




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: September 19, 2023
Placement: Departmental
Estimated Time: 1.5 hours
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

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

SUBJECT: Appeal of the Planning Commission Approval of the Change of Ownership, Change of Guarantor, and Change of Operator for the Las Flores Pipeline System (formerly Plains All American Lines 901/903), Third, Fourth, and First Supervisorial Districts

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

Staff recommends that the Board deny the appeal, and approve the requested changes by taking the following actions:

- a) Deny the appeal, Case No. 23APL-00027;
- b) Make the required findings for approval for the Change of Ownership, Change of Guarantor, and Change of Operator, including CEQA findings (Attachment A);
- c) Determine the request is not a project pursuant to CEQA Guidelines Section 15378(b)(5) (Attachment C); and
- d) Grant *de novo* approval of the Change of Ownership, Change of Guarantor, and Change of Operator for Final Development Plan Permit No. 88-DPF-033 (RV01)z, 88-CP-60 (RV01)(88-DPF-25cz; 85-DP-66cz; 83-DP-25cz), subject to the Conditions of Approval (Attachment B).

Summary Text:

This Board Agenda Letter details the appeal issues and staff responses for the appeal of the Planning Commission’s approval of the change of ownership, guarantor, and operator applications for the Las Flores pipeline system (formerly Plains All American Lines 901/903). Pacific Pipeline Company (PPC) formally acquired ownership of the Las Flores pipeline system from Plains All American Pipeline (Plains) on October 13, 2022. On November 15, 2022, PPC and ExxonMobil Pipeline Company (EMPCo) (together, Applicants) submitted applications for a change of owner, change of guarantor, and substitution of a *temporary* operator to the County. The Planning and Development Director approved these applications on March 13, 2023. Three parties, including the current appellant, appealed the Director’s approval, and staff began preparing to take the appeals to the County Planning Commission. Prior to the appeals being heard, PPC and EMPCo submitted a *permanent* change of operator application on April 28, 2023.

Rather than continuing to process the applications as separate items, PPC withdrew their November 2022 applications and re-applied for a change of owner and change of guarantor on May 12, 2023 so all three items could be heard by the Planning Commission under one comprehensive request. On June 14, 2023, the Planning Commission approved the applications by a vote of 3 to 1 after considering the Staff Report and hearing the Applicant’s testimony and public comment. On June 22, 2023 Grey Fox Class Members c/o A. Barry Cappello filed an appeal of the Planning Commission’s action (Case No. 23APL-00027). The appeal is now before your Board for consideration.

The record for this request was provided in the Set Hearing Board Agenda Letter dated August 1, 2023 incorporated herein by reference, and includes the Appeal Letter, the Planning Commission Action Letter, the Planning Commission Staff Report, the Director’s Action Letter, the Director’s Staff Memo, the Facilitation Report, and additional details regarding the background of the project.

Background:

Appeal Issues and Staff Responses

1. The project is not exempt from CEQA

The appellant claims that the County mistakenly concludes that the proposed action is not subject to CEQA, pursuant to CEQA Guidelines 14CFR 15378(b)(5), which exempts organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. The appellant states that the change of owner/guarantor/operator is interconnected with PPC’s pending 901/903 Pipeline Replacement Project, and the 901/903 Pipeline Valve Upgrade Project. The appellant states that if the County approves the change of owner/guarantor/operator and the Valve Upgrade Project, PPC would be allowed to re-start the pipelines with no additional CEQA review, negating requirements to implement the Pipeline Replacement Project.

Staff Response. The proposed change of owner/guarantor/operator, the Pipeline Replacement Project, and the Valve Upgrade Project are all separate projects and independent of one another. The Pipeline

Replacement Project is currently undergoing environmental review, and the Board of Supervisors took no action on the Valve Upgrade Project during the August 22, 2023 Board of Supervisor’s Hearing.

The change of owner/guarantor/operator is required by Chapter 25B of the County’s Petroleum Code, which requires that new owners, operators, and guarantors of certain oil and gas facilities submit an application to the County requesting such a change before, or soon after, the transfer/change of assets (known as a Chapter 25B Permit Amendment). The Las Flores Pipeline System is an applicable facility under Chapter 25B, and thus subject to its requirements. Restart of the pipelines is not requested under the change of owner/guarantor/operator, nor would these changes facilitate restart. The California Office of the State Fire Marshal (OSFM) is the regulatory authority responsible for the safety oversight of the pipelines. The OSFM, together with the Pipeline and Hazardous Materials Safety Administration and other state and federal agencies, is responsible for overseeing pipeline restart requirements under an existing federal Consent Decree. The County has no role or responsibility in overseeing or determining pipeline restart requirements.

Under the proposed Chapter 25B Permit Amendment, which is the subject of this appeal, the acting owner, guarantor, and operator of the Las Flores pipeline system would change from Plains to PPC, ExxonMobil Corporation, and EMPCo respectively. No physical changes to the pipeline system, or modifications to the pipeline operations would occur. CEQA Guidelines Section 15378(b)(5) specifically exempts “organizational or administrative activities of governments that will not result in direct or indirect physical changes to the environment” from this definition. Processing the request is an administrative action that would not result in any direct or indirect physical changes to the environment. The County has historically considered all previously processed 25B Permit Amendments to not constitute as a “project”, including the 2005 and 2012 change of owner of the similar Sisquoc and Point Pedernales pipelines, and the 2014 change of owner and guarantor of the similar Point Arguello and Point Pedernales pipelines. Therefore, the County maintains that the proposed action is not subject to CEQA, as it does not constitute a “project”, as defined by CEQA Guidelines Section 15378(a).

2. The project does not appropriately modify the Conditions of Approval

The appellant claims that the project establishes the same set of Conditions of Approval as the original pipeline approval, while deleting references to the age of the original DEIR/EIS (1986), and retaining information that is inconsistent with information gathered from the 2015 Refugio Oil Spill investigation, mainly related to the ineffective cathodic protection of the pipelines.

Staff Response. Chapter 25B-7 requires that any new owner, operator, or guarantor be listed on the appropriate permit(s), and any previous owner, operator, or guarantor be removed upon approval of the permit transfer. In accordance with Chapter 25B-10(b), the County may only impose additional conditions on the permit in order to maintain existing insurance or financial guarantees.

The Final Development Plan permit Conditions of Approval were revised to remove and replace Plains (“AAPL”) where listed as owner/operator with “PPC” and/or “EMPCo”. The term “Permittee” was used

for conditions that have already been satisfied in order to maintain the complete record of the permit. Other than minor descriptor changes to County department titles, no other changes were made. Therefore, the Final Development Plan permit Conditions of Approval were modified appropriately and in accordance with County Code Chapter 25B.

3. Approval of the project is inconsistent with the purpose of Chapter 25B

The appellant states that the proposed action is inconsistent with the purpose of Chapter 25B due to the following:

1. The pipeline cannot be operated safely due to the findings of the 2015 Refugio Oil Spill investigation;
2. The pipeline cannot be operated safely due to an inadequate Safety Inspection Maintenance and Quality Assurance Project (SIMQAP); and
3. The pipelines are not in compliance with their project description regarding cathodic protection requirements.

Staff Response. The County is required to approve a change of ownership, change of guarantor, and/or change of operator if required findings can be made in accordance with Chapter 25B-9 and 25B-10. The Planning Commission determined that all findings can be made, as described in the Planning Commission Action Letter dated June 16, 2023 and incorporated herein by reference.

1. Regarding the appellant's concerns about pipeline restart, as described in appeal issue number one, the OSFM is the regulatory authority responsible for the safety oversight of the pipelines; the County has no role or responsibility in overseeing or determining restart requirements.
2. Regarding the SIMQAP, PPC submitted a comprehensive SIMQAP document to the County as part of their application materials, which was reviewed by the County's Systems Safety & Reliability Review Committee in accordance with permit conditions.
3. Regarding compliance with the project description, the Final Development Plan permit does not contain specific conditions of approval regarding cathodic protection, and the project description outlined in the permit is limited to a general discussion of the required pipeline type, purpose, and location. The project description in the 1984 Draft Environmental Impact Report / Environmental Impact Statement (DEIR/EIS) for the Celeron/All American Pipeline Project states that: 1) a cathodic protection system, consisting of groundbeds and rectifiers, would be placed every 10 miles within the pipeline right-of-way; 2) the system would be inspected and maintained at 6-month intervals; and 3) annual pipe-to-soil potential readings would be used to determine the effectiveness of the system.

The design of the cathodic protection system and the equipment used is in accordance with the elements outlined in the DEIR/EIS. The cathodic protection system was installed as part of the original construction of the pipelines and implements Impressed Current Cathodic Protection, consisting of rectifiers, groundbed anodes, and critical bonds. Various test stations are located

along the pipeline system to take electrical measurements, which meet and exceed the described system placement of every 10 miles. The cathodic protection system is inspected at least every 6-months in addition to annual inspections, which meet the described inspection and maintenance schedules.

Therefore, the County maintains that the SIMQAP is adequate, and that the owner/operator/guarantor is in compliance with their project description.

4. Subsequent sales

The appellant states that because Exxon, PPC, and EMPCo intend to transfer ownership of the pipelines and the ExxonMobil Santa Ynez Unit to Sable Offshore Corporation and/or Flame Acquisition Corp, the County should wait to act on the requested changes until the subsequent buyer submits an application to transfer the assets.

Staff Response. As stated above in appeal issue number one, PPC, EMPCo, and ExxonMobil were required to submit applications for a change of ownership, change of operator, and change of guarantor following the sale of the pipelines in accordance with Chapter 25B. In accordance with Chapter 24B-4(c), County permits are not transferable without approval of a permit amendment. If a subsequent sale were completed, any new owner, operator, or guarantor would be required to submit an application to transfer the permit, subject to the County's requirements under Chapter 25B. Therefore, it is the County's responsibility to process the requested changes currently before them, and not withhold decision-maker action until a subsequent application has been submitted.

5. The pipeline easements have lapsed

The appellant states that the pipeline right-of-way easements have lapsed, and that the existing Conditions of Approval related to land use entitlements are no longer relevant. The appellant requests that the acquisition of easements be added as a new Condition of Approval, or legally settled prior to permit transfer approval.

Staff Response. Chapter 25B does not require existing easements be proven or remain active in order to approve the requested changes. Further, the County does not adjudicate private easement disputes. Lastly, as stated above in appeal issue number two, the County may only impose additional conditions on the permit in order to maintain existing insurance or financial guarantees in accordance with Chapter 25B-10(b). Therefore, no additional conditions are recommended.

Fiscal and Facilities Impacts:

Budgeted: Yes

The costs to process the appeal were borne by the Applicant through the payment of processing fees. Funding for this project is budgeted in the Planning and Development's Permitting Budget Program on page D-313 of the County of Santa Barbara Fiscal Year 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 to Planning and Development Department Hearing Support staff, to the attention of David Villalobos (dvillalo@countyofsb.org).

Attachments:

- A. Findings for Approval
- B. Conditions of Approval
- C. CEQA Notice of Exemption

Authored by:

Jacquelynn Ybarra, Planner, jybarra@countyofsb.org
Energy, Minerals & Compliance Division
Planning and Development Department

ATTACHMENT A
FINDINGS FOR APPROVAL

ATTACHMENT B
CONDITIONS OF APPROVAL

ATTACHMENT C
CEQA NOTICE OF EXEMPTION