

**COUNTY OF SANTA BARBARA  
PLANNING AND DEVELOPMENT**

**MEMORANDUM**

TO: Board of Supervisors

FROM: Steve Chase,  
Deputy Director

DATE: October 17, 2002

HEARING DATE: October 22, 2002

RE: Tranquillon Ridge Project Appeal – Revised Findings for Denial

---

For your Board's consideration, attached are minor revisions to the Tranquillon Ridge Project findings that were previously included as Attachment A of the Planning and Development memorandum dated October 10, 2002. The revised text is located on pages A-1 and A-6 and is shown in ~~strikeout~~ and underline.

# Attachment A

## Findings

### 1.0 CEQA FINDINGS

Since the Board is not approving the project, the Board is not required to certify the EIR. Pursuant to Section 15270 of the Guidelines for Implementation of the California Environmental Quality Act, CEQA does not apply to projects which a public agency disapproves.

### 2.0 DEVELOPMENT PLAN FINDINGS

#### 2.1 Article II – Coastal Zoning Ordinance

Pursuant to Article II Section 35-174.7, a Preliminary or Final Development Plan shall be approved only if all of the required findings can be made. The following findings cannot be made for the proposed project:

##### *2.1.1 That adverse impacts are mitigated to the maximum extent feasible.*

~~While the~~ The Board has not certified the EIR because the project is not being approved and CEQA does not require certification of a draft EIR in such instances. (See Public Resources Code § 21080(b)(5) CEQA does not apply to “[p]rojects which a public agency rejects or disapproves and see also 14 Cal. Code Regs §15061(b)(4), “A project is exempt from CEQA if [t]he project will be rejected or disapproved by a public agency.”). ~~the~~ The Board has, however, reviewed and considered the information in the EIR and relies on such evidence as the basis for the decision to deny to project. The Final Environmental Impact Report on the Tranquillon Ridge Oil and Gas Development Project (01-EIR-04) identifies 13 environmental impacts, which cannot be fully mitigated and are therefore considered significant and unavoidable. The impact areas include: visual impacts of Platform Irene, Surf Substation and the Lompoc Oil and Gas Plant; health and safety and risk of upset related impacts due to the transportation of natural gas liquids (NGL) and liquid petroleum gas (LPG); impacts to terrestrial and freshwater biological resources (including numerous sensitive species) due to the potential for oil pipeline leak or rupture and associated clean up efforts; degradation of marine and onshore water quality due to a oil pipeline leak or rupture; impacts to marine biological resources due to a oil pipeline leak or rupture; impacts to commercial fishing due to a rupture or leak of the oil pipeline; disruption of marine traffic due to a rupture or leak of the oil pipeline; potential impacts to cultural resources due to a pipeline leak or rupture and associated clean up effort; and disruption of recreational uses due to a rupture or leak of the oil pipeline. The EIR identifies a number of mitigation measures that would further reduce but not eliminate the significant risk of upset/safety related environmental impacts of the project

The finding that certain impacts are mitigated to the maximum extent feasible cannot be made for the Tranquillon Ridge Project. In particular, the public health and safety and oil spill related risks associated with the increase of production (from 7,300 to 30,000 barrels per day of oil and

3.4 to 6 mmscfd of gas) and extension of life of the processing plant and oil and gas pipelines by up to 25 years (for a total project life of the Point Pedernales facilities of up to 45 years) are unacceptable for the proposed location and surrounding environment. Mitigation measures are identified in the EIR and required in the Point Pedernales permit to reduce the aforementioned impacts. However, as discussed below, the finding that the project's impacts have been mitigated to the maximum extent feasible cannot be made because the applicant has contested the enforceability of pipeline safety measures in section "P" of the existing Point Pedernales Final Development Plan. Unocal originally proposed several of these state of the art mitigation measures in 1986 and supported other County required measures in conjunction with its request for a comprehensive plan amendment, rezone, major conditional use permit, and final development plan permit for the Point Pedernales project. As discussed below, the enforceability of such mitigation measures for the proposed Tranquillon Ridge project cannot be assured.

The Planning Commission approved the Point Pedernales project in 1986 and in doing so made findings of overriding consideration as required by CEQA Guidelines section 15093. The Planning Commission stated that "inherent in these findings is the assumption that approved and recommended project conditions will be incorporated into project design and fully implemented". Unocal accepted the permit, including all of its benefits, and then built its project, and produced and processed oil and gas until 1994, when the permit was transferred to Torch. In 1994, Torch applied for and was approved as the new permittee for the project, and accepted all of the conditions of the permit and its associated benefits. At the time Nuevo was a partial owner of the project. In 1996, Torch (with Nuevo as a majority owner) applied for and obtained amendments to the Final Development Plan permit to authorize the construction of facilities necessary to process natural gas at the Lompoc processing plant. The amended permit included condition A-26 that states "Acceptance of this permit shall be deemed as acceptance of all conditions of this permit, and a knowing and voluntary waiver of any objections thereto." To document compliance with this condition Torch submitted a letter dated 8/16/96 explicitly accepting the permit and its conditions, and waiving any objections thereto.

The proposed Tranquillon Ridge Project would use the infrastructure developed for the Point Pedernales project. As a part of the applicant's explicit written acceptance of the permit for the Point Pedernales project and the benefits afforded therefrom, the applicant accepted numerous mitigation measures relating to safety aspects of Platform Irene and the associated pipelines measures (adopted as County permit "P" conditions). The County has enforced these conditions since approval of the project in 1986. The "P" (System Safety and Reliability) conditions of the applicant's existing Point Pedernales permit would continue to be needed to address the increased production levels and extension of the life to the Point Pedernales facilities associated with the Tranquillon Ridge Project. These measures include use of a Supervisory Control and Data Acquisition System (SCADA), implementation of a Safety, Inspection, Maintenance and Quality Assurance Program (SIMQAP), review of project operations and modifications by the County's System Safety Review and Reliability Committee (SSRRC) including approval of the pipeline operating manual, Emergency Response Plan and implementation, and preparation of an Oil Spill Contingency Plan for the on- and offshore crude oil pipeline. As demonstrated in the

administrative record for the Tranquillon Ridge project, the County's conditions and inspections required pursuant to these conditions have been critical to ensuring safe operation of the pipeline. Furthermore, the mitigation measures, including implementation, required by the County have been considered, but not required by the other agencies that regulate Nuevo's Point Pedernales project.

Questions regarding the enforceability of the existing permit conditions have arisen due to Nuevo's position in the litigation in regards to the 1997 20-inch crude oil pipeline spill settlement. On September 8, 1997, a rupture occurred in the offshore oil pipeline in state waters within the County, causing an oil spill of between 163 and > 1,242 barrels. The oil spill volume was exacerbated because the Torch operator failed to determine the cause of the shutdown, as required by the County permit, and instead overrode the safety systems, and restarted the production. Later, in an enforcement action by County and the People for permit violations related to the oil spill, Torch and Nuevo took the position that the conditions of County's permit were preempted by federal law (the Pipeline Safety Act and Outer Continental Lands Shelf Act) and therefore void and unenforceable. Nuevo has pursued this position in its appeal of the trial court injunction related to the 1997 spill settlement agreement.

As a result of Nuevo's attack on the County's permit conditions, on September 19, 2002, the Second District Court of Appeal ruled that Nuevo is judicially estopped from escaping its long-established commitment to comply with the County's permit. However, the Court also ruled that federal law preempts County implementation and enforcement of pipeline safety related conditions such as those included in the "P" conditions for interstate pipelines regulated under the Pipeline Safety Act. The applicability of the doctrine of judicial estoppel to acceptance of the revised development plan and associated conditions of approval for the Tranquillon Ridge Project, and its applicability to successors in interest of the Point Pedernales project and Tranquillon Ridge Project, cannot be assured. Neither can the enforcement of the System Safety "P" conditions as a result of Nuevo's appeal, which upset the historic arrangement between the County and the offshore oil industry, which accommodated oil and gas development on the understanding that industry would commit to full mitigation of all impacts through all technically feasible and reasonable mitigation measures. The Board acknowledges that even if Nuevo's testimony before the Board could be construed as an offer to accept the permit and waive constitutional objections to it, the doctrines of waiver and res judicata are not available under the Court of Appeal's decision to defend against future objections from Nuevo or its successor. And, in contrast to these state law defenses, judicial estoppel is a discretionary doctrine that is applied by a court at a future date and requires the party to be estopped to have taken inconsistent positions in this administrative proceeding and a future judicial action. During the pendency of these administrative proceedings, Nuevo has maintained in litigation that the County is preempted by the Pipeline Safety Act. Therefore, the Board cannot conclude that a future preemption challenge would be inconsistent with Nuevo's publicly stated position that was well known and understood during these proceedings.

Without the continued implementation of the existing Point Pedernales safety-related ("P") conditions, and without the additional mitigation measures identified in the Tranquillon Ridge

EIR (01-EIR-04), the Board finds that the impacts of the Point Pedernales Project and the Tranquillon Ridge Project would be greater than projected in the original Point Pedernales EIR (84-EIR-07) and the Tranquillon Ridge EIR (01-EIR-04). The Board recognizes that the Court of Appeal's decision may be understood to make County's imposition of certain new pipeline safety conditions legally infeasible on a case-by-case basis. Nonetheless, given the failure of other agencies to fully implement the County's safety measures as required under the "P" conditions, the Board finds that, maximum feasible mitigation cannot be assured. Further, the Board finds that in absence of any reliable assurance regarding the full scope of legally enforceable mitigation measures and conditions, and in light of the uncertainty regarding the full economic and social benefits (e.g., property tax revenues, royalties, and any reductions in tankering) of the project, the Board cannot find that the social and economic benefits outweigh the significant and unavoidable environmental and public safety impacts. Therefore, the finding that adverse impacts are mitigated to the maximum extent feasible cannot be made. In declining to make this finding, the Board of Supervisors takes official notice of Nuevo's position and the record in the litigation (*People and County v. Torch*) that several County's of the permit conditions and mitigation measures are preempted and unenforceable.

***2.1.2 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 area.***

The proposed Tranquillon Ridge Project would extend the life of the Point Pedernales facilities including the pipelines that connect Platform Irene to the LOGP by up to 25 years and would increase impact levels over current levels. The crude oil pipeline has had historic integrity problems that have included defective flanges on the subsea portion of the pipeline and corrosion problems in both the offshore and onshore portions of the pipeline. Leaks or ruptures of this pipeline (as occurred in 1997) would be detrimental to the comfort, convenience and general welfare of Lompoc area residents and the public in general. During the 1997 rupture, between 163 and >1242 barrel of oil were released. The oil affected 40 miles of coastline, impacted 635 to 815 birds (including sensitive species such as western snowy plover and brown pelicans), killed one sea lion, and resulted in other sublethal effects to marine mammals. The spill also resulted in the closure of Surf and Ocean beaches for six days, and diminished the recreational value of these beaches for an additional 26 days.

Based on the Tranquillon Ridge EIR analysis, the lifetime spill probability would increase due to the longer life of the pipeline. The probability of an onshore pipeline rupture increases by 0.6% (from 1.0 to 1.6%) and a leak by 2.0% (from 4.1 to 6.1%) with the Tranquillon Ridge Project (60% and 48.8% increase respectively above current spill probabilities). The annual frequency of a rupture or large spill from the offshore oil emulsion pipeline and Platform Irene would also increase with the Tranquillon Ridge Project over what was projected for current operations. This increase is due to the addition of the Tranquillon Ridge wells, which would reintroduce the potential for a well blowout and increase the annual frequency of a blowout or large spill from a well. Although the annual spill frequency for leaks and small spills would not be expected to change significantly with the Tranquillon Ridge Project, the lifetime spill probability would

increase due to the longer life of the pipeline. The lifetime probability of a leak and small spill increases by 4.4% (from 9.4 to 13.8, a 46.8% increase) and a rupture or large spill by 8.5% (from 1.2 to 9.7, a 708% increase). The cumulative increased probability for any size spill offshore would increase by 11.6% (from 10.5 to 22.1%, a 110% increase). Additional pipeline spills could significantly damage biological, agricultural, cultural, and recreational resources in the project area, and could adversely effect the public use and enjoyment of these resources.

Impacts associated with the transportation of NGL/LPG are also unacceptable. Approving the proposed project would extend the life of the processing facilities and continue the need to transport NGL/LPG from the LOGP via trucks over Santa Barbara County roadways. The project would also increase NGL/LPG truck trips over current levels. The transportation of NGLs/LPGs poses a significant and unavoidable risk of injuries and fatalities for the existing Point Pedernales project and the proposed Tranquillon Ridge project. As discussed in Section 5.1.4.2 of 01-EIR-04 the proposed project would increase the injury and fatality frequencies above current levels and would extend the duration of time during which the public would be exposed to these significant hazards. The risk to public health and safety is reduced but not eliminated by the implementation of a Transportation Risk Reduction and Management Plan.

The extension of the life of the LOGP is also found to be unacceptable to the Board and detrimental to the comfort and convenience of the neighborhood due to land use conflicts presented by this facility to the surrounding area, which has experienced increased population growth and increased residential development since the LOGP was originally permitted in the 1980's. As discussed in 01-EIR-04 these conflicts include significant unavoidable public safety impacts due to the transportation of NGL/LPG (discussed above), significant visual impacts and nighttime glare, and the ongoing nuisance odors, noise, and public safety impacts from a gas leak along the pipeline or at the LOGP.

As a result of Nuevo's attack on the County's permit conditions, on September 19, 2002, the Second District Court of Appeal ruled that Nuevo is judicially estopped from escaping its long-established commitment to comply with the County's permit. However, the Court also ruled that federal law preempts County implementation and enforcement of pipeline safety related conditions such as those included in the "P" conditions for interstate pipelines regulated under the Pipeline Safety Act. The applicability of the doctrine of judicial estoppel to acceptance of the revised development plan and associated conditions of approval for the Tranquillon Ridge Project, and its applicability to successors in interest of the Point Pedernales project and Tranquillon Ridge Project, cannot be assured. Neither can the enforcement of the System Safety "P" conditions as a result of Nuevo's appeal, which upset the historic arrangement between the County and the offshore oil industry, which accommodated oil and gas development on the understanding that industry would commit to full mitigation of all impacts through all technically feasible and reasonable mitigation measures. The Board acknowledges that even if Nuevo's testimony before the Board could be construed as an offer to accept the permit and waive constitutional objections to it, the doctrines of waiver and res judicata are not available under the Court of Appeal's decision to defend against future objections from Nuevo or its successor. And, in contrast to these state law defenses, judicial estoppel is a discretionary

doctrine that is applied by a court at a future date and requires the party to be estopped to have taken inconsistent positions in this administrative proceeding and a future judicial action. During the pendency of these administrative proceedings, Nuevo has maintained in litigation that the County is preempted by the Pipeline Safety Act. Therefore, the Board cannot conclude that a future preemption challenge would be inconsistent with Nuevo's publicly stated position that was well known and understood during these proceedings.

Because of the County's inability to ensure the mitigation of the project's significant impacts, the proposed project presents environmental and safety risks and impacts beyond those considered for the original Point Pedernales Project. The original EIS/EIR for the Point Pedernales project was specifically based on a project description in the original application that included mitigation measures for state of the art leak detection systems, as well as safe operating procedures. These measures ultimately were incorporated into the "P" conditions of the permit and incorporated into the SIMQAP and Oil Spill Contingency Plan.

The County is unable to identify any other feasible mitigation measures within its jurisdiction that can mitigate the impacts of the proposed Tranquillon Ridge project to acceptable levels. The mitigation measures required considered by the County for the existing project have been considered but not fully required or implemented by other agencies with jurisdiction over the project (See June 20, 2002 Planning Commission Staff Report, Table 7.) The Board of Supervisor finds, based on the evidence in the record, that the impacts from the proposed project would be significantly greater without such mitigation measures. In particular, the evidence presented in and documented by Table 7 demonstrates this point.

Further, the County is concerned that Nuevo may well contend that other mitigation measures contained in the current permit and proposed in the new project are beyond the subject matter jurisdiction of the County to impose on this project. Under Nuevo's legal position as expressed in its appeal, Nuevo can attack the enforcement of permit conditions where federal preemption denies the County subject matter jurisdiction even where the applicant specifically agrees to the conditions, waives any objections thereto, never objects during the permitting process, and then accepts the permit and all of its benefits. Most troubling is that Nuevo, under its legal argument, need not even object to mitigation measures during the public hearing process if such measures are later found to be beyond the subject matter jurisdiction of the County. The approach denies the County, other permitting agencies, and the public the opportunity to consider the proposed project and its impacts, as finally mitigated though conditions on the project, before a decision is made to approve or deny the project. It also potentially denies the County the opportunity to consider if findings of overriding consideration are appropriate because the final impacts of the project cannot be known.

The Board of Supervisors also finds that while Nuevo questions County's authority to enforce permit conditions concerning the pipelines, there is no question that County has discretionary authority to determine, through its general plan and zoning ordinance, the appropriate location for industrial facilities within the County, including oil and gas processing plants. In 1985, the Board of Supervisors approved Unocal's request for the comprehensive plan amendment and rezone to allow for the building of the oil processing plant near Lompoc. This legislative action

also made it possible for Torch and Nuevo to expand the plant and add gas processing in 1996. These approvals were all predicated and specifically conditioned on compliance with County requirements, including the SIMQAP (found in Condition P-2) and Oil Spill Contingency Plan (found in Conditions P-13) and SCADA (condition P-16).

Due to the increased probability of a spill or rupture of the 20-inch oil pipeline or a spill at Platform Irene, the increased probability of injuries or fatalities from NGL/LPG transportation, the historic pipeline integrity problems, the extended operating life of the Point Pedernales facilities, land use conflicts, and the potential increase in environmental and public safety impacts due to the increased oil and gas volumes, and in absence of the certain implementation and enforcement of the existing “P” conditions and the additional pipeline safety conditions included in 01-EIR-04 for the Tranquillon Ridge project, the Board cannot find that the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood, or that the project will not be incompatible with the surrounding area.

***2.1.3 That the project is in conformance with the applicable provisions of Article II and the Coastal Land Use Plan.***

The Board refers to and incorporates by reference herein the findings in sections 2.1.1 and 2.1.2 above. The project as proposed would be inconsistent with a number of Coastal Land Use Plan (LCP) policies as discussed in section 6.4.1 and Attachment D of the June 20 Planning Commission staff report. Based on the analysis contained in these sections the project is inconsistent with LCP policies 2-11, 3-9, 3-19, 6-18, 6-19, 9-4, 9-14, 10-2, 10-3, and 10-5.

**2.2 Article III – Inland Zoning Ordinance**

Pursuant to Article III Section 35-317.7, a Preliminary or Final Development Plan shall be approved only if all of the required findings can be made. The following findings cannot be made for the proposed project:

***2.2.1 That adverse impacts are mitigated to the maximum extent feasible.***

The Board refers to and incorporates by reference herein the findings in section 2.1.1 above.

***2.2.2 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 area.***

The Board refers to and incorporates by reference herein the findings in section 2.1.2 above.

***2.2.3 That the project is in conformance with the applicable provisions of Article III and the Comprehensive Plan.***



The Board refers to and incorporates by reference herein the findings in sections 2.1.1 and 2.1.2 above. The project as proposed would be inconsistent with a number of Comprehensive Plan policies as discussed in section 6.4.1 and Attachment D of the June 20, 2002 Planning Commission staff report. Based on the analysis contained in these sections the project is inconsistent with the following Comprehensive Plan policies: Hillside and Watershed Protection Policy 7; Historical and Archaeological Sites Policies 2, 3, and 5; Lompoc Area land use goals; Lompoc Area environment goals; Agricultural Element goals I and II and policies IA and II.D; Safety Element Supplement Policy Hazardous Facility safety 2-B; and Conservation Element mineral resource and ecological systems recommendations.

### **3.0 PROJECT DENIAL**

The Board finds that each of the above findings are separate and independent grounds for denial of the project. Therefore, the Board's inability to make any one of the findings is sufficient to deny the application for the project.

\\PLNDEV\SYS\GROUP\ENERGY\WP\NORTH\TORCH\TRANQULN\Appeal\Revisedfindingsfor10\_22finalrv1.doc