

## LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

August 19, 2022

Linda Liu, Zoning Administrator  
County of Santa Barbara  
Planning & Development  
123 E. Anapamu Street  
Santa Barbara, California 93101

By email to [ajimenez@countyofsb.org](mailto:ajimenez@countyofsb.org)

**RE: Plains Line 901-903 Valve Upgrade Project**

*Dear Zoning Administrator Liu,*

This office represents the Gaviota Coast Conservancy (GCC), a California public benefit organization dedicated to protecting the rural character and environmental integrity of the Gaviota Coast for present and future generations. Along with rural character and environmental integrity, public access and recreational opportunities is the “third pillar” that together fulfills GCC’s mission. At the July 25, 2022 hearing on this item, we expressed concerns regarding the adequacy of the information provided to support an approval. Specifically, the highly unusual approach to California Environmental Quality Act (CEQA) compliance, the lack of Gaviota Coast Plan policy consistency analysis, and inadequate consideration of cumulative impacts. We appreciate that Zoning Administrator Liu requested more information from Staff and the Applicant to clarify these issues, and we appreciate the updated materials provided for this hearing including the CEQA memorandum and supplemental policy analysis. This supplemental information however leaves several important questions unanswered, including whether CEQA allows an agency to approve the Project with “dual findings”, whether proposed Project fencing will be visible from Highway 101, and whether the Project may result in cumulative impacts.

1. The Supplied Visibility Analysis is Wholly Inadequate

Each MOV station would include a fenced in utility area between approximately 1,150 and 1,800 square feet. The 11 MOV stations include above ground infrastructure to store electrical panels, conduits, and communications equipment... the solar panel equipment or the above / below ground connection to the nearby power line would be surrounded by a chain link fence and *may be viewed from surrounding areas.* Addendum, p. 6.

In an attempt to demonstrate consistency with the Gaviota Coast Plan’s visual resource protection policies and lack of significant visual impact, the 8/5 Staff Memorandum includes two photographs of two MOV sites looking *toward* Highway 101, with no simulation or representation of the proposed fencing and equipment. At a minimum, photos of the MOV sites *from* the Highway are needed, and the location of Project infrastructure must be indicated on the

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photo. Without this information it is impossible to ascertain the extent to which the Project will affect public views from Highway 101. In addition, there is no discussion regarding whether the Project may be visible from other public viewing locations such as State Parks, beaches, other roadways, and public trails, precluding a finding of consistency with the Gaviota Coast Plan's view protection policies.

## 2. No Authority Expressly Allows Project Approval with “Dual Findings”

In response to numerous questions raised at the last hearing about the unusual approach to CEQA compliance involving both an Addendum and CEQA exemptions, Zoning Administrator Liu asked the Applicant and Staff to clarify the legal basis for this approach. While the additional materials purport to do so, they actually demonstrate that in fact no authority expressly allows this approach. Rather, the cases cited in the materials all concern whether an agency may argue *in court* in a CEQA challenge that a project is, in the alternative, either exempt or that the environmental review performed was adequate. *See* Attachment 2, Applicant Response to Comment p. 3<sup>1</sup>; *Com. For a Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 854-855. It does not follow that an agency can approve a project with two alternative sets of findings in the first instance. The use of two sets of findings will only confuse the public, and interfere with CEQA's informational goals (*see Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal. App. 3d 1043, 1051).

## 3. The Claimed Exemptions Are Improper

The claimed statutory CEQA exemption for work on existing pipelines (Pub. Res. Code § 21080.23) only applies where “The project is less than eight miles in length” *and* “where “actual construction and excavation activities ... are not undertaken over a length of more than one-half mile at any one time.” The proposed CEQA Exemption however does not establish that each requirement is met for this Project, and improperly combines the two requirements in a way that would render the first requirement meaningless. Specifically, the proposed Exemption claims the exemption applies because “the area of temporary disturbance is only 35 feet in length for each check valve and 82 feet in length for each MOV (less than 0.25 miles in total) and when taken together cumulatively would disturb significantly less than eight miles of the pipeline corridor”. Here, the Project spans 10.9 miles on Line 901 alone, and a 61.7 mile stretch of Line 903, far exceeding the eight mile limitation. Further, the proposed Exemption does not specify whether construction and excavation activities would occur within one-half mile at the same time.

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<sup>1</sup> “It is well settled, for example, that lead agencies can assert an exemption for the first time in litigation even if the agency did not expressly rely upon an exemption in the administrative process. (*See Santa Barbara County Flower & Nursery Growers Assn. v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 873; *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 700-701 [county not barred from arguing in court that (i) subdivision project's negative declaration satisfied CEQA, and (ii) project was exempt from CEQA].”

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Moreover, the asserted categorical exemptions do not apply where the project may damage scenic resources within a designated scenic highway (CEQA Guidelines § 15300.2 (d)). The Project involves development within the Gaviota Coast State Scenic Highway corridor, and as discussed above it is still unclear whether chain link fencing and other Project development will be visible *from* Highway 101, and to what extent. Accordingly it is premature to apply any categorical exemptions until substantial evidence is provided including visual simulations *of* the project *from* the highway.

#### 4. Cumulative Impacts

The CEQA Addendum does not address cumulative impacts, and the Staff materials prepared for this hearing claim that no cumulative impacts would arise because the valve sites are far away from one another and the Project is the only one of its kind in the area. *See* Staff Memorandum, p. 2. However, on the Gaviota Coast there are valve locations located in close enough proximity to result in cumulative impacts (*see* Attachment D – Valve Locations Map), particularly at the eastern end of the Project area. Moreover, SoCalGas has undertaken at least two projects including the Advance Meter Project and Line SL36-1002 Derate/Depressurization that included earthwork and equipment installation in this same area. These and other projects that have similar impacts in the same area must be considered in a cumulative impacts analysis. *See* CEQA Guidelines § 15355.

#### 5. Conclusion

While we appreciate the additional effort made by Staff and the Applicant to respond to concerns raised by public commenters at the last hearing, the supplied information continues to raise serious questions regarding the soundness of the CEQA process and the adequacy of evidence to support required findings including consistency with the Gaviota Coast Plan.

We believe the more prudent approach entails updating the Addendum to more clearly establish that the Project does not result in significant visual or cumulative impacts, including where necessary including new or revised mitigation measures. The proposed exemptions are improper here, and should not be utilized.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC



Ana Citrin

For Gaviota Coast Conservancy