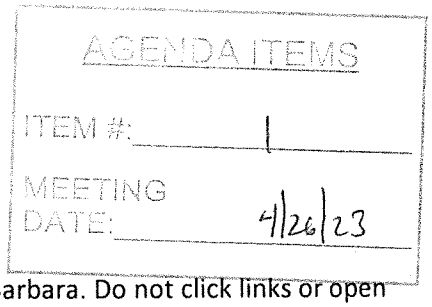
Villalobos, David

From: Bonnie Freeman <bonniegoleta@cox.net>
Sent: Tuesday, April 25, 2023 11:38 AM
To: Villalobos, David
Subject: Plains Pipeline Valve Upgrade Project

Categories: Purple Category



Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Planning Commissioners,

I have updated my reading for this project and it seems clear that the County Planning Commission should, at this point, save the reviews and prolonged analyzing on conditions we already know are not certain to correct the problems long-term, with or without a CUP, so please go with Option 4, and DENY this Project.

Thank you for your consideration and long range concerns for our coastline and our environment.

Bonnie Freeman,
5436 Tree Farm Lane, SB 93111

Villalobos, David

From: Loryann Velez <loryannvelez1@gmail.com>
Sent: Tuesday, April 25, 2023 11:20 AM
To: Villalobos, David
Subject: I support Gaviota Coast Conservatory appeal

Categories: Purple Category

AGENDA ITEMS
ITEM #: 1
MEETING DATE: 4/26/23

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Hello
My name is LoryAnn Velez and I am a Chumash tribal member in the city of Santa Barbara I was also a Native American monitor for a short time during the Refugio fuel oil spill. I am emailing you today in regards to approve option 4 denying the Project because the approval findings made in 1986 no longer apply. Under option 4, the planning commission would deny the project grounds for denial and clear the inability to make findings required for the conditional use permit and the final development plan amendments specifically the 1986 approval findings for the CUP and FDP no longer apply because the best available techniques to prevent external erosion are not in place and marine tankering is not the only alternative to projects approval (The key justification for overwriting the significant environmental impacts of the 1996 project). Thank you for your time and your service as a council member.

Villalobos, David

From: Nancy Black <nancy.black@mercurypress.com>
Sent: Tuesday, April 25, 2023 11:31 AM
To: Villalobos, David
Subject: Gaviota Pipeline

Categories: Purple Category

AGENDA ITEMS
ITEM #: 1
MEETING DATE: 4/26/23

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Saludos cordiales,

On behalf of my community, family and self, I urge the Planning Commission to support the appeal by Gaviota Coast Conservancy and to approve Option 3 to direct staff to prepare a Supplemental EIR, or Option 4, to simply deny the project (preferred option) as the approval findings made in 1986 no longer apply.

As the Vice President of the Equity Advisory and Outreach Committee of the Central Coast Climate Collaborative, I urge this. Santa Barbara faces a host of challenges as we adapt to a warming world, including sea level rise, putting this dead coastal pipeline at risk.

As a board member of Gaviota Coast Conservancy, and someone who grew up here on the Central Coast, I can't help but remember the 2015 Refugio Spill. The Gaviota Coast is a rare, spectacular and unique biodiversity hotspot and it cannot be risked again. That pipeline is like swiss cheese. It was horrific to bear witness to that black death. And then years of cleanup followed... but you can't ever really clean it up.

And before that the 1969 SB Oil Blowout that sparked Earth Day rocked our world (how timely). From that tragedy, we created the National Environmental Policy Act (NEPA), the Environmental Protection Agency, CEQuA and all the environmental laws that we can now use to hold polluters to account.

My filmmaker husband and I and our community sponsors (including the UCSB ES Program) made two films about it.

If our community hadn't done that work then, protesting and carrying signs and showing up at public meetings, over decades, we wouldn't have this option now.

This decision matters. We fought for the right for you to be able to make this decision.

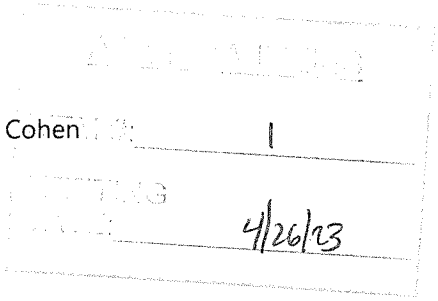
I have confidence in you. Thank you for your stewardship,
Nancy

Nancy Black
Cofounder, Producer, Storyteller

Villalobos, David

From: Albert Knight <ahunknight@msn.com>
Sent: Monday, April 24, 2023 7:38 PM
To: Villalobos, David
Cc: Doug Kern, Gaviota Coast Conservancy; Sam Cohen
Subject: Plains Pipeline

Categories: Purple Category



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Friends,

As someone that was present when the Pacific Pipeline was installed (I was one of the archaeological monitors) I would like to say that it is a shame that it was ever built. I am personally familiar with the area and the pipeline. I was present and did considerable archaeological excavations/site testing and monitoring work, along essentially the entire Santa Barbara County portion of the line, from the Cuyama Valley back-country, to and including the work in Gaviota State Park. When the pipeline reached the area of Highways 1 and 101, on the west side of the highway and just south of Gaviota Pass proper, the project came close to impacting the important prehistoric and historic sites on the west edge of the highway. I was successful in contacting Park ranger Dan Preece (in later years a senior State Parks official), and in coordinating with Santa Ynez Band Of Chumash Indians monitors Elisse Tripp and Victor Cota (both of whom had brought the presence of the archaeological deposits to my attention), and together we prevented the complete destruction of the historic remains and most of the prehistoric midden located there.

After assuring myself that the sites would be protected by Dan Preece and other State Parks personal, I resigned, more-or-less in disgust (UCSB archaeologists were in charge of the cultural resources aspect of the project; I am a UCSB graduate). I was subsequently told, by a Mr. Chris Webb of UCSB, who also resigned shortly thereafter, that the project "had destroyed 26 sites without mitigation" {i.e., without being tested) as the trenching continued east along the Gaviota Coast. I do note that several sites *were* tested, and that the information gleaned from *those* sites was extrapolated so-as to "explain" the prehistoric archaeology of that entire stretch of coast (i.e., from Gaviota Pass on the west, to the terminal end of the pipeline, on the east).

I was already generally familiar with the Gaviota Coast because I lived in Santa Barbara at the time, and I frequently drove to the three State Parks along the coast (Gaviota, Refugio, and El Capitan) for hiking, swimming, etc. Las Cruces Hot Spring was also a favorite place to hike to. I am grateful that the Pacific Pipeline project provided me with the opportunity to see and learn about the interior part of the Park and surrounding Santa Ynez Mountains and Gaviota Coast.

Therefore, based on my personal familiarity with the Gaviota region, and specifically with the period when the Pacific Pipeline was installed, I would like to suggest that Option 3 is the best approach. I think Option 3, if designed to consider not just the condition of the pipeline itself, but also the natural history, archaeology, and history of the area(s) that the construction of the pipeline impacted, is appropriate and would add to our knowledge of the specific subject (the pipeline) and the region where it is located. Any new EIR should
1- Address what the original permitting process required as to mitigation of any and all negative impacts, to the resources I have mentioned, 2- Describe and discuss negative impacts, and mitigations that took place during the project itself, 3- Revisit, review, and discuss all aspects of operations from the time of installation to the present, and 4- clearly describe the current condition(s) of all of those resources.

Albert Knight
1731 Riverside Drive
Glendale CA 91201
Santa Barbara Museum of Natural History
Anthropology Department Associate

Sent from Mail for Windows

Villalobos, David

AGENDA ITEM
ITEM #: 1
MEETING DATE: 4/26/23

From: John Douglas <jed805@gmail.com>
Sent: Monday, April 24, 2023 6:12 PM
To: Villalobos, David
Subject: DENY EXXON Valve Upgrade and Drilling Restart proposal

Categories: Purple Category

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Santa Barbara County Planning Commission:

- All three 1980s offshore platforms and the corroded pipeline servicing them need to be retired, not restarted to have a second chance to spill.
- The federal incident report on the pipeline spill detailed the **pipeline's susceptibility to corrosion and lack of effective safety features and corrosion protection.** We have no assurance that these conditions will be improved. Meanwhile, the **pipeline's degradation and corrosion only increases with time.**
- **The pipeline is badly corroded and will not be safe to use** even if the valve upgrade project is completed. **Corrosion monitoring of the pipeline was inadequate**. The County should deny any project intended to restore pipeline operations, and Exxon should **safely decommission the pipeline.**
- Exxon has a bad track record of spreading public disinformation. For example, they accurately predicted the fossil fuel industry's climate impacts in the 1970s and since then have **deliberately misled the public about climate science**. They will likely **lie about the pipeline's safety** too.
- Currently in Texas, Exxon is trying to **weasel their way out of paying a 14.5 Million dollar fine** they were charged with 14 years ago for **violating the Clean Air Act thousands of times**. Exxon can't be trusted, period.
- The world's climate scientists say **we need to rapidly and deeply reduce fossil fuel use** to avoid the worst impacts of the climate crisis. **Allowing this project to move forward would only worsen** the crisis, driving more mass extinction and human suffering at the global scale.
- The County must deny this project. The **environmental analysis fails to consider all the impacts of valve installation and the impacts** of beginning to pump oil through the line again. As we know all too well from the Refugio Spill in 2015, these are bound to be severe and long-lasting impacts.
- This pipeline was **built in the late 1980s** and has already ruptured. It is even more likely to fail today, as 8 more years have weathered the equipment. **Old oil platforms and pipelines are ticking time bombs for the next major oil spill**, especially from subsea equipment.
    - One offshore pipeline study found that after 20 years the annual probability of pipeline failure increases 10% to 100% per year (source).
    - Another study covering 1996 to 2010 found that accident incident rates, including spills, increased significantly with the age of infrastructure (source).

The County should deny this project due to its massive and predictable environmental impact of causing more oil spills, more death to wildlife, and exacerbating the climate crisis

Thank you for considering my views.

John E. Douglas
Santa Barbara

--
John Enrico Douglas
(805) 284-2082
jed805@gmail.com
www.JohnEDouglas.com

Villalobos, David

From: Santa Lucia Sierra Club <sierraclub8@gmail.com>
Sent: Monday, April 24, 2023 4:36 PM
To: Villalobos, David; Nall, Katie
Subject: Plains Line 901-903 Valve Upgrade Project

Categories: Purple Category

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Planning Commissioners and Project Manager Nall,

We write to you from San Luis Obispo County, the location of a large segment of the "903" in the Plains Line 901-903 Valve Upgrade Project.

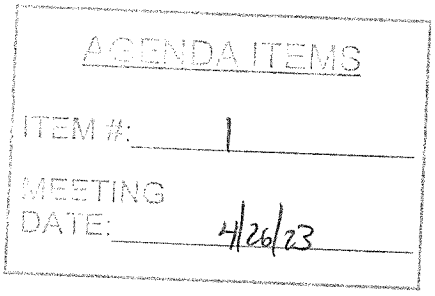
As line 191 continues to connect to line 193, a restart of the former would bring the latter ever closer to its own "Refugio moment" adjacent to the Twitchell Reservoir or anywhere else along the length of the Cuyama River watershed—into which, three years ago, an Exxon tanker truck spilled 4,500 gallons of oil. If restarted, the probability of line 193 joining line 191 in catastrophic failure will increase with each passing year.

And, of course, the re-start of a corroded oil pipeline to facilitate the re-start of three 1980s vintage offshore drilling rigs would be counter to all the climate and energy transition goals of the state of California.

Thus we fully share in the alarm of Santa Barbara's citizens that the impacts of the Refugio Oil Spill were not anticipated in the original environmental review, and remain unaccounted for. The failure of the environmental analysis to consider all the impacts of both valve installation and transporting oil through the existing lines constitutes grounds to deny the project, or require a supplemental EIR.

Thank you for your attention to this issue,

Andrew Christie, Director
Sierra Club Santa Lucia Chapter
P.O. Box 15755
San Luis Obispo, CA 93406
(805) 543-8717



Villalobos, David

From: Julie Groves <juliegroves111@gmail.com>
Sent: Monday, April 24, 2023 6:05 PM
To: Villalobos, David
Subject: • I support Option 3 OR Option 4

Categories: Purple Category

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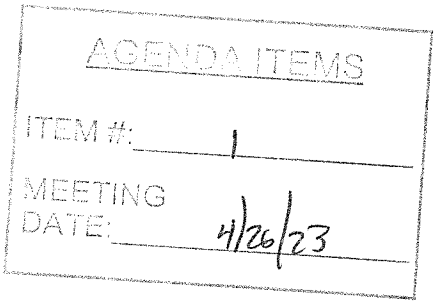
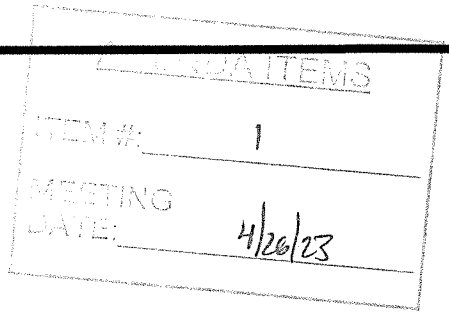
We need your backing. Please support option 3 or 4.
Julie Kortum Groves

Sent from Mail for Windows



Villalobos, David



From: Susan Shields <shields3033@netscape.net>
Sent: Monday, April 24, 2023 6:14 PM
To: Villalobos, David
Subject: Plains Line 901-903 Valve Upgrade Project

Categories: Purple Category

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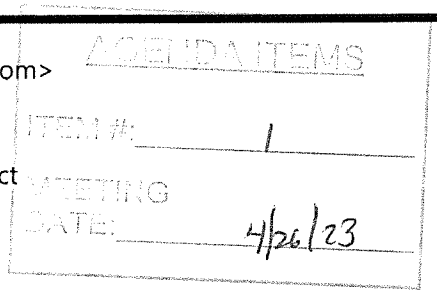
Attention: Members of the County Planning Commission

I live in Santa Barbara County. For the safety of the community and the environment I support the recommendations of the GCC relative to this project.
That is: Approve Option 3, directing staff to prepare a Supplemental EIR; OR Approve Option 4, denying the Project because the approval findings made in 1986 no longer apply.

I hope you will deliberate carefully over this.

Susan Shields
3033 Calle Rosales, SB 93105

Villalobos, David



From: Michelle Sparks-Gillis <mleesp@gmail.com>
Sent: Monday, April 24, 2023 6:18 PM
To: Villalobos, David
Subject: The Plains Pipeline Valve Upgrade Project

Categories: Purple Category

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Dear Planning Commission,

Please support Gaviota Coast Conservancy's appeal of the Plains Pipeline Valve Upgrade Project by either Approving Option 3, directing staff to prepare a Supplemental EIR, OR Approving Option 4, denying the Project because the approval findings made in 1986 no longer apply.

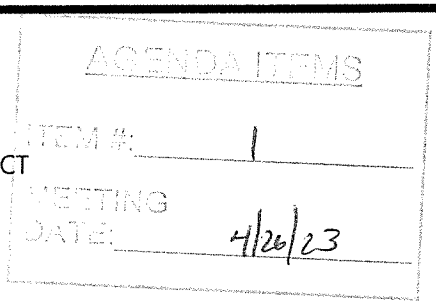
Thank you for your time,

Michelle Sparks-Gillis
A Santa Barbara County resident since 2007

Villalobos, David

From: Julie Lopp <loppjulie@gmail.com>
Sent: Monday, April 24, 2023 6:20 PM
To: Villalobos, David
Subject: PLAINS PIPELINE VALVE UPGRADE PROJECT

Categories: Purple Category



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Dear Planning commission,

This is a note to let you know that I totally support GCC's appeal and to:

- Approve Option 3, directing staff to prepare a Supplemental EIR; OR
- Approve Option 4, denying the Project because the approval findings made in 1986 no longer apply.

Julie Lopp
805-569-5252

Villalobos, David

From: Tod Mesirow <mesirow@gmail.com>
Sent: Monday, April 24, 2023 6:20 PM
To: Villalobos, David
Subject: I only support Option 3 OR Option 4 - THE PLAINS PIPELINE VALVE UPGRADE PROJECT

Categories: Purple Category

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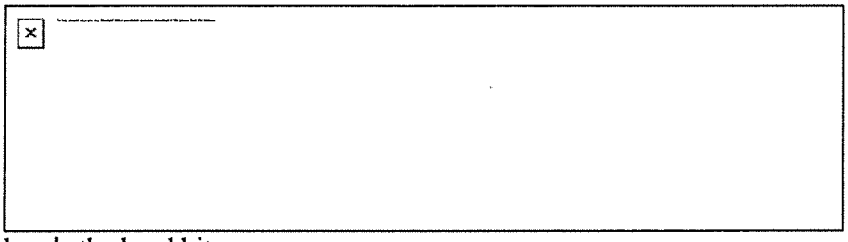
Allowing this project to move forward is a mistake, especially now.
I support Option 3 or Option 4.
Thank you for keeping the safety of all citizens, and our precious, threatened environment in mind when casting your vote.
We are here for a short time, and we need to leave it cleaner than we found it.
Tod

AGENDA ITEMS
ITEM #: 1
MEETING DATE: 4/26/23



here's the legal bit -
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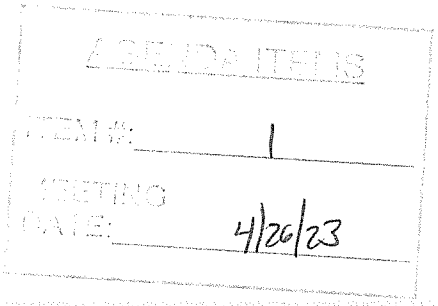
Villalobos, David

From: cathykarolc <cathykarolc@aol.com>
Sent: Monday, April 24, 2023 6:24 PM
To: Villalobos, David
Subject: I support Option 3 OR Option 4

Categories: Purple Category



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Under **Option 3**, the Supplemental EIR would analyze the changed circumstances and new information identified after the Refugio Oil Spill, including the corrosive conditions in the pipeline coating/insulation system and the failure of the corrosion protection system. A draft Supplemental EIR would be circulated to the public and government agencies for review and comment, and the final EIR would serve to inform County decision-makers and the public of the environmental impacts of the Project.

Under **Option 4,** the Planning Commission would deny the Project. Grounds for denial include the inability to make findings required for the Conditional Use Permit (CUP) and Final Development Plan (FDP) Amendments. Specifically, the 1986 approval findings for the CUP and FDP no longer apply because the best available techniques to prevent external corrosion are not in place, and marine tankering is not the only alternative to Project approval (the key justification for overriding the significant environmental impacts of the 1986 project).

thank you

Cathy Karol-Crowther

Villalobos, David

From: Maureen McFadden <mcmpr101@gmail.com>
Sent: Monday, April 24, 2023 6:29 PM
To: Villalobos, David
Subject: Plains Pipeline Total Fail - Option 4 Only Approval Worth It

Categories: Purple Category

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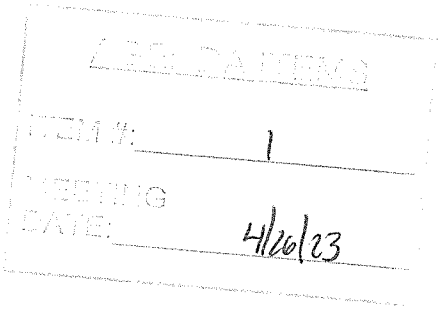
Dear Members of the Planning Commission:

I am writing to ask you to please approve Option 4 - and deny the Plains Valve Upgrade Project. It's not worth restarting these lines when you think about the larger and longer impact an oil spill of any size leaves behind killing flora and fauna, marine life and birds. Our wildlife is a vital part of this community's health and well-being. Plus, one of the most egregious of American oil companies - Exxon - now own it. I don't trust it, not one bit.

Option 4 !!! please



I'd like to thank your staff for the time and thought they put into this.

Sincerely,
Maureen "Mo" McFadden
President

McFadden & McFadden P.R.
945 Ward Drive. #128
Santa Barbara, CA 93111
(805)689.5053
mcmpr101@gmail.com
www.mcfaddenpr.com
www.facebook.com/MnMPR

Parvus Sed Potentus = Small Yet Powerful
PR Tip: Remember journalists don't work for you. The media work for their audience. What they're looking for is value for their readers, viewers or their listeners. So always look for what value you can provide them... not what they can do for you.

Villalobos, David

From: Kathy Yaeger <k.yaeger@me.com>
Sent: Monday, April 24, 2023 6:30 PM
To: Villalobos, David
Subject: Protect our Coast

Categories: Purple Category

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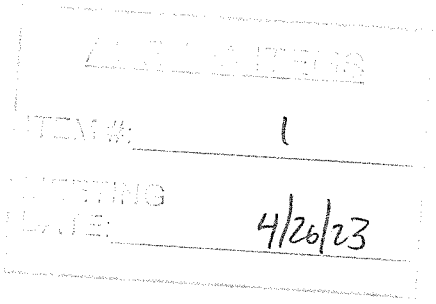
I support Options 4 or 3 Please protect our coast from another disaster.

Kathy Yaeger

Sent from my iPhone



Villalobos, David

From: Joe Silv <jsilv579@yahoo.com>
Sent: Monday, April 24, 2023 6:36 PM
To: Villalobos, David
Subject: Option 3or 4

Categories: Purple Category

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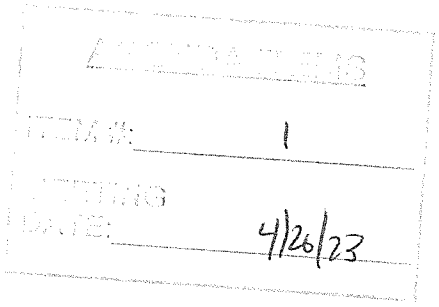
We would really prefer option 3or4.
Sincerely, Joe Silvey



Villalobos, David

From: Kristy Porteous <2kristyp@gmail.com>
Sent: Monday, April 24, 2023 6:46 PM
To: Villalobos, David
Subject: Pipeline

Categories: Purple Category

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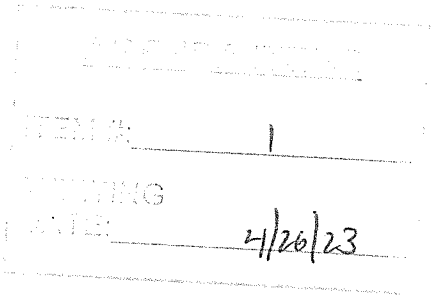
Please consider only Option 3 or 4.
Thank you,
Kristy Porteous



Villalobos, David

From: Michelle Bone <michelle.bone@mac.com>
Sent: Monday, April 24, 2023 7:28 PM
To: Villalobos, David
Subject: No to the Gaviota pipeline

Categories: Purple Category

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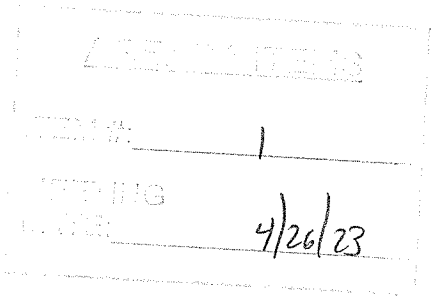
I am a local resident who witnessed the last oil spill and believes the Gaviota Coast should be preserved. Please vote option 4 - no more oil pipeline. Thank you.

Sent from my iPhone



Villalobos, David

From: artkennedy1 <artkennedy1@cox.net>
Sent: Monday, April 24, 2023 7:34 PM
To: Villalobos, David
Subject: suport info

Categories: Purple Category

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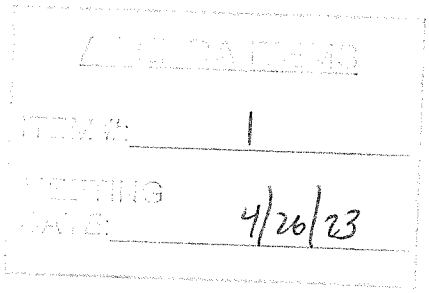
Isupport GCCand option 4

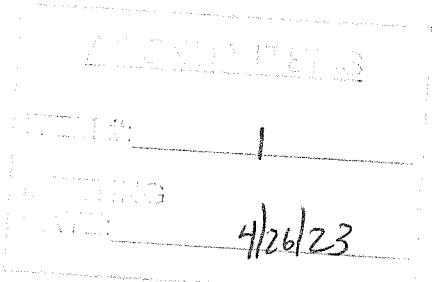
Arthur Kennedy
a registered voter in Santa Barnara county



Villalobos, David

From: Sue Mellor <sbsuem@gmail.com>
Sent: Monday, April 24, 2023 7:55 PM
To: Villalobos, David
Subject: Plains Pipeline

Categories: Purple Category



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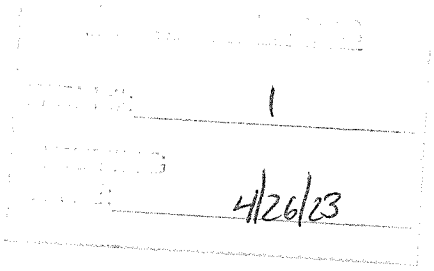
The Gaviota Coast should be given the greatest amount of protection from environmental degradation and I support Option 3 and/or Option 4. Sue Mellor

Villalobos, David

From: Eric Dahl <ericldahl@gmail.com>
Sent: Monday, April 24, 2023 8:00 PM
To: Villalobos, David
Subject: Plains Valve Upgrade Project

Categories: Purple Category



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I support the appeal by the Gaviota Coast Conservancy of the Plains Valve Upgrade Project, and I urge the County of Santa Barbara Planning Commission to either:

(a) Approve Option 3, directing staff to prepare a Supplemental EIR;
OR
(b) Approve Option 4, denying the Project because the approval findings made in 1986 no longer apply.

The lands potentially affected by this project are precious natural resources. The County should make every effort to ensure that they are fully protected from potential harm that might result from this project.

Sincerely,

Eric Dahl
964 W Campus Ln
Goleta, CA 93117

Villalobos, David

From: Lynn Laumann <llaumann@yahoo.com>
Sent: Monday, April 24, 2023 8:42 PM
To: Villalobos, David
Subject: THE PLAINS PIPELINE VALVE UPGRADE PROJECT

Categories: Purple Category

1

4/26/23

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Commissioners,

I support Gaviota Coast Conservancy's appeal of the Plains Valve Upgrade Project at the County of Santa Barbara Planning Commission. Please Approve Option 4 denying the Project because the approval findings made in 1986 no longer apply.

I grew up on the Gaviota Coast. It is a California treasure. Let's move past the era of dirty oil and promote clean energy for our health and a stable climate.

Thank you,

Lynn A. Laumann
La Jolla, CA

Villalobos, David

From: Carol Kosman <ckosman@gmail.com>
Sent: Monday, April 24, 2023 8:49 PM
To: Villalobos, David
Subject: Conduct a Supplemental Environmental Impact Review of Plains 901-903 pipeline valve upgrade

Categories: Purple Category

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Planning Commissioners,

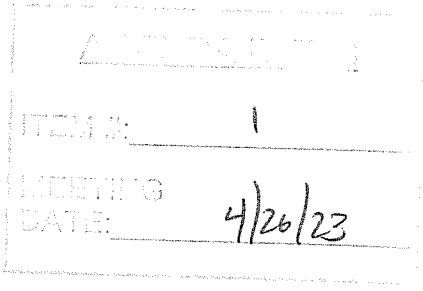
As a resident of Santa Barbara County and a concerned scientist, I'm writing to urge you to please direct your planning staff to prepare a Supplemental Environmental Impact Review (SEIR) on Exxon's proposed 901-903 pipeline upgrades.

Alarmingly, this is the same pipeline that ruptured in 2015 at Refugio sending 450,000 gallons of toxic oil onto the pristine Santa Barbara County coastline and into the biodiverse Santa Barbara Channel, resulting in the senseless deaths of at least 202 birds and 99 marine mammals, including at least 46 sea lions and 12 dolphins.

I realize that I may be slightly late in sending you my comments on this proposal, but I hope you take my thoughts and those who have already written to the Planning Commission into consideration as you make this decision.

I appreciate your thoughtful attention to this matter.

Sincerely,
Carol Kosman
4176 OakWood Rd, Lompoc, CA 93436



Villalobos, David

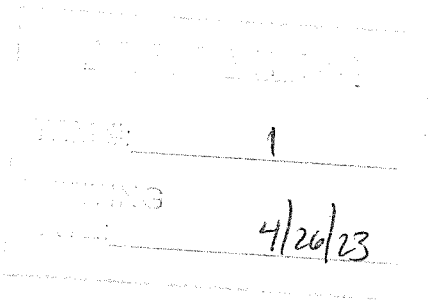
From: Anna Kokotovic <anna48k@gmail.com>
Sent: Monday, April 24, 2023 8:49 PM
To: Villalobos, David
Subject: 3 or 4

Categories: Purple Category

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

I support option 3 or 4.

Anna Kokotovic, PhD
Psychologist



Villalobos, David

From: Kris MW <mainlandwhite@gmail.com>
Sent: Monday, April 24, 2023 8:54 PM
To: Villalobos, David
Subject: THE PLAINS PIPELINE VALVE UPGRADE PROJECT

Categories: Purple Category

1
4/26/23

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

I write to voice my opinion that either option 3 or option 4 be approved by the Planning Commission.

I would lean toward #4. We need to take a stand against oli development and why not here?

Otherwise, I would go with number 3 to make sure all protections are in place and the old pipeline is not simply put back into action not knowing it is mechanically foolproof. To merely install valves in an old pipeline that has failed already is irresponsible.

Kris Mainland White
Gaviota Coast Conservancy

Villalobos, David

From: dra354@yahoo.com
Sent: Monday, April 24, 2023 9:05 PM
To: Villalobos, David
Subject: THE PLAINS PIPELINE VALVE UPGRADE PROJECT

Categories: Purple Category

4/26/23

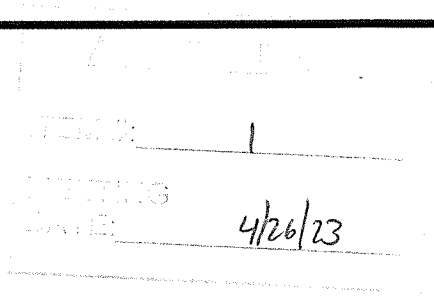
Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Greetings:

I am a fulltime resident of Santa Barbara county and I agree with and support the Gaviota Coast Conservancy's appeal of THE PLAINS PIPELINE VALVE UPGRADE PROJECT and urge you to support Option 3 or 4 before the Planning Commission on April 26th. Thank you,

David Amenta
1305 Woodmere Rd
Santa Maria 93455

Villalobos, David



From: Terence Betts <pacificwood@icloud.com>
Sent: Monday, April 24, 2023 9:34 PM
To: Villalobos, David
Subject: Support GCG appeal

Categories: Purple Category

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Please

Sent from my iPad

Villalobos, David

From: Pion, Jeff @ West LA <Jeff.Pion@cbre.com>
Sent: Monday, April 24, 2023 9:44 PM
To: Villalobos, David
Subject: Plains Oil Pipeline

Categories: Purple Category

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

I would like to ask the Planning Commission to support GCC's appeal and to:

- **Approve Option 3, directing staff to prepare a Supplemental EIR;**

OR

- **Approve Option 4, denying the Project because the approval findings made in 1986 no longer apply.**

I am a resident of the Gaviota Coast and my home is at 11 Arroyo Quemada Lane, Goleta CA.

Jeff Pion, LEED® AP
Vice Chairman | License #00840278
CBRE | Advisory & Transaction Services.
2121 Avenue of the Stars, Suite 1630 | Los Angeles, CA, 90067-2108
T +1 310 550 2537 | F +1 310 203 9624 | C +1 310 383 5181
jeff.pion@cbre.com
Twitter LinkedIn

ITEM #: 1
MEETING DATE: 4/26/23

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Details about the personal data CBRE collects and why, as well as your data privacy rights under applicable law, are available at **CBRE – Privacy Policy.**

Villalobos, David

From: Catherine Black <csblack@silcom.com>
Sent: Monday, April 24, 2023 10:05 PM
To: Villalobos, David
Subject: HE PLAINS PIPELINE VALVE UPGRADE PROJECT

Categories: Purple Category

1
4/26/23

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

I support Option 4.

The entire project is out of date, poorly maintained, and another leak waiting to happen.

Plains has proven itself to be unreliable, irresponsible, and looking for the cheapest "fix".

Catherine S Black
7171 Emily Lane
Goleta, CA 93117

Villalobos, David

From: Kevin Loughran <kvikelo@gmail.com>
Sent: Monday, April 24, 2023 10:21 PM
To: Villalobos, David
Subject: Concerning PLAINS PIPELINE Option PROPOSALS
Categories: Purple Category

1
4/26/23

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

To whom it may concern:
I am a 30 year resident on theTajiguas front road and the Plains pipeline runs 30 meters on the hill behind my house.
I am presently out of the country at this time and want to make my request to the Board at their meeting.
It being my heart felt desire for them to move on option 4 or at the least option 3 on the record.
I was there the day of the corrupted pipelines spill and do not want to have it ever to be turned on again. It is a useless,dead end proposition .
Sincerely
Kevin and Nipa Loughran
14300 Calle Real
Gaviota
93117

--
Kevin Loughran

805-680-2779

RR 1 BOX 264
GAVIOTA,
CA
93117

Villalobos, David

From: Christiane Schlumberger <c.schlumberger@me.com>
Sent: Monday, April 24, 2023 10:32 PM
To: Villalobos, David
Subject: Plains Pipeline Valve Upgrade Project

Categories: Purple Category

1

4/26/23

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

I am writing to ask you to support the Gaviota Coast Conservancy's appeal of the Plains Pipeline Valve Upgrade Project.

Of the four options under consideration, I urge you to support either Option 3, which would require further environmental review, or Option 4, which would deny the project altogether.

Thank you for your consideration.

Christiane Schlumberger
Santa Barbara

Villalobos, David

From: Mariah Moon <aquamoon42@hotmail.com>
Sent: Monday, April 24, 2023 11:35 PM
To: Villalobos, David
Subject: Please Deny Plains Pipeline Valve Upgrade Project

Categories: Purple Category

1
4/26/23

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Hello,

I am writing regarding the Plains Pipeline Valve Upgrade Project. I ask that the County Planning Commission deny the Project. Grounds for denial include the inability to make findings required for the Conditional Use Permit (CUP) and Final Development Plan (FDP) Amendments. Specifically, the 1986 approval findings for the CUP and FDP no longer apply because the best available techniques to prevent external corrosion are not in place, and marine tankering is not the only alternative to Project approval (the key justification for overriding the significant environmental impacts of the 1986 project).

The 2015 Refugio oil spill was awful to witness, and with the condition of things right now including proposed upgrades, it is inevitable that another spill here will occur if this pipeline is used to transport oil.

Please deny the project, because the approval findings made in 1986 no longer apply.

Sincerely,
Mariah Moon

Villalobos, David

From: Stephanie Reed <gokickstand1@gmail.com>
Sent: Tuesday, April 25, 2023 5:09 AM
To: Villalobos, David
Subject: Pipeline

Categories: Purple Category

1
4/26/23

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear County of Santa Barbara,
Please vote to support option 4 to deny the Project because the approved findings made in 1986 no longer apply.
Thank you,
Stephanie Reed

Villalobos, David

AGENDA ITEMS
ITEM #: 1
MEETING DATE: 4/26/23

From: Seth Steiner <wsasteiner@gmail.com>
Sent: Tuesday, April 25, 2023 8:52 AM
To: Villalobos, David
Subject: EXXON VALVE UPGRADE PROJECT 3/26/2023

Categories: Purple Category

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

For distribution to all County Planning Commissioners.

Good morning Commissioner,

I respectfully urge you to uphold the appeals and deny the valve upgrade project.

The valves would not prevent additional ruptures. How many thousands gallons of oil would spread from the next spill?

The 142,000-gallon spill of Exxon oil from that same pipeline 8 years ago has done more than enough damage in our County. There are still countless clumps of tar below the sand's surface. **Will my wife and I <u>ever</u> again be able to walk on Refugio Beach without getting tar on our feet?**

The long list of Exxon's calamitous accidents will continue to grow, wherever it operates and regardless of its assurances and claims of engineering advances and safe operating practices.
For decades Exxon has found ways to avoid responsibility for full clean-up and restoration. And, recovery is never complete.

I ask that you consider the values of the Gaviota Coast Plan and Exxon's historic record. Otherwise, the next ruinous Santa Barbara spill is surely only a matter of time.

Options 3 or 4 are best for the County.

Thank you.

Seth Steiner
750 Shaw Street
Los Alamos
805.344.1828

Villalobos, David

AGENDA ITEMS
ITEM #: 1
MEETING DATE: 4/26/23

From: Lori Sullivan <lorisullivan1951@gmail.com>
Sent: Tuesday, April 25, 2023 8:36 AM
To: Villalobos, David
Subject: Plains Pipeline

Categories: Purple Category

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

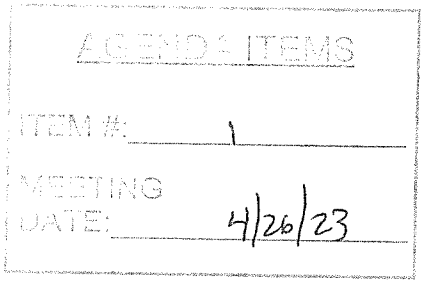
I am writing you to let you know as a county resident I support Option 3 or Option 4 regarding the Plains Pipeline Valve Project.

Thank you,
Lori Sullivan

Villalobos, David

From: Ybarra, Jacquelynn
Sent: Tuesday, April 25, 2023 8:28 AM
To: Nall, Katie; Villalobos, David
Subject: FW: Exxon drilling

Categories: Purple Category



-----Original Message-----
From: Jean Zeibak <zeibak@icloud.com>
Sent: Tuesday, April 25, 2023 4:23 AM
To: Ybarra, Jacquelynn <jybarra@countyofsb.org>
Subject: Exxon drilling

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Hello
I do not want Exxon to fix valves , corroded pipes and start drilling again in the Santa Barbara channel. This destroys everything around it.

Sent from my iPhone

Villalobos, David

From: Barbara rigney-hill <barbararigneyhill3@gmail.com>
Sent: Tuesday, April 25, 2023 9:12 AM
To: Villalobos, David
Subject: PLAINS PIPELINE VALVE UPGRADE

Categories: Purple Category

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

I am in support of Options 3 or 4.
Thank you,
Barbara Rigney-Hill
resident of Santa Paula, CA

AGENDA ITEMS
ITEM #: 1
MEETING DATE: 4/26/23

Villalobos, David

From: Greg Karpain <gregkarpain@comwrite.net>
Sent: Tuesday, April 25, 2023 9:26 AM
To: Villalobos, David
Subject: THE PLAINS PIPELINE VALVE UPGRADE PROJECT feedback

Categories: Purple Category

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

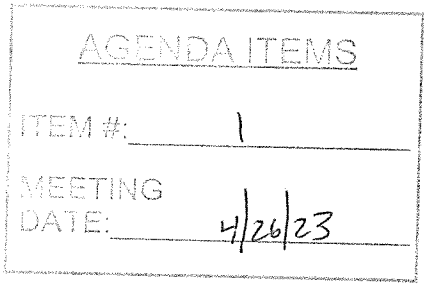
Dear Planning Commission,

I support options 3 (Direct staff to prepare a Supplemental EIR) and more strongly, 4 (Deny the Project as proposed).

Please add this to the record.

Thank you,

Greg Karpain



Nall, Katie

From: Ybarra, Jacquelynn
Sent: Monday, April 24, 2023 9:09 AM
To: Nall, Katie; Villalobos, David
Subject: FW: DENY EXXON Valve Upgrade and Drilling Restart proposal

Katie and David,

I'm getting some public comments for the Plains Valve Project appeals 22APL-OOOOO-00024; 22APL-OOOOO-00025; 22APL-OOOOO-00026.

Forwarded to you for saving/distribution to the PC.

Thanks,

Jacquelynn Ybarra (she/her)
Senior Planner
Planning & Development
123 E. Anapamu St.
Santa Barbara, CA 93101
(Hours): M – F 8:00 am – 2:00 pm

From: John Douglas <jed805@gmail.com>
Sent: Friday, April 21, 2023 6:12 PM
To: Ybarra, Jacquelynn <jybarra@countyofsb.org>
Subject: DENY EXXON Valve Upgrade and Drilling Restart proposal

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Santa Barbara County Planning Commission:

- All three 1980s offshore platforms and the corroded pipeline servicing them need to be retired, not restarted to have a second chance to spill.
- The federal incident report on the pipeline spill detailed the **pipeline's susceptibility to corrosion and lack of effective safety features and corrosion protection.** We have no assurance that these conditions will be improved. Meanwhile, the **pipeline's degradation and corrosion only increases with time.**
- **The pipeline is badly corroded and will not be safe to use** even if the valve upgrade project is completed. **Corrosion monitoring of the pipeline was inadequate**. The County should deny any project intended to restore pipeline operations, and Exxon should **safely decommission the pipeline.**
- Exxon has a bad track record of spreading public disinformation. For example, they accurately predicted the fossil fuel industry's climate impacts in the 1970s and since then have **deliberately misled the public about climate science**. They will likely **lie about the pipeline's safety** too.
- This week in Texas, Exxon is trying to **weasel their way out of paying a 14.5 Million dollar fine** they were charged with 14 years ago for **violating the Clean Air Act thousands of times**. Exxon can't be trusted, period.

- The world's climate scientists say **we need to rapidly and deeply reduce fossil fuel use** to avoid the worst impacts of the climate crisis. **Allowing this project to move forward would only worsen** the crisis, driving more mass extinction and human suffering at the global scale.

- The County must deny this project. The **environmental analysis fails to consider all the impacts of valve installation and the impacts** of beginning to pump oil through the line again. As we know all too well from the Refugio Spill in 2015, these are bound to be severe and long-lasting impacts.

- This pipeline was **built in the late 1980s** and has already ruptured. It is even more likely to fail today, as 8 more years have weathered the equipment. **Old oil platforms and pipelines are ticking time bombs for the next major oil spill**, especially from subsea equipment.
    - One offshore pipeline study found that after 20 years the annual probability of pipeline failure increases 10% to 100% per year (source).
    - Another study covering 1996 to 2010 found that accident incident rates, including spills, increased significantly with the age of infrastructure (source).

The County should deny this project due to its massive and predictable environmental impact of causing more oil spills, more death to wildlife, and exacerbating the climate crisis

Thank you for considering my views.

John E. Douglas
Santa Barbara

--
John Enrico Douglas
jed805@gmail.com
www.JohnEDouglas.com

Nall, Katie

From: Ybarra, Jacquelynn
Sent: Friday, April 21, 2023 1:17 PM
To: Nall, Katie
Subject: FW: Please deny the Exxon proposal to add valves to their corroded pipeline

This one is for you

Jacquelynn Ybarra (she/her)
Senior Planner
Planning & Development
123 E. Anapamu St.
Santa Barbara, CA 93101
(Hours): M – F 8:00 am – 2:00 pm

From: Rachel Altman <raltmansb@gmail.com>
Sent: Friday, April 21, 2023 1:10 PM
To: Ybarra, Jacquelynn <jybarra@countyofsb.org>
Subject: Please deny the Exxon proposal to add valves to their corroded pipeline

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Members of the Planning Commission,

The Planning Commission MUST DENY the Exxon/Plains/Sable proposal to add valves to their corroded pipeline and resume pumping from the Exxon platforms for the following reasons:

.

1. This pipeline was built in the late 1980s and has already ruptured in 2015, costing hundreds of thousands of dollars to clean up, and causing great harm to sea life, as well as financial impacts on the local fishing and tourist industries. It is even more likely to fail today, as 8 more years have weathered the equipment.

2. The world's climate scientists agree that we need to rapidly and deeply reduce fossil fuel use to avoid the worst impacts of the climate crisis. Allowing this project to move forward would only worsen the crisis, driving more mass extinction and human suffering at the global scale.

3. In Santa Barbara County we have already seen the harmful results of the climate crisis, from extreme and continuing drought, wildfires and the resulting hazardous smoke, and dangerous amounts of rainfall causing life- and property-threatening flooding. **My husband and I personally have been forced to evacuate our home on at least 8-10 occasions in the last 15 years due to these dangerous conditions. We love**

our home in Santa Barbara and value the beauty of the environment but frankly, we spend much time in terror of what might come next.

The County must deny this project. The environmental analysis fails to consider all the impacts of valve installation and the impacts of pumping oil through the corroded line again. As we know all too well from the Refugio Spill in 2015, these are bound to be severe and long-lasting.

Thank you for your consideration of my comments.

Rachel (Rochelle) Altman
1383 Sycamore Canyon Road
Santa Barbara, CA 93108
raltmansb@gmail.com

Nall, Katie

From: plund@umail.ucsb.edu
Sent: Monday, April 24, 2023 11:41 AM
To: Nall, Katie
Subject: Plains All Americans valve upgrade proposal

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Commissioners,

Thank you so much for your careful consideration of the critical details of Plains All American's valve upgrade proposal and your willingness to hear our comments regarding the issue. As members of UCSB's Environmental Affairs Board, we strongly urge you to choose either option 4, denying the project as proposed, or option 3, directing the preparation of a supplemental EIR as described by staff in the recent memorandum.

Plains All American's claim that the current pipeline is satisfactory, or will be with the addition of valves, is blatantly deceiving. It ignores the clearly exhibited signs of severe corrosion in order to rush towards restart as soon as the first quarter of next year, as described in investor reports. The most recent EIR for this project was produced in 1985 and therefore fails to consider a number of more recent critical factors, including the 2015 Refugio Oil Spill and the pipeline's current condition. We cannot expect this outdated evaluation to effectively suffice for another 40 years, especially as our climate becomes more unpredictable and the county as a whole is obligated to reduce its emissions. In addition to inadequate standards, the in-progress, multi-step ownership change complicates the issue by allowing both Plains and Exxon to reduce their own liability, and neglects to prioritize the reliability of the pipeline over investor returns.

Again, thank you for your time and regard for this issue. We look forward to continuing to work with you!

Sincerely,

UCSB EAB

WISHTOYO
CHUMASH FOUNDATION
FIRST NATIONS ECOLOGICAL CONSERVATION ALLIANCE

County of Santa Barbara, Energy Division

Attn: Katie Nall, Project Planner

Via email: nallk@countyofsb.org

Dear Katie Nall,

On Behalf of the Wishtoyo Foundation ("Wishtoyo") we submit the following comments on the Plains Valve Upgrade Project ("Project") for the upcoming April 26th, 2023 Santa Barbara County Planning Commission hearing concerning the Valve Upgrade Project.

Founded in 1997, Wishtoyo Foundation is a California 501(c)(3) nonprofit public interest organization with members composed of Chumash Native Americans, First Nations People, and Santa Barbara, Ventura, and Los Angeles County residents. Wishtoyo is place, organization, and movement inspiring people to live in harmony with our Earth again. Wishtoyo serves as a "rainbow bridge" linking Chumash and Indigenous lifeways with the protection of natural and cultural resources, utilizing traditional ecological knowledge to provide environmental and cultural preservation and justice, education, research, and advocacy.

For the following reasons, Wishtoyo strongly opposes the Santa Barbara County Zoning Administrator's approval of the project and request that the project is either denied for failure to meet environmental review requirements under the California Environmental Quality Act ("CEQA"), or the County of Santa Barbara demands that the applicant prepares a Supplemental Environmental Impact Report for the Project.

Eight-Mile Statutory Exemption Does Not Apply to the Project.

The Project Description includes detailed information about both the 901 and 903 pipelines where the valves will be installed. Pipeline 901 was designed to transport oil 10.9 miles from the Las Flores Pump Station to the Gaviota Pump Station. Pipeline 903 was designed to transport oil 61.7 miles from the Gaviota Pump Station to the Sisquoc Pump Station. These pipelines have not transported oil since the 2015 Refugio Oil Spill. In inspections conducted prior to the oil spill, extensive corrosion was found in the 901 line and the 903 line was also found to be experiencing corrosion. The 901 line, where the 2015 spill occurred, had to be repaired three times before the oil spill, and still ruptured. Because these pipelines are currently not transporting oil, this project would include the use of the entire length of pipelines 901 and 903 with the restoration of oil transport through the lines. The full pipeline length of the project is 72.6 miles, and the project therefore does not meet the requirements of the eight-mile statutory exemption.

WISHTOYO
CHUMASH FOUNDATION
FIRST NATIONS ECOLOGICAL CONSERVATION ALLIANCE

Statutory Exemptions detailed in Sections 15301(b), 15303(d), and 15311 do not Apply to the Project

The applicant is attempting to restart the operation of lines 901 and 903, which were originally planned to be reconstructed after the 2015 Refugio Oil Spill. Lines 901 and 903 are corroded and in too poor shape to handle the transportation of oil through Santa Barbara County. The work conducted for this project does only involve the installation of accessory structures and small structures on existing infrastructure, but the existing infrastructure has been shut down to prevent another environmental disaster. The use of the existing pipelines 901 and 903 should require environmental review to analyze all environmental impacts associated with the restart of oil transport through these corroded pipelines.

The restart of oil transportation through these obsolete lines should not be done without a Supplemental EIR that supplements the environmental review that was conducted 40 years ago in 1983. The 1983 EIR is outdated and does not include necessary analysis on pipeline impacts to cultural and biological resources.

Categorical Exemptions Do Not Apply to the Project

A) Location

Line 901 is located along 10.9 miles of the Gaviota Coast, terminating at the Gaviota Pump Station. Line 903 extends 61.7 miles along the Gaviota Coast, to the Sisquoc Pump station, then northeast through the Los Padres National Forest to the Santa Barbara/San Luis Obispo County line, terminating at the Pentland Station. This project would restart the transportation of crude oil through corroded pipelines that are located along sensitive coastal habitats, national forests, and rivers. The transport of crude oil through lines 901 and 903 threaten oil spills throughout these areas and a repeat of the 2015 Refugio Oil Spill.

Oil spills from lines 901 or 903 have the potential to impact 30 federally listed species, including one candidate. Oil spills from these lines could impact designated critical habitats for at least 12 of these species including the arroyo toad, California red-legged frog, California tiger salamander, Western Snowy Plover, California Condor, vernal pool fairy shrimp, Gaviota tarplant, Lompoc yerba santa, Southwestern Willow Flycatcher, and Tidewater Goby.

Another oil spill from these lines along the Gaviota Coast could have significant negative impacts on marine and coastal ecosystems. At least 156 pinnipeds, 76 cetaceans, and 558 birds were killed as a result of the 2015 oil spill caused by the rupture of line 901. The oiling of coastal waters and sandy beaches impacted invertebrate communities which may have impacted breeding success of pacific mole crab (*Emerita analoga*) decreasing prey availability of the most important food source for shorebirds that use southern California beaches during their migration along the Pacific Flyway. The 2015 spill impacted 1500 acres of shoreline

habitat, 2200 acres of benthic subtidal habitat, and caused a loss of more than 140,000 recreational user days[1] (page 3).

B) Cumulative Impact

Even with valves installed to reduce the amount of oil spilled into the environment from these pipelines, the Project may cause a substantial cumulative impact on the environment. Any release of crude oil into the environment can be detrimental to ecosystem health, wildlife, endangered species, cultural resources, recreational opportunities, and the aesthetic value of the surrounding environment. The installation of new CHK and MOV valves will not solve the problem of transporting crude oil through a corroded pipeline that has already caused a major oil spill.

C) Significant Effect

The threshold for this categorical exemption is “A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstance”. The Project absolutely fails to meet the requirements of this categorical exemption. The 901 and 903 pipelines have experienced significant corrosion, with inspectors finding metal loss between 54% and 74% at three different locations along pipeline 901. The extensive corrosion in these pipelines could lead to another oil spill along the sensitive Gaviota Coast, Santa Ynez River, or Sisquoc River. The installation of the valves along this pipeline may limit the amount of oil spilled but will do nothing to prevent the oil actually spilling. If oil were to spill in any of these sensitive locations, this could lead to the pollution of federally protected waterways and habitats of endangered species and sensitive plants and wildlife. Potential impacts from this project would also have a significant negative effect on Chumash lifeways, like traditional fishing practices and ceremony, and cultural resources. Coastal village sites that were already impacted by the 2015 Refugio oil spill are also threatened by this Project. The Project fails to meet the requirements of the Significant Effect categorical exemption.

D) Scenic Highways

Highway 101 along the Gaviota Coast is a Scenic Highway. The risks associated with the project and potential for oil spills from lines 901 and 903 threaten to damage the scenic resources of this scenic highway.

F) Historical Resources

[1] Refugio Beach Oil Spill Trustees. 2021. Refugio Beach Oil Spill Final Damage Assessment and Restoration Plan/Environmental Assessment. Prepared by the California Department of Fish and Wildlife, California State Lands Commission, California Department of Parks and Recreation, Regents of the University of California, U.S. Department of the Interior, U.S. Fish and Wildlife Service, and National Oceanic and Atmospheric Administration.

WISHTOYO
CHUMASH FOUNDATION
FIRST NATIONS ECOLOGICAL CONSERVATION ALLIANCE

The applicant failed to properly analyze impacts to cultural resources. The Project will allow the transport of crude oil through corroded pipelines along the Gaviota Coast. The rupture of the 901 pipeline caused an oil spill that directly oiled and caused significant damage to the historic Chumash Village, Qasil, which is located at Refugio State Beach. Qasil is an important trading location between Island Chumash peoples and the peoples of the mainland. It is also an important location for tomol launches. The 2015 Refugio spill caused by the rupture in pipeline 901 irreparably damaged many cultural resources and resources necessary for the continuation of Chumash lifeways along the southern California coast. An event like this cannot be allowed to happen again.

The size of the spill led to the formation of Tarballs that spread as far as LA County. Chemical analysis of tar balls found after the spill found that the oil from the ruptured 901 pipeline was present across the central coast from Santa Barbara County to LA County in a span of at least 100 miles[2]. The tarring of beaches from Santa Barbara to La County had impacts on cultural sites sacred to Chumash, Fernandeño Tatavium, and Tongva peoples. This project may impact the continuing ceremonial use, traditional tending and gathering, traditional fishing, and Chumash peoples' kinship with the land that this project threatens.

Need for Supplemental Environmental Review

In 2015, a rupture in line 901 caused over 100,000 gallons of crude oil to spill onto the coast and into the Pacific Ocean, near Refugio State Beach. In the investigations following the spill, it was found that line 901 has experienced extensive external corrosion. The thickness of the pipeline's wall where the rupture had occurred had corroded to 1/16th of an inch thick. The applicant is planning on commencing the transport of crude oil through this same pipeline that has undergone an additional 8 years of exposure and corrosion since the 2015 oil spill. Investigations also found that line 903 had experienced external corrosion. The transport of oil through these decrepit lines poses a significant and unavoidable risk to the surrounding environment, marine ecosystem, Chumash lifeways and cultural resources.

The EIR/EIS prepared in 1983 was conducted with the best available science and analysis at the time. However, this was done long before wide access to the internet, severely limiting the capability of the applicant to consider all impacts that the Project might have on the environment. Online software and mapping tools like iPac and the CNDDB database did not exist. Archeological records and anthropological sciences were not nearly as developed in 1983 as they are now. The environmental review conducted for the Project in 1983 was also done for the construction of a new pipeline that would transport crude oil. The pipeline that exists today is

[2] CBS Interactive. (2015, June 23). *Tar from central California oil spill washes up in L.A. Area*. CBS News. Retrieved February 27, 2023, from https://www.cbsnews.com/news/tar-from-central-california-oil-spill-washes-up-in-l-a-area/

Nall, Katie

From: Torrie Cutbirth <admin@campdesign805.com>
Sent: Saturday, April 1, 2023 6:21 PM
To: Nall, Katie; Villalobos, David
Subject: Submitting Public Comment for April 26 Planning Commission Hearing re: Exxon/Plains valve upgrade/pipeline operators' permit application
Attachments: L.A. bans new oil wells, phases out existing ones - Los Angeles Times.pdf; 8 reasons why we need to phase out the fossil fuel industry - Greenpeace USA.pdf; From Banks and Tanks to Cooperation and Caring Zine MG Compressed.pdf; Short Version of A GREEN NEW DEAL FOR CALIFORNIA'S CENTRAL COAST_draft (1) (1)-compressed.pdf; Idle oil wells are California's toxic multibillion-dollar problem - Los Angeles Times.pdf

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Planning Commissioners and Project Manager NallDavid Villalobos and Katie Nall,

I ask you to please read the entirety of my public comment ahead of the April 26 planning commission hearing re: Exxon/Plains valve upgrade/pipeline operators' permit application. Thank you.

My name is Torrie Cutbirth. I am a 29-year old SB native & local workforce employee. I went to Roosevelt Elementary, SB Jr. High and SB High. I am taking classes at SBCC's Environmental Horticulture department, and work in local environmental philanthropy.

I am submitting additional public comment today to urge you again to deny the Exxon/Plains valve upgrade/pipeline operators' permit application. At the very least conduct additional environmental review for the project under the California Environmental Quality Act.

This application is not just about the valves. You MUST look beyond the narrow specifics of this application, and acknowledge the larger impacts and implications of this project.

I grew up enjoying the beauty and nature of Santa Barbara - 8+ years of Jr. Lifeguards at east beach, volunteer clean-ups at Hendry's beach, hikes up Inspiration trail, day-trips up the beautiful Gaviota coastline…

I envy older community members who had "magical" "carefree" "hopeful" "abundant" childhoods. Told that the world was their oyster. Growing up, I was told that there was NO HOPE and NO FUTURE for me and my generation with climate change…Imagine kids growing up today, 15 years further into our climate situation…

I AM FURIOUS at City & County staff who continue to show commitment to PROFITS OVER PEOPLE by recommending approval of these fossil fuel projects.

I AM FURIOUS at older community members in positions of power and authority, who continue to choose PROFITS OVER OUR COMMUNITY/PEOPLE/ENVIRONMENT!

I have the privilege to work with environmentalists in our local nonprofit sector who work tirelessly year-round to protect the health and wellbeing of our environment and people. Allowing these projects to move forward continues to dismantle the work so many locals do towards making sure we have healthy soil to grow our food, clean water to drink and clean air to breath...

Local youth and community members are ALREADY suffering from climate impacts, from fires, floods, drought, biodiversity loss, topsoil loss/erosion, mudslides, heat, crop instability, and more…

The time is now to show a REAL commitment to our community and futures. IF YOU CONTINUE TO ALLOW BIG OIL IN OUR COMMUNITIES, YOU ARE SEALING OUR FATE.

You are telling your local neighbors, families, friends, coworkers, kids, that you DO NOT CARE ABOUT US! You are telling us that you care more about PROFITS THAN PEOPLE.

The City & County websites CLAIM their mission is to promote the health of our local economy, environment, and people. Approving this project is in DIRECT CONFLICT with the health of our economy, environment and people.

IF YOU APPROVE THIS PROJECT, you will be telling our community members, and especially our local youth, that you do not care about our health or wellbeing.

According to IPCC, WE ONLY HAVE SEVEN MORE YEARS to make bold changes in our economy and culture until the WORST climate impacts are INEVITABLE AND UNAVOIDABLE.

We MUST transition to a regenerative, local green economy. We DO NOT HAVE TIME to continue to fight fossil fuel industries. We need to be focusing efforts on BUILDING THE NEW, not fighting the old.

The project has massive and predictable environmental impacts including causing more oil spills, more death to wildlife, and exacerbating the climate crisis. Please use your position of power and authority to protect our local community and ecosystem.

Communities across the globe are transitioning to renewable energy, and regenerative economies. Our own community has a robust local green new deal outlined. Please work WITH the communities you claim to serve, and move us towards SOLUTIONS instead of MORE PROBLEMS.

I am attaching some resources on economic transition, a draft of our local green new deal, information, and bold commitments that nearby governments have made to their communities. PLEASE SUPPORT THIS WORK!

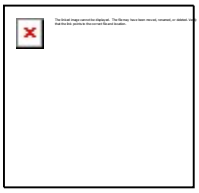
-
-
- **LA Times article “In historic move, Los Angeles bans new oil wells,**
- **phases out existing ones”**
-
    -
    -
    - The Los Angeles City Council voted Friday, December 2, 2022 to phase
    - out all oil drilling in L.A. and ban new wells, a historic move in a city that was built by a once-booming petroleum industry and whose residents have suffered with decades of environmental consequences as a result.
    -
-
-
- **Movement Generation’s Just Transition Zine**
-
    -
    -
    - Transition to Regenerative Economy from current Extractive Capitalist

- Economy
-
-
-
- **Central Coast Climate Justice Network Green New Deal**
-
  -
  -
  - In partnership with
  -
    -
    -
    - Community Environmental Council, Environmental Defense Center, McCune
    - Foundation, Bower Foundation, El Gato Channel Foundation, The Fund for Santa Barbara, City of Santa Barbara, County of Santa Barbara, MICOP, CAUSE, 350 Santa Barbara, Future Leaders of America, Santa Paula Latino Town Hall, Santa Ynez Band of Chumash Indians,
    - Sierra Club, The Sea League, Los Padres Forest Watch, Standing Up for Racial Justice Ventura.
    -
-
-
- **GreenPeace article "8 reasons why we need to phase out the fossil**
- **fuel industry"**
-
  -
  -
  - Fossil fuel corporations are profiting from the continued consumption
  - of coal, oil and gas, which are driving global warming to dangerous levels. A Greenpeace report illustrated the need for managed phase out of fossil fuel production as part of any comprehensive climate policy effort like a Green New Deal. The report shows
  - that without specific policies to constrain fossil fuel supply, then a significant fraction of emissions reductions achieved by policies to reduce demand for fossil fuels could be wiped out.[1]
  -
-
-
- **LA Times article "The toxic legacy of old oil wells: California's**
- **multibillion-dollar problem"**
-
  -
  -
  - Across much of California, fossil fuel companies are leaving thousands
  - of oil and gas wells unplugged and idle, potentially threatening the health of people living nearby and handing taxpayers a multibillion-dollar bill for the environmental cleanup.
  -

In Community,

Torrie Cutbirth (she/her/hers)
Director of Grants & Programs
El Gato Channel Foundation & Adrian Family Foundation

735 State Street, Suite 511 Santa Barbara, CA 93101
Living and working on unceded Chumash lands and waters
805-453-6351 (c)



far different and has undergone significant changes from corrosion and decades of wear-and-tear on the pipeline. A Supplemental EIR must be prepared to better analyze the impacts of this Project, that would effectively restart the transport of crude oil through old, corroded pipelines.

A total of 22 federally endangered species that exist in the Project's impact area were listed since the 1983 EIR/EIS was prepared. These include spreading navarettia, purple amole, Pismo clarkia, marsh sandwort, Gambel's watercress, beach layia, California jewelflower, chorro creek bog thistle, Contra Costa goldfields, monarch butterfly (candidate), vernal pool fairy shrimp, giant kangaroo rat, California Condor (experimental population released in 1996), Marbled Murrelet, Southwestern Willow Flycatcher, Western Yellow-billed Cuckoo, Western Snowy Plover, green sea turtle, arroyo southwestern toad, California red-legged frog, California tiger salamander (central California DPS), California tiger salamander (Santa Barbara County DPS), and tidewater goby. Because the EIR/EIS was prepared before any of these species were listed, the environmental review conducted for the construction of the 901 and 903 pipelines did not include analyses on the impacts to these 22 species. Further, the 1983 EIR/EIS did not analyze impacts to the Light-footed Clapper Rail (now the Light-footed Ridgeway's Rail). The 2015 oil spill caused by the rupture 901 line resulted in the oiling and tarring of the rail's sensitive salt marsh habitat in Santa Barbara and Ventura Counties. A supplemental EIR must be prepared for these species listed and an updated analysis must include impacts to the Light-footed Ridgeway's Rail and mitigation measures for these impacts.

The operation of these decrepit pipelines has already caused immense impacts to cultural resources and Chumash lifeways. The 2015 oil spill harmed cultural resources of the Chumash Village of Qasil and had detrimental impacts to the coastal fisheries of Santa Barbara and Ventura. Chumash Peoples were not able to take part in traditional fishing practices, launch tomols from sacred sites, or participate in ceremony at the village site for years after the spill. The use of the categorical and statutory exemptions discussed in this letter completely avoid the necessary analysis of impacts to these cultural resources and the mitigation measures necessary for their protection.

The 901 and 903 pipelines, as well as the applicant, have a tumultuous past and cannot be trusted. As discussed previously in this letter, the 901 pipeline had experienced substantial external corrosion and metal loss leading up to the 2015 oil spill. Corrosion has also been observed during inspections of the 903 pipeline. The company responsible for the construction and maintenance of these pipelines, Plains Pipeline, has a long history of environmental and safety violations and oil spills from their pipelines. Since 1991, there have been at least 4 oil spills from their pipeline systems in Santa Barbara County. Their pipelines have also caused a multitude of oil spills in Kansas, Texas, Louisiana, Oklahoma, Canada, Los Angeles County, and Bakersfield. It is therefore reasonable to assume that the transport of crude oil through pipelines 901 and 903, even with CHK and MOV valves installed, may cause future oil spills along the Gaviota Coast and along the 72.6 miles of corroded pipeline in Santa Barbara County.

WISHTOYO
CHUMASH FOUNDATION
FIRST NATIONS ECOLOGICAL CONSERVATION ALLIANCE

A full assessment of the condition of the entire length of both the 901 and 903 pipelines must be conducted, and a Supplemental EIR should be prepared to analyze the impacts of the project.

Plains Pipeline had originally planned on reconstructing the 901 and 903 lines with the “L.P. Lines 901 and 903 Replacement Project”, but they paused the development and permitting process in early 2022 and have not commenced the permitting process. If oil is to be transported by pipeline through Santa Barbara County, these lines must be replaced with new lines and the company responsible for them agrees. The Valve Upgrade Project is just a cheap and dangerous alternative to get oil moving through this pipeline again. If this Project is allowed to move forward without the proper environmental review conducted, this Project will have long lasting, detrimental impacts to cultural resources, the environment, and southern California coastal ecosystems.

We urge the Santa Barbara Planning Commission to deny the project outright and demand a thorough environmental review as required by CEQA. Thank you for your consideration.

Mati Waiya
Executive Director
Wishtoyo Chumash Foundation

Tevin Schmitt
Watershed Scientist
Wishtoyo Chumash Foundation

Nall, Katie

From: Ybarra, Jacquelynn
Sent: Friday, April 21, 2023 4:21 PM
To: Nall, Katie
Subject: FW: Pipeline

I think this is another for the valve project.

-----Original Message-----
From: Amy Wolfslau <awolfslau@gmail.com>
Sent: Friday, April 21, 2023 3:41 PM
To: Ybarra, Jacquelynn <jybarra@countyofsb.org>
Subject: Pipeline

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Please do not approve the pipeline project. It will be a total disaster for our area. We've had enough oil spills. Our environment is suffering enough as it is. Please please please do not approve it.

Thank you very much, sincerely, Amy Wolfslau. Buellton, CA 93427.

Sent from my iPhone

Nall, Katie

From: ruby754@umail.ucsb.edu
Sent: Thursday, March 16, 2023 5:24 PM
To: Villalobos, David; Nall, Katie
Subject: Support the Appeal of the Plains Valve Upgrade Proposal

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

To whom it may concern-
As a member of the UCSB Environmental Affairs Board, I urge the Planning Commission to vote in Support of the Appeal of the Plains Valve Upgrade Proposal. Reasons for this are as follows:

- Failure of the original EIR to consider new information, new consequences of construction, and the effects of the 2015 Refugio Oil Spill should warrant an updated and significantly more credible EIR than the original written in 1985.
- The proposal fails to comply with CEQA in numerous ways, including exceeding the maximum pipeline length exemption requirement and potentially constructing illegal infrastructure obstructing the scenic highway.
- The addendum relies on outdated baseline impacts and deliberately fails to address the project's involvement in facilitating a new oil extraction project.
- The re-opening of current non-operational lines threatens to result in both immediate hazards and long-term environmental impacts, such as air and water quality, GHGs, potential oil spills, biological impacts, and loss of biodiversity.
- The proposal fails to address the cumulative impacts associated with both other projects in the same area and its own incremental effects.
- The proposal deceptively avoids an analysis of the consequences associated with the project for the foreseeable future, despite CEQA (California Environmental Quality Act) requirements.

Thank you for your time and consideration,
Ruby Sirota-Foster

Nall, Katie

From: Ybarra, Jacquelynn
Sent: Tuesday, April 25, 2023 8:28 AM
To: Nall, Katie; Villalobos, David
Subject: FW: Exxon drilling

-----Original Message-----
From: Jean Zeibak <zeibak@icloud.com>
Sent: Tuesday, April 25, 2023 4:23 AM
To: Ybarra, Jacquelynn <jybarra@countyofsb.org>
Subject: Exxon drilling

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Hello
I do not want Exxon to fix valves , corroded pipes and start drilling again in the Santa Barbara channel. This destroys everything around it.

Sent from my iPhone

Nall, Katie

From: Santa Lucia Sierra Club <sierraclub8@gmail.com>
Sent: Monday, April 24, 2023 4:36 PM
To: Villalobos, David; Nall, Katie
Subject: Plains Line 901-903 Valve Upgrade Project

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Planning Commissioners and Project Manager Nall,

We write to you from San Luis Obispo County, the location of a large segment of the "903" in the Plains Line 901-903 Valve Upgrade Project.

As line 191 continues to connect to line 193, a restart of the former would bring the latter ever closer to its own "Refugio moment" adjacent to the Twitchell Reservoir or anywhere else along the length of the Cuyama River watershed—into which, three years ago, an Exxon tanker truck spilled 4,500 gallons of oil. If restarted, the probability of line 193 joining line 191 in catastrophic failure will increase with each passing year.

And, of course, the re-start of a corroded oil pipeline to facilitate the re-start of three 1980s vintage offshore drilling rigs would be counter to all the climate and energy transition goals of the state of California.

Thus we fully share in the alarm of Santa Barbara's citizens that the impacts of the Refugio Oil Spill were not anticipated in the original environmental review, and remain unaccounted for. The failure of the environmental analysis to consider all the impacts of both valve installation and transporting oil through the existing lines constitutes grounds to deny the project, or require a supplemental EIR.

Thank you for your attention to this issue,

Andrew Christie, Director
Sierra Club Santa Lucia Chapter
P.O. Box 15755
San Luis Obispo, CA 93406
(805) 543-8717

Nall, Katie

From: Ybarra, Jacquelynn
Sent: Monday, April 24, 2023 9:12 AM
To: Nall, Katie; Villalobos, David
Subject: FW: Plains pipeline renewal effort

-----Original Message-----
From: BILL WOODBRIDGE <bill.woodbridge@verizon.net>
Sent: Sunday, April 23, 2023 12:16 PM
To: Ybarra, Jacquelynn <jybarra@countyofsb.org>
Subject: Plains pipeline renewal effort

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Santa Barbara Planning Commission;

PLEASE DO NOT approve the Exxon/Plains/Sable new valves and resumption of use of their badly deteriorated pipeline. This is a disaster waiting to happen. There are photos from 8 years ago reveling how decrepit and eroded the pipe was then. Imagine how much worse it is 8 years later!!!!!! What is the point of putting new values on a pipeline that is disintegrating and will not be able to function? The only reason Exxon wants to transfer "LOAN" the pipeline to Sable is so that Exxon will be absolved of any cleanup liabilities and Sable willl just declare bankruptcy to avoid liabilities just as they have in the past. Sable has lied to its wall street investors about their supposed "progress" and resumption of the pipelines use. They are lying to you about what will occur, and what they will do to prevent problems with the line, which will be nothing.

Thank you,

Bill Woodbridge
Goleta

NATIONAL COAST TRAIL ASSOCIATION

Keeping The Coast For Everyone!

through advocacy, education and action
for trails, public access and coastal preservation

4/26/23

April 25th, 2023

County of Santa Barbara Planning Commission
123 East Anapamu Street, Santa Barbara, CA 93101

RE: Gaviota Coast Conservancy's Appeal, Plains Valve Upgrade Project

Chair Parke, Vice-Chair Martinez, and Members of the Commission:

California Coastal Trail . . .

The Gaviota coast is a special place . . . and I know every inch of it . . . because in 1996, I hiked the entire length of the 1200-mile California Coastal Trail.

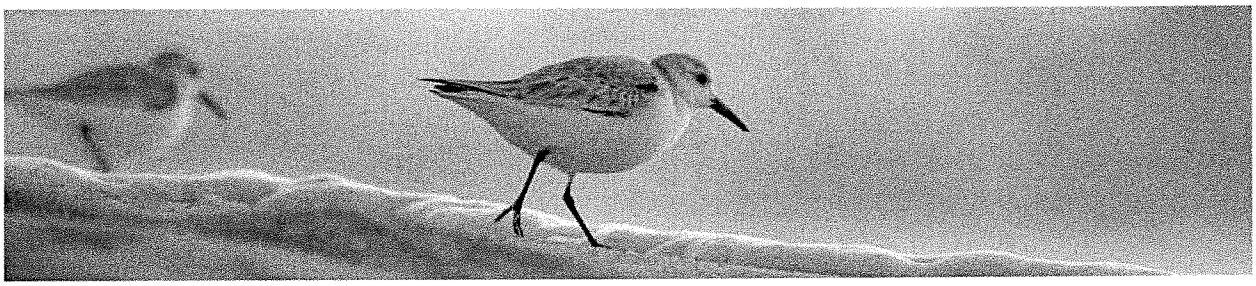
But my connection is also professional as the executive director of the National Coast Trail Association. Our vision includes the California Coastal Trail, our mission, simply stated, "Keeping the Coast for Everyone," through advocacy, education and action for public access, trails and coastal preservation.

Our organization recognized the value of the Gaviota coast, as did the National Park Service, when they released their feasibility study in April 2003, and our submitted comments supported it becoming a unit of that agency to enhance its protection.

We especially see the value a protected land and seascape within the California Coastal Trail corridor has for both people and wildlife, for both economic and quality of life benefits, to businesses and residents. Based on this, and the fact that your beautiful coast not only has local but regional, national, and global significance, we are providing our input.

One question to consider is simply this, "Which kind of experience would you want tourists and residents to have when visiting the beach . . . when walking along it, on the California Coastal Trail, on Refugio Beach? Clean sands, fresh air, healthy wildlife . . . or oil in the sand, perhaps an unnatural odor and impacted wildlife?

Ecology and Conservation . . . Past, Present, Future



Given everything already stated, it's obvious that protection of your coastline is important. Therefore, a completely new environmental impact report (EIR), especially in light of the 2015 Refugio Oil Spill, would seen appropriate, reasonable and acting with due care. Indeed, given the original EIR was done close to forty years ago, and the apparent fact that the science of conservation and ecology has not only grown, but also has evolved significantly since then, it is absolutely necessary that a new EIR be developed.

Consider the beginning and end of the conclusion section of research published by the *Ecological Society of America* in April 2021, ***Trends in ecology and conservation over eight decades*** . . .

- *"Our analyses allow ecologists and conservationists to reflect on the past, present, and future of their field. Within eight decades, the field has evolved from focusing on natural history and observational field studies to a multidisciplinary field more applied and quantitative in scope. . . . As we see it, elements of ecology today are almost unrecognizable from the field 90 years ago; only time will tell if this rate of evolution will continue, leaving ecologists in 2100 with a similar sentiment."***

Point is, the original 1985 EIR, almost four decades ago, is part of those eight decades of change, and when a field of science changes so significantly, an entirely new EIR also has the potential to do the same.

Democracy . . . Stronger with Public Input

Further, such a report could then invite further input , both public and otherwise, and so in accordance with the value of democracy in our society, especially participatory democracy, and with such input, the Commission could eventually make a more informed . . . and publicly supported decision.

Finally, therefore, **we support option 3, directing staff to prepare a Supplemental EIR**, and consistent with our comments, **one encompassing the science of today**, and not forty years ago. However, **failing that,** and again, consistent with the need for scientifically updated EIR, **then option 4, denying the project because the approval findings made in 1985 would conceivably no longer apply,** not only in terms of outdated science, but also relative to the changed social and economic landscape plus the need to address various issues, such as potential threats to biodiversity loss and of climate change.

With Respect and Gratitude,

Al LePage

Al LePage, Executive Director, *National Coast Trail Association*
M. Ed. Science, B.S. Biology, Individual Member, *Society for Conservation Biology*

** Anderson SC, Elsen PR, Hughes BB, et al. (2021) Trends in ecology and conservation over eight decades. Frontiers in Ecology and the Environment 19: 274–282.

LIVE OAK UNITARIAN UNIVERSALIST
CONGREGATION of GOLETA
Social Justice Ministry
January 30, 2023

Planning Commission
Santa Barbara County
123 E. Anapamu Street
Santa Barbara, CA 93101

Dear Planning Commission,

The **Social Justice Ministry** of the *Live Oak Unitarian Universalist Congregation* of Goleta, CA opposes any and all applications to restart oil drilling in the channel. The Plains Pipeline request to install valves on a pipeline that currently carries no oil (following the terrible spill at Refugio) is a blatant attempt to make this pipeline operational again. We fully support the three appeals under consideration, and we stand with the Gaviota Coast Conservancy in its efforts to preserve our coast.

PLEASE do more to protect our planet from the worst consequences of climate change!
Please stop the Plains Pipeline expansion plan.

Actions we take – or fail to take – today will determine whether our grandchildren inherit a habitable planet. We would appreciate a response to understand how you will be moving forward.

Most Respectfully,
Carolyn Chaney, on behalf of
The **Social Justice Ministry** of the *Live Oak Unitarian Universalist Congregation* of Goleta, CA
349 Moreton Bay Lane #1, Goleta, CA 93117

DOWNEYBRAND

Christian L. Marsh
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415.848.4830 Direct
415.848.4801 Fax

Downey Brand LLP
455 Market Street, Suite 1500
San Francisco, CA 94105
415.848.4800 Main
downeybrand.com

April 23, 2023

VIA ELECTRONIC MAIL

Santa Barbara County Planning Commission
c/o David Villalobos,
Planning Commission Secretary
123 East Anapamu Street
Santa Barbara, California 93101
dvillalo@co.santa-barbara.ca.us

Re: Pacific Pipeline Company Response to Appeal of the Zoning Administrator's August 22, 2022 Approval of a Development Plan/Conditional Use Permit Amendment and Coastal Development Permit Pertaining to Line 901-903 Upgrade Project (21 AMD-00000-00009 & 22CDP-00000-00048)

Honorable Chair and Members of the Planning Commission:

On behalf of the Pacific Pipeline Company ("**PPC**"), we provide the following supplemental responses to the appeals and Planning Commission's tentative action on March 1, 2023 regarding the Development Plan/Conditional Use Permit Amendments and Coastal Development Permit for the Line 901-903 Upgrade Project referenced above. This response addresses: (1) the four options in the April 26, 2023 Staff Memorandum requested by the Planning Commission; (2) concerns raised by the Planning Commission at the March 1, 2023 hearing; and (3) additional issues presented in the administrative appeals.

In the administrative proceedings below, the Zoning Administrator approved discrete amendments to the Final Development Plan and Conditional Use Permit for Lines 901 and 903 ("**FDP/CUP**"), authorizing the installation of sixteen (16) safety valves within Santa Barbara County. As outlined in more detail below, the safety valves are proposed to satisfy the requirements of Assembly Bill 864 ("**AB 864**") and its implementing regulations, a state law enacted to *improve* pipeline safety and *reduce* the risks associated with potential releases of oil along pipelines in the coastal areas of California.[1] Plans for installation of PPC's safety valves have already been reviewed and approved by the California Office of the State Fire Marshal ("**OSFM**"), the State agency with sole and exclusive authority and the expertise for administering pipeline safety and compliance with AB 864 statewide. And approvals for installation of additional safety valves on other segments of these pipelines have already been issued by OSFM, Kern County, and San Luis Obispo County.

[1] Gov. Code, § 51013.1; 19 Cal. Code Regs., §§ 2100-2200.

These lines are designated as "active" by the Pipeline and Hazardous Materials Safety Administration ("**PHMSA**") and OSFM, and remain subject to state and federal pipeline inspection, maintenance, and safety regulations administered by OSFM, including the requirements of AB 864. Accordingly, PPC respectfully requests that the Planning Commission reconsider its position, support the staff recommendation, deny the appeals, and approve the discrete amendments to the existing FDP/CUP to accommodate the installation of the safety valves.

I. STAFF MEMORANDUM OPTIONS

The April 26, 2023 Staff Memorandum provides four alternative options for the Planning Commission to consider. Each is briefly addressed in turn below, but selecting anything other than the first option, approving the Project, would amount to an abuse of discretion. To the extent that the Planning Commission disagrees, it should deny the Project.

1) Approve the Project Utilizing Existing Addendum and Exemptions:

Planning Commission staff undertook a rigorous analysis of the safety valves under CEQA and its Guidelines, and determined that the Planning Commission should deny the appeals and approve the proposed project utilizing the existing Addendum and Exemptions laid out in the March 1, 2023 Staff Memorandum. As further explained below, that conclusion is the only correct one under the law and record before the Commission—the concerns raised by certain Commissioners, appellants, and public comments are not focused on the proposed Project at hand. (*See* Sections II-III, below.)[2] PPC's application seeks only the installation of safety valves to comply with AB 864 and its regulations. A vote against valves is a vote against having the best available technology to significantly minimize the impacts of releases in the coastal zone of Santa Barbara County.

2) Direct Staff to Supplement the Addendum:

The second option proposed by staff would involve supplementing the current Addendum to include additional information specified by the Commission. Such areas could include "[s]upplementary information for specific environmental issue areas (e.g., visual, biological, risk/hazards, and/or others), including preparation of a new risk analysis."

However, in circumstances like this one where an Addendum to an Environmental Impact Report ("**EIR**") is appropriate, that Addendum is supposed to be directed at the potential environmental impacts, if any, of minor technical additions to the originally approved project. (*See* Section II.1.) Of the Planning Commissioners who expressed concerns about the safety valve project at the hearing, not one appeared concerned about the limited impacts of adding valves that either (1) were completely underground, or (2) involved only the addition of minor above-ground appurtenances in carefully-selected locations. Nor could they, as each valve location was

[2] It is noteworthy that appellants have not raised any specific issues with regard to several of the individual safety valves, including those to be located outside the coastal zone and the Gaviota Coast Plan.

identified with the intent of avoiding potential environmental impacts during construction and operation, avoiding cultural, biological, and other sensitive resources.

The staff's suggestion of a "risk analysis [that] could compare the risk profiles of operation of the originally approved pipeline project to the operation of the existing pipeline with the proposed valves installed" is similarly flawed. No one, not even appellants, denies that adding safety valves to the pipelines would lower their risk profile—that is their purpose and the impetus behind AB 864.

In sum, a supplement to the Addendum would not address the concerns expressed by Commissioners at the March 1 hearing (Section II). Appellants also oppose this option. (See April 21, 2023 Appellants Submission.) The Planning Commission should not proceed with Option 2.

3) <u>Direct Staff to Prepare Supplemental EIR</u>:

As the Staff Memorandum outlines, this option would require the County to conjure a specific rationale for triggering supplemental CEQA review, which must satisfy the criteria set forth in Public Resources Code section 21166 and CEQA Guidelines sections 15162 and 15163. For the reasons outlined below (*see* Section II.5), the County does not have the evidence to support imposing supplemental review on either the project at issue (*i.e.*, valve installations), or the pipelines in their entirety, nor does the County have discretion to ignore the several statutory and categorical exemptions that apply.

At the urging of appellants and the Planning Commission, County staff request guidance on the baseline for supplemental CEQA review. But it is well settled under the law that the baseline under Section 21166 of the Public Resources Code presumes full build-out and operation of Lines 901 and 903; the age of the EIR is irrelevant. (*See* Section II.1.-2.) Consequently, the Planning Commission does not have discretion to disregard the original EIR and simply choose an alternative baseline. As further substantiated below (Section II.2), PPC respectfully asks the Planning Commission decline Option 3.

4) <u>Deny the Project</u>:

To deny the project, the Planning Commission would be required to make specific findings contrary to the appellate record and find that the Addendum and none of the statutory or categorical exemptions apply to the addition of sixteen safety valves (several of which are not subject to the grounds raised in the appeal). As detailed in the Staff Memorandum for the March 1, 2023 meeting and below (Section III.2-5), appellants have not established that the project before the Planning Commission does not qualify for an Addendum or any of the statutory or categorical exemptions presented, even though all that is needed is for one exemption to apply. Consequently, denial of the project would amount to an abuse of discretion.

II. PLANNING COMMISSION QUESTIONS AND CONCERNS

During deliberations on March 1, Planning Commissioners expressed concern and asked questions in several areas related to the appeals. Each issue is addressed in turn, and none would dictate a result other than denying the appeals and approving the safety valve project. Notably, none of the Planning Commission's concerns address the statutory and categorical exemptions, which by definition exempt the safety valves from further CEQA review. Thus, even if the Planning Commission were to find that the Addendum was not sufficient—a finding belied by the administrative record—the safety valves still qualify for any one of the four exemptions set forth in the March 1, 2023 Staff Memorandum and accompanying Notice of Exemption (Appendix C2). As noted below, appellants must demonstrate that none of the exemptions apply—a burden they have not met. (*See* Section III.2.-5.)

1) Age of the EIR:

The appellants and Planning Commission suggest that the prior EIR cannot serve as a basis for consideration of the AB 864 safety valves, claiming that the EIR is old and that certain regulatory designations or other hypothetical changes in impacts since the original EIR constitute "significant new information" or "changed circumstances." This is incorrect as there is no expiration date in an EIR. Indeed, the County recently relied on a 23-year-old EIR for the Orcutt Community Plan in adopting an addendum and approving the Orcutt Gateway Commercial Center.[3] In that case, petitioners argued, without any citation to authority, that a 1997 EIR for the Orcutt Community Plan was "obsolete." In response, Santa Barbara County argued that:

> "CEQA does not impose a time-limit on the validity of an EIR. Rather, an addendum to a prior EIR may be relied upon where many years have elapsed since the certification of the original EIR."[4]

The Second Appellate District agreed, confirming that there is no legal authority for the claim that an EIR becomes stale simply due to the passage of time. (**Exhibit 1**.)

In line with these recent legal arguments presented by Santa Barbara County, the Brownstein law firm (representing one of the appellants in this appeal) emphasized to the California Supreme Court that:

> "The age of the original environmental document is *irrelevant* in the absence of subsequent events or circumstances triggering the need for additional environmental review. See *Snarled Traffic Obstructs Progress v. City & County of San Francisco* (1999) 74 Cal.App.4th 793. Though project build out may not occur

[3] See *Residents for Orcutt Sensible Growth v. County of Santa Barbara* (Unpublished) 2022 WL 521520. (**Exhibit 1**.)

[4] Santa Barbara County's Respondent's Brief, *Residents for Orcutt Sensible Growth v. County of Santa Barbara* (Nov. 15, 2021) 2021 WL 5744173 (Nov. 21, 2021), p. 30 (**Exhibit 2**), citing *Mani Bros. Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1399 (upholding agency approval of 2005 project based on 1989 EIR); *Latinos Unidos de Napa v. City of Napa* (2013) 221 Ca1.App.4th 192, 208 (upholding agency approval of 2009 project based on 1998 EIR).

> until many years after EIR certification, . . . the original environmental document is presumed adequate to satisfy the requirements of CEQA." (**Exhibit 3**.)

Here, the already-existing EIR *addressed* the risks and potential impacts that appellants and certain Commissioners claim constitute "new information" or "changed circumstances" under CEQA's subsequent review provisions. This includes, among other things, possible releases (volume, frequency, location, risk, etc.) and potential impacts on the surrounding sensitive environments, pipeline corrosion (and cathodic protection), and even the installation and operation of valves.[5] Moreover, new legislation or other regulatory developments such as AB 864 are never a basis for subsequent review, as new laws are not themselves evidence that the proposed action will result in any new or substantially more severe significant impacts.[6]

In short, no matter the passage of time, the safety valves are proposed to be added to an "existing facility" already addressed in a prior wholly-valid EIR. With that in mind, the only appropriate environmental review is an Addendum, as proposed here, to assess the *incremental effects* arising from minor technical changes to the originally approved project—here, installation of additional safety valves.[7] The proposed safety valves will have no significant adverse impact related to accidental releases, and no perceptible impact on views from Highway 101 or biological and cultural resources. Indeed, as aptly noted in the March 1, 2023 Staff Memorandum, installation of the additional safety valves in accordance with the approved AB 864 plan is expected to have an overall "beneficial effect" by reducing potential release volumes.

2) <u>Environmental Baseline</u>:

Reciting CEQA Guideline provisions and case law interpreting the environmental baseline as it applies to an EIR prepared for an entirely new project or a project that has never undergone full CEQA review, appellants state incorrectly that the County must assume a more recent, "non-operational" baseline. As existing facilities previously reviewed under CEQA, the baseline for modification of a previously-approved project must reflect the conditions analyzed in the original

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[5] See, e.g., Draft EIR at 2.2.1 [Project Components]; 2.2.2 [Pipeline Construction]; 2.2.4 [Operation/Maintenance]; 3.2.1, 4.2.1 [Air Quality]; 4.2.14 [System Safety and Reliability]; 4.2.15 [Oil Spill Potential and Effects].

[6] *Fort Mojave Indian Tribe v. Cal. Dept. of Health Services* (1995) 38 Cal.App.4th 1574, 1603-1605 (federal designation of project site as "critical habitat" for the desert tortoise did not trigger the need for supplemental CEQA review as the prior EIR had already addressed the physical effects of the project on tortoise habitat).

[7] *Committee for a Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 864 (EIR not required in connection with restoration of waste discharge levels for an existing municipal sewage treatment facility to levels already addressed in prior EIR); *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168-178 (supplemental EIR not required where change in project—size and elevation of flood-control berm—did not result in new or substantially greater impacts).

EIR. And the Planning Commission does not have discretion to disregard that prior EIR and substitute the environmental baseline.[8]

Where an existing facility has already undergone full CEQA review (as here), the environmental baseline for measuring the project's impacts pursuant to CEQA's subsequent review provisions is adjusted and "the originally approved project is *assumed to exist*."[9] In this manner, "[t]he project impacts as reviewed in [a] prior EIR [are] properly treated *as part of the environmental baseline* in a subsequent or supplemental EIR."[10] And where, as here, changes are proposed to an existing facility that has already undergone comprehensive environmental review (e.g., the addition of safety valves to an existing pipeline), the lead agency is required to evaluate only the *incremental impact* arising from the change (and not construction or operations already evaluated in the original EIR).[11]

The Brownstein law firm (representing appellants in this appeal), when on the other side of this issue, presented this very position to the California Supreme Court. In Brownstein's own words:

> "Public Resources Code section 21166 *expressly prohibits subsequent environmental review* for further discretionary approvals unless the specified conditions are met. Pub. Resources Code § 21166. . . . Under section 21166, the baseline *includes the project as previously approved* even if it has not been constructed. Remy et al., *Guide to the California Environmental Quality Act* (11th ed. 2007) p. 206. . . . Absent a successful legal challenge within the limitations period, a certified EIR 'shall be conclusively presumed to comply with the provisions of [CEQA] for purposes of its use by responsible agencies, unless the provisions of Section 21166 are applicable.' Pub. Resources Code § 21167.2. 'This presumption acts to *preclude* 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*.' *Laurel Heights II*, 6 Cal.4th at 1130; *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 178. . . ." (**Exhibit 3**.)

Appellants also are not correct in describing the pipelines as "non-operational." The pipelines are actively maintained in compliance with local, state, and federal requirements. For example, multiple federal and state agency audits of the lines have been conducted from 2018 to date; most

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[8] See Pub. Resources Code, § 21166; Guidelines, § 15162(a) (When an EIR has already been prepared and certified for a project, "no subsequent EIR shall be prepared. . . .").

[9] Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (CEB 2022), § 12.23 (emphasis added); *SJJC Aviation Services, LLC v. City of San Jose* (Unpublished) 2017 WL 2269550 (**Exhibit 4**); see also *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2017) 48 Cal.4th 310, 326 (distinguishing the operational baseline at issue in that case from the "limited CEQA review" where the previously analyzed project had already undergone CEQA review).

[10] Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (CEB 2022), § 19.54 (emphasis added), citing *Sierra Club v City of Orange* (2008) 163 Cal.App.4th 523, 542. (**Exhibit 5**.)

[11] See *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168-178 (supplemental EIR not required where change in project—size and elevation of flood-control berm—did not result in new or substantially greater impacts).

recently with an audit by OSFM in April 2023. Aerial surveillance of the pipeline's right-of-way has continued to be conducted every one to three weeks, and at least 26 times each year over the past decade. Damage prevention activities including one-call response and field oversight of third-party activity conducted in close proximity to the pipeline have occurred from 2015 to date. Likewise, ongoing inspection of the lines has taken place from 2015 to present, including periodic in-line-inspection tool runs, annual cathodic protection surveys, and various field investigations. Routine checks of required systems and appropriate maintenance have occurred, as needed, throughout the relevant time period. The lines are currently (and have been) maintaining pressure and are actively monitored. Finally, Emergency Response Exercises conducted under the purview and attendance of OSFM, the Office of Spill Prevention and Response, PHMSA, the U.S. Environmental Protection Agency, and the County were held, most recently in February 2023 by PPC.

Even if the pipelines have been "shut down," as appellants erroneously assert, such a shutdown of an existing facility does not alter the facility's baseline.[12] Thus, contrary to appellants' assertion, the County does not have discretion to disregard the original EIR and apply a "new" or "updated" baseline.[13] And the only issue before the County is the approval of the discrete amendments to the FDP/CUP to facilitate installation of additional safety valves on the existing lines in compliance with State Law (OSFM's AB 864 regulations).[14]

The Zoning Administrator and County staff appropriately evaluated the incremental impacts associated with adding safety valves to an existing pipeline facility. Installation of the additional safety valves in accordance with the approved AB 864 implementation plan is expected to have an overall *beneficial effect* by reducing potential release volumes substantially. Appellants

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[12] *Association of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708, 723, 728 (despite years of suspended or severely depressed operation, the court upheld baseline year of 2007, almost seven years prior to commencement of environmental review in 2013); *North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94, 103-106 (upheld historical occupancy rates at retail center as baseline even though redevelopment area was completely vacant at the time the agency commenced environmental review); *Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549, 557–563 (existing marine terminal for transport of crude oil constituted baseline for lease authorizing future operations).

[13] Appellants reference language in the "existing facilities" exemption (CEQA Guidelines, § 15301) to suggest that the pipelines are "not being used" and thus cannot rely on an historical baseline. As a preliminary matter, it is incorrect to claim that the pipelines, which are active under regulatory standards, are not in use. And appellants neglect to recite the key language of Guideline section 15301, which states that the exemption applies to existing facilities "involving negligible or no expansion of existing *or former use*." (*Id*., § 15301 (emphasis added).) Installation of ancillary equipment (safety valves) on an existing facility does not necessitate an updated baseline. Appellants also point to certain language in the County's April 2022 notice of preparation ("**NOP**") for the Plains Pipeline Replacement as justification for a "nonoperational baseline" here. But that ignores the fact that the replacement project involves the construction of an entirely new pipeline, necessitating its own complete environmental review. That NOP therefore cannot inform the appropriate baseline for a project involving minor alterations—the addition of safety equipment—to an existing facility.

[14] It is telling that that the prior agencies to review the safety valves (OSFM and the Counties of Kern and San Luis Obispo) did not conjure a different baseline or order further environmental review.

provide no evidence that by approving the installation of additional safety valves, the County is causing a new or substantially more severe impact than those impacts already addressed in the original EIR.[15] Indeed, the current EIR addressed environmental impacts associated with installation of the entire pipeline, installation and operation of existing safety valves, and accidental releases of oil from the pipeline. As noted in the County's March 1, 2023 Staff Memorandum, the safety valves are intended to *improve* the safety of oil pipelines in coastal areas by requiring the use of best available technology in compliance with AB 864 to reduce potential environmental impacts from an accidental release.

3) <u>Vested Right to Restart</u>:

Although restart of the pipeline is not in front of the Planning Commission,[16] 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.[17] The FDP/CUP, authorizing construction, maintenance, and operation of the pipeline system, remain valid and effective, and ministerial transfer of the FDP/CUP to PPC is pending in accordance with County Ordinance Section 25B. 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 attached FDP/CUP.[18] In addition, the County "will not require any permit to construct or operate [the pipeline] except as specifically set forth in the Agreement." Thus, the settlement agreement confirms the vested right of the pipeline owner to operate the pipelines without further approval from the County, with no expiration date. Furthermore, the Consent Decree entered between PPC's predecessor, Plains Pipeline LP ("**Plains**"), and several state and federal agencies regarding the 2015 release from Line 901 also acknowledges the vested right of Plains or any successor owner of the pipelines to restart under the authority of OSFM.[19] And PPC's vested right to restart the pipeline is consistent with well-settled legal authorities.[20]

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[15] Compare *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788 (city's eighth addendum to Airport Master Plan did not present any "new" or "substantially different" impacts than those described in the original EIR) (**Exhibit 6**); *Residents for Orcutt Sensible Growth v. County of Santa Barbara* (Unpublished) 2022 WL 521520 (appellants failed to show how the Orcutt Gateway Commercial Center Project impacts were so different from, or more severe than, the impacts identified in the 23-year-old EIR for the Orcutt Community Plan) (**Exhibit 1**).

[16] Restart of the existing lines, if and when that occurs, is governed solely by the OSFM and subject to the 2020 Consent Decree.

[17] County Staff's March 1, 2023 Permit Appeal Staff Memorandum correctly observes that "under the County permit, the operator maintains the ability to restart Lines 901 & 903 at any time without discretionary approval by a County decision maker." (See County Staff Memorandum Response at Issue #3; *Id.* at Issue #7 (same).)

[18] Settlement Agreement Between Celeron Pipeline Company and the County of Santa Barbara (Feb. 8, 1988), 2.2 (**Exhibit 7**).

[19] *See* **Exhibit 8** (Mar. 13, 2020 Consent Decree) at Appendix D ¶ 1b ("If Plains seeks to restart Line 901, Plains shall develop and submit . . . a written Restart Plan for Line 901 to the OSFM for review and approval."); *id.* at ¶ 1f (same for Line 903).

[20] See *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 551-552 (a developer's right to complete a project vests when "a valid building permit, or its functional equivalent,

The County has also acknowledged that Exxon Mobil Corporation ("**ExxonMobil**") has a vested right to restart production and operations of its Santa Ynez Unit ("**SYU**") facilities.[21] Because oil produced from these facilities is transported via the pipeline, this acknowledgement assumes a vested right for the owner of the pipelines to also restart.[22] In fact, the County has stated on several occasions transport oil through pipelines is preferred to other methods. This sentiment is reflected in the County's Coastal Land Use Plan, Land Use Development Code ("**LUDC**"), and Coastal Zoning Ordinance ("**CZO**").[23]

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has been issued and the developer has performed substantial work and incurred substantial liabilities in good faith reliance on the permit") [internal quotations and citations omitted] (**Exhibit 9**); *Pardee Construction Co. v. California Coastal Com.* (1979) 95 Cal.App.3d 471 (vested right did not expire when building permit expired); *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785. Here, because PPC (or its predecessor) 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.

[21] County staff issued a Staff Memorandum related to a separate application for trucking oil filed by ExxonMobil, in which it found that ExxonMobil could restart the SYU facilities at any time without approval from County decision-makers. *See* Staff Memorandum (Sept. 28, 2021) at 7, *available at*: https://cosantabarbara.app.box.com/s/qmm12rx22rm35yur7ywzzv6un9svy6ds/file/857937568729.

[22] County of Santa Barbara, Notice of Preparation of a Draft Supplement to an Environmental Impact Report, ExxonMobil Interim Trucking for SYU Phased Restart Project.

[23] The Coastal Land Use Plan states that "[o]il is one of the key issues associated with oil development in Santa Barbara County" and that "[o]nce constructed and operational to the refining center of a producer's choice . . . pipelines shall be the required mode of transportation because they are less environmentally damaging than other modes of transportation." Coastal Land Use Code at 66, *available at* https://cosantabarbara.app.box.com/s/cx95k0r4hnfo58hg291fi5gzf5rrdurd. Section 35.52.060B.10 of the LUDC requires that "oil processed by facilities that receive oil from offshore fields exclusively or from both offshore and onshore fields shall be transported from the facility and County to the final refining destination by overland pipeline, except in the case of highly viscous oil or during an emergency." LUDC at 5-13, § 35.52.060B.10, *available at* https://cosantabarbara.app.box.com/s/6hrqg4blorc7zjyh2hklhsl3pv2j2tad. And Section 35-154.5(i) similarly requires that "permits for expanding, modifying, or constructing crude oil processing or related facilities shall be conditions to require that all oil processed by the facility shall be transported from the facility and the County by pipeline as soon as the shipper's oil refining center of choice is served by pipeline." CZO at 9-6, *available at* https://cosantabarbara.app.box.com/s/ca93u38tv092neffw488txbjqh3ucrnv.

4) <u>Whole of the Action</u>:

Appellants and the Planning Commission misconstrue the scope of the Project at issue. The Project before the Planning Commission is not replacement of the pipelines, nor potential restart of existing pipelines. OSFM has already determined that the safety valves are the best available technology available pursuant to State Law (AB 864); the Project before the Commission is thus limited to the discrete amendments to the FDP/CUP—previously granted by Santa Barbara County to construct and operate the existing pipelines—to allow for the addition of the valves within the County. Each valve is its own "project" that has independent utility.[24] Not all of these valve projects have been appealed: for the seven valve sites that are not the subject of any appeal, the Planning Commission should approve those valves consistent with County staff's findings.[25]

The Commission cannot use this appeal as an excuse to re-evaluate the entire pipeline, a completed project that underwent full CEQA review. The pipelines run through both Kern and San Obispo Counties, where the installation of additional safety valves will proceed irrespective of Santa Barbara County's decision. The "whole of the action" is not the entire 123 mile pipeline or all the valves that will be installed on the pipeline including those in other counties, but only those valves in Santa Barbara County.

Replacement and restart are likewise not part of the safety valves in front of the County; they are distinct actions. These valves will be installed on the existing pipelines. Thus, replacement is inapplicable. Moreover, replacement is a completely separate and independent alternative project such that piecemealing analysis does not apply; replacement "can be implemented independently."[26] Where projects can be implemented independently, there can be no improper piecemealing.[27] Here, the valve installations on the existing lines and the pending Pipeline Replacement Project serve different purposes—compliance with AB 864 versus complete replacement of the entire pipeline system and can be implemented independently.[28]

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[24] See *Paulek v. Cal. Dept. of Water Resources* (2014) 231 Cal.App.4th 35, 45-46 (seismic safety improvements to a pre-existing dam and reservoir had independent utility and thus were *not part* of ongoing operations or a broader dam remediation project).

[25] Although the February 24, 2023 and April 21, 2023 submissions from Cappello & Noël purport to be on behalf of the entire class in the *Grey Fox* litigation, only four landowners submitted appeals to the County in September 2022 (Mark W. Tautrim Revocable Trust, Hutchings Family Trust, Mathis Gaviota Ranch, LP, Grey Fox LLC). None of the other proposed valve locations involve these landowners, and one of the other valves is located on land owned by the County (APN 081-150-028). The class claims in the *Grey Fox* litigation relate solely to whether landowners' easements permit a second pipeline to be constructed in the existing right-of-way.

[26] *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385, citing *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223-1224 ("*Banning Ranch*").

[27] *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 280; *Banning Ranch*, 211 Cal.App.4th at 1223-1224; *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 736 (EIR analyzing a 1.8-mile segment of a state highway was not required to include other highway segments that would eventually be joined to form a new highway).

[28] See *Paulek v. Cal. Dept. of Water Resources* (2014) 231 Cal.App.4th 35, 45-46.

The same is true for restart. Contrary to assertions by appellants, restart is not a reasonably foreseeable consequence of the valve project—restart is an independent process that will occur only *after* appropriate review by OSFM in compliance with the Consent Decree (a stipulated federal judgment).[29] If Santa Barbara County as a matter of policy is opposed to safety valves, PPC will work with OSFM to identify alternative methods and technology for compliance with AB 864. Not only is restart subject to an entire set of alternative requirements, but construction and operation of the entire pipeline was already evaluated in an EIR. Thus, a piecemealing analysis simply does not apply here.

5) <u>Triggers for Subsequent Review</u>:

The Planning Commission raised greenhouse gasses (GHGs), changes in the Clean Air Act, and Assembly Bill 52 (AB 52) as topics of concern in its March 1, 2023 meeting. However, GHGs and AB 52 cannot alone justify supplemental environmental review under CEQA.

Once an EIR has been certified for a project, no subsequent EIR shall be required unless, "on the basis of substantial evidence in the light of the whole record," the agency determines that "[n]ew information of substantial importance, which was not known *and could not have been known* with the exercise of reasonable diligence at the time the previous EIR was certified as complete . . . shows [that] . . . [s]ignificant effects previously examined will be substantially more severe than shown in the previous EIR. . . ."[30] In the CEQA context, "substantial evidence" includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,"[31] but not "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment."[32] As the Court in *Banker's Hill, Hillcrest, Park West Community. Preservation Group v. City of San Diego* recognized, "[u]nsubstantiated opinions, concerns, and suspicions about a project do not rise to the level of substantial evidence."[33] This equally applies to statements from counsel that "consists almost exclusively of mere argument and unsubstantiated opinion."[34] The County should evaluate "[e]nvironmental decisions . . . based on facts, not feelings."[35] And although Appellants claim in their April 21, 2023 submission that "public concern in and of itself requires the preparation of an EIR," the CEQA Guidelines they cite, Section 15064(f)(4), in fact say the opposite: "The existence of public controversy over the environment effects of a project *will not require*

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[29] For this reason Appellants' reliance on *Laurel Heights Improvement Association vs. Regents of the University of California* (1988) 47 Cal.3d 17 376, 396, is misplaced. That case stands for the unremarkable proposition that CEQA review must include an analysis of the environmental effects on a future expansion or action if it's a "reasonably foreseeable consequence of the original project." Here, restart and valve installation are independent actions, and the "original project" has long been approved and is not before the Commission in this proceeding.
[30] Guidelines, § 15162(a)(3)(B) [emphasis added]; see also Pub. Resources Code, § 21166(c).
[31] Guidelines, § 15384(b).
[32] *Id.*, § 15384(a).
[33] 139 Cal.App.4th 249, 274 (2006).
[34] *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 579-580.
[35] *Leonoff v. Monterey Cnty. Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1352.

preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment."[36]

This "new information" prong of Public Resources Code section 21166 does not, and cannot negate the existence of a certified EIR and baseline operations. CEQA is concerned with physical changes to baseline conditions—not a re-evaluation of baseline operations every time a subsequent permit arises.[37]

a) Greenhouse gas emissions do not trigger supplemental CEQA review.

During the March 1 hearing, the Chair of the Planning Commission noted that the reductions in greenhouse gas emissions at the Las Flores Canyon SYU facilities due to the lull in operations is itself a basis to deny the Project or order supplemental CEQA review. As a threshold matter, this comment is misplaced in terms of the valve project, which itself will not generate any significant greenhouse gas emissions. That said, the Chair's comments were aimed at the restart of an onshore facility that ties into these pipelines. Overall, these concerns raised by the Chair fail to acknowledge the substantial increase in greenhouse gas emissions associated with importing oil from foreign countries. Nevertheless, the case law is clear and unequivocal—climate change is not a basis to trigger supplemental CEQA review, as it is an issue that could have been addressed in the original EIR for Lines 901 and 903. Courts have held that, because greenhouse gas emissions and climate change were "known or could have been known" decades ago, "the potential environmental impact of greenhouse gas emissions *does not* constitute new information" requiring subsequent review under CEQA.[38]

The First Appellate District's ruling in *Concerned Dublin Citizens v. City of Dublin* is particularly instructive.[39] There, the Court held that the adoption of new regulatory guidelines for the evaluation of GHG emissions was not "significant new information" because information about the potential effects of GHG emissions was known and *could have been addressed* in connection with the certification of the original EIR. And while the original program EIR did not analyze the impact of GHG emissions, the EIR considered the impacts on air quality and substantial evidence

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[36] Guidelines, § 15064(f)(4) [emphasis added].
[37] See *Citizens' Committee to Complete the Refuge v. City of Newark* (2021) 74 Cal.App.5th 460, 476-478 (rejecting argument that "scientific insights concerning the amount and rate of sea level rise" that emerged after the lead agency certified the EIR constituted "significant new information"); *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 532 (new information about the effects of greenhouse gas emissions on climate change did not require preparation of supplemental EIR because information about climate change was available before original EIR was certified); *Fort Mojave Indian Tribe v. Cal. Dept. of Health Services* (1995) 38 Cal.App.4th 1574 (no subsequent EIR required due to post-approval release of geological analysis or federal government's post-approval regulatory decision to designate critical habitat for endangered desert tortoise).
[38] *See Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 806-808 (upholding 2010 addendum to 1997 EIR, neither of which addressed greenhouse gas impacts) (**Exhibit 6**); *see also Friends of Big Bear Valley v. County of San Bernardino* (Unpublished) 2019 WL 2402978 (because the potential environmental impacts of GHG emissions were "known" or "could have been known" in 1991, climate change did not need to be addressed in 2014 addendum).
[39] (2013) 214 Cal.App.4th 1301.

supported the finding that the potential effects of GHG emissions were known and could have been addressed in conjunction with the EIR's certification.[40] As emphasized in an oft-cited treatise, "[t]he obvious policy behind [Section] 21166(c) is to head off demands for further environmental review simply because a new study relevant to the issues in an EIR or a negative declaration can later be developed through additional efforts."[41]

Here, the original EIR for the pipelines included an extensive review of potential air quality impacts and could have addressed GHG emissions. The addition of certain safety valves does not warrant re-opening the EIR to perform a comprehensive review of GHG emissions, which would not be impacted by the Project under consideration by the County here.

b) Enactment of Assembly Bill 52 does not justify supplemental CEQA review.

At the March 1, 2023 hearing, the Planning Commission suggested that the California Legislature's enactment of AB 52—recent legislation requiring CEQA lead agencies to consult with certain Native American tribes on tribal cultural resources—justifies the need to undertake supplemental CEQA review. However, AB 52 consultation is not required. As discussed above, new legislation or other regulatory requirements are never alone a basis for subsequent review, as new laws are not themselves evidence that the proposed action will result in any new or substantially more severe significant impacts.[42] Regardless, both the County and archaeological experts at Albion Environmental, Inc. ("**Albion**") have consulted extensively with Native American tribes for both the replacement project and specifically for installation of the safety valves.

Enacted in 2014, AB 52 lays out the process for consulting with California Native American tribes traditionally and culturally affiliated with a project's geographic area.[43] AB 52 requires lead agencies to provide notice to—and *if requested*, consult with—any tribe that has submitted a written request "[p]rior to the release of a negative declaration, mitigated negative declaration, or environmental impact report."[44] AB 52 by its plain language does not require consultation prior to release of an "addendum" or "supplemental" or "subsequent" EIR pursuant to Public Resources section 21166 and CEQA Guideline sections 15162, 15163, or 15164.

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[40] *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1320; see also *No Slo Transit, Inc. v. City of Long Beach* (1987) 197 Cal.App.3d 241 (new information indicating that construction of light-rail system would take 48 months, rather than 20 to 30 months as originally estimated, did not require further EIR); *A Local & Regional Monitor v. City of Los Angeles* (1992) 12 Cal.App.4th 1781, 1802 (reformulated information did not require a subsequent EIR because it did not indicate the presence of any new significant environmental impacts).
[41] Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2nd ed. 2022), §19.21.
[42] *Fort Mojave Indian Tribe v. Cal. Dept. of Health Services* (1995) 38 Cal.App.4th 1574, 1603-1605 (federal designation of project site as "critical habitat" for the desert tortoise did not trigger the need for supplemental CEQA review as the prior EIR had already addressed the physical effects of the project on tortoise habitat).
[43] Pub. Resources Code, § 21080.3.1(b).
[44] *Ibid*.

To verify presence/absence of tribal cultural resources, Albion surveyed the 16 safety valve installation areas, conducting subsurface presence/absence testing between 2019 and 2022. Albion's background research and field efforts confirmed that "there are no archaeological resources within any of the Valve Installation Areas." And despite the fact that AB 52 consultation is not required when conducting supplemental CEQA review, County staff and Albion conducted extensive outreach to Native American tribes on both the separate replacement project and, specifically, the safety valve installation project, to help ensure that tribal cultural resources could be avoided. As detailed in the Phase I Cultural Resource Inventory and its Appendix B, Albion in 2021 and 2022 contacted the Native American Heritage Commission ("**NAHC**") and representatives of several Native American tribes affiliated with the region. In those efforts, Albion received little response, and no information about the location of additional tribal cultural resources or alternative protective measures.

On April 13, 2022, Santa Barbara County staff emailed the Santa Ynez Band of Chumash Indians—one of the only tribal representatives to request additional information—to confirm whether any tribal cultural resources might be present within the proposed valve sites. In response, the Cultural Resource Archaeologist for the Santa Ynez Band of Chumash Indians emphasized the presence of known cultural resources along the pipeline, but provided no information concerning the precise location of any significant tribal cultural resources. Instead, the Chumash Archaeologist expressed "strong[] support" for the construction best management practices already incorporated in the Project (e.g., temporary matting on unpaved access roads and presence of a Chumash monitor during ground disturbance). In sum, Albion and the County already consulted with Native American tribes about the possible presence of tribal cultural resources at the valve sites, as well as the entire length of the pipelines for the replacement project. To date, *no information has been provided* by the tribes to contradict the Phase I Cultural Resources Inventory, which expressly found that installation of the valve sites will avoid impacts to tribal cultural resources.

c) The 2015 release and condition of the pipeline are not "changes in circumstances" necessitating subsequent review.

Appellants assert that supplemental or subsequent environmental review is warranted because of changes in circumstances regarding the 2015 release from Line 901 and the condition of the pipeline and its corrosion protection system. However, CEQA requires further environmental review only when *substantial* changes occur with respect to the circumstances under which a project is being undertaken will require *major* revisions in the EIR.[45] A subsequent EIR may only be prepared if there are *substantial* changes with respect to the circumstances under which the project is undertaken which will require *major* revisions of the previous EIR due to the involvement of *new* significant environmental effects or a *substantial increase* in the severity of previously identified significant effects.[46]

The legislature intended to limit the situations that require subsequent review to "provide a balance against the burdens created by the environmental review process and to accord a

[45] Pub. Resources Code, § 21166(b).
[46] Guidelines, § 15162(a)(2).

reasonable measure of finality and certainty to the results achieved."[47] When circumstances change in a way that do not cause any significant impacts other than those already contemplated by the EIR, CEQA does not require preparation of a subsequent EIR.[48] Neither the 2015 release nor allegations questioning the integrity of the pipeline rise to the level of substantial changes that now require major revisions to the EIR by Santa Barbara County because they do not cause any significant impacts other than those already contemplated by the EIR. The EIR sufficiently analyzed the impacts of possible spills and pipeline corrosion.[49] The Consent Decree and designated agencies will analyze the integrity of the lines.

The possibility of spills is contemplated and analyzed throughout the EIR. It includes analysis of potentially significant impacts to surface water, groundwater, aquatic biology, terrestrial biology, and land use and recreation, including coastal recreation, related to potential oil spills.[50] The EIR acknowledged that "the duration of magnitude of impact and resources at risk would be dependent upon the locations of spill incidents, volumes spilled, and application of oil spill contingency measures."[51] The EIR expressly contemplated and analyzed the possibility of a complete rupture, or "worst-case" scenario, that could involve over 8,700 barrels of oil at sensitive locations—more than twice the volume released in 2015.[52] The 2015 release does not give rise to a substantial increase in the severity of previously identified significant effects because the potential for spills like the 2015 release was analyzed in the EIR.

Similarly, the EIR recognizes the vulnerabilities of the pipelines to corrosion over time and that corrosion could result in potential releases. The EIR analyzed statistics on the causes of U.S. pipeline accidents and found that pipeline faults, including defective pipe and corrosion accounted for over half of the spills.[53] The project addressed this risk of spill caused by corrosion by developing and implementing a multi-faceted approach to protect the pipelines against corrosion, which included wrapping the pipelines and installing a cathodic protection ("**CP**") system.[54] The CP system installed on the Las Flores Pipeline System met industry and regulatory practice. To ensure continued protection, the EIR included plans to install corrosion protection test stations every 10 miles and to continually inspect and maintain the CP system at 6-month intervals.[55] Since original construction and startup, PPC and predecessor owners and operators of the

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[47] *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1057.
[48] See *El Morro Community Assn. v. Cal. Dept. of Parks & Recreation* (2004) 122 Cal.App.4th 1314, 1362; *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154 (no subsequent review required where changes in the plan for development of the surrounding area required changes to light rail transit project because "the change in circumstances . . . [did] not raise any new effects which the EIR had not already reviewed and analyzed.").
[49] *East Oakland Stadium Alliance v. City of Oakland* (Mar. 30, 2023, A166221) __ Cal.App.4th __ [2023 WL 2706692, pp. 12-13] (City's analysis of reasonably foreseeable operation of emergency generators, including recognizing the foreseeability of annual power shutoffs in high fire risk areas, was adequate and did not require a worst-case assumption).
[50] August 1984 Draft EIR/S, p. 2-48.
[51] *Id.*, p. 4-122.
[52] *Id.*, p. 2-31.
[53] *Id.*, p. 4-110.
[54] *Id.*, p. 4-106.
[55] *Id.*, pp. 4-117, H-35.

pipelines maintained the CP system in accordance with state and federal standards, as contemplated in the EIR.

Thus, the operating conditions of the pipeline were contemplated in the EIR with its analysis of potential oil spills and its inclusion of regular inspection and maintenance. Even if correct, any vulnerabilities in the pipeline alleged by the appellants will be managed by the appropriate agencies under the Consent Decree, but they do not give rise to new significant environmental effects or a substantial increase in the severity of previously identified significant effects because they *were already contemplated in the original pipeline installation project* analysis. Hence, and no subsequent review is required.

6) <u>Right to Restart/Cathodic Protection/Integrity of Existing Pipelines</u>:

Appellants erroneously asserted (and Planning Commissioners expressed concerns) that approval of the Project will directly lead to restart of the pipelines. While PPC has the vested right to restart the pipelines, it can only restart after completing an extensive process with review and approval by OSFM. All of this is spelled out in detail in the Consent Decree (**Exhibit 8**), approved by the U.S. District Court for the Central District in Los Angeles in October 2020.

The Consent Decree was the result of enforcement actions by multiple federal and state agencies following the accidental release of oil from Line 901 in May 2015. Agencies involved with the Consent Decree—including PHMSA, U.S. EPA, OSFM, the California Department of Parks and Recreation, the Central Coast Regional Water Quality Control Board, the California State Lands Commission, and the California Department of Fish & Wildlife, Office of Spill Prevention—are all federal and state agencies with experts that provided input on the pipeline safety, environmental, and emergency response provisions of the Decree. Accordingly, the Consent Decree includes comprehensive safety and operational requirements for the pipelines that are now part of the pipeline system.[56]

The Consent Decree confirms PPC's right to restart after it meets certain safety requirements and obtains approval by OSFM, which has the exclusive jurisdiction and authority to decide whether the Consent Decree's requirements have been satisfied and the pipeline is safe. PPC must also pursue a State Waiver, which OSFM may grant only if it finds the application submitted by PPC outlines measures consistent with pipeline safety standards and "*the risk to public safety is slight and the probability of injury or damage remote.*"[57]Appellants' allegations that that pipeline is in poor condition and that restart would lead to unacceptable risk are wrong. Should restart be pursued, pipeline safety experts at the OSFM would review and confirm that the pipelines meet the regulatory requirements and the enhanced measures outlined in the Consent and OSFM also would have to approve a Restart Plan outlining the procedures and monitoring practices to be used during re-commissioning.(which would precede restart by at least 60 days).

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[56] Although the Consent Decree imposed its requirements on Plains Pipeline L.P., the Decree included provisions that bound subsequent owners of the pipelines to comply with the safety and operational requirements. Accordingly, it applies to PPC by virtue of its current ownership of the pipelines.
[57] Gov. Code, § 51011; *see* 49 U.S.C. 60118(c*).*

The Consent Decree lists multiple requirements that must be included in the Restart Plan, including documentation confirming completion of all tasks required under the Consent Decree. These requirements include enhanced safety equipment and operational measures to verify the condition of the pipeline is wholly sound prior to resuming oil transportation and additional measures to monitor the pipeline during its operation for any abnormal circumstances from when it restarts. For example, the Restart Plan must include a plan for incremental pressure increases during the restart process and sufficient surveillance of the pipeline during each increase in pressure to ensure integrity of the line as it resumes. It requires testing of the integrity of the line shortly after restart to ensure the line can continue to operate safely. The Consent Decree also requires the Restart Plan include enhanced training—all with coordination and approval by OSFM, which in turn, will consult with PHMSA and potentially other federal and state agencies who are parties to the Consent Decree. OSFM would approve the Restart Plan only after confirming that the pipelines can be safely operated in conformance with state and federal pipeline safety standards.[58]

As noted above, although the pipelines are not currently transporting oil, the lines are filled with an inert gas and are maintaining pressure—they are not "Swiss cheese" as Appellants allege.[59] The pipelines continue to be regularly inspected, tested, and maintained consistent with federal and state regulations. The lines are currently active and regulated by OSFM.

7) <u>Changes in Ownership</u>:

Appellants and the Planning Commission raised questions regarding the ownership of the Las Flores Pipeline System and whether the Planning Commission can approve the FDP/CUP amendments if there is uncertainty regarding ownership. As a threshold matter, the identity of the current owner is not in dispute—PPC owns the lines. Second, the requirement to comply with AB 864 remains, regardless of the ownership of the pipelines. Finally, the identity of the end-user has no bearing on the merits of the pending appeals and is irrelevant from a CEQA standpoint.[60]

PPC acquired Lines 901 and 903 from Plains on October 13, 2022 and is now legal title owner and successor in interest to Plains.[61] PPC submitted an application for change of ownership under

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[58] Appellants stated at the March 1, 2023 hearing that PHMSA said the lines could not be reopened. This is inaccurate. PHMSA is a signatory to the Consent Decree which expressly allows restart after various corrective actions are completed and with approval from OSFM. Consent Decree, Appendix D.

[59] The fact that the lines are maintaining pressure with an inert gas, which is lighter than fluid, means that the lines are intact and have integrity.

[60] *See, e.g.*, *Maintain Our Desert Environment v. Town of Apple Valley* (2004) 120 Cal.App.4th 396 (identification of retail store as a Walmart was irrelevant to CEQA analysis); *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004 (identity of tenant in commercial development was irrelevant to project's CEQA review).

[61] Appellants are parties to other litigation involving PPC and are aware of PPC's interest in the pipelines. In the *Grey Fox* litigation, the U.S. District Court permitted PPC to join as a defendant on all prospective claims due to its ownership of the pipelines. (See *Grey Fox, LLC v. Plains Pipeline L.P.*, Case No. 2:16-cv-03157 (C.D. Cal.), Dkt. 214, 218 (Feb. 24, 2023 order granting stipulation pursuant to Fed. R. Civ. P. 25(c), which allows joinder of party "[i]f an interest is transferred").) On April 13, 2023, the court set a May 9, 2024 trial date for the plaintiffs' claims against PPC. Dkt. 228.

Santa Barbara County Ordinance 25B on November 1, 2022. The application, deemed complete on February 24, 2023, includes the identity of the new owner, PPC, and an agreement by PPC to comply with the conditions of all County permits issued for the pipelines. The Planning Director approved the transfer of ownership March 13, 2023. Appeals to this decision were filed and these appeals will be heard by the Planning Commission later.

Any issues regarding pipeline ownership and responsibility for compliance with County-issued permits will be considered by the Planning Commission as part of the ownership transfer appeals. These issues are not before the Planning Commission under the valve project appeal, which apply regardless of the change in ownership. Further, issues regarding a potential transfer of the pipelines to a third party are not ripe or relevant to these proceedings. PPC remains sole owner of the pipelines and has taken on responsibility for maintaining and inspecting them. Concerns of any pending or future transactions for these pipelines are not appropriate bases to withhold project approval; any future change of ownership applications would be submitted to the County, and the County will have the opportunity to review those submissions consistent with applicable County ordinances.

8) <u>Easements/Rights of Way</u>:

Although this same issue was voiced to the Zoning Administrator before his decision to approve the Zoning Clearances for the valves, Appellants have re-urged that the Project cannot be approved because the project will require new Rights of Way for the installation of the safety valves. To address these concerns, the Zoning Administrator (with PPC's consent) added a condition to the FDP Amendment, requiring the pipeline owner to demonstrate it has obtained the required land rights for construction of the safety valves prior to installation (not prior to approval of the Project).

Appellants also argue that the easements for the existing lines have somehow lapsed and this should prevent approval of the Project. Although appellants claim that the easements "simply do not exist," these are mere allegations in pending litigation among a handful of landowners (not the class action), which PPC vigorously disputes. No decision has been made about the validity of the easements. Unless and until there is adjudication otherwise, the easements at issue still exist and are available for PPC's use.

In any event, appellants' assertions about the status of the easements are irrelevant to the permitting decision before the County. Condition 43 of the FDP Amendment requires the pipeline owner to demonstrate it has the necessary land rights to install the safety valves prior to construction. Thus, in accordance with the standard approach to acquiring and managing pipeline easements, PPC, prior to construction, will determine if additional rights are required. If additional rights are needed, PPC will engage in discussions with landowners to negotiate appropriate terms to acquire rights for the installation and maintenance of the valves, including fair compensation.

In addition, PPC is a common carrier pipeline company and has the authority to initiate condemnation proceedings to acquire property rights for the Project. A "pipeline corporation may condemn any property necessary for the construction and maintenance of its pipeline." A "pipeline corporation" means "every corporation or person owning, controlling, operating, or

managing any pipeline for compensation within this state." (*Id*., § 228.) Accordingly, should good faith negotiations with landowners fail, PPC has the authority to initiate condemnation proceedings to acquire any property rights necessary for the construction and maintenance of the Las Flores Pipeline.

III. RESPONSES TO ADDITIONAL ISSUES RAISED IN APPEALS

1) Restart of the Pipeline System is a separate process beyond the County's jurisdiction.

The Planning Commission directed staff to return with options to consider additional review of potential environmental impacts associated with the restart and operations of the pipelines. These issues are not only beyond the scope of the project in front of the Planning Commission, which is limited to the installation of safety valves, but pipeline safety, restart, and operation are beyond the authority of the County altogether, falling under the exclusive jurisdiction of PHMSA and OSFM to regulate intrastate pipeline safety.

Under the federal Hazardous Liquid Pipeline Safety Act ("**HLPSA**"), PHMSA is granted authority to regulate oil pipelines in "furtherance of the highest degree of safety in pipeline transportation and hazardous materials transportation."[62] In accordance with HLPSA authority, PHMSA may certify appropriate state authorities to prescribe and enforce safety standards and practices of intrastate pipelines.[63] In California, the sole agency certified by PHMSA and authorized by the state legislature with authority over pipeline safety is OSFM.[64]

Where a state legislature delegates the exclusive authority to regulate pipeline operation and safety with a state agency, HLSPA preempts local authorities from imposing safety requirements on oil pipelines.[65] Government Code section 51010 of the California Pipeline Safety Act states that "[i]t is the intent of the Legislature, in enacting this chapter, that the State Fire Marshal shall exercise ***exclusive safety regulatory and enforcement authority over intrastate hazardous liquid pipelines*** . . . ." [66] **(Exhibit 11.)** This language creates express preemption of any local laws that may exceed the scope of or be inconsistent with a state statute by creating dual regulation of the same subject that would inevitably result in a conflict of jurisdiction.[67]

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. [68] The California Pipeline Safety Act expressly states that OSFM has "exclusive safety regulatory and enforcement authority over intrastate hazardous liquid pipelines."[69] By using the

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[62] 49 U.S.C. § 108(b).
[63] *See* 49 U.S.C. § 60105(a).
[64] *See* Gov'. Code, § 51010.
[65] *Olympic Pipeline Co. v. City of Seattle*, 437 F.3d 872, 880 (9th Cir. 2006) (Where the Washington Legislature designated the Washington Utilities and Transportation Commission as the state authority for pipelines in Washington, the HLPSA "expressly preempts the City's attempt to impose safety regulations on the Seattle Lateral."). (**Exhibit 10**.)
[66] Emphasis added.
[67] See *City of Lodi v. Randtron* (2004) 118 Cal.App.4th 337.
[68] *Sherwin-Williams Co. v. City of Los Angeles*, (1993) 4 Cal.4th 893, 898.

word "exclusive," the Act categorically expresses its intent to fully occupy the area of safety regulatory and enforcement authority over hazardous liquid pipelines.

While the County may argue that there is a local interest in regulating pipeline safety, this local interest is overcome by the State's interest in uniform safety, particularly in the case of the Las Flores Pipeline System because it runs through three counties. As the court explained in *Southern Cal. Gas Co.* v. *City of Vernon*:

> "Regulations . . . must be uniform, and must be free from the local judgment and prejudice. . . . None of these great interests would be served if each community retained the power of making such police regulations as each might deem proper. Neither the public nor the service corporation could tolerate as many standards and policies as there were towns, cities, or boroughs through which they operated."[70] (**Exhibit 12**.)

Moreover, any argument that the County makes here regarding its local interest in regulating pipeline safety is an attempt to "avoid preemption by shifting their regulatory focus[,]" which is harshly criticized by courts because "localities can't skirt the text of broad preemption provisions by doing indirectly what Congress says they can't do directly."[71] The California Legislature has already spoken on what localities cannot do by giving exclusive regulatory authority for safety of intrastate hazardous liquid pipelines to OSFM rather than the localities themselves. The County's attempts to sidestep OSFM's authority by re-framing safety issues that fall squarely within OSFM's purview is a bold misstep given the clear preemption issues.[72]

2) **Even if the Planning Commission disregards the original EIR, the safety valves are subject to several statutory and categorical exemptions. It would constitute an abuse of discretion to disregard those statutory and categorical exemptions.**

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[69] Gov. Code § 51010.

[70] *So. Cal. Gas Co.* v. *City of Vernon* (1995) 41 Cal.App.4th 209, 215 (City was preempted from regulating the design or construction of a proposed natural gas pipeline under the guise of ensuring pipeline safety because the Constitution granted the CPUC exclusive jurisdiction); *San Diego Gas & Electric Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785, 802 (City ordinance requiring a special use permit was preempted by Public Utility Act because City did not show that its local interest was "necessarily compatible with the statewide interest in ensuring that utility operations are conducted in a safe and efficient manner.")

[71] *California Restaurant Assn. v. City of Berkeley*, Case No. No. 21-16278 at p. 23 (9th Cir. April 17, 2023).

[72] *Ibid.* (City's circuitous route of trying to indirectly regulate natural gas piping was preempted by state statute preemptive reach over the issue); *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061 (municipal ordinance preempted because the comprehensive nature of the state statute was so thorough and detailed that the Legislature intended to preclude location regulation); *Chevron U.S.A., Inc. v. County of Monterey* (2021) 70 Cal.App.5th 153 (County ordinance related to drilling was preempted by the state statute granting authority to regulate operations, methods, and practices to the state oil and gas supervisor); *Am. Trucking Assns. v. City of Los Angeles*, 569 U.S. 641, 652 (2013) (criticizing State efforts to "avoid preemption by shifting their regulatory focus" where the State chose "an indirect but wholly effective means" of achieving a preempted goal).

In approving the safety valve project, the Zoning Administrator found four statutory and categorical CEQA exemptions apply to the safety valves. Where a statutory exemption applies, as the 8-mile pipeline exemption does here, the California Legislature has expressly determined that the exemption "promote[s] an interest important enough to justify foregoing the benefits of environmental review."[73] Thus, unlike categorical exemptions, when a project is subject to a statutory exemption, no further analysis is required.[74] Categorical exemptions, are those categories of project that have been determined by the California Secretary of Natural Resources—not individual cities or counties—"not to have a significant effect on the environment and that shall be exempt from [CEQA]."[75] Where, as here, a statutory or categorical CEQA exemption applies, the project is completely outside of the scope of CEQA review.[76] Thus, the Planning Commission cannot simply disregard applicable exemptions and order additional review of environmental impacts under CEQA.[77]

Citing a case and "Topic Paper" entirely out of context, appellants argue that it is improper to rely on both a statutory exemption together with a categorical exemption; instead, appellants urge that statutory and categorical exemptions are "mutually exclusive." This is untrue and contrary to settled law. As the Court of Appeal expressly held in *Surfrider Foundation v. California Coastal Commission*, CEQA allows agencies to "stack" statutory and categorical exemptions for components of a single project. [78]

3) <u>Each valve installation falls squarely within the CEQA 8-mile statutory exemption for pipelines, consistent with OSFM's application of AB 864</u>.

Appellants claim that the County's reliance on the CEQA 8-mile pipeline statutory exemption was flawed, arguing that the project spans 10.9 miles on Line 901 and 61.7 miles on Line 903—more than the 8-mile limitation. However, the valve installations fall squarely within the 8-mile exemption.

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[73] *Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 184.
[74] *Ibid.*; CEQA Guidelines, § 15061(b)(2). An agency may review a project for unusual circumstances to determine if categorical exemptions apply, however, no unusual circumstances apply to the safety valve project.
[75] Pub. Resources Code, § 21084(a).
[76] *San Francisco Beautiful v. City & Cnty. of San Francisco* (2014) 226 Cal.App.4th 1012, 1019–20 ("If the project is exempt from CEQA, . . . 'no further environmental review is necessary.'")
[77] *Prentiss v. City of South Pasadena* (1993) 15 Cal.App.4th 85 (lead agency subject to writ and forced to apply exemption for ministerial projects).
[78] *Surfrider Foundation v. Cal. Coastal Commission* (1994) 26 Cal.App.4th 151, 156 (project exempt from CEQA review by "combined effect" of a categorical exemption and a statutory exemption); *Cal. Farm Bureau Federation v. Cal. Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 191 ("[W]here the agency considers the project as a whole and determines the combined effect of two exemptions places the entire project outside the scope of CEQA, no improper segmentation has occurred."); *Lookout Point Alliance v. City of Newport Beach* (Unpublished) 2014 WL 2708912 at *12; *Wilson v. City of Laguna* (Unpublished) 2013 WL 5739456 at *4.

Under the statutory eight-mile exemption, "[CEQA] does not apply to any project which consists of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline . . . or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline, if *the project* . . . is less than eight miles in length."[79] Unlike categorical exemptions, statutory exemptions apply regardless of the potential impacts to the environment.[80] The "project" at issue in this appeal is not the entire pipeline as the appellants would suggest. The "project" for purposes of this appeal are the individual valve installations, which are *cumulatively less than 0.21 miles in length*.[81]

This is consistent with how OSFM has interpreted the eight-mile exemption expressly under the auspices of AB 864 compliance. To hold otherwise would subvert the purposes of AB 864 compliance, and the need to install best available technology on all pipelines within coastal areas of California by April 2023. And because the valve installations qualify for the eight-mile statutory exemption, the two "exceptions" referenced in the appeals do not apply. [82]

[79] Pub. Resources Code, § 21080.23(a)-(a)(1)(A) [emphasis added].
[80] *Sunset Sky Ranch Pilots Assn. v. County of Sacramento* (2009) 47 Cal.4th 902, 908.
[81] Grey Fox separately asserts that the County's use of the 8-mile exemption was improper because the County must necessarily consider the "reopening of the Lines." Again, each project before the Planning Commission is limited to installation of the individual safety valves, not the entire existing pipelines.
[82] CEQA Guidelines, § 15061(b)(1)-(2).

4) <u>The County's use of Categorical Exemptions was proper, including in relation to the Project's proximity to a State Scenic Highway and Marine Conservation Areas</u>.

Appellants also argue that reliance on CEQA categorical exemptions was flawed—not because the valve installations do not fall within the exemption (they do), but only because there are "exceptions" to the exemptions (e.g., unusual circumstances and scenic highways).

For example, while the "location" exception under CEQA Guidelines section 15300.2(a) might create a rebuttable presumption against reliance on certain categorical exemptions where the project may impact a federal or state-designated and mapped environmental resource of critical concern, that exception only applies to certain categorical exemptions (e.g., Class 3 and 11). The location exception does not apply to CEQA's statutory Eight-Mile Exemption nor to the Class 1 Categorical Exemption for Existing Facilities, both of which apply to the valve installations at issue here.

In *Berkeley Hills*, the court found the location exception did not apply.[83] It held the statutes cited by plaintiffs that mapped the physical locations of potential earthquakes or landslide zones did not fit within the plain meaning of "environmental resource" because earthquakes and landslides are geological events, not resources.[84] The court also found the site was not located in an environmentally sensitive area:

> "[P]laintiffs cite no language in the geotechnical reports that suggests the projects pose a risk of harm to the environmental resources on the sites, as opposed to people or buildings. Nor did plaintiffs submit their own geotechnical assessment, or any other evidence, to demonstrate the presence of 'an environmental resource of hazardous or critical concern.'"[85]

Likewise in *Aptos Residents*, the court found plaintiff presented no evidence that the Day Valley area in general or any of the specific utility poles where microcell units would be installed are at a location that fits within the definition of the exception, even with plaintiff pointing to the fact that the area is rural and zoned Residential Agricultural.[86] The court also made clear that because the visual impact of the utility poles would not be significantly increased by the project, any visual impact of the project was necessarily insignificant and could not require further CEQA review.[87]

Even if the County relies solely on the specified categorical exemptions (e.g., Existing Facilities, Appurtenant Structures, or Small Structures), the "exceptions" set forth by the appellants do not apply. For example, the installation of safety valves do not encompass an unusual circumstance, as there is nothing "unusual" about the size or location of the existing lines—there are many pipelines that occur with the coastal zone of California. Indeed, all pipelines in the coastal zone of California must eventually install best available technology to comply with state mandates and

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[83] *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 890.
[84] *Id.* at 891.
[85] *Id*. at 891-893.
[86] *Aptos Residents Assn. v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039, 1052.
[87] *Id*. at 1053.

AB 864, and thus this factor does not distinguish the existing lines from other pipelines. There is also no *causal link* between the valve installations (which are designed to *benefit* the environment by reducing spill volumes) and any significant adverse impacts to the environment. Thus, the unusual circumstances exception simply does not apply.

The Scenic Highway Exception is equally inapplicable. CEQA Guidelines section 15300.2(d) states, "[a] categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway." While Highway 101 is a State Scenic Highway, the safety valves pose no significant visual or related aesthetic impact. Further, there will be no alteration of trees, historic buildings, rock outcroppings, or similar scenic resources. Consequently, the Scenic Highway Exception does not apply.

The County's Addendum and exemptions analysis thoroughly addressed any possible impact that installation of the additional safety valves could have on scenic views and the Gaviota Coast Plan, finding that the valves would present no significant adverse effect and would not conflict with policies in the Plan (some of which favor pipeline infrastructure for oil and gas infrastructure).[88]

5) <u>The County's adoption of "dual findings" was appropriate</u>.

Appellants take issue with the County's approach to CEQA compliance, and specifically the use of "dual findings": (a) that the safety valves qualify for an addendum because they do not involve any new or substantially more severe significant environmental impacts; and (b) the safety valves are exempt from CEQA under various statutory and categorical exemptions.

But such dual findings are appropriate under CEQA, as the Zoning Administrator and County staff and counsel found, and they are supported here by substantial evidence. Reliance on an exemption and other parallel forms of CEQA compliance (e.g., EIR, negative declaration, or addendum) is not unusual.[89] Such dual findings are appropriate where, as here, the project in

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[88] The Gaviota Coast Plan seeks to protect the unique visual, cultural, historical, and biological character of the Gaviota Coast. The General Plan's Policy VIS-10 covering energy development states, "[e]nergy development (e.g. wind, solar, oil and gas, and associated infrastructure) shall demonstrate to the extent feasible, consistency with the visual resources policies of the Gaviota Coastal Plan, which 'require structures to be compatible with the existing community and project areas of high scenic values and scenic corridors.'" The Critical Viewshed Corridor Overlay states, "[u]nder this overlap, development would be required to be screened to the maximum extent feasible as seen from public viewing places." Consistent with the Gaviota Coast Plan, the safety valves were expressly sited, and will be constructed, to avoid any significant visual impacts to areas of high scenic value and scenic corridors and are designed to meet AB 864 goals of substantially reducing the volume (and risks) associated with potential releases. The appellants neglect to acknowledge that the Gaviota Plan expressly contemplates oil pipeline infrastructure, noting that conveyance of oil by pipeline is the safest form of transport.

[89] *See, e.g., May v. City of Milpitas* (2013) 217 Cal.App.4th 1307, 1319 (732-unit condominium project was "exempt" from CEQA because it was "consistent with the certified EIR" for the previously-approved specific plan); *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307, 1313 (noting that the court in Committee for a Progressive Gilroy relied on findings under both Section 21166 and the Class 1 existing facilities

question qualifies for both an addendum and an exemption due to lack of adverse environmental impacts for a previously-approved facility.[90]

Furthermore, use of an addendum to evaluate an activity under CEQA's subsequent review provisions does not prevent the County from relying on any number of statutory or categorical exemptions, *at any time*. For instance, lead agencies can assert an exemption for the first time in litigation, even if the agency did not expressly rely upon the exemption in the administrative process.[91] Indeed, Santa Barbara County has relied on this legal authority in defending an amendment to its Local Coastal Plan (**"LCP"**) to accommodate development of additional greenhouse gases in the Coastal Zone.[92] Even though the County had prepared and certified an EIR for its LCP amendment, the Second Appellate District held that the County was not precluded from also arguing that the LCP amendment was exempt from CEQA. The County ultimately prevailed, and the Court found the action exempt. Given this well-settled legal authority allowing counties to apply exemptions even after project approval, the practice of adopting dual or alternative findings prior to project approval is clearly authorized.

And by publicly noticing the dual finding, the County has provided the opportunity to clarify the exemption finding now, rather than simply rely on the exemptions after approval of the valve installations.

CONCLUSION

Because the Zoning Administrator's decision followed appropriate procedure and is supported by substantial evidence, PPC respectfully asks that the Planning Commission affirm the decision and deny the appeals.

Sincerely,

DOWNEY BRAND LLP

Christian L. Marsh

cc: COUNTY OF SANTA BARBARA

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exemption); *Committee for a Progressive Gilroy v. State Water Resources Control Bd*. (1987) 192 Cal.App.3d 847, 864 (EIR not required in connection with changes to waste discharge levels for municipal sewage treatment facility based on coverage from prior EIR and application of the Class 1 existing facilities exemption).

[90] *Ibid.*

[91] *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).

[92] *Santa Barbara County Flower & Nursery Growers Assn. v. County of Santa Barbara* (2004) 121 Cal.App.4th 864.

Lisa Plowman, Director, Planning and Development
John Zorovich, Division Manager, Energy, Minerals and Compliance Division
Errin Briggs, Division Supervisor
Katie Nall, Planner
Jenna Richardson, Division Chief, Santa Barbara County Counsel

PACIFIC PIPELINE COMPANY
Brian Carlin
Andrew Craig
Steve Greig
Kate Blaine

EXHIBITS

1. *Residents for Orcutt Sensible Growth v. County of Santa Barbara* (Unpublished) 2022 WL 521520.

2. Santa Barbara County's Respondent's Brief, *Residents for Orcutt Sensible Growth v. County of Santa Barbara*, 2021 WL 5744173.

3. Brownstein Application for Leave to File Amicus Curiae Brief and Amicus Curiae Brief in Support of Real Party in Interest Conocophilips Company and Petitioner South Coast Air Quality Management District, *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 2008 WL 5417799.

4. *SJJC Aviation Services, LLC v. City of San Jose* (Unpublished) 2017 WL 2269550.

5. *Sierra Club v City of Orange* (2008) 163 Cal.App.4th 523.

6. *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788.

7. Settlement Agreement Between Celeron Pipeline Company and the County of Santa Barbara (Feb. 8, 1988).

8. Consent Decree (March 13, 2020) and Order to Enter Consent Decree (October 14, 2020).

9. *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534.

10. *Olympic Pipeline Co. v. City of Seattle*, 437 F.3d 872 (9th Cir. 2006).

11. Gov. Code, § 51010.

12. *So. Cal. Gas Co.* v. *City of Vernon* (1995) 41 Cal.App.4th 209.

CAPPELLO & NOËL LLP
TRIAL LAWYERS

A. Barry Cappello

April 21, 2023

Via E-Mail Only

Santa Barbara County Planning Commission
c/o David Villalobos
Planning & Development Hearing Support Supervisor
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Santa Barbara, CA 93101
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Re: Continuation of Appeal of the Zoning Administrator's August 22, 2022 Approval of a Development Plan/Conditional Use Permit Amendment and Coastal Development Permit Pertaining to Plains Pipeline, L.P. Line 901-903 Upgrade Project (21 AMD-00000-00009 & 22CDP-00000-00048)

Honorable Members of the Planning Commission:

Our firm, together with co-counsel, represent the individual and class representative plaintiffs (collectively "Owners") in *Grey Fox, LLC et al. v. Plains Pipeline L.P. et al*., Case No. 2:16-cv-03157, currently pending in the Federal District Court in the Central District of California. The certified Class in the *Grey Fox* case is comprised of all parcel Owners previously subject to easement contracts ("Easements") that provided Plains Pipeline, L.P. and Plains All American Pipeline, L.P. (collectively, "Plains") with limited, narrow access to the parcels to take certain actions related to Plains' pipeline system, Lines 901 and 903 (collectively, the "Lines"). The Class includes approximately 150 Owners. On behalf of the Owner Class, our office timely submitted an appeal of the Zoning Administrator's August 22, 2022 approval of the project set forth above.

On March 1, 2023, the Planning Commission considered the appeals of the Zoning Administrator's Approval of the Plains Line 901-903 Valve Upgrade Project (Case Nos. 21AMD-00000-00009 and 22CDP-00000-00048) and directed staff to return with alternative CEQA options. On behalf of the Owner Class, we provide the below response to the staff report on continuance of the appeal.

1) The County has ignored that Plains is not the Owner, and PPC is only a temporary owner.

The CEQA process should be responsive to minimizing environmental impacts. (See, CEQA Guidelines Section 15003(b) [the "EIR requirement serves not only to protect the environment but also to demonstrate to the public that it is being protected"]; Section 15003(f) ["CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language"].)

Here, however, the County of Santa Barbara ("County") does not address the fact that Plains has disavowed Ownership of the Lines. In fact, Plains has sold the Lines to Mobil Pacific Pipeline Company ("Mobil Pacific"), a subsidiary of ExxonMobil Corporation ("Exxon"), which agreed to purchase the Lines and place them in its wholly owned subsidiary, Pacific Pipeline Company ("PPC"). This scenario will end with a future anticipated transfer by PCC to Sable Offshore Corporation ("Sable"), which reportedly has a deal with Flame Acquisition Corp. ("Flame") including a reversion if the Lines are not operational by January 1, 2024.

So – who is the present Applicant for this Valve Upgrade Project? The County cannot process this application because the ownership change is being appealed, and will be set for hearing. (See, Cappello and Noel LLP letter dated March 8, 2023, attached hereto as Exhibit A.) Determining that issue is critical: it affects (and infects) the entire CEQA process. How can the County know which entity is going to be doing the work, and which entity should be held accountable for future oil spills? Sable, the future owner of this Project, must be at the table as a co-applicant responsible for its representations to the governmental agencies and the citizens of Santa Barbara, and for the efficacy of the pipeline. The proper Applicant must be determined before the County can issue any approval.

2) The County fails to acknowledge that the Easements have lapsed.

The County also has ignored the fact that the Easements simply do not exist. Instead, the County presents a picture of "existing" easements which "continue to be in place." (See, e.g., Attachment C2-Notice of Exemption.pdf, p. C2-2.) This is fiction.

As explained previously, the written terms of the Easements limit the life of those Easements to 3-5 years after non-operation. (See, Right of Way Grant, recorded July 23, 1986, p. 1.) Here, the Lines were shut down in May 2015, almost eight years ago. Because the Easements have lapsed under their written terms, and the validity of those Easements is being litigated in the *Grey Fox* case, no party can claim that any Easements "exist." Accordingly, new Easements must be acquired, by whichever entity is the Owner of the Lines. This issue also must be resolved, before the County can approve the instant Application.

3) The staff's Option No. 3 directs staff to prepare a Supplemental EIR. This Option at least confirms there are questions presented as to baseline, risk, and compliance with PHMSA conditions.

Staff presented Option 3, which asked for direction on (a) the baseline (currently existing conditions of no operation, permitted condition, or historical average), (b) scope (to assess

impacts associated with installation and operation), and (c) an updated Risk analysis (to assess restarting the Lines). Staff noted that, under Option 3, the SEIR also would have to make certain assumptions related to compliance with PHMSA's Corrective Action Order ("CAO").

Directing the staff to utilize currently existing conditions is the proper baseline. AB 864 requires installation of Best Available Technology ("BAT") on existing pipelines that have the potential to impact sensitive resources in the Coastal Zone. It was not enacted to impose a condition on a **non-operational** pipeline which cannot carry oil because of corrosive deficiencies.[1] It follows that BAT installation is not relevant to the purposes of environmental review under CEQA.

However, if BAT installation is considered as a basis for the Project, there is no factual basis for suggesting that the baseline condition should be based on a historical average of operation. Such an approach is countered by the County's own characterization of the pipeline as **non-operational**. The revised Notice of Preparation ("NOP") for the Pipeline Replacement Project issued on April 26, 2022, stated that because substantial retrofits were required prior to re-opening the Lines, "due to deficiencies in the existing pipeline coating . . . the baseline conditions evaluated in the Draft EIR/EIS were changed to **the conditions that existed on the ground at the time the 2019 NOP and NOIs were released, which is, and continues to be, a non-operational pipeline**." (See, Revised NOP SCH #2019029067 (April 26, 2002), pp. 2-3, emphasis added.)

Additionally, utilizing the current condition is the standard commonly used in CEQA, *i.e.*, that the baseline is that set of conditions which exist at the time a Notice of Preparation is prepared. (CEQA Guidelines section 15125(a)(1).)

As to the other noted issues, there is no question that the risk of a further oil spill must be assessed. The analysis should assess the risk if the Lines are restarted without and/or with compliance with the PHMSA COA. The public is entitled to see what the Applicant (whichever entity that is) promises to perform, to ensure public safety. This is the bare minimum that should be considered under CEQA.

Should the Commission recommend a Supplemental EIR ("SEIR"), a new initial study should be prepared and a Scoping Meeting should be scheduled to properly focus the SEIR.

4) We oppose Options Nos. 1 and 2.

Option No. 1 – Approve the Project by utilizing the existing Addendum and Exemptions.

We <u>oppose</u> this option for all of the reasons we and other appellants raised: *i.e.*, it is not legally supportable from a CEQA compliance standpoint. (See, generally, previous appeal letters from Cappello & Noel, LLP dated February 24, 2023, and letters dated February 27, 2023 from Brownstein Hyatt Farber Schreck, LLP and Law Office of Marc Chytilo, APC (collectively, the "Letters"), all of which are incorporated herein.)

[1] See, PHMSA Corrective Action Order (COA) May 21, 2015, attached to prior Cappello and Noel appeal correspondence dated February 24, 2023 as Exhibit 2.

Option No. 2 – Direct staff to supplement the Addendum with additional information specified by the Commission.

We oppose Option No. 2 for several reasons. It avoids the preparation of a Supplemental EIR and ignores any or all of the three conditions demonstrably met under CEQA Guidelines Section 15162(a)(1)-(3) which require the preparation of a Supplemental EIR.

Second, in light of the breadth of written and oral comments, there exists a substantial public controversy over potentially significant environmental effects of the County's processing of this Valve Upgrade Project. This public concern in and of itself requires the preparation of an EIR under CEQA Guidelines Section 15064(f)(4), in that appellants have provided substantial evidence of potentially significant environmental effects, including but not limited to: (a) the definition of baseline conditions; (b) potential for visual impacts to a state scenic highway; and (c) the possible risk of upset from re-starting the Lines after the Valve Upgrade Project has been completed.

Third, supplementing the Addendum with additional information without preparing a Supplemental EIR is inconsistent with numerous written and/or implicit policies in CEQA. These include, but are not limited to, the policies set forth in CEQA Guidelines section 15003:

- Section 15003(a), which states that the "EIR requirement is the heart of CEQA;"
- Section 15003(b), which states that the "EIR requirement serves not only to protect the environment but also to demonstrate to the public that it is being protected;"
- Section 15003(c), which states that the "EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project;"
- Section 15003(f), which states that "CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language;" and,
- Section 15003(h), which states that "the lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect."

Finally, adopting this option would run counter to previous correspondence appellants have submitted that shows the use of either statutory or categorical exemptions in this case would not comply with relevant sections of CEQA. (See, Letters.)

Conclusion

We request that the Planning Commission deny this Application. There is insufficient information on the Owners/Applicants involved and an appeal on the ownership issue is pending before this Commission, and the Easement issue is presently being litigated.

If the Application is not denied, we would support Option No. 3. We oppose Options Nos. 1 and 2.

Very truly yours,

CAPPELLO & NOËL LLP

A. Barry Cappello

Encl: Exhibit A.

Exhibit A

CAPPELLO & NOËL LLP
TRIAL LAWYERS

A. Barry Cappello

March 8, 2023

Via E-Mail and Hand Delivery

Planning and Development Department
Attn: Jacquelynn Ybarra for Director Lisa Plowman
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jybarra@countyofsb.org

Re: Director's Approval of Transfer of Permit for Change of Ownership, Change of Guarantor, and Substitution of a Temporary Operator for the Las Flores Pipeline System (formerly AAPL Lines 901/903); Final Develop Plan No. 88-DPF-033 (RV01)z, 88-CP-60 (RV01) (88-DPF-25cz; 85-DP-66cz; 83-DP-25cz)

Honorable Director of the Planning and Development Department:

Our firm, together with co-counsel, represent the individual and class representative plaintiffs (collectively "Owners") in *Grey Fox, LLC et al. v. Plains Pipeline L.P. et al.*, Case No. 2:16-cv-03157, currently pending in the Federal District Court in the Central District of California. The certified Class in the *Grey Fox* case is comprised of all parcel Owners previously subject to easement contracts ("Easements") that provided Plains Pipeline, L.P. and Plains All American Pipeline, L.P. (collectively, "Plains") with limited, narrow access to the parcels to take certain actions related to Plains' pipeline system, Lines 901 and 903 (collectively, the "Lines"). The *Grey Fox* Class includes approximately 150 Owners.

On behalf of the Owners, we submit the below opposition to the Director's potential approval of the Change of Ownership, Change of Guarantor, and Substitution of a Temporary Operator for the Las Flores Pipeline System (collectively, "Change of Ownership"). The grounds for this challenge are the following.

First, the Change of Ownership ignores the fact that neither ExxonMobil Corporation ("Exxon"), Pacific Pipeline Company ("PPC"), or ExxonMobil Pipeline Company ("EMPCo"), the parties involved in this requested approval, have fully disclosed the terms of the transfer. It is patently clear that Exxon, PPC, and EMPCo have purchased not just the pipelines, but the platforms, and plan a further additional transfer to Sable Offshore Corporation ("Sable") and/or Flame Acquisition Corp. ("Flame"). We have reviewed the Sable investor presentation which, among other things, advertises that the "Asset re-start process [is] well underway," and that

"Sable management are well-qualified to operate Santa Ynez." However, that same investor presentation notes that Sable management came from Plains, the prior operator who had failed to maintain the Lines, leading to irrevocable corrosion anomalies and Plains' criminal conviction for *knowingly* discharging oil. (See, *State of California v. Plains All American Pipeline, L.P.*, Santa Barbara Superior Court, Case No. 1495091, September 7, 2018.) To approve this transfer would endorse a change to a party and/or parties without any accountability, *knowing* these parties fully intend to transfer again in a few months. This is not a straightforward transfer, and the Director should therefore examine it closely.

Second, the Easements have lapsed or terminated under their written terms, which limited the life of the easement to between 3-5 years after non-operation. As stated in one of the Rights of Way ("ROWs"): "It is agreed that all rights and privileges herein granted and given Grantee shall *automatically* end and terminate in the event that Grantee, or its successors and assigns shall fail to install or operate and maintain said pipeline for a period of five (5) consecutive years." (Right of Way Grant, recorded July 23, 1986, p. 2, emphasis added.[1]) It is now more than 7 years since May 2015, when the Lines were ordered to be shut down by the Pipeline and Hazardous Materials Safety Administration. The Easements all have therefore automatically terminated under their terms. The validity of the Easements is being litigated in the federal *Grey Fox* case, and here, neither party can claim a right.[2]

It is also unclear whether the alleged "new" Owner and/or Operator can utilize eminent domain if necessary. There has been no showing that Exxon, PPC, or EMPCo – let alone Sable/Flame -- have been granted public utility status in this case, such that they could invoke that doctrine.

Accordingly, given (1) the lack of substantive information about the Owner/Agents, and (2) the fact that the availability of the relevant Easements is presently being litigated, we urge the Director to disapprove this Change of Ownership.

Sincerely,

CAPPELLO & NOËL LLP

A. Barry Cappello

[1] The County of Santa Barbara acknowledged that the lines were non-operational on April 26, 2022, when it revised the baseline for the replacement project. (See, e.g., Attachment C1: Addendum to EIR.pdf, p. C1-4 ["To-date, the Line 901 and 903 pipeline system from the Las Flores Pump Station to the Pentland Pump station remain non-operational."].)

[2] The original ROW corridor also was generally reduced to a width of 25 feet after construction of the pipelines: "This right of way and easement shall have a temporary width as necessary to construct the pipeline but not to exceed one hundred (100) feet which width shall revert to a permanent width of twenty-five feet six months after commencement of construction on the pipeline." (Right of Way Grant, recorded July 23, 1986, page 1.) It follows that the temporary corridor ceased to exist after the construction of the pipeline.

LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

April 24, 2023

Santa Barbara County Planning Commission *By email*
126 E. Anapamu Street
Santa Barbara, CA 93101

RE: Appeal of Plains Line 901-903 Valve Upgrade Project (Case Nos. 22APL-00000-00024, 22APL-00000-00025, & 22APL-00000-00026 [21AMD-00000-00009 & 22CDP-00000-00048]

Dear Chair Parke and Honorable Planning Commissioners:

This office represents the Gaviota Coast Conservancy (GCC), appellant in this action. GCC is 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.

We appreciate the Commissioner's thoughtful questions and comments, and the direction given to staff. We also appreciate that staff has come back with four potential options available to the Commission. **We respectfully request that the Planning Commission approve either Option 3 (Direct staff to prepare a Supplemental EIR) or Option 4 (Deny the Project as proposed).** We clearly stated our reasons for opposing Option 1 (Approve the project by utilizing the existing Addendum and Exemptions) in written materials and oral comment at the Commission's March 1st hearing. We also oppose Option 2 (Direct staff to supplement the Addendum with additional information specified by the Commission), because the conditions triggering preparation of a Supplemental EIR have occurred (notably the changed circumstances with respect to the integrity of the line and absence of an effective liner system and cathodic protection (a standard pipeline protective safety measure that uses a low electrical current to prevent corrosion[i]).

1. A Supplemental EIR Is the Proper CEQA Document

To approve the Project with an Addendum, the Commission must find that no subsequent environmental review is required pursuant to CEQA Guidelines §§ 15162 and 15164. (*See* Findings, p. A-1.) Where, as here, there are substantial changes in the circumstances under which the project is undertaken, which reveal new and substantially increased significant environmental effects, a Supplemental (or Subsequent) EIR rather than an Addendum is the proper environmental document. (CEQA Guidelines §§ 15162 and 15164.)

The 1985 Final EIR (and 1984 Draft EIR) for the Celeron/All American and Getty Pipeline Projects assessed the environmental impact of the entire 1,200 mile pipeline from the Los Flores facility on the Gaviota Coast to McCamey Texas. The 1984 Draft EIR (DEIR)

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acknowledges that "[p]rotection of a pipeline from corrosion is of critical importance to the environment as well as the pipeline operator." (DEIR, p. 4-106). The DEIR concludes however that the proposed wrap and cathodic protection would protect against it. (DEIR p. 2-5 ("The entire pipeline would be protected from corrosion with cathodic protection systems consisting of groundbeds and rectifiers.")

In 2015, Line 901 ruptured, causing the Refugio Oil Spill. The rupture in Line 901 resulted from progressive external corrosion of the pipeline, caused by ineffective protection against external corrosion and failure by Plains to detect and mitigate the corrosion. (PHMSA Report[ii], p. 14.) The condition of the pipeline's coating and insulation system fostered an environment that led to the external corrosion, and the pipeline's cathodic protection system was not effective in preventing corrosion from occurring beneath the pipeline's coating/insulation system. (Id., p. 3; *see* 6/5/15 Independent story[1].)

The proposed safety valves would be installed on the existing pipeline to enable its use consistent with the Consent Decree and Corrective Action Order (*see* Exhibit B) as an alternative approach to replacing the pipeline (*see id.,* PDF p. 89). Prior to restarting Line 901, Plains must apply for a State Waiver through the Office of the State Fire Marshall (OSFM) for the limited effectiveness of cathodic protection. (Exhibit B, PDF p. 81; *see* Plains Valve Appeal Planning Commission Staff Report (2/2/23) p. 14.)

Installing safety valves on an oil pipeline without a functioning liner and cathodic protection system, is substantially different from installing safety valves on the pipeline analyzed in the 1985 EIR. This change in circumstances substantially increases the significant environmental effects of the 1985 approved pipeline project. Specifically, the risk of rupture and release of oil into the environment is substantially increased without an effective liner and cathodic protection system.

2. Scope of the Supplemental EIR Must Follow CEQA's Guiding Principles

In determining the scope of the Supplemental EIR, the County must follow CEQA's "foremost principle" that the act be "interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.'" (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259). The "Project" analyzed in the EIR must include "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" (CEQA Guidelines § 15378 (a).)

With respect to choice of baseline, the Supplemental EIR must be guided by the purpose of CEQA's baseline requirement, namely "to give the public and decisionmakers the most accurate and understandable picture practically possible of the project's likely near-term and

[1] Available at https://www.independent.com/2015/06/05/huge-discrepancy-pipeline-corrosion-measurements/

long-term impacts." (CEQA Guidelines § 15125 (a)). The physical environmental conditions as they exist at the time the notice of preparation is published or the environmental analysis commences will normally constitute the baseline for the environmental analysis. (CEQA Guidelines § 15125 (a) (1)). However, "a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record." (Id.).

Following these principles, the Supplemental EIR for the Valve Project must include a detailed evaluation of the state of the existing pipeline (the proposed pipeline anomaly repairs, and alternative spill prevention measures required through the State Waiver) and assess the spill risk impacts for the proposed use of the existing pipeline. An updated Risk Analysis that includes restart of full pipeline operation, with the proposed valves, should be included in the analysis.

To the extent additional guidance on the scope of the Supplemental EIR is needed, the Commission should specifically direct that staff conduct a public scoping process before commencing preparation of the Draft Supplemental EIR.

2. Substantial Evidence Supports Denial Findings

To approve the proposed CUP and DVP Amendment the Planning Commission must make findings including that "the findings required for approval of the Final Development Plan, including any environmental review findings made in compliance with the California Environmental Quality Act, that were previously made when the Final Development Plan was initially approved remain valid to accommodate the project as revised with the new development proposed by the applications for the Amendment and the Coastal Development Permit. (Finding 2.1.3.A)

When the Planning Commission approved the Celeron/Plains All American Pipeline Development Plan in 1986, it found the following with respect to Oil Spill Impacts:

> Oil spill-related impacts may still occur even after successful implementation of the identified mitigation measures, due to natural events and technical limitations that can hinder effective cleanup and containment. The risks of an unlikely oil spill, combined with the risks of incomplete spill cleanup, are considered acceptable because only denying the project could assure complete mitigation of oil spill impacts. The identified mitigation measures represent the best feasible techniques currently available.

(3/1 Staff Report, Attachment M, p. 7.) This finding does not anticipate any events or technical limitations that hinder the effectiveness of corrosion protection as has actually occurred. Without corrosion protection the pipeline no longer includes the best feasible techniques currently available.

The 1986 Overriding Considerations emphasized "The primary alternative to pipelines is marine tankering. Expanded marine transport would cause adverse significant, long-term impacts to the County in the areas of air quality, socioeconomics and oil spill risk… It is therefore the County's desire to permit pipelines which will serve local producers' refineries, thereby diverting oil from marine tankers to pipelines." (*Id.*, p. 55.)

Here, the Planning Commission is confronting a choice to approve or deny valve installation on the existing pipeline. With an approval, the Applicant can apply to the OSFM to restart operations and transport oil in the existing line (without best available techniques to protect against external corrosion). With a denial, the Applicant remains free to pursue the pipeline replacement project which is already undergoing environmental review at the County. A new modern pipeline would have lower spill risks than use of the existing corroded line, even with anomaly repairs and safety valves. In 1986 by contrast, there was no safer alternative available and denial of the pipeline would force transport by marine tankering.

For these reasons, the findings made for the pipeline project in 1986, and in particular the Statement of Overriding Considerations, is no longer applicable to the Valve Project.

3. Conclusion

For the foregoing reasons, and those stated in materials and presentations for the March 1st hearing, we urge the Commission to take the following actions:

a) Approve Option 3 in the 4/26/23 Staff Memorandum, directing staff to prepare a Supplemental EIR, the scope of which must be guided by core CEQA principles and, if necessary, considered in a public scoping process;

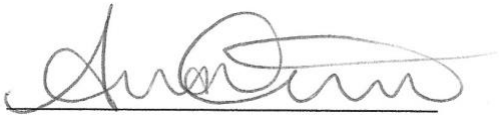
OR

b) Approve Option 4 in the 4/26/23 Staff Memorandum, denying the Project based on the inability to make required findings provided in Attachment A of the March 1, 2023 County Planning Commission Staff Report including:

Findings 2.1.3.1.A and 2.2.1.1.A cannot be made because previous approval findings are no longer applicable to the Project because best available techniques to prevent external corrosion are not in place, and marine tankering is not the only alternative to Project approval.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC



Ana Citrin
For Gaviota Coast Conservancy

Exhibit A: GCC Comment Letter on the Change of Ownership, Guarantor, and Temporary Operator of the AAPL 901/903 Pipeline System (March 13, 2023)
Exhibit B: Consent Decree, Civil Action No. 2:20-cv-02415

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[i] *See https://www.tcenergy.com/siteassets/pdfs/commitment/safety/pipelines-and-operations/tc-cathodic-protection.pdf*

[ii] U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration Failure Investigation Report, Plains Pipeline, LP, Line 901 Crude Oil Release, May 19, 2015 (May 2016) ("PHMSA Report"). Available at: https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/PHMSA_Failure_Investigation_Report_Plains_Pipeline_LP_Line_901_Public.pdf

LAW OFFICE OF MARC CHYTILO, APC

EXHIBIT A

ENVIRONMENTAL LAW

March 13, 2023

Jacquelynn Ybarra, Planner
Santa Barbara County Planning & Development
126 E. Anapamu Street
Santa Barbara, CA 93101

By email

RE: Change of Ownership, Guarantor, and Temporary Operator of the AAPL 901/903 Pipeline System

Dear Ms. Ybarra:

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. GCC is an appellant on a separate but related matter, the Plains Line 901-903 Valve Upgrade Project, currently pending before the County Planning Commission.

GCC is concerned that the proposed Change of Ownership, Guarantor, and Temporary Operator for the 901/903 pipeline system (referred to herein as the proposed "Ownership Change") is being processed separately from the Valve Upgrade Project when both amend the same Final Development Plan (FDP), concern overlapping issues, and the identity of the true applicant is at issue in the Valve Upgrade Project appeals. GCC also shares many of the specific concerns regarding the proposed Ownership Change raised by other members of the public. This letter focuses on one required finding that we find particularly problematic.

Pursuant to County Code § 25B-9 (5), Pacific Pipeline Company (PPC)'s request for a change in ownership of the Line 901 and 903 Pipeline System can only be approved if the Director finds that "the current owner(s) are in compliance with all requirements of the permit". The Director Memo for the Ownership Change incorrectly asserts, that with the exception of the SIMQAP, "[t]he new/pending Owner (PPC) is in compliance with all other requirements of the facility's governing permits." (Director Memo, Attachment A, p. 3)

First, the finding is as to the "current owner" not the "new/pending owner". More importantly however, the current owner is manifestly not in compliance with all other requirements of the facility's governing permits. Below we describe a glaring example of this owner's noncompliance that has major safety implications, especially given the new/pending owner's proposal to restart operations using the existing, badly corroded, 901-903 pipeline system.[i]

Final Development Plan Conditions for the 901-903 Pipeline System, attached to the Directors Memo, include the following condition:

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> A-7. Substantial Conformity
> ***The procedures, operating techniques, design, equipment and other descriptions (hereinafter procedures)*** described in by AAPLP in its application to the County 83-DP-25 cz, 83-CP-97 cz, and in subsequent clarifications and additions to that application and the Final Development Plan ***are incorporated herein as permit conditions and shall be required elements of the project. Since these procedures were part of the project description which received environmental analysis, a failure to include such procedures in the actual project could result in significant unanticipated environmental impacts.*** Therefore, modifications of these procedures will not be permitted without a determination of substantial conformity or a new or modified permit. The use of the property and the size, shape, arrangement and location of buildings, structures, walkways, parking areas and landscaped areas shall be in substantial conformity with the approved Final Development Plan.

(Directors Memo, Attachment 1, p. 2).

Discovered following the Refugio Oil Spill in 2015, the cathodic protection system designed to protect the pipeline from external corrosion failed spectacularly, due in no small part Plains' failure to maintain it. (PHMSA Report[ii].) Accordingly a waiver from the Office of the State Fire Marshall (OSFM) for the limited effectiveness of cathodic protection is being pursued to allow the pipeline to operate *without* effective cathodic protection (Plains Valve Appeal Planning Commission Staff Report (2/2/23) p. 14.) This important "procedure" was part of the project description that received environmental review.

Specifically, the 1985 EIR's description of the Celeron/All American pipeline provides "[t]he entire pipeline would be protected from corrosion with cathodic protection systems consisting of groundbeds and rectifiers." (DEIR p. 2-5.) The Project Description further provides "[m]aintenance activities associated with the pipeline and the ROW would include the following: …Inspection and maintenance of cathodic protection systems." (DEIR p. 2.24.) The Draft EIR acknowledges that "[p]rotection of a pipeline from corrosion is of critical importance to the environment as well as the pipeline operator." (DEIR, p. 4-106 (emphasis added).

On May 19, 2015, Line 901 ruptured, spilling approximately 2,934 barrels of heavy crude oil into the environment, at least 500 barrels of which entered the Pacific Ocean near Refugio State Beach. (PHMSA Report, p. 3.) The spill impacted approximately 1,500 acres of shoreline habitat and 2,200 acres of subtidal and fish habitat, killing and injuring marine plants and wildlife, including seagrasses, kelp, invertebrates, fish, birds, and mammals. (Final Damage Assessment[iii], p. 22.) The spill moreover forced the closure of beaches and fisheries, causing losses for local businesses and lost opportunities for the public to visit and enjoy the shore and offshore areas estimated at 140,000 lost recreational user days. (Id., pp. 8, 22.)

The rupture in Line 901 resulted from progressive external corrosion of the pipeline, caused by ineffective protection against external corrosion and failure by Plains to detect and

mitigate the corrosion. (PHMSA Report p. 14.) The condition of the pipeline's coating and insulation system fostered an environment that led to the external corrosion, and the pipeline's cathodic protection system was not effective in preventing corrosion from occurring beneath the pipeline's coating/insulation system. (Id., p. 3.) Plains failed to identify corrosion under insulation (CUI) as risk-driving threat in their federally-mandated integrity management program (IMP) and did not fully implement their IMP as required. (Id., pp. 14-15.)

As explained at length in the PHMSA Report, the failures in the insulation/coating system, ineffectiveness of cathodic protection, and Plains' maintenance failures have compromised the pipeline to the extent that it is proposed for wholesale replacement[iv]. There is no substantial evidence showing that the owner/operator of Line 901 is in compliance with the critical aspect of the project description requiring effective cathodic protection. Accordingly the owner/operator is not in compliance with Condition A-7, and findings required for approval pursuant to County Code § 25B-9 (5) cannot be made.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC

Ana Citrin
For Gaviota Coast Conservancy

CC: Katie Nall, Planner

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[i] *See* GCC Letter to Planning Commission re: Plains Valve Appeal (2/27/23) Exhibit B (Sable Investor Presentation); *see also* Flame's Preliminary Proxy Statement filed with the SEC and available at https://www.sec.gov/Archives/edgar/data/1831481/000119312522282811/d377586dprem14a.htm

[ii] U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration Failure Investigation Report, Plains Pipeline, LP, Line 901 Crude Oil Release, May 19, 2015 (May 2016) ("PHMSA Report"). Available at: https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/PHMSA_Failure_Investigation_Report_Plains_Pipeline_LP_Line_901_Public.pdf

[iii] Refugio Beach Oil Spill, Final Damage Assessment (June 2021), available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=193144&inline

[iv] Revised Notice of Preparation, Plains Replacement Pipeline Project, available at: https://cosantabarbara.app.box.com/s/o9fp2865sykaqn98s0702plaa96xj7t5/folder/74197252061 and

https://files.ceqanet.opr.ca.gov/170616-2/attachment/kMgGnx0tQr16ZTEvxK9MMeqNrLQO9Zgzm79wtnPIiz9ypKehMDgvTH0hm3te5DOx4NMf_ebkpJow0wNe0

EXHIBIT B

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Counsel for Plaintiff United States of America

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, and the PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.* DEPARTMENT OF FISH AND WILDLIFE, PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.* CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD, *ex rel.* CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, *ex rel.* CALIFORNIA STATE LANDS COMMISSION, *ex rel.* CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION'S OFFICE OF STATE FIRE MARSHAL, and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, Plaintiffs, v. PLAINS ALL AMERICAN PIPELINE, L.P. and PLAINS PIPELINE, L.P., Defendants.	Civil Action No. 2:20-cv-02415 **CONSENT DECREE**

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Supervising Deputy Attorney General
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TABLE OF CONTENTS

A. WHEREAS, on or about May 19, 2015, a hazardous liquid pipeline known as the Line 901 pipeline ("Line 901") owned and operated by Plains Pipeline, L.P., a wholly owned subsidiary of Plains All American Pipeline, L.P., (jointly, "Plains" or "Defendants"), failed and discharged approximately 2,934 barrels of heavy crude-oil ("Refugio Incident") in Santa Barbara County, California. A portion of the oil reached the Pacific Ocean and coastal areas such as Refugio State Beach. The Refugio Incident adversely impacted Natural Resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and the State of California ("California" or the "State").

B. WHEREAS, cleanup actions began immediately after the Refugio Incident at the direction of a Unified Command established by the United States Coast Guard ("USCG") and the State of California Department of Fish and Wildlife ("CDFW"), Office of Spill Prevention and Response ("OSPR"). The Unified Command was comprised of the United States, State agencies, the County of Santa Barbara, and Plains.

C. WHEREAS, on May 21, 2015, the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued Plains a Corrective Action Order ("Original CAO"), CPF No. 5-2015-5011H, which was subsequently amended on June 3, 2015 ("CAO Amendment No. 1"), November 12, 2015 ("CAO Amendment No. 2"), and June 16, 2016 ("CAO Amendment No. 3"), (collectively, "the PHMSA CAO"). The PHMSA CAO directed Plains, among other things, to purge Line 901 and a portion of the adjoining Line 903 pipeline ("Line 903"), between Plains' Gaviota and Pentland pump stations, and to keep Line 901 and the purged sections of Line 903 shut down until the actions required by the PHMSA CAO were satisfactorily completed.

D. WHEREAS, on May 19, 2016, PHMSA issued a Failure Investigation Report, which included PHMSA's findings of the "proximate or direct" causes and the "contributing" causes of the Refugio Incident.

E. WHEREAS, Defendants reimbursed Plaintiffs' costs incurred for cleanup, and Plaintiffs have no known unreimbursed claims for cleanup costs arising from the Refugio Incident.

F. WHEREAS, CDFW incurred certain additional costs arising from the administration and civil enforcement of pollution laws, including attorneys' fees that have been reimbursed by Plains.

G. WHEREAS, Plains represents that it has implemented and will continue to utilize an electronic tracking tool and software for maintenance activities, including those activities related to mainline valves. The software tracks which maintenance activities are performed, who performs the activity, when prior notifications of maintenance activities by field personnel are received, when problems requiring maintenance are first discovered, and when maintenance problems are corrected. Plains maintains a separate software program to track the training and qualifications of all maintenance personnel.

H. WHEREAS, Plains represents that, following the Refugio Incident and pursuant to PHMSA's CAO, Plains performed a comprehensive review of its Emergency Response Plan and Training Program, and revised and updated its Response Plan for Onshore Oil Pipelines for Line 901 and Line 903 ("Bakersfield District Response Zone Plan") to reflect modifications resulting from the review and the incorporation of lessons learned. As part of the revision, Plains identified the locations of culverts along the pipelines' rights-of-way and provided containment and recovery techniques for responding to spills that may occur near those culverts. Plains provided drafts of the updated Bakersfield District Response Zone Plan to PHMSA, incorporated comments provided by PHMSA, and received approval of the revised plan from PHMSA on September 26, 2017.

I. WHEREAS, Plains represents that it also created a more detailed Geographic Information System ("GIS") based online Tactical Response Plan for its onshore oil pipelines in Southern California, including Line 2000 and the operational portion of Line 903, that, among other things, identifies culverts along the pipelines' rights-of-way, potential receptors and the equipment, supplies and resources that would be necessary to respond to a spill occurring at any given location along those pipelines, identifies the sources and locations for obtaining those resources, and, in some instances, establishes stored inventories of those resources in specific locations. Plains represents that it intends to keep its Tactical Response Plan updated and available for use in drills and spill response, and that it will make the Tactical Response Plan available to the Plaintiffs upon reasonable request and as needed in connection with a drill or response to a spill.

J. WHEREAS, Plains represents that Plains personnel responding to incidents that trigger the standup of an incident command structure ("ICS") have been provided ICS training appropriate to their responsibilities.

K. WHEREAS, the relevant Natural Resources trustees ("Trustees") for the Refugio Incident are the United States Department of the Interior ("DOI"); United States Department of Commerce, on behalf of the National Oceanic and Atmospheric Administration ("NOAA"); CDFW; California Department of Parks and Recreation ("CDPR"); California State Lands Commission ("CSLC"); and The Regents of the University of California ("UC").

L. WHEREAS, pursuant to Section 1006 of the Oil Pollution Act (''OPA''), 33 U.S.C. 2701, *et seq*., the United States and the State Trustees allege that oil from the Refugio Incident caused injuries to Natural Resources, including birds, marine mammals, shoreline and subtidal habitats, and also had an impact upon human uses of Natural Resources and other public resources. The Federal Trustees are designated pursuant to the National Contingency Plan,

40 C.F.R. § 300.600 and Executive Order 12777. CDFW and CDPR are designated state trustees pursuant to the National Contingency Plan, 40 C.F.R. § 300.605, and the Governor's Designation of State Natural Resource Trustees pursuant to Section 1006(b)(3) of OPA and the Comprehensive Environmental Response, Compensation and Liability Act of 1980. In addition, CDFW has state natural resource trustee authority pursuant to California Fish and Game Code §§ 711.7 and 1802 and the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (California Government Code § 8670.1 *et seq.*). CDPR and UC have jurisdiction over natural resources within the state park system and the UC Natural Reserve System, respectively, which are held in trust for the people of the State of California. CSLC is a state trustee pursuant to its jurisdiction under Public Resources Code § 6301 and Civil Code § 670.

M. WHEREAS, after the Refugio Incident, the Trustees and Defendants entered into a cooperative Natural Resource Damage Assessment process pursuant to 15 C.F.R. § 990.14, whereby the Trustees and Defendants jointly and independently planned and conducted a number of injury assessment activities. These activities included gathering and analyzing data and other information that the Trustees used to determine and quantify resource injuries and damages. As a result of this process and other activities, the Trustees identified several categories of injured and damaged Natural Resources, including birds, marine mammals, and shoreline and subtidal habitats, as well as effects to human use/recreation resulting from impacts on these Natural Resources, and determined the cost to restore, rehabilitate, replace, or acquire the equivalent of injured Natural Resources. By entering this Consent Decree, Defendants do not admit or agree that the Trustees' NRD findings and determinations are accurate.

N. WHEREAS, due to the specific facts surrounding the Refugio Incident, including the timing, degree, and nature of the spill and the affected

environment, the Trustees will not seek additional damages, costs, or expenses for Natural Resources resulting from the Refugio Incident.

O. WHEREAS, Plains agrees to reimburse costs incurred by the Trustees in connection with the NRDA through November 15, 2018, and will not reimburse costs incurred by the Trustees in connection with the NRDA after that date.

P. WHEREAS, by entering into this Consent Decree, Plains does not admit the allegations in the Complaint filed in this action, or any liability to the Plaintiffs.

Q. WHEREAS, on January 28, 2019, PHMSA initiated a regularly-scheduled "Integrated Inspection" of a portion of Defendants' Regulated Pipelines, as described below, and other pipeline facilities and records, pursuant to 49 U.S.C. § 60117.

R. WHEREAS, the Parties agree that settlement of this matter without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving this action.

S. WHEREAS, the Parties agree and the Court by entering this Consent Decree finds, that this Consent Decree: (1) has been negotiated by the Parties at arm's-length and in good faith; (2) will avoid prolonged litigation between the Parties; (3) is fair and reasonable; and (4) furthers the objectives of the federal and state environmental protections, and the federal and state pipeline safety laws.

I. BACKGROUND

The United States, on behalf of PHMSA, the United States Environmental Protection Agency ("EPA"), DOI, NOAA, and USCG; and the People of the State of California *Ex Relatione* CDFW, CDPR, CSLC, UC, the California Central Coast Regional Water Quality Control Board ("RWQCB"), and the California Department of Forestry and Fire Protection's - Office of the State Fire

Marshal ("OSFM"), filed a Complaint in this matter pursuant to the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq*., and associated regulations and orders; OPA, 33 U.S.C. §§ 2701 *et seq.*, and associated regulations and orders; the federal Pipeline Safety Laws, 49 U.S.C. §§ 60101 *et seq*., and associated regulations and orders; the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, California Government Code §§ 8670.1 *et seq.* and associated regulations; California Fish and Game Code §§ 2014, 5650, 5650.1, 12016, 13013; California Water Code §§ 13350, 13385; and the Elder California Pipeline Safety Act of 1981, California Government Code §§ 51010 *et seq*. The Complaint against Plains, *inter alia*, asserts allegations of violations, and seeks penalties, injunctive relief, and Natural Resource Damages.

NOW, THEREFORE, before the trial of any claims and without adjudication or admission of any issue of fact or law and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the United States' claims in this action pursuant to Section 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n), Section 1017(b) of OPA, 33 U.S.C. § 2717(b); Sections 60120 and 60122 of the Pipeline Safety Laws, 49 U.S.C. §§ 60120 and 60122; and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has supplemental jurisdiction over the State law claims pursuant to 28 U.S.C. § 1367. To the extent the OPA presentment requirement described in 33 U.S.C. § 2713 applies, the United States and the State Agencies have satisfied the requirement.

2. Venue is proper in this District pursuant to Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), Section 1017(b) of OPA, 33 U.S.C. § 2717(b); Section 60120 of the Pipeline Safety Laws, 49 U.S.C. § 60120; and 28 U.S.C. §§ 1391 and 1395(a), because Plains

does business in this District and the alleged claims occurred in this District.

3. For purposes of this Consent Decree or any action to enforce this Consent Decree, Defendants consent to the Court's jurisdiction over this Consent Decree for such action and Defendants consent to venue in this judicial district. For purposes of this Consent Decree and without admission of liability, Defendants agree that the Complaint states claims upon which relief may be granted.

III. APPLICABILITY

4. Subject to the terms herein, the obligations of this Consent Decree apply to and are binding upon the Parties and any successors, assigns, as well as any other entities or persons otherwise bound by law to comply with this Consent Decree.

5. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include ensuring compliance with any provision of this Consent Decree, as well as to any contractor retained for the purpose of performing work required under this Consent Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree by specifying that contractors are obligated to perform work in compliance with this Consent Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the CWA, OPA, Pipeline Safety Laws, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, and the Elder California Pipeline Safety Act of 1981 shall

have the meanings assigned to them in these statutes and their regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

"Appendix A" is the set of maps that generally depict Lines 901, 903, and 2000;

"Appendix B" is the Injunctive Relief that Plains is required to perform under this Consent Decree;

"Appendix C" is intentionally left blank;

"Appendix D" is the list of remaining corrective actions from the PHMSA CAO that Plains is still required to implement under this Consent Decree. For the terms of the PHMSA CAO, *see* https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_520155011H.html?nocache=4888#_TP_1_tab_1;

"CDFW" shall mean the California Department of Fish and Wildlife and any of its successor departments or agencies;

"CDPR" shall mean the California Department of Parks and Recreation and any of its successor departments or agencies;

"Complaint" shall mean the Complaint filed by the Plaintiffs in this action;

"Consent Decree" shall mean this Consent Decree and all Appendices attached hereto;

"Control Room Management Plan" shall mean Plains' Control Room Management Plan, dated October 2019, and delivered to PHMSA electronically on October 21, 2019, from counsel for Defendants;

"Control Center General Procedures" shall mean Plains' Control Center General Procedures, dated October 2019, and delivered to PHMSA electronically on October 21, 2019, from counsel for Defendants;

"CSLC" shall mean the California State Lands Commission and any of its successor departments or agencies;

"Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, the rules set forth in Rule 6 of the Federal Rules of Civil Procedure shall apply;

"Defendants" shall mean Plains All American Pipeline, L.P. and Plains Pipeline, L.P.;

"Delivery Lines" as stated in Appendix B shall mean any pipeline that generally operates to move oil from a delivery meter on a pipeline or facility to another pipeline or facility in close proximity;

"DOI" shall mean the United States Department of the Interior, including its bureaus and agencies, and any of its successor departments or agencies;

"Elder California Pipeline Safety Act" shall mean the Elder California Pipeline Safety Act of 1981, California Government Code §§ 51010 *et seq.*;

"EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

"Effective Date" shall have the definition provided in Section XXI (Effective Date);

"Federal Trustees" shall mean DOI and NOAA in their capacities as Natural Resource Trustees;

"Integrity Management Plan" or "IMP" shall mean Plains' Integrity Management Plan, dated September 2019, as delivered to PHMSA by letter dated November 19, 2019, from counsel for Defendants;

"Line 901" is Defendants' 24-inch diameter crude-oil pipeline that extends approximately 10.7 miles in length from the Los Flores Pump Station to the Gaviota Pump Station, in Santa Barbara County, California, as generally depicted in Appendix A;

"Line 903" is Defendants' 30-inch diameter crude-oil pipeline that extends approximately 129 miles in length from the Gaviota Pump Station in Santa Barbara County, California to the Emidio Pump Station in Kern County,

California, with intermediate stations at Sisquoc Mile Post 38.5 and Pentland Mile Post 114.57, as generally depicted in Appendix A;

"Line 2000" is Defendants' 20-inch diameter pipeline that extends approximately 130 miles in length and transports crude-oil produced in the outer continental shelf and the San Joaquin Valley. Line 2000 runs from Bakersfield, California, over the Tehachapi Mountains and through the Grapevine I-5 corridor and extends to delivery locations in the Los Angeles metropolitan area, as generally depicted in Appendix A;

"Mainline pipeline" as stated in Appendix B shall mean the principal pipeline or the parallel pipeline in a given pipeline system, excluding connected lateral lines or branch lines that are used locally to deliver product either into the mainline pipeline from, or out of the mainline pipeline to, a nearby facility or a third-party line;

"Natural Resource" and "Natural Resources" shall mean land, fish, mammals, birds, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or the State or any subdivision thereof, and shall also mean the services provided by such resources to other resources or to humans;

"Natural Resource Damages" or "NRD" shall mean all damages, including restoration or rehabilitation costs, recoverable by the United States or State Trustees for injuries to, destruction of, loss of, or loss of use of, natural resources including any services such natural resources provide, including the reasonable costs of assessing the damage, as described in 33 U.S.C. § 2702(b)(2)(A), resulting from the Refugio Incident;

"Natural Resource Damage Assessment" or "NRDA" shall mean the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine damages for injuries to Natural

Resources, as described in 15 C.F.R. Part 990, resulting from the Refugio Incident;

"NRD Payment" shall mean the payment Defendants are required to pay for the Natural Resource Damages as described in Section VI (Natural Resource Damages);

"Natural Resource Trustees" or "Trustees" are those federal and state agencies or officials designated or authorized pursuant to the CWA, OPA, and/or applicable state laws to act as Trustees for the Natural Resources belonging to, managed by, controlled by, or appertaining to the United States or the State. Participating Trustees in the Natural Resource Damage Assessment and in this Consent Decree are DOI, NOAA, CDFW, CDPR, CSLC, and UC;

"NOAA" shall mean the National Oceanic and Atmospheric Administration and any of its successor departments or agencies;

"Oil Spill Liability Trust Fund" or "OSLTF" shall mean, *inter alia*, the fund established pursuant to 26 U.S.C. § 9509, including the claim-reimbursement provisions set forth in 33 U.S.C. § 2712;

"OSFM" shall mean the California Department of Forestry and Fire Protection's - Office of the State Fire Marshal and any of its successor departments or agencies;

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral;

"Parties" shall mean the Plaintiffs and Defendants, collectively;

"PHMSA" shall mean the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration and any of its successor departments or agencies;

"PHMSA Corrective Action Order" or "PHMSA CAO" shall mean the Original CAO issued on May 21, 2015, by PHMSA, which was subsequently amended on June 3, 2015, November 12, 2015, and June 16, 2016;

"Pipeline Safety Laws" shall mean 49 U.S.C. §§ 60101 *et seq*., and regulations promulgated thereunder, including 49 C.F.R. Parts 190-199;

"Plaintiffs" shall mean the United States and the State Agencies;

"Refugio Incident" shall mean the release of approximately 2,934 barrels of crude-oil from Plains' Line 901 Pipeline, in Santa Barbara County, California on or about May 19, 2015;

"Regulated Pipeline" shall mean any pipeline operated by Plains subject to regulation under 49 C.F.R. Subchapter D, 19 California Code of Regulations Div. 1 Ch. 14, or the pipeline safety regulations of any other state certified by PHMSA pursuant to 49 U.S.C. § 60105, but excludes facilities other than pipelines;

"Requests for Information" or "RFI" shall mean PHMSA's RFIs dated August 19, 2015, August 21, 2015, and September 1, 2016. RFIs shall also refer to PHMSA's subpoenas issued to Plains dated July 27, 2016 and June 2, 2017;

"Restore" or "Restoration" shall mean any action or combination of actions to restore, rehabilitate, replace or acquire the equivalent of any Natural Resource and its services, including Natural Resource-based recreational opportunities that were injured, lost, or destroyed as a result of the Refugio Incident;

"RWQCB" shall mean the California Central Coast Regional Water Quality Control Board and any of its successor departments or agencies;

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral;

"Segment" as stated in Appendix B shall mean any contiguous portion of a pipeline system for which a single hydrostatic test or ILI may be performed, as determined by Defendants;

"State Agencies" shall mean the People of the State of California, *Ex Relatione* CDFW, CDPR, CSLC, OSFM, RWQCB, and UC. The State Agencies do not include any entity or political subdivision of the State of California other than those agencies herein designated the "State Agencies";

"State Trustees" shall mean CDFW, CDPR, CSLC, and UC in their capacities as Natural Resource Trustees;

"United States" shall mean the United States of America, on behalf of PHMSA, EPA, DOI, NOAA, and USCG;

"UC" shall mean The Regents of the University of California and any of its successor departments or agencies; and

"USCG" shall mean the United States Coast Guard and any of its successor departments or agencies.

V. CIVIL PENALTIES

A. Within thirty (30) Days after the Effective Date, Defendants shall pay to the United States, CDFW, and RWQCB a total civil penalty of twenty-four million dollars ($24,000,000), together with interest accruing from the date on which the Consent Decree is lodged with the Court, at a rate specified in 28 U.S.C. § 1961 (the "Penalty Payment"). The Penalty Payment shall be allocated as follows:

8. Penalty Payment to the United States (PHMSA). For violations of the Pipeline Safety Laws alleged in the United States' Complaint, Defendants shall pay to the United States a civil penalty of fourteen million five hundred thousand dollars ($14,500,000), together with a proportionate share of the interest accrued on the Penalty Payment. The Penalty Payment shall be made as follows:

a. Thirteen million two hundred fifty thousand dollars ($13,250,000) attributed to Plains' alleged Pipeline Safety Law violations; and

b. One million two hundred fifty thousand dollars ($1,250,000) attributed to Plains' alleged non-compliance with the RFIs.

c. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice in accordance with written instructions to be provided to Defendants by the

Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Central District of California Western Division after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Megan Prout
Senior Vice President
Commercial Law and Litigation
Plains All American Pipeline, L.P.
333 Clay Street, Suite 1600
Houston, TX 77002

on behalf of Defendants. Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States in accordance with Section XX (Notices).

d. At the time of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state the payment is for the civil penalty owed pursuant to this Consent Decree in the *United States of America and the People of the State of California v. Plains All American Pipeline, L.P., et al*., and shall reference the Civil Action Number assigned to this case, CDCS Number, and DOJ case number 90-5-1-1-11340, to the United States in accordance with Section XX (Notices).

9. Penalty Payment to the United States (EPA) shared with CDFW and RWQCB. The Penalty Payment shall be allocated as follows:

a. As a CWA penalty for violations of 33 U.S.C. § 1321(b) and

the California statutes alleged in the Complaint other than California Government Code § 8670.66(b), Defendants shall pay a civil penalty of nine million four hundred fifty thousand dollars ($9,450,000), together with a proportionate share of the interest accrued on the Penalty Payment. The Penalty Payment shall be made as follows:

1) To CDFW, one million twenty-five thousand dollars ($1,025,000), together with a proportionate share of the interest accrued on the Penalty Payment. The Penalty Payment shall be made by check payable to California Department of Fish and Wildlife. The check shall be sent by overnight or certified mail to:

California Department of Fish and Wildlife
Office of Spill Prevention and Response
Attn: Katherine Verrue-Slater, Senior Counsel
P.O. Box 160362
Sacramento, California 95816-0362

The check shall reference the "Refugio Oil Spill." CDFW shall deposit the money as follows: one million dollars ($1,000,000) into the Environmental Enhancement Fund pursuant to California Government Code § 8670.70; and twenty-five thousand dollars ($25,000) into the Fish and Wildlife Pollution Account pursuant to California Fish and Game Code §§ 12017 and 13011.

2) To RWQCB, two million five hundred thousand dollars ($2,500,000), together with a proportionate share of the interest accrued on the Penalty Payment. The Penalty Payment shall be made by check payable to the "State Water Pollution Cleanup and Abatement Account" and sent to:

State Water Resources Control Board
Division of Administrative Services, ATTN: Civil Liability Payment
P.O. Box 1888
Sacramento, California 95812-1888

The check shall reference the "Refugio Oil Spill."

3) To the United States, five million nine hundred twenty-five thousand dollars ($5,925,000), together with a proportionate share of the interest accrued on the Penalty Payment, by EFT to the United States Department of Justice, in accordance with instructions to be provided to Defendants by the FLU of the United States Attorney's Office for the Central District of California Western Division. Such monies are to be deposited in the OSLTF. The Penalty Payment shall reference the Civil Action Number assigned to this case, DOJ case number 90-5-1-1-11340, and USCG reference numbers FPNs A15017 and A15018, and shall specify that the payment is made for CWA civil penalties to be deposited into the OSLTF pursuant to 33 U.S.C. § 1321(s), Section 4304 of Pub. L. No. 101-380, and 26 U.S.C. § 9509(b)(8). Any funds received after 11:00 a.m. Eastern Standard Time shall be credited on the next business day. Defendants shall simultaneously provide notice of payment in writing, together with a copy of any transmittal documentation to EPA and the United States in accordance with Section XX (Notices) of this Consent Decree, and to EPA by email to acctsreceivable.CINWD@epa.gov and to EPA and the National Pollution Funds Center at the following addresses:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

and

Patricia V. Kingcade
Attorney Advisor
National Pollution Funds Center
U.S. Coast Guard
2703 Martin Luther King Jr. Avenue SE
Washington, D.C. 20593-7605

10. Penalty Payment to be Paid to CDFW. For alleged violations of California Government Code § 8670.25.5, Defendants shall pay a civil penalty pursuant to California Government Code § 8670.66(b) of fifty thousand dollars ($50,000) together with a proportionate share of the interest accrued on the Penalty Payment. The Penalty Payment shall be made by check payable to California Department of Fish and Wildlife. The check shall be sent by overnight or certified mail to:

California Department of Fish and Wildlife
Office of Spill Prevention and Response
Attn: Katherine Verrue-Slater, Senior Counsel
P.O. Box 160362
Sacramento, California 95816-0362

The check shall reference the "Refugio Oil Spill." CDFW shall deposit the money into the Environmental Enhancement Fund pursuant to California Government Code § 8670.70.

11. Defendants shall not deduct or capitalize any penalties paid under this Section or under Section XI (Stipulated Penalties) in calculating their federal or state income taxes.

VI. NATURAL RESOURCE DAMAGES

12. Within thirty (30) Days after the Effective Date, Defendants shall pay an NRD Payment of twenty-two million three hundred twenty-five thousand

dollars ($22,325,000) together with interest accruing from November 16, 2018, at a rate specified in 28 U.S.C. § 1961. The NRD Payment shall be allocated as follows:

a. To DOI, eighteen million four hundred twenty-two thousand dollars ($18,422,000) together with a proportionate share of the interest accrued on the NRD Payment. Such payment shall be used by the Trustees for the purposes set forth in Section VII (Trustees' Management and Applicability of Joint NRD Funds). Defendants shall make such payment by EFT to the United States Department of Justice in accordance with instructions that the FLU of the United States Attorney's Office for the Central District of California Western Division shall provide to Defendants following the Effective Date of this Consent Decree by this Court. At the time of payment, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation to the Trustees in accordance with Section XX (Notices) of this Consent Decree and to:

Department of the Interior
Natural Resource Damage Assessment and
Restoration Program
Attention: Restoration Fund Manager
1849 "C" Street, N.W. Mail Stop 4449
Washington, D.C. 20240

The EFT and transmittal documentation shall reflect that the payment is being made to the Department of the Interior Natural Resources Damage Assessment and Restoration Fund ("Restoration Fund"), Account Number 14X5198. DOI will maintain these funds as a segregated subaccount named REFUGIO BEACH OIL SPILL NRD Subaccount within the Restoration Fund.

b. To CDPR, two million eighty-four thousand dollars ($2,084,000) together with a proportionate share of the interest accrued on the NRD Payment, for deposit into the State Park Contingent Fund. Payment shall be made by check payable to the California Department of Parks and Recreation. At the time of payment, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation to the Trustees in accordance with Section XX (Notices) of this Consent Decree. The check shall be sent by overnight or certified mail to:

The California Department of Parks and Recreation
Attn: Laura Reimche, Senior Counsel
1416 Ninth Street, Room 1404-6
Sacramento, California 95814

The check shall reference the "Refugio Beach Oil Spill" and reflect that it is a payment to the State Parks Contingent Fund. CDPR shall use such monies to fund appropriate projects within State Parks' properties from Gaviota to El Capitan State Park to compensate for recreation losses resulting from the Refugio Incident. CDPR shall manage such monies in accordance with Section VIII (Trustees' Management of Recreational Use Funds).

c. To the National Fish and Wildlife Foundation ("NFWF"), one million seven hundred ninety-three thousand dollars ($1,793,000) together with a proportionate share of the interest accrued on the NRD Payment, on behalf of the State Trustees for deposit into the California South Coast Shoreline Parks and Outdoor Recreational Use Account established by NFWF. Payment shall be made by check payable to the National Fish and Wildlife Foundation. At the time of payment, Defendants shall simultaneously send written

notice of payment and a copy of any transmittal documentation to the Trustees in accordance with Section XX (Notices) of this Consent Decree. The check shall be sent by overnight or certified mail to:

California Department of Fish and Game
Office of Spill Prevention and Response
Attn: Katherine Verrue-Slater, Senior Counsel
P.O. Box 160362
Sacramento, California 95816-0362

The check shall reference the "Refugio Beach Oil Spill" and reflect that it is a payment to the California South Coast Shoreline Parks and Outdoor Recreational Use Account. The California South Coast Shoreline Parks and Outdoor Recreational Use Account shall be managed in accordance with the South Coast Shoreline Parks and Outdoor Recreational Use Account Memorandum of Agreement among the State Trustees and NFWF and shall be used by the Trustees for the purposes set forth in Section VIII (Trustees' Management of Recreational Use Funds).

d. To UC, twenty-six thousand dollars ($26,000) together with a proportionate share of the interest accrued on the NRD Payment, for deposit into Natural Reserve System Account. Payment shall be made by check payable to The Regents of the University of California. At the time of payment, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation to the Trustees in accordance with Section XX (Notices) of this Consent Decree. The check shall be sent by overnight or certified mail to:

The Regents of the University of California
Attn: Michael Kisgen, Associate Director
Natural Reserve System
University of California, Office of the President
1111 Franklin Street, 6th Floor
Oakland, California 94607-5200

The check shall reference the "Refugio Beach Oil Spill" and reflect that it is a payment to the Natural Reserve System Account. The University of California Natural Reserve System will administer the monies to fund projects selected by the University of California in coordination with the Trustees. The projects shall address the research, education, and outreach missions of the University of California. UC shall manage such monies in accordance with Section VIII (Trustees' Management of Recreational Use Funds).

13. The NRD Payment is in addition to the NRDA costs incurred by the Trustees through November 15, 2018, which have been separately reimbursed by Defendants. To date, Plains has paid approximately ten million dollars ($10,000,000) for NRDA costs incurred by the Trustees through November 15, 2018.

VII. TRUSTEES' MANAGEMENT AND APPLICABILITY OF JOINT NRD FUNDS

14. DOI shall, in accordance with law, manage and invest funds in the REFUGIO BEACH OIL SPILL NRD Subaccount, paid pursuant to Paragraph 12, and any return on investments or interest accrued on the REFUGIO BEACH OIL SPILL NRD Subaccount for use by the Natural Resource Trustees in connection with Restoration of Natural Resources affected by the Refugio Incident. DOI shall not make any charge against the REFUGIO BEACH OIL SPILL NRD Subaccount for any investment or management services provided.

15. DOI shall hold all funds in the REFUGIO BEACH OIL SPILL NRD

Subaccount, including return on investments or accrued interest, subject to the provisions of this Consent Decree.

16. The Natural Resource Trustees commit to the expenditure of the funds set forth in Paragraph 12 for the design, implementation, permitting (as necessary), monitoring, and oversight of Restoration projects and for the costs of complying with the requirements of the law to conduct a Restoration planning and implementation process. The Natural Resource Trustees will use the funds to Restore, rehabilitate, replace or acquire the equivalent of any Natural Resource and its services, including lost human use of such services, injured, lost, or destroyed as a result of the Refugio Incident and for the administration and oversight of these Restoration projects.

17. The specific projects or categories of projects will be contained in a Restoration Plan prepared and implemented jointly by the Trustees, for which public notice, opportunity for public input, and consideration of public comment will be provided. Plains shall have no responsibility nor liability for implementation of the Restoration Plan or projects relating to the Refugio Incident, including any future project costs other than the payments set forth in Section VII herein. The Trustees jointly retain the ultimate authority and responsibility to use the funds in the REFUGIO BEACH OIL SPILL NRD Subaccount to Restore Natural Resources in accordance with applicable law, this Consent Decree, and any memorandum or other agreement among them.

VIII. TRUSTEES' MANAGEMENT OF RECREATIONAL USE FUNDS

18. CDPR shall allocate the monies paid pursuant to Paragraph 12 for projects providing human use benefits and for the oversight of those projects in accordance with a Restoration Plan prepared and implemented jointly by the Trustees, this Consent Decree, and in accordance with applicable law and any Trustee memorandum or other agreement among them.

19. The State Trustees shall allocate the funds in the Recreational Use Account held by NFWF for projects providing human use benefits and for the oversight of those projects in accordance with a Restoration Plan prepared and implemented jointly by the Trustees, this Consent Decree, and in accordance with applicable law and any Trustee memorandum or other agreement among them.

20. UC shall allocate the monies paid pursuant to Paragraph 12 for research, education, and outreach projects in accordance with a Restoration Plan prepared and implemented jointly by the Trustees, this Consent Decree, and in accordance with applicable law and any Trustee memorandum or other agreement among them.

IX. INJUNCTIVE RELIEF

21. Plains agrees to implement the injunctive relief set forth in Appendix B to this Consent Decree for Plains' Regulated Pipelines.

22. Material Changes to Plains' IMP.

a. Plains' Integrity Management Plan shall serve as the baseline IMP for purposes of this Consent Decree. Plains agrees that it will not make any material changes to the following parts of the IMP throughout the term of this Consent Decree without following the process set forth in this Paragraph:

1) Procedure for the Assessment of In-Line Inspection ("ILI") Results;

2) Section 9.5, "Continual Evaluation and Assessment of Pipeline Integrity;"

3) White Papers 32-200.09-S001, "Reassessment Interval Determination on Pipelines with Possible Shielded Coatings," and 32-200.09-S002, "Reassessment Interval Determination on Pipelines with Possible Corrosion Under Insulation;"

4) Section 11.3, "Conducting Preventive and Mitigative Evaluation Meetings;"

5) Section 11.4, "Documentation of P&M Evaluation Meetings;" and

6) Section 11.6, "Implementation of P&M Recommendations."

For purposes of this Paragraph, the term "material change" refers to any substantive modification in the IMP Procedures that could affect the outcome or effect of a particular procedure or requirement.

b. At least thirty (30) Days prior to making a material change to the above sections of the IMP, Defendants shall provide written notice to PHMSA that includes a copy of the proposed change(s). In the event PHMSA provides a written objection to Defendants' notice prior to the effective date of the material change and they cannot informally resolve the matter, Defendants shall have the right to submit the issue to Dispute Resolution (Section XIII).

c. In the event Plains cannot reasonably provide the thirty (30) Day notice of material modification to the IMP described in Subparagraph 22.b due to an unanticipated emergency, Plains shall provide written notice to PHMSA within seven (7) Days of the material change, stating the basis for the abbreviated notice. In the event PHMSA provides a written objection to Defendants' modification, Defendants shall have the right to submit the issue to Dispute Resolution (Section XIII).

d. In the event PHMSA provides a written objection to a material modification of Defendants' IMP, PHMSA and Defendants shall have sixty (60) Days for informal consultation. The parties may mutually agree to extend the period by no more than thirty (30)

Days. Following the notice period specified in Subparagraphs 22.b and 22.c, Defendants may implement the modification until the dispute is resolved. If the dispute is not resolved as a result of the informal consultation, PHMSA or Defendants may invoke Dispute Resolution pursuant to Section XIII. Stipulated penalties shall not accrue during the informal consultation period described in this Paragraph.

23. Material Changes in Control Room Management Plan and Control Center General Procedures.

a. Plains' Control Room Management Plan and Control Center General Procedures (collectively, "Control Center Plan and Procedures") shall serve as the baseline Control Center Plan and Procedures for purposes of this Consent Decree. Plains agrees that it will not make any material changes to sections 6.5.5, 6.6.8, 8, 9.6.4, 9.6.9, 9.6.13, and 9.6.14 of its Control Room Management Plan and procedures 100-2, 100-8, 100-9, 200-1, 300-1, 300-3, 300-5, 400-0, and 500-12 of its Control Center General Procedures throughout the term of this Consent Decree without following the process set forth in this Paragraph. For purposes of this Paragraph, the term "material change" refers to any substantive modification in the Control Center Plan and Procedures that could affect the outcome or effect of a particular procedure or requirement.

b. At least thirty (30) Days prior to making a material modification to the above sections of its Control Room Management Plan and Control Center General Procedures, Defendants shall provide written notice to PHMSA that includes a copy of the proposed change(s). In the event PHMSA provides a written objection to Defendants' notice prior to the effective date of

the material change(s), Defendants shall have the right to submit the issue to Dispute Resolution (Section XII).

c. In the event Plains cannot reasonably provide the thirty (30) Day notice of material modification to the Control Room Management Plan and Control Center General Procedures described in Subparagraph 23.b due to an unanticipated emergency, Plains shall provide written notice to PHMSA within seven (7) Days of the material modification, stating the basis for the abbreviated notice. In the event PHMSA provides a written objection to Defendants' modification, Defendants shall have the right to submit the issue to Dispute Resolution (Section XIII).

d. In the event PHMSA provides a written objection to a material modification of Defendants' Control Room Management Plan and Control Center General Procedures, PHMSA and Defendants shall have sixty (60) Days for informal consultation. The parties may mutually agree to extend the period by no more than thirty (30) Days. Following the notice period specified in Subparagraphs 23.b and 23.c, Defendants may implement the modification until the dispute is resolved. If the dispute is not resolved as a result of the informal consultation, PHMSA or Defendants may invoke Dispute Resolution pursuant to Section XIII. Stipulated penalties shall not accrue during the informal consultation period described in this Paragraph.

24. Where any compliance obligation under this Consent Decree requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely applications and take all other actions reasonably necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of any such

obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely applications and have taken all other actions reasonably necessary to obtain all such permits or approvals.

X. CORRECTIVE ACTION ORDER

25. Upon the Effective Date of this Consent Decree, the PHMSA CAO shall close and be of no further force or effect. All outstanding terms and obligations under the PHMSA CAO as of the Effective Date and which Plains is still required to implement under this Consent Decree are set forth in Appendix D.

XI. STIPULATED PENALTIES

26. Unless excused under Section XII (Force Majeure), Defendants shall be liable for stipulated penalties for violations of this Consent Decree as specified below. A violation includes failing to perform any obligation required by the terms of this Consent Decree according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

27. Late Payment of Civil Penalties and NRD Payment.

a. If Defendants fail to pay any portion of the Penalty Payment to the United States required under Section V (Civil Penalties) when due, Defendants shall pay to the United States a stipulated penalty of ten thousand dollars ($10,000) per Day for each Day payment is late.

b. If Defendants fail to pay any portion of the Penalty Payment to the CDFW and/or RWQCB as required under Section V (Civil Penalties) when due, Defendants shall pay to the CDFW and/or RWQCB a stipulated penalty of ten thousand dollars ($10,000) each, as applicable, per Day for each Day payment is late.

c. If Defendants fail to pay any portion of the NRD Payments

required under Section VI (Natural Resource Damages) when due, Defendants shall pay a stipulated penalty of five thousand dollars ($5,000) to the United States, and five thousand dollars ($5,000) to the State Trustees, per Day for each Day payment is late.

28. Stipulated Penalties for Non-Performance of Injunctive Relief. Unless excused under Section XII (Force Majeure), the stipulated penalties described in this Paragraph shall accrue per violation per Day for Defendants' failure to perform the following injunctive relief required under Section IX (Injunctive Relief) when due:

a. For failure to timely submit to OSFM the applications for State waivers as specified in paragraphs 1.A, 1.B, 1.C, and 1.D of Appendix B;

b. For failure to implement the Integrity Management provisions as specified in paragraphs 4.A.1.a, e, f, g, h, and 4.A.2 of Appendix B;

c. For failure to timely submit to OSFM the EFRD analyses as specified in paragraphs 5.A-5.B of Appendix B;

d. For failure to timely submit to OSFM the risk analysis as specified in paragraph 6.A of Appendix B;

e. For failure to timely submit to PHMSA the modified Section 9.5 of Plains' IMP, as specified in paragraph 9.A.3 of Appendix B;

f. For failure to timely submit to PHMSA the modified P&M Recommendation forms, as specified in paragraph 9.B of Appendix B;

g. For failure to timely conduct EFRD analyses for all Regulated Pipelines for which Plains has not previously conducted an EFRD analysis, as specified in paragraph 10.A of Appendix B;

h. For failure to timely have in place revised valve maintenance procedures, as specified in paragraph 10.B of Appendix B;

i. For failure to timely create a list of rupture detection methods utilized, as specified in paragraph 11.A of Appendix B;

j. For failure to timely conduct annual training for controllers on attributes and benefits of various methods of leak detection, including Analog High/Low Threshold, Alarm Deadband, Creep Deviation, and Analog Rate of Change, as specified in paragraph 11.B of Appendix B;

k. For failure to timely submit to PHMSA the computational pipeline monitoring ("CPM") systems analysis, as specified in paragraph 11.C of Appendix B;

l. For failure to timely submit to PHMSA the selection of leak detection method procedure, as specified in paragraph 11.D of Appendix B;

m. For failure to hold or document periodic (at least annual) meetings regarding potential improvements to leak detection, as provided in paragraph 11.E of Appendix B;

n. For failure to timely have in place a procedure for tracking when instrumentation has been impeded, as provided in paragraph 11.F of Appendix B;

o. For failure to complete, prior to resuming operations on Lines 901 or 903, the items identified in paragraph 12.A.1-4 of Appendix B;

p. For failure to timely submit to OSFM confirmation that all alarm descriptors are accurate, as specified in paragraph 12.B of Appendix B;

q. For failure to timely conduct the surveys and update the

emergency response plans, as specified in paragraph 13.B.1 of Appendix B;

r. For failure to timely provide emergency response training to employees, as specified in paragraph 13.B.2 of Appendix B;

s. For failure to timely provide control room supervisor training, as specified in paragraph 13.B.4 of Appendix B;

t. For failure to timely submit to PHMSA and/or OSFM, and/or OSPR, as applicable, notice of drills, as specified in paragraph 13.B.5 of Appendix B, provided that the penalty under this subsection shall not exceed one Day per drill;

u. For failure to timely submit to PHMSA the third-party Safety Management System report, as specified in paragraph 14.A.1 of Appendix B;

v. For failure to timely review and revise the drug and alcohol misuse plans, as specified in paragraph 15 of Appendix B;

w. For failure to timely submit to PHMSA notice of any material modification to the IMP, as required by Paragraph 22; and

x. For failure to timely submit to PHMSA notice of any material modification to the Control Room Management Plan or Control Center General Procedures, as required by Paragraph 23;

y. The penalties stipulated in this Section shall accrue as follows:

Penalty Per Violation	Per Day Period of Noncompliance
$2,000 penalty per Day	1st to 30th Day
$4,000 penalty per Day	31st to 60th Day
$5,500 penalty per Day	61st Day and beyond

29. Stipulated Penalties for Non-Compliance with Corrective Action Order Terms. Unless excused under Section XII (Force Majeure), the stipulated penalties described in this Paragraph shall accrue per violation per Day for Defendants' failure to perform the following injunctive relief required under Section X (Corrective Action Order) when due:

a. For operation of Line 901 in violation of paragraph 1.a of Appendix D;

b. For failure to timely submit to OSFM a Line 901 Restart Plan, as specified by paragraph 1.b of Appendix D;

c. For failure to comply with the operating pressure restriction, including requirements for removal of the pressure restriction, for Line 901 specified by paragraphs 1.c and 1.d of Appendix D;

d. For operation of Line 903, in violation of paragraph 1.e of Appendix D;

e. For failure to timely submit to OSFM a Line 903 Restart Plan, as specified by paragraph 1.f of Appendix D;

f. For failure to comply with the operating pressure restriction, including requirements for removal of the pressure restriction, for Line 903 specified by paragraphs 1.g and 1.h of Appendix D;

g. For failure to timely submit to OSFM any notification specified by paragraph 1.i of Appendix D; and

h. For failure to submit to OSFM a final Appendix D Documentation Report, as specified by paragraph 1.j of Appendix D.

i. The penalties stipulated in this Section shall accrue as follows:

Penalty Per Violation	Per Day Period of Noncompliance
$2,000 penalty per Day	1st to 30th Day
$4,000 penalty per Day	31st to 60th Day
$5,500 penalty per Day	61st Day and beyond

30. Defendants shall pay stipulated penalties due pursuant to this Section within thirty (30) Days of a written demand.

31. For stipulated penalties accrued pursuant to Subparagraphs 27.a, 28.e, 28.f, 28.g, 28.h, 28.i, 28.j, 28.k, 28.l, 28.m, 28.n, 28.s, 28.t, 28.u, 28.v, 28.w, or 28.x of this Consent Decree, the United States shall have the right to issue a written demand for stipulated penalties, and Defendants must pay to the United States the full amount of any stipulated penalties due and will not be liable to the State Agencies for any such stipulated penalties.

32. For stipulated penalties accrued pursuant to Subparagraph 27.b of this Consent Decree, only CDFW and RWQCB shall have the right to issue a written demand for stipulated penalties and Defendants must pay to the CDFW and RWQCB the full amount of any stipulated penalties due and will not be liable to United States for any such stipulated penalties.

33. For stipulated penalties accrued pursuant to Subparagraphs 28.a, 28.b, 28.c, 28.d, 28.o, 28.p, or Paragraph 29 of this Consent Decree, only OSFM shall have the right to issue a written demand for stipulated penalties, and Defendants must pay to OSFM the full amount of any stipulated penalties due and will not be liable to United States for any such stipulated penalties.

34. For stipulated penalties accrued pursuant to Paragraphs 28.q, 28.r, 28.t, or Paragraph 30 of this Consent Decree, the United States, CDFW, OSFM, or all, may demand stipulated penalties by sending a joint or individual written demand to Defendants, with a copy simultaneously sent to the other Plaintiff(s).

a. Where only one or two of the Plaintiffs referenced in Paragraph 35 demand stipulated penalties under Paragraph 35, a copy of the demand will simultaneously be sent to the remaining Plaintiff(s) and they will have forty-five (45) Days to join in the demand.

b. Where multiple Plaintiffs referenced in Paragraph 35 demand stipulated penalties for the same violation, Defendants shall pay fifty (50) percent to each of the demanding Plaintiffs (when two Plaintiffs join in the demand); one third to each demanding Plaintiff (when all three Plaintiffs join in the demand); or as allocated by the United States, CDFW, and OSFM.

c. Where only one Plaintiff referenced in Paragraph 35 demands stipulated penalties, and the other Plaintiffs do not join in the demand within forty-five (45) Days of receiving the demand, Defendants shall pay one hundred (100) percent to the Plaintiff making the demand.

d. If a Plaintiff joins in the demand within forty-five (45) Days but subsequently elects to waive or reduce stipulated penalties, in accordance with Paragraphs 38 or 39 for that violation, Defendants shall not be liable for such portion of the stipulated penalties waived or reduced by such Plaintiff and shall be liable for any stipulated penalties due to the other Plaintiffs joining such demand pursuant to the allocation set forth in Subparagraph 34(b).

35. For stipulated penalties arising from a failure to perform obligations pursuant to Subparagraph 27.c, the United States and the State Trustees may demand stipulated penalties by sending a joint written demand to Defendants.

36. For all payments made pursuant to this Section, Defendants must follow the payment instructions set forth in Section V (Civil Penalties). Any

transmittal correspondence shall state that payment is for stipulated penalties and shall identify the date of the written demand to which the payment corresponds.

37. Stipulated penalties under this Section shall begin to accrue on the Day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed, or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

38. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to the United States under this Consent Decree.

39. The applicable State Agencies may, in the unreviewable exercise of their discretion, reduce or waive stipulated penalties otherwise due to the applicable State Agencies under this Consent Decree.

40. Stipulated penalties shall continue to accrue as provided in Paragraphs 27 through 29, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States or the State Agencies, as applicable, that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing to the United States or the State Agencies, as applicable, together with interest, within thirty (30) Days of the effective date of the agreement or the receipt of the United States' or the State Agencies' decision.

b. If the dispute is appealed to the Court and the Plaintiffs prevail in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the Court's decision and a Plaintiff prevails in whole or in part, Defendants shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

41. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State Agencies from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

42. The payment of stipulated penalties, if any, shall not alter in any way Defendants' obligation to complete the performance of the requirements of this Consent Decree.

43. Subject to the provisions of Section XVII (Effect of Settlement/Reservation of Rights) of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State Agencies (including, but not limited to, statutory penalties, additional injunctive relief, mitigation or offsets measures, and/or contempt) for Defendants' violation of this Consent Decree or applicable laws.

XII. FORCE MAJEURE

44. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any

potential Force Majeure event (a) as it is occurring and (b) following the potential Force Majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

45. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Defendants shall provide notice orally or by electronic transmission to the relevant Plaintiff(s), within five (5) Days of when Defendants first knew that the event might cause a delay. Within ten (10) Days thereafter, Defendants shall provide in writing to such Plaintiffs an explanation and description of the reasons for the delay; the anticipated duration of the delay; the actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall provide with any notice the documentation that Defendants are relying on to support the claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

46. If Plaintiffs agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by

Plaintiffs for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. Plaintiffs will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

47. If Plaintiffs do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, Plaintiffs will notify Defendants in writing of their decision.

48. If Defendants elect to invoke the Dispute Resolution procedures set forth in Section XIII (Dispute Resolution), in response to Plaintiffs' determination in Paragraph 47 above, it shall do so no later than thirty (30) Days after receipt of Plaintiffs' notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 44 and 45. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to Plaintiffs and the Court.

XIII. DISPUTE RESOLUTION

49. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by Plaintiffs to enforce any obligation of Defendants arising under this Consent

Decree.

50. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the relevant Plaintiff(s) a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement. If the parties cannot resolve a dispute by informal negotiations, then the position advanced by Plaintiffs shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, Defendants invoke formal Dispute Resolution procedures as set forth below.

51. Formal Dispute Resolution. Defendants shall invoke formal Dispute Resolution procedures, within the time period provided in the preceding Paragraph, by serving on Plaintiffs a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

52. Plaintiffs shall serve their Statement of Position within forty-five (45) Days of receipt of Defendants' Statement of Position. Plaintiffs' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Plaintiffs. Plaintiffs' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

53. Defendants may seek judicial review of the dispute by filing with the Court and serving on the relevant Plaintiff(s), in accordance with Section XX (Notices), a motion requesting judicial resolution of the dispute. The motion

must be filed within thirty (30) Days of receipt of Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Consent Decree.

54. Plaintiffs shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court or by a schedule set by the Court. Defendants may file a reply memorandum to the extent permitted by the Local Rules.

55. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 51, Defendants shall bear the burden of demonstrating that its position complies with this Consent Decree, based on the Statements of Position, and under applicable standards of review.

56. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue until the final resolution of the dispute. Payment shall be stayed pending resolution of the dispute. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XIV. REPORTING

57. After the Effective Date, by March 31 and September 30 of the following years until termination of this Consent Decree per Section XXIV (Termination), Defendants shall submit to the Plaintiffs in accordance with Section XX (Notices) bi-annual reports that shall describe the status of Defendants' compliance with the Consent Decree, including implementation of

the injunctive relief requirements set forth in Appendices B and D. The report will be organized to show the measures taken to comply with each of the requirements set forth in Appendices B and D, whether the measures were taken timely, the status of any permitting action that may affect compliance with the Consent Decree, and whether the measures taken have achieved compliance with the requirement.

XV. CERTIFICATION

58. Each report submitted by Defendants under Section XIV (Reporting) shall be signed by either the Chief Executive Officer, the President, an Executive Vice President, a Senior Vice President, or General Counsel who is an authorized representative of Defendants, and must contain the following statement:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on any personal knowledge and my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XVI. INFORMATION COLLECTION AND RETENTION

59. Plaintiffs and their representatives shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times and upon reasonable notice, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the Plaintiffs in accordance with the terms of this Consent Decree;

c. obtain documentary evidence, including photographs and similar data; and

d. assess Defendants' compliance with this Consent Decree.

60. Until one (1) year after the termination of this Consent Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve or deliver to Plains, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of their obligations under this Consent Decree. At any time during this information-retention period, upon request by the Plaintiffs, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

61. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State Agencies pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

62. For any documents, records, or other information required to be submitted to Plaintiffs pursuant to this Consent Decree, Plains may assert a claim of business confidentiality or other protections applicable to the release of information by Plaintiffs, covering part or all of the information required to be submitted to Plaintiffs pursuant to this Consent Decree in accordance with, as applicable, 49 C.F.R. Part 7, 49 C.F.R. Part 190, and 40 C.F.R Part 2. Plains must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality.

63. The federal agency Plaintiffs are subject to applicable laws

governing the disclosure of information under the Freedom of Information Act ("FOIA") (5 U.S.C. § 552 *et seq*.). If a federal agency Plaintiff receives a request pursuant to FOIA for records produced pursuant to the Consent Decree, that Plaintiff will, to the extent permitted by law, treat those records as exempt from disclosure, and give Defendants a reasonable opportunity to identify portions of documents Defendants have claimed as confidential and that may be subject to the request, and to specify the grounds for each claim of confidentiality. In accordance with applicable regulations, if the federal agency Plaintiff determines that the records are not exempt from disclosure, the Plaintiff shall provide notice of the determination to Defendants prior to making any record available to the public.

64. For documents provided to PHMSA under this Consent Decree, Defendants need not provide redacted copies when the documents are produced. Within fourteen (14) Days of notification from PHMSA of a FOIA request, or such other time as agreed upon, Defendants will provide a copy of the relevant records with confidential information redacted along with explanations of the asserted grounds for confidentiality.

65. State Agency Plaintiffs are subject to the California Public Records Act ("CPRA") (California Government Code §§ 6250 *et seq*.). If a State Agency Plaintiff receives a request pursuant to the CPRA for records produced pursuant to the Consent Decree, that Plaintiff will, to the maximum extent permitted by law, treat those records as exempt from disclosure, and give Defendants a reasonable opportunity to submit redacted copies of the requested records. If the Plaintiff determines that the records are not exempt from disclosure, the Plaintiff shall provide notice of the determination to Defendants prior to making any record available to the public.

66. The requirements of this Paragraph apply to Defendants' production of documents to PHMSA only. Defendants shall produce all documents required

to be produced in connection with this Consent Decree in, at Defendants' option, either native format via electronic media or secure file transfer protocol ("FTP"). Any encryption or access restriction shall be on a container level only, *i.e.*, only the electronic media or the top-level folder containing the documents shall be encrypted and Plaintiffs shall have unrestricted access to the files/folders within the electronic media or the top-level folder without need for additional decryption or access codes. Regardless of production method or encryption, individual documents shall be produced in a manner that allows the Plaintiffs to view, print, copy, save, download, and share each document within Plaintiffs' own environment without restriction, tracking or monitoring by Defendants, or automatically generated changes to the document (*e.g.*, without entering access codes prior to each download, and without automatically generated watermarks stating the download date and time).

67. At the conclusion of the information-retention period, Defendants shall provide ninety (90) Days' notice to Plaintiffs of Defendants' resumption of internal document destruction policies for documents, records, or other information subject to the requirements of Paragraph 60.

68. [*Intentionally left blank.*]

XVII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

69. This Consent Decree resolves the civil claims of the United States and the State Agencies for the matters alleged in the Complaint filed in this action for the Refugio Incident.

70. Subject to the reservations of rights specified in Paragraph 71, this Consent Decree also resolves all civil and administrative penalty claims that could be brought by PHMSA, for violations of the Pipeline Safety Laws specified below that occurred on any of Defendants' Regulated Pipelines prior to January 28, 2019, the date that PHMSA's ongoing "Integrated Inspection" of a portion of Defendants' Regulated Pipelines and other pipeline facilities began. The specific

Pipeline Safety Laws subject to this Paragraph are the following (including other regulations expressly incorporated therein):

a. 49 C.F.R. Part 194 Subpart B – Response Plans;

b. 49 C.F.R. Part 195 Subpart B – Reporting;

c. 49 C.F.R. Part 195 Subpart E – Pressure Testing;

d. 49 C.F.R. Part 195 Subpart F – Operation and Maintenance, sections 195.402, 195.403, 195.404, 195.406, 195.408, 195.412, 195.420, 195.422, 195.428, 195.436, 195.442, 195.444, 195.446, 195.452;

e. 49 C.F.R. Part 195 Subpart G – Qualification of Pipeline Personnel, as it relates to valve maintenance;

f. 49 C.F.R. Part 195 Subpart H – Corrosion Control;

g. 49 C.F.R. Part 199 – Drug and Alcohol Testing; and

h. All recordkeeping, documentation, and document production requirements in the provisions listed in subsections 70.a-70.g, and 49 C.F.R. section 190.203 and Part 195.

71. The United States, on behalf of PHMSA, reserves all legal and equitable remedies to address violations of the Pipeline Safety Laws described in Paragraph 70 that occur on or after January 28, 2019, including violations that may have begun prior to such date and continued subsequent to January 28, 2019. A separate violation of the Pipeline Safety Laws occurs for each day that the violation continues, pursuant to 49 U.S.C. § 60122(a).

72. This Consent Decree also resolves all civil and administrative penalty claims that could be brought by OSFM against Defendants for violations of the Pipeline Safety Laws and the Elder California Pipeline Safety Act as specified below relating to Line 901, Line 903, or Line 2000 that occurred prior to January 28, 2019. OSFM reserves all legal and equitable remedies to address violations of the specified Pipeline Safety Laws that occur on or after

January 28, 2019, including violations that may have begun prior to such date and continued subsequent to January 28, 2019. The specific Pipeline Safety Laws and Elder California Pipeline Safety Act subject to this Paragraph are:

a. The Pipeline Safety Laws specified in Paragraph 70; and

b. California Government Code §§ 51012.3, 51013, 51013.5, 51014, 51015, 51015.4, 51015.5 (for Line 901 and Line 903 only), and 51018.

73. For any reportable pipeline accident, as defined in 49 C.F.R. § 195.50, occurring on or after January 28, 2019, on any of Defendants' Regulated Pipelines, Paragraphs 70 and 72 shall not limit the right of PHMSA and OSFM to sue or pursue administrative or other remedies for violations (including penalties) under the Pipeline Safety Laws and the Elder California Pipeline Safety Act for such accident. Nothing in Paragraphs 70 through 72 shall be construed to limit the legal and equitable remedies of the United States or State Agencies, other than PHMSA and OSFM.

74. The United States and the State Agencies reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State Agencies to obtain penalties, injunctive relief, or other administrative or judicial remedies under the CWA, OPA, Pipeline Safety Laws, or under other federal or state laws, regulations, or permit conditions, except as specified in Paragraphs 69, 70, and 72.

75. The United States reserves all legal and equitable remedies to address any imminent and substantial endangerment or threat to the public health or welfare or the environment arising at, or posed by, Defendants' operations, whether related to the violations addressed in this Consent Decree or otherwise. PHMSA further reserves the right to issue to Defendants corrective action orders pursuant to 49 C.F.R § 190.233; emergency orders pursuant to 49 C.F.R.

§ 190.236; and safety orders pursuant to 49 C.F.R. § 190.239. The State Agencies reserve all legal and equitable remedies under California Government Code §§ 8670.57, 8670.69.4, 51013.5, 51015.5, 51018.6, 51018.7 and 51018.8, California Water Code §§ 13301, 13304, 13340, and 13386, and California Health & Safety Code § 13107.5 to address (1) conditions threatening to cause or creating a substantial risk of an unauthorized discharge of oil into waters of the State of California, (2) a discharge of waste threatening to cause a condition of pollution or nuisance, or (3) a discharge which poses a substantial probability of harm to persons, property or natural resources.

76. This Consent Decree also shall not be construed to in any way limit or waive the claims set forth in the case entitled *California State Lands Commission, et al. v. Plains Pipeline, L.P., et al.*, Case No. 18CV02504 (Cal. Sup. Court) and Case No. B295632 (Cal. Ct. App.).

77. In any subsequent administrative or judicial proceeding initiated by the United States or the State Agencies for injunctive relief, civil penalties, other appropriate relief relating to Defendants' violations alleged in Plaintiffs' Complaint, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State Agencies in the subsequent proceeding should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraphs 69, 70, and 72.

78. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws, or regulations. Defendants are responsible for achieving and maintaining full compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action

commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State Agencies do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, OPA, Pipeline Safety Laws, or with any other provisions of federal, state, or local laws, regulations, or permits.

79. This Consent Decree does not limit or affect the rights of Defendants or of the United States or the State Agencies against any third-parties, not party to this Consent Decree, nor does it limit the rights of third-parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

80. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third-party not party to this Consent Decree.

81. Plaintiffs will not submit any claim for restitution for Natural Resource Damages in *The People of the State of California v. Plains All American Pipeline, L.P.*, Case No. 1495091 (Cal. Sup. Court).

82. By entering into this settlement, Defendants do not admit the Pipeline Safety Laws violations alleged in the Complaint or described in this Consent Decree by the United States on behalf of PHMSA; therefore, any allegations of violations of these Pipeline Safety Laws do not constitute a finding of violation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation, order, or requirement, except in a proceeding to enforce the provisions of this Consent Decree. However, the allegations of violations set forth in the Complaint may be: (1) considered by PHMSA to constitute prior offenses in any future PHMSA enforcement action brought by the agency against Plains, and (2) used for statistical purposes to identify violations that PHMSA deems as causal to an incident or to increase the consequences of an incident. Notwithstanding the forgoing, alleged violations subject to Paragraph 70 shall not

be considered by PHMSA to constitute prior offenses in any future PHMSA enforcement action brought by the agency against Plains.

83. By entering into this settlement, Defendants do not admit the allegations of California Water Code §§ 13350 and 13385 violations set forth in the Complaint; therefore, any allegations of violations of these statutes do not constitute a finding of violation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation, order, or requirement, except in a proceeding to enforce the provisions of this Consent Decree. However, the allegations of California Water Code §§ 13350 and 13385 violations set forth in the Complaint may be considered by the State Water Resources Control Board or Regional Water Quality Control Boards to constitute prior offenses in any future enforcement action brought by any of these agencies against Plains.

84. Subject to the terms of this Consent Decree, no provision contained herein affects or relieves Plains of their responsibilities to comply with all applicable requirements of the CWA, OPA, the Pipeline Safety Laws, federal or state laws, and the regulations and orders issued thereunder. Subject to the terms of this Consent Decree, nothing herein shall limit or reduce the Plaintiffs' right of access, entry, inspection, and information-gathering or their authority to bring enforcement actions against Defendants pursuant to the CWA, OPA, the Pipeline Safety Laws, federal or state laws, the regulations and orders issued thereunder, or any other applicable provision of federal or state law.

85. Defendants hereby covenant not to sue Plaintiffs for any claims related to the Refugio Incident, or response activities in connection with the Incident, pursuant to the CWA, OPA, the Pipeline Safety Laws, federal or state laws, or any other law or regulation for acts or omissions through the date on which this Consent Decree is lodged with the Court.

86. Defendants covenant not to sue and agree not to assert any direct or

indirect claim for reimbursement related to the Refugio Incident from the OSLTF or pursuant to any other provision of law.

87. The United States reserves the right to seek reimbursement from Defendants for claims relating to the Refugio Incident paid after the date on which the Consent Decree is lodged with the Court from the OSLTF pursuant to 33 U.S.C. § 2712.

XVIII. TRANSFER AND ACQUISITION OF ASSETS

88. In the event Defendants sell or transfer ownership of or operating responsibility for Lines 901, 903, or 2000, or any lines built to replace Lines 901 or 903, Defendants will obtain from the transferee an agreement to be bound by those provisions of this Consent Decree and Appendices B and D that are specifically applicable to the asset(s) acquired, unless Defendants have already completed the required action or unless OSFM agrees to relieve the transferee of the obligations of any otherwise applicable provision. Those provisions of Appendix B are:

a. For existing but non-operational segments of Lines 901 and 903, paragraphs 1.A, 1.B, 1.E, 2.B, 2.C., 4, 5, 6, 7.A, 12.A of Appendix B;

b. For the operational segment of Line 903 from Pentland to Emidio, paragraphs 1.C, 1.E, 4, 5, 6, 7.A of Appendix B;

c. For any lines built to replace Lines 901 or 903, paragraphs 2.A.1, 5, 7.B, 12.A of Appendix B; and

d. For Line 2000, paragraphs 1.D, 1.E, 4, 5, 6, 7.A, 12.B. of Appendix B.

89. In the event Defendants sell or transfer ownership of or operating responsibility for Lines 901, 903, or 2000, or any lines built to replace Lines 901 or 903, Defendants shall provide a copy of this Consent Decree to the prospective transferee at least fourteen (14) Days prior to such transfer. Defendants shall

provide written notice of any such transfer to OSFM within ten (10) Days after the date Defendants publicly disclose the transaction or the date the transaction is closed, whichever is earlier. Prior to the transfer, Defendants may notify OSFM that Defendants have completed certain required actions of this Consent Decree, or request that OSFM relieve the transferee of certain obligations of otherwise applicable provisions, such that the transferee will not be bound by those requirements. Defendants shall provide to Plaintiffs documentation demonstrating the transferee's agreement to be bound by the relevant provisions of the Consent Decree. Defendants shall provide to the transferee copies of those portions of relevant emergency response plans that relate to the transferred asset.

90. In the event of the sale or transfer pursuant to an arm's-length transaction of Defendants' Regulated Pipelines other than Lines 901, 903, or 2000, or any lines built to replace Lines 901 or 903, to an independent third-party transferee, the transferee shall not be subject to the requirements of this Consent Decree. Defendants shall provide a copy of this Consent Decree to the transferee at least fourteen (14) Days prior to such transfer. Defendants shall provide written notice of any such transfer, including documentation demonstrating that the Consent Decree was provided to the transferee, to PHMSA within ten (10) Days after the date Defendants publicly disclose the transaction or the date the transaction is closed, whichever is earlier. Defendants' obligations under this Consent Decree with respect to all non-transferred assets shall not be affected.

91. For all Regulated Pipeline assets that Defendants assume operating responsibility for after the Effective Date, Plains is obligated to apply Article II (Company Wide Provisions) of Appendix B of this Consent Decree to the newly acquired assets.

XIX. COSTS

92. Except as otherwise stated in this Consent Decree, the Parties shall bear their own costs related to this action and this Consent Decree, including

attorneys' fees; provided, however, the United States and the State Agencies shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XX. NOTICES

93. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, reports, or communications are required by this Consent Decree, they shall be made in writing, sent electronically by email provided by the Parties, and addressed to all Parties as follows:

As to the United States by email:	eescdcopy.enrd@usdoj.gov Re: DJ # 90-5-1-1-11340
As to the United States by mail:	EES Case Management Unit Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 Re: DJ # 90-5-1-1-1130
As to PHMSA:	James M. Pates Assistant Chief Counsel for Pipeline Safety U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration 1200 New Jersey Ave. SE. E-26 Washington, DC. 20590
As to EPA:	Andrew Helmlinger Attorney Advisor U.S. EPA Region IX 75 Hawthorne Street (ORC-3) San Francisco, California 94104

As to DOI:	Clare Cragan U.S. Department of the Interior Office of the Solicitor 755 Parfet St., Suite 151 Lakewood, Colorado 80215
As to NOAA:	National Oceanic and Atmospheric Administration Office of General Counsel Natural Resources Section ATTN: Christopher J. Plaisted 501 W. Ocean Blvd, Suite 4470 Long Beach, California 90802
As to USCG:	Patricia V. Kingcade Attorney Advisor National Pollution Funds Center, US Coast Guard 2703 Martin Luther King Jr. Ave SE Washington, DC 20593-7605
As to the State Agencies:	Michael Zarro Deputy Attorney General Office of the Attorney General Natural Resources Law Section 300 S. Spring St., Suite 11220 Los Angeles, California 90013
As to CDFW:	California Department of Fish and Wildlife Office of Spill Prevention and Response Attn: Katherine Verrue-Slater Senior Counsel P.O. Box 160362 Sacramento, California 95816-0362

As to CDPR:	California Department of Parks and Recreation Attn: Laura A. Reimche, Senior Counsel 1416 Ninth Street, Room 1404-6 Sacramento, California 95814
As to CSLC:	California State Lands Commission Attn: Patrick Huber, Legal Division 100 Howe Avenue, Suite 100-South Sacramento, California 95825
As to OSFM:	California Department of Forestry and Fire Protection Legal Services Office Attn: Joshua Cleaver, Staff Counsel P.O. Box 944246 Sacramento, California 94244-2460
As to RWQCB:	California Central Coast Regional Water Quality Control Board Attn: Naomi Rubin, Attorney III 801 K Street Sacramento, California 95814
As to UC:	Barton Lounsbury, Senior Counsel University of California Office of the General Counsel 1111 Franklin Street, 8th Floor Oakland, California 94607
As to Defendants:	Megan Prout Senior Vice President Commercial Law and Litigation 333 Clay Street, Suite 1600 Houston, Texas 77002

Henry Weissmann
Daniel B. Levin
Colin Devine
Munger, Tolles & Olson LLP
350 S. Grand Ave, 50th Floor
Los Angeles, California 90071

Steven H. Goldberg
Nicole Granquist
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, California 95814

94. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

95. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, or emailing unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XXI. EFFECTIVE DATE

96. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, or a motion to enter this Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XXII. RETENTION OF JURISDICTION

97. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of effectuating or enforcing compliance with the terms of this Consent Decree.

XXIII. MODIFICATION

98. The terms of this Consent Decree, including any attached Appendices, may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval of the Court.

99. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XIII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 55, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXIV. TERMINATION

100. After Defendants have: (a) operated under this Consent Decree for five (5) years and three (3) months from the Effective Date; and (b) complied with the requirements of this Consent Decree, including payment of all penalties and accrued stipulated penalties required by this Consent Decree, Defendants may serve on Plaintiffs a Request for Termination, stating that Defendants have satisfied these requirements, together with all necessary supporting documentation. Plaintiffs shall respond within ninety (90) Days to Defendants' Request for Termination. If Plaintiffs agree that the requirements for termination have been satisfied, the Parties shall submit for the Court's approval a joint stipulation terminating the Consent Decree.

101. Following receipt by Plaintiffs of Defendants' Request for Termination, Plaintiffs shall respond within ninety (90) Days regarding any disagreement that the Consent Decree may be terminated and state the reason for such disagreement. The Parties shall confer informally concerning the Request for Termination and any disagreement that the Parties may have as to whether Defendants have complied with the requirements for termination of this Consent Decree. If Plaintiffs agree that the requirements for termination have been satisfied, the Parties shall submit for the Court's approval a joint stipulation terminating the Consent Decree.

102. If Plaintiffs do not agree that the requirements for termination have been satisfied, Defendants may invoke Dispute Resolution under Section XIII (Dispute Resolution). However, Defendants shall not seek Dispute Resolution of

any dispute regarding termination until sixty (60) Days after receipt of the Plaintiffs' response to Defendants' Request for Termination.

XXV. PUBLIC PARTICIPATION

103. This Consent Decree shall be lodged with the Court for a period of not fewer than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The Parties agree and acknowledge that the final approval by Plaintiffs and entry of this Consent Decree are subject to notice of lodging of the Consent Decree and a public comment period. Plaintiffs reserve the right to withdraw or withhold consent if the comments disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate.

104. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless Plaintiffs have notified Defendants in writing that Plaintiffs no longer support entry of the Consent Decree.

XXVI. SIGNATORIES/SERVICE

105. Each undersigned representative of Defendants, the State of California Attorney General's Office, CDFW, CDPR, CSLC, OSFM, RWQCB, UC, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, PHMSA, and EPA certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to the terms of this Consent Decree.

106. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect. For purposes of this Consent Decree, a signature page that is transmitted electronically (*e.g.*, by emailed PDF) shall have the same effect as an original.

XXVII. INTEGRATION

107. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXVIII. FINAL JUDGMENT

108. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties.

XXIX. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

109. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section III (Applicability), Paragraph 5; Section VI (Natural Resource Damages), Paragraph 12; Section IX (Injunctive Relief), Subparagraphs 22.a, 22.b, 22.c, 23.a, 23.b, 23.c, Paragraph 24, and related Appendix B; Section XIV (Reporting), Paragraph 57; Section XV (Certification), Paragraph 58; and Section XVI (Information Collection and Retention), Paragraphs 59, 60, and 66 is restitution or required to come into compliance with law to the extent it applies to federal agencies.

Dated and entered this _____ day of _____, 20__.

_____
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE UNITED STATES OF AMERICA:

3/12/2020
Date

BRUCE S. GELBER
Deputy Assistant Attorney General
Environment and Natural Resources
Division U.S. Department of Justice

3/13/2020
Date

BRADLEY R. O'BRIEN
ANGELA MO
Environmental Enforcement Section
Environment and Natural Resources
Division

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P and Plains Pipeline, L.P.*

FOR THE UNITED STATES DEPARTMENT OF TRANSPORTATION, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION:

31 March 2020
Date

PAUL ROBERTI
Chief Counsel
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

3-2-20
Date

SUSAN PARKER BODINE
Assistant Administrator
Office of Enforcement and Compliance Assurance

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

2/26/2020
Date

AMY C. MILLER
Region 9 Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 9
Mail Code ENF-1
75 Hawthorne Street
San Francisco, CA 94105

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE CALIFORNIA DEPARTMENT OF FISH and WILDLIFE:

3/4/2020
Date

THOMAS M. CULLEN, JR.
Administrator
Office of Spill Prevention and Response

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION:

3/2/20
Date

Lisa Ann L Mangat
LISA ANN L. MANGAT
Director
California Department of Parks
and Recreation

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE CALIFORNIA STATE LANDS COMMISSION:

2/28/2020
Date

JENNIFER LUCCHESI
Executive Officer
California State Lands Commission

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION'S - OFFICE OF THE STATE FIRE MARSHAL:

3/4/2020
Date

THOMAS W. PORTER
Director
California Department of Forestry and Fire Protection

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL COAST REGION:

March 2, 2020
Date

JOHN ROBERTSON
Executive Officer
Central Coast Regional Water
Quality Control Board

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

3/3/20
Date

BARTON LOUNSBURY
Senior Counsel
Office of the General Counsel

Date

PEGGY FIEDLER
Executive Director
UC Natural Reserve System

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

Date

BARTON LOUNSBURY
Senior Counsel
Office of the General Counsel

3 March 2020
Date

PEGGY FIEDLER
Executive Director
UC Natural Reserve System

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR PLAINS ALL AMERICAN PIPELINE, L.P.

2/25/2020
Date

HARRY PEFANIS
President

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

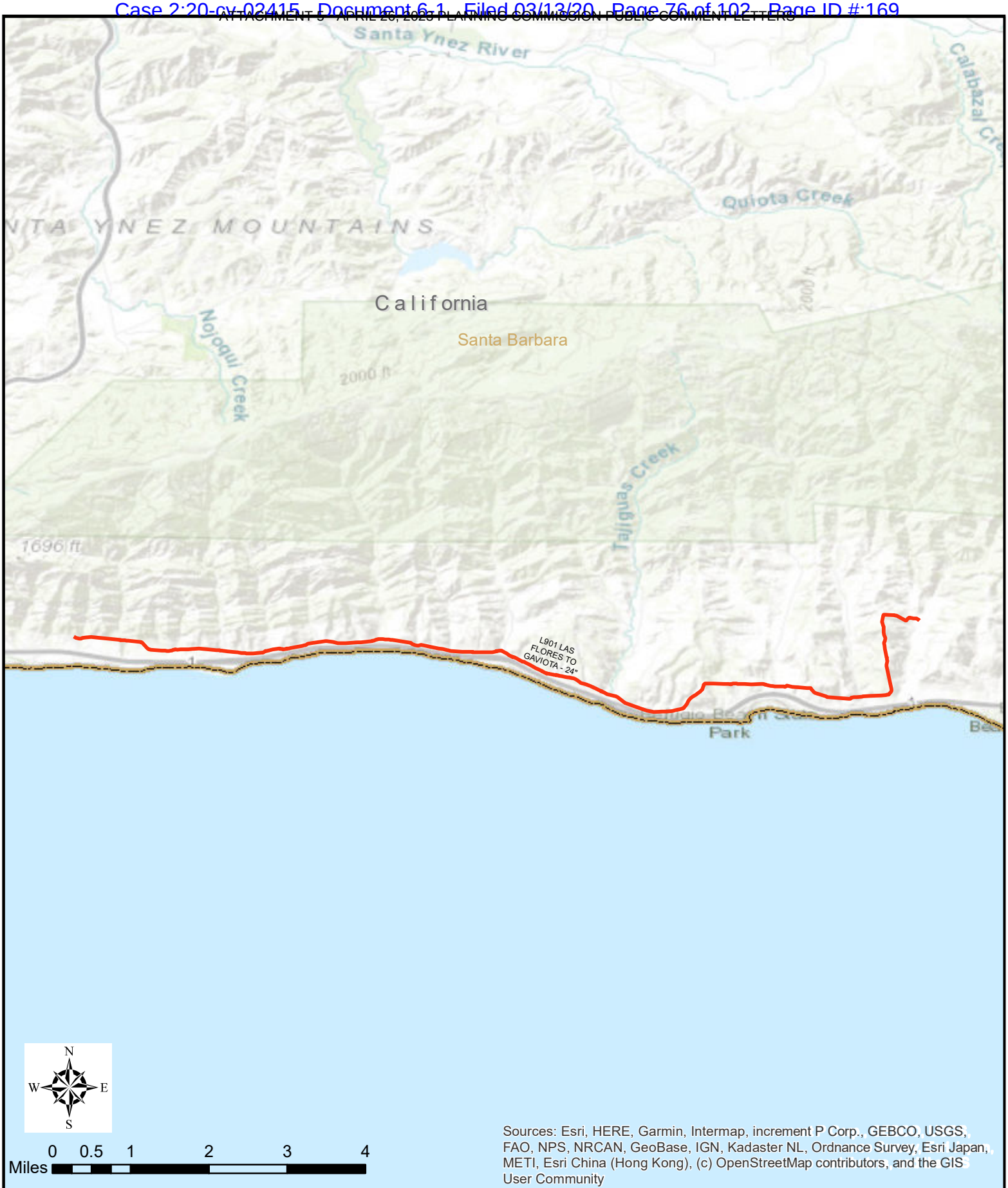
FOR PLAINS PIPELINE, L.P.

2/25/2020
Date

HARRY PEFANIS
President

APPENDIX A

(*Set of maps that generally depict Lines 901, 903, and 2000*)



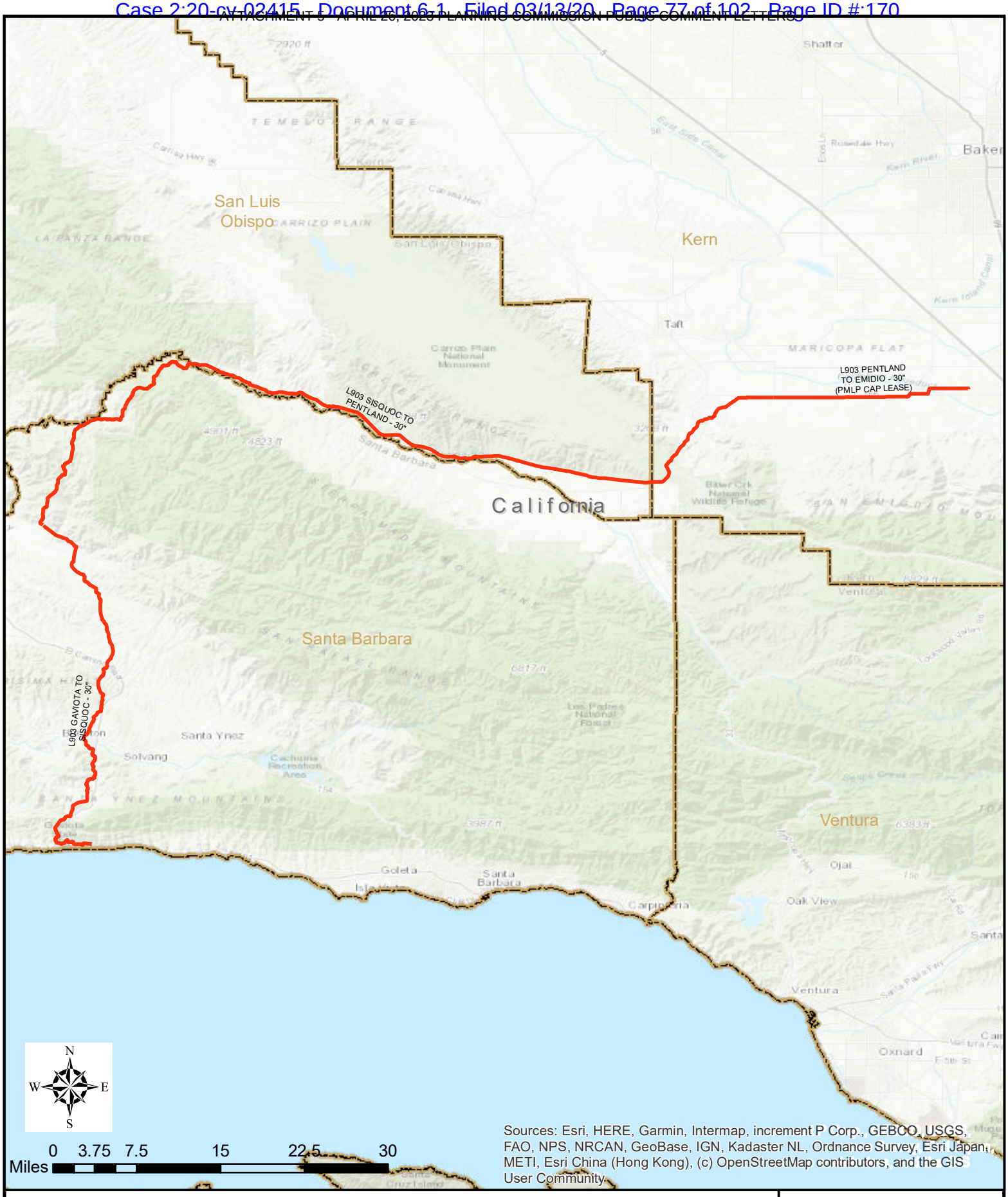
Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Appendix A – Line 901

Scale: 1:100,000

Sheet No: 1/1

Owner: PLAINS ALL AMERICAN PIPELINE, L.P.

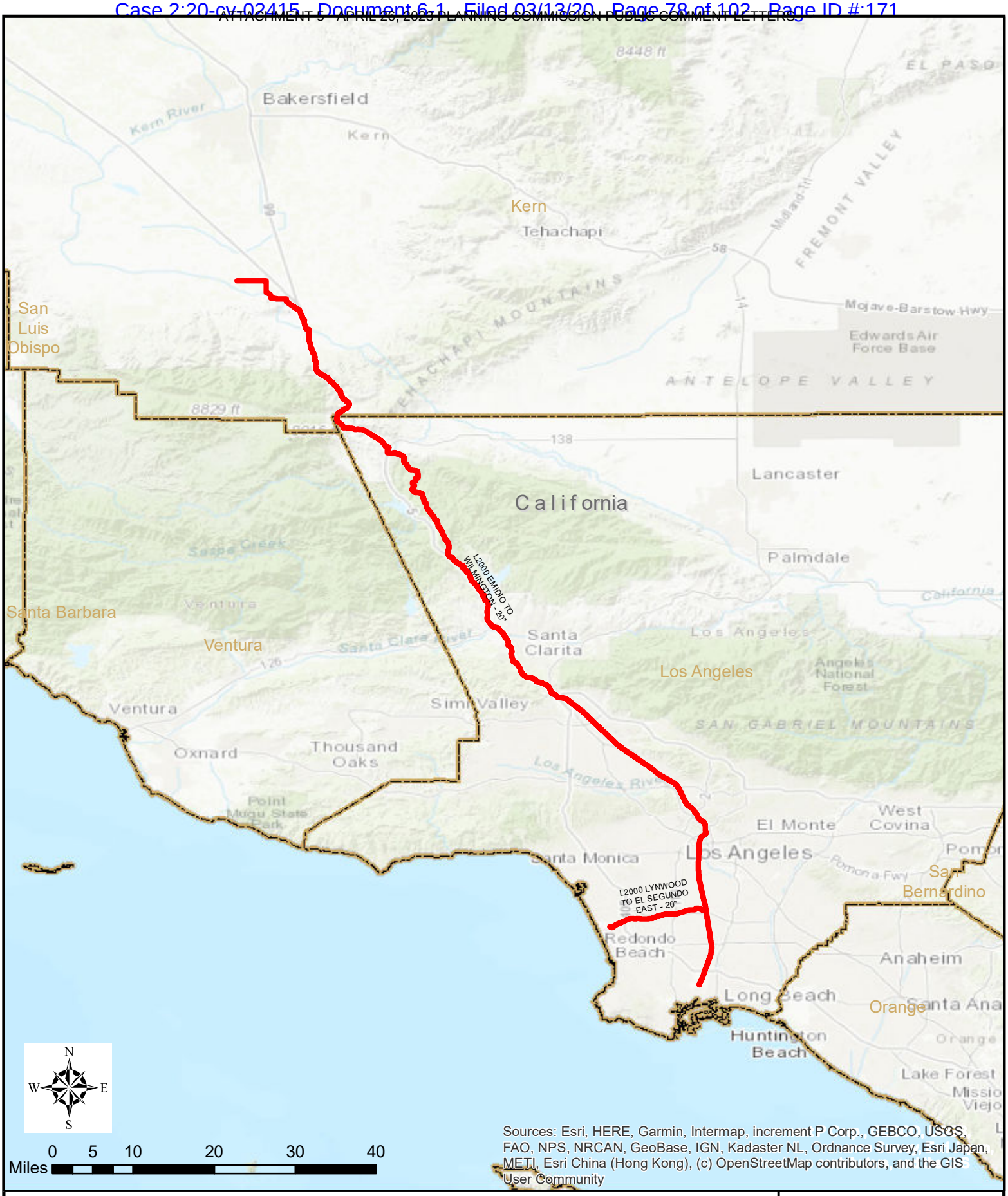


Appendix A – Line 903

Scale: 1:700,000

Sheet No: 1/1

Owner: PLAINS ALL AMERICAN PIPELINE, L.P.



Appendix A – Line 2000

Scale: 1:966,574

Sheet No: 1/1

Owner: PLAINS ALL AMERICAN PIPELINE, L.P.

APPENDIX B

(PHMSA Injunctive Relief)

APPENDIX B

ARTICLE I – CALIFORNIA-SPECIFIC PROVISIONS

1. **State Waivers for Lines 901, 903, and 2000 (not to include any replacement lines):**

   A. Prior to restarting Line 901, Plains shall apply for a State Waiver through the OSFM for the limited effectiveness of cathodic protection on Line 901. Plains must receive a State Waiver from the OSFM prior to restarting Line 901.

   B. Prior to restarting non-operational segments of Line 903, Plains shall apply for a State Waiver through the OSFM for the limited effectiveness of cathodic protection on Line 903. Plains must receive a State Waiver from the OSFM prior to restarting Line 903.

   C. Within 90 days of entry of the Consent Decree (CD), Plains must apply for a State Waiver through the OSFM for the limited effectiveness of cathodic protection on Line 903. The State Waiver shall apply to the currently operational segment of Line 903 from Pentland to Emidio.

   D. Within 90 days of entry of the CD, Plains must apply for a State Waiver through the OSFM for the limited effectiveness of cathodic protection on Line 2000.

   E. To the extent that a State Waiver directly incorporates terms identified in section 4 (Integrity Management) below, as being applicable to Lines 901, 903, or 2000, Plains shall not contest the inclusion of those terms in the relevant State Waiver. Plains reserves its rights to contest on any grounds any additional terms that the OSFM may require as part of each State Waiver if one is received. Nothing in this CD shall be construed to limit the authority of the OSFM to require additional terms or conditions in the State Waiver. Further, nothing in the State Waiver shall be construed to limit the applicability of the terms set forth in the CD.

2. **Replacement, Restart, or Abandonment of Lines 901 and 903:**

   A. Plains shall replace the existing Line 901 and segments of Line 903 from Gaviota to Sisquoc and Sisquoc to Pentland with non-insulated pipe, if Plains is able to timely obtain: (1) agreements from shippers to transport sufficient quantities of product to make the cost of replacing the segments economically viable; (2) the Federal, State, and Local permits that may be required; and (3) whatever additional rights are needed, including rights-of-way that may be needed from landowners. Obtaining required commercial commitments, permits, rights-of-way, and any other rights necessary for replacement is the sole responsibility of Plains.

1. On any replacement segments of Lines 901 or 903, Plains shall, prior to commencing operation of such segment(s):

   a. Test for potential AC/DC interference. Where potential AC/DC interference exists, proper mitigation of interference shall be designed and installed during construction of replacement lines.

   b. Conduct a close interval survey (CIS) and AC/DC interference survey.

   c. Based on the CIS and AC/DC interference surveys, place additional cathodic-protection test stations at locations where the surveys demonstrate potential cathodic-protection deficiencies, following review and consultation with the OSFM regarding proposed test station locations.

B. As an alternative to replacement of Line 901 and segments of Line 903 from Gaviota to Sisquoc and Sisquoc to Pentland, Plains may restart the existing pipelines in accordance with the CD (including Appendix D) and applicable law.

C. As an alternative to replacement or restart of Line 901 and segments of Line 903 from Gaviota to Sisquoc and Sisquoc to Pentland, Plains may abandon all or any segments in accordance with all applicable laws and regulations.

3. **Third-Party Analysis of Line 2000 ILI Data**

A. Plains shall select, subject to OSFM's approval, a third-party consultant to review and analyze ILI data for Line 2000 and provide a report to the OSFM on its findings.

B. The consultant shall:

1. Review all ILI results and reports that Plains has received from ILI vendors for Line 2000;

2. Review Plains' processes and procedures for analyzing ILI data, and Plains' analysis of Line 2000 ILI results, and suggest potential improvements, if any, to Plains' current processes or procedures for analyzing ILI data;

3. Analyze Plains' implementation of its ILI assessment procedures for Line 2000.

4. Evaluate ILI vendor specifications to ensure that proper criteria and technology considerations are taken in to account in selecting the specific inspection tool(s) used in the future, with consideration given to best available technology for reliably detecting corrosion, general corrosion, selective seam-weld corrosion, and seam anomalies;

5. Consider disclosed industry standards and regulations, including, but not limited to: 49 CFR § 195.452, the California Elder Pipeline Safety Act, ASME B31.4 (Pipeline Transportation Systems for Liquids and Slurries), ASME B31G (Manual for Determining Strength of Corroded Pipelines) or RSTRENG, API 1160 (Managing System Integrity for Hazardous Liquid Pipelines), API 1163 (In-Line Inspection Systems Qualification), ANSI/ASNT ILI-PQ (In-Line Inspection Personnel Qualification and Certification), NACE SP0169 (Control of External Corrosion on Underground or Submerged Metallic Piping Systems), and the PRCI Pipeline Repair Manual;

6. Comply with additional requirements specified in the scope of work.

C. The third-party consultant shall prepare a written report reflecting its findings, conclusions, and any recommendations for improvement found in conducting the analysis.

1. The consultant may recommend improvements to Plains' ILI analysis process and procedures to improve the quality and integration of ILI data into its IMP going forward. Plains shall give due consideration to the results of the analysis and recommendations of the consultant but will maintain discretion over whether and how to implement any recommendations.

2. The report shall include a list of documents and data reviewed in conducting the analysis, which shall be provided to the OSFM, if requested.

3. Within 150 days of entry of the CD, the consultant shall provide a draft report to the OSFM and Plains for comment at the same time. Plains and the OSFM may provide comments to the consultant on the report within 21 days of receipt of the draft.

4. Within 45 days after receiving comments (if any) from Plains and the OSFM, the consultant shall provide a final report to PHMSA, the OSFM and Plains.

4. **Integrity Management**

A. For any operating segments of Lines 901, 903, and 2000 (not to include any replacement lines):

1. Plains shall implement the following measures and amend its IMP, as needed, to include the requirements of this section for the applicable lines:

a. In addition to other dig criteria specified by regulation or in its IMP, Plains shall remediate all internal or external metal loss anomalies that have an ILI reported depth of 40% or greater wall

loss, within one year of discovery. If Plains is unable to remediate such anomalies within one year of discovery, Plains shall notify OSFM and temporarily reduce the operating pressure and/or take further remedial action in accordance with 49 C.F.R. § 195.452 until the anomaly is remediated (or until otherwise authorized by OSFM).

b. Analyze a sample of additional anomalies of varying amounts of metal loss between 10% and 40% for validation. The sample size shall be at least ten, unless fewer than ten anomalies are reported within that range, in which case Plains would examine the number of anomalies called.

c. When sizing anomalies, apply interaction/clustering criteria of 6t by 6t for applicable ILI tools;

d. Require its ILI tool vendor to include in the vendor's inspection report all metal loss anomalies of 10% or greater, based on raw data, prior to adding in any correction for tool tolerance;

e. Any time a shrink sleeve is exposed during an anomaly investigation, remove the shrink sleeve, investigate circumferentially and longitudinally along the pipe for external corrosion and coating deterioration, and recoat with two-part epoxy;

f. Send all field measurements to the tool vendor within 90 days of completing all digs for any ILI, provided that available data must be submitted prior to the next ILI run, and conduct annual meetings with the tool vendor to discuss tool performance;

g. For any use of magnetic flux leakage (MFL) tools, require its ILI tool vendor to manually grade any metal loss anomalies initially identified by the ILI tool as greater than or equal to 20% of wall loss (i.e., have human eyes on the raw data and not simply rely on a computer algorithm), and require that the vendor's ILI report note any differences between what the computer algorithm reported and the vendor's manual grade;

h. Where any ILI tool fails to record data for 5% or more of the external and/or internal surface area of the inspected segment, re-run the ILI tool to cover the area of failure;

i. Integrate and analyze available data in its P&M process, including:

i. Assessment data from ILI tool runs;

ii. Dig and repair data;

iii. Corrosion data, such as survey results, chemical treatments, and cleaning-pig results;

iv. Operational data, such as pressure and flow data;

v. Emergency response data, such as tactical response plans and results of recent drills on the pipeline, including locations of conduits to water, as identified in emergency response plans;

vi. Evaluation of the capability of the leak detection system, which shall include identification of each leak detection segment between block valves, consideration of length and size of the pipeline, type of product carried, proximity to high consequence areas, swiftness of leak detection (the time period required for a leak to be operationally isolated and/or the pipeline to be shut down), type and location of valves, valve closure time, EFRD analysis results, the location of nearest response personnel, leak history, and risk assessment results;

vii. Other pipeline characteristics, such as length, diameter, presence in HCAs and Environmentally and Ecologically Sensitive Areas (as defined in regulations promulgated pursuant to California Government Code § 8574.7(d), including 14 CCR 817.04(k)(3)(A)), maximum operating pressure, normal operating pressure, coating type, elevation data, water crossings, proximity to water bodies, casings, geohazard threats, maximum flow rate, and maximum rupture volume.

2. ILI Measures

a. Initial ILI Runs. Each year during the first two years after entry of the CD, Plains shall conduct at least two ILIs using: (1) a high-resolution MFL tool; and (2) a UT tool with an inertial measurement unit (IMU). Plains shall compare both runs and evaluate all available information, including these tool runs and corresponding IMU data. If a UT tool run is unsuccessful, Plains shall identify the limitations that prevented the UT tool run from being successful, consider changes to increase the likelihood of a successful UT tool run, and use best efforts to rerun the UT tool within six months (subject to tool availability).

i. All ILI assessments in the first two years shall include a sizing tool and a tool capable of identifying dents.

ii. In each of the first two years, Plains shall run the second ILI tool as soon as practicable after running the first ILI tool, but no later than 90 days after completion of the first ILI tool run. If one of the two tool runs is unsuccessful, Plains shall re-run the tool that was unsuccessful (but need not re-run the tool that was successful) even if the re-run of the unsuccessful tool run would occur more than 90 days from the successful tool run.

b. Subsequent ILI Runs. After the first two years, Plains shall run at least one MFL or one UT tool every year, using a different ILI tool type (MFL or UT) in each alternating year. Alternatively, Plains may run a UT tool each year. If, however, any UT tool run is unsuccessful, Plains shall document the reasons why the UT tool was unsuccessful, consider changes to increase the likelihood of a successful UT tool run, and may use MFL technology to complete that year's ILI, but must run a UT tool the following year.

c. All ILI Runs. Plains shall provide ILI results and reports to the OSFM within 30 days from its availability to Plains.

5. **Valves**

A. Within one year after entry of the CD for any operating segments of Lines 901, 903, and 2000, and for any new pipeline segments replacing those lines, Plains shall conduct EFRD analyses, which shall include consideration of:

1. Swiftness of leak detection and pipeline shutdown capabilities, type of commodity carried, rate of potential leakage, volume that can be released, topography or pipeline profile, potential for ignition (for spilled commodity), proximity to power sources, location of nearest response personnel, specific terrain between the pipeline and the HCA, and benefits expected by reducing the spill size.

2. Valve placement and method of valve actuation for all valves (not including valves used for instrumentation purposes, such as on tubing on transmitter calibration manifolds).

B. Plains shall submit the EFRD analyses to OSFM within one year of entry of the CD.

C. Where practical, Plains shall confirm that check valves that are necessary for the safe operation of the pipeline are in good working order at intervals required by other valve maintenance activities and associated procedures.

6. **Risk Analysis**

A. For any operating segments of Lines 901, 903, or 2000 (not to include any replacement lines):

1. Plains shall submit a risk analysis under proposed regulation 19 CCR § 2111(c) to OSFM (dated January 17, 2019 and publicly noticed in the California Regulatory Notice Register on February 15, 2019), or the final version of such regulation as it may be made effective in the future, regardless of whether or not those lines would otherwise be subject to the proposed regulations.

a. The information in the risk analysis shall be limited to the information listed in proposed regulation 19 CCR § 2111(c).

b. Plains' responsibility under this subsection is limited to providing the risk analysis to OSFM; Plains will maintain discretion over whether and how to implement the results of the analysis. The OSFM may review and comment on the risk analysis submitted by Plains consistent with provisions found in the proposed regulations, 19 CCR 2100 et seq.

c. The risk analysis shall be due within one year from entry of the CD.

7. **Leak Detection**

A. For any operating segments of Lines 901, 903, or 2000 (not to include any replacement lines), Plains shall confirm in writing to the OSFM within 30 days of entry of the CD that it has installed a Computational Pipeline Monitoring (CPM) Real Time Transient Model (RTTM) that is compliant with API 1130.

B. Within 12 months after initiating operation of any replacement lines for Lines 901 or 903, Plains shall verify and certify to the OSFM that all Pipeline and Instrumentation Drawings (P&IDs) reflect correct "as-built" information.

8. **Non-waiver**

A. Nothing in this CD shall excuse Plains from otherwise complying with the AB 864 regulations when they are promulgated.

ARTICLE II – COMPANY-WIDE PROVISIONS ON REGULATED PIPELINES

9. **Integrity Management**

A. New Procedures for Interim Reviews and Assessments

1. Plains shall modify Section 9.5 of its Integrity Management Plan ("Continual Evaluation and Assessment of Pipeline Integrity") to provide for an annual, but not to exceed 15 months, Interim Review of each pipeline segment it operates to determine whether, since the last assessment (whether it was an Interim Assessment or a full periodic assessment under Section 6), conditions have changed or new information has been obtained that could significantly impact already-identified threats or create new threats for that segment. If so, Plains shall evaluate whether it should implement any P&M measure(s) to address that threat prior to the next regularly-scheduled assessment. Section 9.5 shall list all the categories of potential threats to be considered as part of the Interim Review and the types of conditions, information and data that will be included in the information analysis conducted under 49 CFR § 195.452(g).

2. Plains shall modify Section 9.5 of its IMP to provide new forms for P&M measures or actions to be taken as a result of an Interim Review. Section 9.5 shall provide that Plains' Integrity Engineer may recommend any P&M measures that may be appropriate, including any P&M measures that could be recommended following a full assessment performed under Section 6 of its IMP.

3. Plains shall submit its proposed modifications of Section 9.5 to PHMSA no later than 60 days after entry of the CD. If PHMSA does not object or request any modification within 60 days, Plains shall proceed to implement the revised procedures in Section 9.5, which shall be completed within 18 months from entry of the CD.

B. Documentation for P&M Recommendations

1. Within 90 days from entry of the CD, Plains shall revise Part B of its P&M Recommendation form (F11-2), to expand the scope and content of comments in the "Basis of Recommendation" field to provide a narrative explanation that reflects, at a minimum:

   a. What drew the engineer's attention and caused him or her to make the recommendation (such as an anomaly, pattern, trend or potential correlation observed in the data, a particular event or occurrence, a particular change in the operation or configuration of the line or in its surrounding environment, "lessons learned" from another event or occurrence, a corporate goal or initiative, etc.);

   b. The specific risk (likelihood or consequence of failure, or both) or concern that the recommended measure is intended to investigate or address; and

c. The goal or intended outcome that the recommended P&M measure is intended to achieve with regard to that specific risk or concern.

2. In the new forms for the Interim Review procedure described in Paragraph A above, Plains shall likewise provide a narrative explanation of the bases for any recommended P&M measures.

3. In Part B of its Preventive and Mitigative Evaluation Recommendation Form (F11-2), Plains shall continue to identify the anticipated completion date for the P&M measure in the column titled "Deadline Date."

C. Tracking of P&M Measures

Plains shall document P&M measures recommended but not implemented. Plains shall document implemented P&M measures through to completion, whether undertaken pursuant to an Interim Review under Section 9.5 or a full assessment under Section 6, such that these actions will be properly documented under 49 CFR § 195.452(l).

10. **Valves and O&M**

A. Within two years after entry of the CD, Plains shall conduct EFRD analyses for all Regulated Pipelines for which it has not previously completed an EFRD analysis.

B. Within two years of entry of the CD, Plains shall develop and implement procedures to:

1. If a valve fails to respond properly on first actuation command, document the failure and review historical records for that valve to identify any systemic issues.

2. Adjust Plains' surge analyses and Emergency Response Plans, if necessary, to account for identified systemic issues associated with valve closure times.

3. Timely communicate to the Control Room the status of valve maintenance activity for those valves on Regulated Pipelines that are capable of being operated by the Control Room.

4. Verify that personnel assigned to operator-qualification tasks for valve maintenance are qualified to perform those tasks.

C. Plains shall make all repairs necessary to keep valves in good working order within one year of discovery that the valve is not operating as intended, or, if not possible, Plains shall provide timely notification (including justification) to PHMSA or OSFM as applicable.

D. For all field personnel who perform maintenance on facilities, equipment, or devices, Plains shall provide training:

1. Within two years of entry of the CD, that addresses the importance of complying with Plains' policy requiring notification of Control Room personnel before beginning maintenance activities on any such facility, equipment, or device that could change the status of any pump, valve, CPM device, SCADA device, pressure or flow metering or rate that is monitored by the Control Room. Plains shall include in the training a requirement that employees shall notify the Control Room before entering a facility to perform maintenance, or, if not possible, immediately after entering.

E. Plains shall improve existing valve maintenance recordkeeping to include confirmation whether the valve has been actually operated during maintenance.

11. **Leak Detection**

A. Within 90 days after entry of the CD, Plains shall create and maintain a list of its regulated mainline pipelines, excluding gathering lines and Delivery Lines, to indicate which of the following three rupture-detection methods, if any, are used on each line: (1) Rate of Change Combination alarm; (2) low discharge pressure alarm; or (3) 5-minute computational pipeline monitoring (CPM) alarm.

1. Within one year after entry of the CD, for any regulated mainline pipeline identified in the list created pursuant to this paragraph that does not utilize at least one of the three rupture detection methods, Plains shall implement at least one.

B. For the term of the CD, Plains shall conduct annual training for controllers on attributes and benefits of various methods of leak detection, including Analog High/Low Threshold, Alarm Deadband, Creep Deviation, and Analog Rate of Change.

C. Within 18 months of entry of the CD, for its CPM systems, Plains shall analyze and evaluate the use of accumulated deviation rolling time periods longer than 24 hours.

1. Plains shall document its analysis and provide it to PHMSA for comment, but Plains shall maintain discretion over what actions to take, if any, and how to implement the results of its analysis.

D. Within six months of entry of the CD, Plains shall have in place a written procedure for Selection of Leak Detection Method for its Regulated Pipelines.

1. Plains shall provide the Selection of Leak Detection Method procedure to PHMSA for comment, but Plains shall maintain discretion over and be

responsible for the final content and implementation of the Selection of Leak Detection Method procedure.

E. Plains will hold periodic (at least annual) meetings to solicit feedback from Control Room and operations maintenance personnel regarding potential improvements to leak detection. The results of the meetings will be documented and shared with appropriate personnel. The recommendations will be evaluated and documented.

F. Instrumentation and Display

1. To minimize and prevent false operating conditions from being displayed, Plains shall, per API 1175 (Pipeline Leak Detection – Program Management (1st Edition, December 2015)), within three years from entry of the CD or such earlier time as required by regulations:

a. Provide a procedure by which operations maintenance personnel and/or Control Room personnel identify and record when instrumentation has been impeded on an unplanned basis and is no longer providing accurate and updated values on pressure, flow, or temperature due to scheduled or planned maintenance activities.

b. Track these conditions through to resolution, including instrumentation relocation when necessary.

12. **Control Room Management**

A. For Lines 901 and 903, prior to resuming operations on segments currently not in service or commencing operations on any replacement for those lines, Plains shall:

1. Complete point-to-point verification reviews for all components of its SCADA system, including displays, alarm setpoint values, and alarm log descriptors;

2. Update its piping and instrumentation diagrams, software, manuals, and operating procedures to accurately reflect the existing field configuration;

3. Confirm that all Lo-Lo and Hi-Hi SCADA alarms are configured and programmed as critical safety related alarms for pressures and flows, and that alert notifications are correct and accurate; and

4. Update the names of all facilities, equipment, devices, measurement points and locations in console displays, the Control Room Management Plan and Control Center General Procedures, shift reports, and form templates to reflect current operating conditions (updating or removing out-of-date names).

B. For Line 2000, within six months after entry of the CD, Plains shall confirm to the OSFM that all Alarm Descriptors on the control console are accurate.

C. Plains shall implement the Control Room Management Plan measures and Control Center General Procedures measures referenced in paragraph 23(a) of the CD.

13. **Emergency Response and Oil Spill Response Plans**

A. California-Specific Provisions:

1. Plains shall review and update its Bakersfield District Response Zone Plan periodically, as required by applicable regulations, including 14 CCR 816.05. Plains' review shall include the portions of its Response Plan that address identification of culverts along the pipelines' rights-of-way, potential receptors, access to potential spill sites, and procedures to assure protection of the environment from oil spills. To the extent that Plains has a Tactical Response Plan, Plains shall make it available to the Governments upon reasonable request and as needed in connection with a drill or response to a spill.

B. Company-Wide Provisions

1. Plains shall, at least once before two years from the date of entry of the CD, and at least one additional time prior to termination of the CD, survey its rights-of-way for all regulated mainline pipelines of at least 24" diameter, by foot or air patrol, to identify all culverts and shall ensure the emergency response plans covering those pipelines (a) reflect the locations of all culverts identified, and (b) address potential containment and recovery techniques for spills that may occur near identified culverts.

2. Within 180 days of entry of the CD (or within 180 days of a new employee being hired, or an existing employee being assigned to relevant duties) Plains shall provide or confirm that it has provided all employees who may reasonably be involved in spill response with NIMS ICS training at the 100 and 200 levels. Within 180 days of entry of the CD, Plains shall also provide or confirm that it has provided ICS training at the 300 and 400 level to any employee who may reasonably be expected to coordinate with the Incident Management Team during a spill response. Plains shall provide refresher training to employees within two years after initial training and shall maintain certification of such training and make such documents available to Plaintiffs upon request.

3. Going forward from the date of the CD, Plains shall include in its contracts with all Oil Spill Response Organizations (OSROs) a requirement that the OSROs' employees and contract employees receive training at the same level specified for Plains employees, based on their responsibilities, prior to participating in any incident response on behalf of

Plains. Plains shall require its OSRO contractors and subcontractors to register with a third-party online compliance verification system and shall use that online verification system to spot-check the NIMS ICS Training histories for randomly-selected OSRO personnel who participate in Plains' table-top drills. Plains' spot-check shall include a reasonable number of OSRO personnel participating in the drills to help ensure that all OSRO personnel participating in incident response are trained at the ICS levels specified herein.

4. Within 180 days of entry of the CD, Plains shall provide or confirm that it has provided all Control Room supervisors with training regarding the Control Room's emergency response responsibilities and procedures. Plains shall provide this training annually thereafter. Plains shall maintain auditable documentation that supervisors have received such training and shall make such documentation available to PHMSA upon request.

5. Plains shall notify PHMSA (and, for California Lines, California OSPR and OSFM) of company-sponsored and organized drills in accordance with applicable regulations, including table tops (either with or without equipment deployment). Plains shall provide PHMSA (and, for California Lines, California OSPR and OSFM) with after-action reports for each table-top drill involving equipment deployment within 90 days of completion of the drill. Plains shall include lessons learned in such after-action reports and shall consider such lessons learned for incorporation into future drills or exercises.

6. For the term of the CD, a representative of Plains' Control Room management team shall participate in any after-action or "hot wash" activity designed to identify areas of improvement following a release, and shall share, in documented form, the information obtained with relevant Control Room personnel.

14. **Safety Management System (SMS)**

A. Plains shall continue to implement its SMS, which is based on recommended practices in American Petroleum Institute (API) RP 1173 (Pipeline Safety Management Systems (1st Edition, July 2015)).

1. Prior to the termination of the CD, Plains shall hire a third party to assess the conformance of its SMS to API RP 1173. Plains shall direct the third party to transmit a copy of the final report to PHMSA. Plains' responsibility under this paragraph shall be limited to engaging the third party to prepare the report and providing the report to PHMSA. Any nonconformance identified by the third party shall not be a violation of the CD.

B. Plains shall participate in the API Pipeline SMS Group to exchange ideas, information, and lessons learned about implementation of API RP 1173.

15. **Drug and Alcohol Program**

A. Within one year of entry of the CD, Plains shall review and revise its drug and alcohol misuse plans to comply with post-accident and random drug and alcohol testing required by 49 C.F.R. §§ 199.105(b), (c), and 49 C.F.R. § 199.225(a). This shall include a review of all covered positions among Control Room personnel and field personnel for inclusion in the plans for post-accident testing. Covered positions shall include any person with authority to shut down a pipeline, including Control Room shift supervisors. Plains shall ensure adequate implementation and documentation for all post-accident drug/alcohol tests as required by 49 C.F.R. § 199.117(a)(5) and 49 C.F.R. §§ 199.227(b)(4), (c)(1)(v) and in accordance with its procedures. Should Plains determine that it is not possible to administer a post-accident drug/alcohol test on a covered employee whose performance of a covered function either contributed to the accident or could not be completely discounted as a contributing factor within the time specified in the regulations, Plains shall document why the test was not administered within such time.

APPENDIX C

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APPENDIX D

(Remaining Corrective Actions from the PHMSA CAO)

APPENDIX D

1. All outstanding corrective actions in PHMSA's closed Corrective Action Order (CAO), CPF No. 5-2015-5011H, as amended, are hereby merged into this Consent Decree, as outlined below, and subject to the sole regulatory oversight of the OSFM.

   a. **Line 901 Shutdown.** Plains shall not operate Line 901 until authorized to do so by the OSFM.

   b. **Restart Plan for Line 901.** If Plains seeks to restart Line 901, Plains shall develop and submit, at least 60 days in advance of a scheduled restart, a written Restart Plan for Line 901 to the OSFM for review and approval. Once approved by the OSFM, the Restart Plan shall be incorporated by reference into this Consent Decree. The Restart Plan shall include:

      1) Documentation of the completion of all mandated actions, and a management of change plan to ensure that all procedural modifications are incorporated into Plains' operations and maintenance procedures manual;

      2) Provisions for adequate patrolling of Line 901 during the restart process and shall include incremental pressure increases during start-up, with each increment to be held for at least two hours;

      3) Sufficient surveillance of the pipeline during each pressure increment to ensure that no leaks are present when operation of the line resumes;

      4) A specific day-light restart that includes advance communications with local emergency response officials;

      5) Master Control Room enhancements, including:

         a) Implementation of advanced leak-detection

capabilities that include mass balance and line pack calculations (the total volume of liquid present in a pipeline section). The leak-detection improvements shall include:

1. Revised alarm threshold adjustments;
2. Additional required instrumentation; installation of additional safety valves as a result of Plains' EFRD evaluation;

b) Review and update of the alarm set-point values of pressures and flows to account for hydraulics and the interaction of topography, pipeline status (running and shutdown), sensor location, and historical pressure and flow values by configuration, in order to provide a basic level of leak detection when the pipeline is down and not running. Dynamic alarm limits based on pipeline status shall be used if hydraulically required;

c) Implementation of modifications to the existing alarm priority/severity system to incorporate low and high pressure and flow values in major or safety-related alarm (SRA) categories;

d) Implementation of emergency shutdown programming associated with Line 901 that can be executed by the Shift Supervisor or Controller;

e) Development and implementation of training associated with the emergency shutdown programming described above; and

f) Provision of additional controller training that

incorporates awareness of abnormal operations and reduced-pressure operational characteristics, including alarm set-point revisions for conditions similar to the Refugio Incident.

6) Elimination and documentation of actions taken to prevent inappropriate uncommanded Valve 460 (Sisquoc Conoco) status and position changes;

7) Installation of additional safety valves as a result of Plains' EFRD evaluation;

8) Installation of additional pressure sensors as a result of Plains' surge study;

9) Initiation of a UT ILI within seven days after steady-state operation is achieved in accordance with an ILI schedule approved by the OSFM. The tool run shall be initiated during daylight hours. If the tool run does not collect a complete data set, the UT tool shall be promptly re-run. A report from the ILI tool vendor shall be completed within 30 days of running the tool. Plains shall complete its review and analysis of the ILI report within 15 days of receiving the report. Provisions shall be made to address any immediate repairs that result from an initial data analysis of the UT ILI run; and

10) **Corrosion Prevention.** Plains shall include a long-term plan to address corrosion under insulation (CUI) on Line 901 that meets the requirements of 49 C.F.R. Part 195, Subpart H, in any Restart Plan. Plains may address the inadequate corrosion prevention through any method approved by the OSFM, including but not limited to the provisions contained in CAO Amendment No. 3, Section 2(a)-(c).

c. **Return to Service of Line 901.** After the OSFM approves the Restart Plan, Plains may return Line 901 to service but the operating pressure shall not exceed eighty percent (80%) of the actual operating pressure in effect immediately prior to the Refugio Incident on May 19, 2015.

d. **Removal of Pressure Restriction of Line 901.** The OSFM may allow the removal or modification of the pressure restriction upon a written request from Plains demonstrating that restoring the pipeline to its pre-Refugio Incident operating pressure is justified, based on a reliable engineering analysis showing that the pressure increase is safe, considering all known defects, anomalies, and operating parameters of the pipeline. The OSFM may allow the temporary removal or modification of the pressure restriction upon a written request from Plains demonstrating that temporary Preventive and Mitigative (P&M) measures will be implemented prior to and during the temporary removal or modification of the pressure restriction. The OSFM's determination shall be based on consideration of the Refugio Incident's cause and Plains' evidence that P&M measures provide for the safe operation of Line 901 during the temporary removal or modification of the pressure restriction.

e. **Line 903 Shutdown.** After purging Line 903, Plains shall not operate Line 903 between Gaviota and Pentland stations until authorized to do so by the OSFM.

f. **Restart Plan for Line 903.** If Plains seeks to restart the Gaviota-to-Pentland segment of Line 903, Plains shall develop and submit, at least 60 days in advance of a scheduled restart, a written Restart Plan for the Gaviota-to-Pentland segment of Line

903 to the OSFM for review and approval. Once approved by the OSFM, the Restart Plan shall be incorporated by reference into this Consent Decree. In addition to all the requirements set forth in the above subparagraphs 1.b.1)-11), excluding subparagraph 1.b.6), the Restart Plan shall include:

1) Provisions for adequate patrolling during the restart process and the inclusion of incremental pressure increases during start-up, with each increment to be held for at least two hours;

2) Sufficient surveillance of the pipeline during each pressure increment to ensure that no leaks are present when operation of the line resumes; and

3) Provisions for a daylight restart and advance communications with local emergency response officials.

g. **Line 903 Return to Service.** After the OSFM approves the Restart Plan for the Gaviota-to-Pentland segment of Line 903, Plains may return that segment to service, but the operating pressure shall not exceed eighty percent (80%) of the highest pressure sustained for a continuous 8-hour period between April 19, 2015, and May 19, 2015, for Line 903 (Gaviota-to-Sisquoc and Sisquoc-to-Pentland segments).

h. **Removal of Pressure Restriction for Line 903.** After a return to service, Plains may request the OSFM to remove the pressure restriction for the Gaviota-to-Pentland segment of Line 903.

1) The OSFM may allow removal or modification of the pressure restriction upon a written request from Plains demonstrating that restoring the pipeline to its pre-Refugio Incident operating pressure is justified, based on a reliable

engineering analysis showing that the pressure increase is safe, considering all known defects, anomalies, and operating parameters of the pipeline.

2) The OSFM may allow the temporary removal or modification of the pressure restriction upon a written request from Plains demonstrating that temporary P&M measures will be implemented prior to and during the temporary removal or modification of the pressure restriction. The OSFM's determination shall be based on consideration of the Refugio Incident's cause and Plains' evidence that P&M measures provide for the safe operation of Line 903 during the temporary removal or modification of the pressure restriction. Requests for removal of the pressure restriction may be submitted by pipeline segment.

i. **Notifications.** Plains shall provide notification to the OSFM within five business days of any of the following events: any investigation and remediation field actions for identified anomalies (i.e., digs and repairs), ILI tool runs, and/or startup dates.

j. **Reporting Requirements for Lines 901 and 903.** If and when Plains has concluded all items in this Appendix D, Plains shall submit a final Appendix D Documentation Report to the OSFM for review and approval.

1) The OSFM may approve the Appendix D Documentation Report incrementally without approving it in its entirety.

2) Once approved by the OSFM, the Appendix D Documentation Report shall be incorporated by reference into this Consent Decree.

3) The Appendix D Documentation Report shall include but not be limited to:

A. Table of Contents;

B. [*intentionally left blank.*]

C. [*intentionally left blank.*]

D. Summary of all tests, inspections, assessments, evaluations, and analysis to the extent required under this Appendix D;

E. [*intentionally left blank.*]

F. [*intentionally left blank.*]

G. Lessons learned while fulfilling the requirements of this Appendix D.

Brownstein

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April 24, 2023

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RE: Continuation of Appeal of the Zoning Administrator's August 22, 2022 Approval of a Development Plan/Conditional Use Permit Amendment and Coastal Development Permit Pertaining to Plains Pipeline, L.P. Line 901-903 Upgrade Project (21AMD-00000-00009 & 22CDP-00000-00048)

Honorable Members of the Planning Commission:

Brownstein Hyatt Farber Schreck, LLP represents Grey Fox, LLC ("Grey Fox"), owner of property located at 13600 Calle Real, Goleta, CA and identified as Assessor's Parcel Number ("APN") 081-210-047 ("Property"). On behalf of Grey Fox, our office timely submitted an appeal of the Zoning Administrator's August 22, 2022 approval of a Development Plan, Conditional Use Permit Amendment and Coastal Development Permit pertaining to the Plains Line 901-903 Upgrade Project ("Project") which includes installation of eleven motor operated valves and five check valves on lines 901 and 903 (the "Lines"). Two other parties also appealed, the Gaviota Coast Conservancy and a group of landowners represented by the law firm of Cappello & Noël LLP ("Owners").

Grey Fox concurs with the points raised in the April 21, 2023 letter submitted by the law firm of Cappello & Noël LLP on behalf of the Owners. After reviewing the four options presented in the staff report for the continued hearing on April 26, 2023, we respectfully urge the Planning Commission to either deny the Project (Option #4), or direct staff to prepare a **Subsequent** (not "Supplemental") Environmental Impact Report ("Subsequent EIR") (i.e., a variation on Option #3). If a Subsequent EIR is prepared, the only legally proper approach under the California Environmental Quality Act ("CEQA") is to use the existing conditions of a non-operational pipeline as the baseline.

Legal support for requiring a Subsequent EIR and using existing conditions as the baseline were extensively documented in Grey Fox's February 27, 2023 letter to the Planning Commission, and in points presented by counsel during the appellants' presentation at the March 1, 2023 Planning

Commission hearing. The following summarizes the key legal authority and evidence previously outlined, and provides further support for proceeding with the variation on Option #3, **a Subsequent EIR using existing conditions of a non-operational pipeline as the baseline**:

- **Scope of the "Project" at Issue**: The public policies that Assembly Bill 864 ("AB 864") was intended to promote—namely, public health and safety and the protection of sensitive coastal resources—should not be used to short-circuit CEQA review. CEQA requires analyzing the "whole of the action," which here, includes not only valve installation but also re-initiating operation of the currently non-operational Lines.[1] "A public agency is not permitted to subdivide a single project into smaller individual subprojects in order to avoid the responsibility of considering the environmental impact of the project as a whole. 'The requirements of CEQA, cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.' "[2]

- **Propriety of a Subsequent EIR**: The circumstances here readily meet the legal requirements for the preparation of a Subsequent EIR under Public Resources Code § 21166 and CEQA Guidelines § 15162. At least two of the three criteria set forth in CEQA Guidelines §15162 are amply met. First, there are "[s]ubstantial changes" that have occurred with respect to the **circumstances under which the project is being undertaken** which will require major revisions to the 1985 EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified environmental effects. (See CEQA Guidelines § 15162(a)(2)). Since the 1985 EIR was prepared, the Lines have aged significantly, corrosion problems have been identified, and an actual spill occurrence has brought the existence of these risks to the fore through indisputable lived reality. It strains the bounds of common sense that these would not be considered a classic "substantial change" in circumstances that CEQA Guidelines § 15162 was intended to address. Alternatively, these facts should also be considered "**[n]ew information of substantial importance**, which was not known and could not have been known with the exercise of reasonable diligence" when the 1985 EIR was certified, and shows that the project will have one or more significant effects not discussed in the 1985 EIR or that significant effects previously examined will be substantially more severe than shown in the 1985 EIR. (See CEQA Guidelines § 15162(a)(3)(A), (B).) Given the considerable passage of time over nearly four decades and the availability of new information regarding pipeline safety, new information regarding mitigation measures and

[1] See CEQA Guidelines § 15378(a), (c)–(d).
[2] *Orinda Assn. v. Bd. of Sups.* (1986) 182 Cal.App.3d 1145,1171, quoting *Topanga Beach Renters Assn. v. Dept. of Gen. Srvcs.* (1976) 58 Cal.App.3d 188, 195–196.

alternatives further supports the preparation of a Subsequent EIR. (See CEQA Guidelines §§ 15162(a)(3)(C), (D).)

- **"Subsequent" Not "Supplemental" EIR**: Although the staff report recommends a "Supplemental EIR," that CEQA document is only appropriate where "[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation." (CEQA Guidelines § 15163(a)(2).) Given the extensively documented problems with the condition of the existing Lines, and the occurrence of a catastrophic spill since the original EIR was prepared nearly four decades ago, it is far from clear that "only minor additions or changes" would be necessary to update the 1985 EIR. Accordingly, the Planning Commission should direct staff to prepare a Subsequent and not merely a "Supplemental" EIR.

- **The Proper Baseline is Existing Conditions with a Non-Operational Pipeline:** As raised at the Planning Commission's March 1, 2023 hearing on this issue, the Notice of Preparation ("NOP") for the Plains Replacement Pipeline Project (published by the County on April 26, 2022) states that because substantial retrofitting is required prior to reopening the Lines "due to deficiencies in the existing pipeline coating . . . **the baseline conditions evaluated in the Draft EIR/EIS were changed to the conditions that existed on the ground at the time the 2019 NOP and NOIs were released, which is, and continues to be, a non-operational pipeline**."[3] The County cannot justify using an operational pipeline or historical average as a baseline for the purposes of the valving project while using the correct, existing conditions baseline for the concurrently pending replacement project. Such an approach is legally improper, confusing to the public, contrary to CEQA's public transparency aims, and cannot be supported by legal authority. Existing conditions at the time a notice of preparation is prepared is the standard baseline under CEQA, and no circumstances exist here to justify a modification to that approach. (See CEQA § 15125(a)(1).)

- **Reliance on Exemptions or Use of an Addendum Would be Improper**: For the reasons extensively detailed in the appellants' prior written submissions and at the March 1, 2023 Planning Commission hearing, each of the claimed CEQA exemptions is inapplicable, and the use of an "addendum" to a 1985 EIR under these circumstances would be legally improper. Nothing in the staff report or presented by the applicant would justify the Planning Commission choosing either Option #1 or #2, as presented in the staff report. Based on the legal standard set forth in Public Resources Code § 21166 and the presence of changed circumstances and new information, the approach of proceeding via "addendum" cannot be legally cured by merely adding additional information (i.e., Option #2).

[3] Revised Notice of Preparation (April 26, 2022), SCH #2019029067, pp. 2–3 (emphasis added).

Conclusion

For the reasons stated above, and as set forth in Grey Fox's prior written submissions and oral testimony, we urge the Planning Commission to either DENY the Project (Option #4), or direct staff to prepare a Subsequent EIR (modification of Option #3). Please contact me with any questions or if you would like to discuss further.

Sincerely,

Jessica Diaz