning Commission determined that two of the required findings could not be made, stating the proposed project would not be compatible with the established physical scale of the area and that the project would be detrimental to the health, safety, comfort, convenience and general welfare of the neighborhood. This appeal hearing is a de novo hearing at the Board where your Board has discretion to determine whether the required findings can be made.

**Appeal Issue No. 6: Applicant asserts the Planning Commission’s findings are contrary to the CEQA exemptions that apply to the safety valves.**

The Applicant contends that the lead agency cannot simply disregard applicable exemptions and order additional review of environmental impacts under CEQA. The Commission failed to disregard the CEQA statutory and categorical exemptions applicable to the safety valves. Application of any one of the four exemptions would negate entirely the Planning Commission’s findings of denial.

**Staff Response.**

The findings for denial made by the Planning Commission were administrative findings associated with the County's Land Use Development Code and Coastal Zoning Ordinance, and were not CEQA related. The denial appropriately relied upon CEQA Section 15270: 'Projects which are disapproved'. CEQA does not apply to projects that a public agency disapproves. The Commission did not direct additional environmental review to be performed and the salient findings for denial were made with regards to the Land Use Development Code and Coastal Zoning Ordinance. Therefore, the Statutory and Categorical Exemptions cited by the applicant are irrelevant to the Planning Commission's denial action.

**Appeal Issue No. 7: Applicant asserts the Planning Commission's determination is contrary to CEQA's subsequent review provisions.**

The Applicant contends that the Planning Commission disregarded the original EIR certified by the County Board of Supervisors by reopening the findings rendered with the County's original approval. Per Public Resources Code section 21166, a certified EIR shall be conclusively presumed to comply with the provisions of CEQA by Responsible Agencies, so long as specified conditions are met. This precludes reopening of the CEQA process even if the initial EIR is discovered to have been fundamentally inaccurate and misleading in the description of a significant effect or the severity of its consequences. By denying the project on the finding that the risks of an oil spill are elevated above what was previously approved, the Commission reopens the original EIR's analysis that acknowledged that spill-related impacts would be significant and unavoidable. Applicant contends the County has acknowledged through the Addendum and Planning Commission Staff Report (included in Attachment 2 of the July 18, 2023 Set Hearing Letter) the substantial benefit of the safety valves, including a 48% reduction in potential release volumes.

**Staff Response.**

The Commission did not reopen or act to modify the original EIR or direction the preparation of additional environmental review. The Commission's findings for denial are based upon the administrative findings in the County's inland and coastal zoning ordinances that require that the original findings can still be made for the proposed project. The denial specifies the reasons that Finding 1.1.e from the originally approved project could not be made. The Commission did not direct additional environmental review to be performed.

**Appeal Issue No. 8: Applicant asserts the Planning Commission's grounds were in error and an abuse of discretion, based on the Planning Commission's action being preempted by the exclusive jurisdiction of OSFM and PHMSA over pipeline safety, PPC's vested rights to restart the pipeline, and the terms of the County's settlement agreement with Celeron.**

The Planning Commission's grounds for denial of the safety valves rest almost exclusively with the overall safety and operation of Lines 901 and 903, and have nothing to do with individual valve construction. In California, the sole agency certified by PHMSA and authorized by the California Legislature with authority over pipeline safety is OSFM. The Legislature has expressly manifested its intent that OSFM "fully occupy" the area of pipeline operation and safety and the County has no authority to impose its rules or ordinances in this area of law.

Second, the County, in addition to the state and federal agencies with oversight of the pipeline, have confirmed that PPC has a vested right to restart. The Consent Decree entered between PPC's predecessor, Plains, and several state and federal agencies regarding the 2015 release from Line 901 similarly acknowledges the vested right of Plains or any successor owner of the pipelines to restart under the authority of OSFM. PPC's vested right to restart the pipeline is consistent with well-settled legal authorities. Here, because PPC (and its predecessors) completed construction, incurred millions in costs and liabilities, and has operated the lines for years, it holds vested rights vis-à-vis the County to continue to operate the line.

Third, the County entered into a settlement agreement with a previous owner of the pipelines acknowledging that it has "no authority over the design, construction and operation" of the pipelines except that set forth in the agreement and Final Development Plan/Conditional Use Permit. Therefore, the Planning Commission's grounds were clearly in error and an abuse of discretion.

**Staff Response.**

The Applicant is not proposing to restart the existing pipeline as part of this request, but is proposing *modifications* to the existing pipeline. The County's role in reviewing the proposed project is to ensure compliance with the County's codified requirements. The 2020 Consent Decree entered between PPC's predecessor, Plains, and several state and federal agencies, including PHMSA and OSFM, outlines items the operator must complete prior to restart of the pipeline system. The County was not a party to the Consent Decree. Compliance with AB 864 is one of the identified requirements. A County permit is required for the proposed development and certain findings are required to be made in order to approve that permit.

**Fiscal and Facilities Impacts:**

Budgeted: Yes

Total costs for processing the appeals are approximately \$11,000.00 (45 hours of staff time). The costs for processing appeals of projects in the Energy, Minerals & Compliance Division are borne completely by the applicant. Funding for this project is budgeted in the Planning and Development Department's Permitting Budget Program as shown on page 313 of the County of Santa Barbara Fiscal Year (FY) 2023-24 Adopted Budget.

**Special Instructions:**

The Planning and Development Department will satisfy all noticing requirements. The Clerk of the Board shall forward the minute order of the hearing to the attention of Planning and Development Department: Hearing Support, David Villalobos.

**Attachments:**

1. Findings
  - 1-A. Findings for Approval
  - 1-B. Findings for Denial
2. Planning Commission Memorandum dated April 26, 2023
3. Pipeline & Hazardous Materials Safety Administration Failure Investigation Report, May 2016



**Authored by:**

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