

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Agenda Number:
Prepared on: 7/27/05
Department Name: Planning and Development
Department No.: 053
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Placement: Departmental
Estimate Time: 1 hour
Continued Item: YES
If Yes, date from: 6/7/05

TO: Board of Supervisors

FROM: Dianne Meester, Assistant Director
Planning and Development Department

STAFF CONTACT: Doug Anthony, Interim Deputy Director, Energy, ext. 2046
William M. Dillon, County Counsel, ext. 2950

SUBJECT: California Coastal Commission's Consideration of Consistency Determinations
Regarding the Minerals Management Service's Proposed Extensions of 36
Undeveloped Leases on the Outer Continental Shelf Offshore Santa Barbara County

Recommendation(s): That the Board of Supervisors authorize the Chair to execute the attached letter (Exhibit A) to the California Coastal Commission in support of recommendations by Coastal Commission staff that, due to insufficient information, approval of extensions for 36 undeveloped oil and gas leases cannot be found consistent with the California Coastal Management Program at this time.

Alignment with Board Strategic Plan: The recommendation primarily aligns with the following goals:

- Goal No. 1. An Efficient Government Able to Responds Effectively to the Needs of the Community.
- Goal No. 2. A Safe and Healthy Community in Which to Live, Work, and Visit.
- Goal No. 6. A County Government that is Accessible, Open, and Citizen-Friendly.

Executive Summary:

In November of 1999, the U.S. Department of the Interior, Minerals Management Service (MMS), suspended the terms of 36 undeveloped oil and gas leases offshore the tri-county region of Ventura, Santa Barbara, and San Luis Obispo. Suspension of a lease term effectively extends the term of the lease. The State of California challenged these extensions on procedural grounds; the County of Santa Barbara, along with others, joined the lawsuit as plaintiffs. The plaintiffs contended that the MMS's action did not fully comply with consistency review procedures of the Coastal Zone Management Act (CZMA) and the National Environmental Policy Act (NEPA). The plaintiffs prevailed in court, with rulings from both the Superior Court and the Ninth Circuit.

In compliance with the court rulings, the MMS submitted its consistency determinations to the Coastal Commission in April of 2005, pursuant to the CZMA. The MMS has concluded that the lease extensions are

consistent to the maximum extent practicable with the California Coastal Management Program (CCMP). Commission staff has reviewed the consistency determinations and concluded that the MMS did not provide sufficient information to determine if the lease suspensions are consistent or inconsistent with the CCMP.

Discussion:

Introduction: The MMS has determined that its 1999 action to extend 36 undeveloped oil and gas leases offshore the tri-county region is consistent to the maximum extent practicable with the *California Coastal Management Program* (CCMP). The extensions forestall the expiration of these leases that would otherwise occur. The MMS submitted these consistency determinations to the California Coastal Commission on April 7, 2005, for its review, pursuant to the U.S. Coastal Zone Management Act (CZMA). Under CZMA provisions, the Coastal Commission, in turn, analyzes the submittal, requests more information if necessary to inform its review, and ultimately concurs with or objects to the MMS's conclusions that the lease extensions are consistent to the maximum extent practicable with the CCMP. Both the CZMA and the CCMP encourage the Coastal Commission to seek input from affected local jurisdictions as it conducts this review.

The Federal government originally leased these 36 offshore oil and gas tracts between 1966 and 1984 for an initial term of 5 years that continues in effect thereafter as long as oil and/or gas are produced in paying quantities or drilling operations are underway.¹ Although oil and/or gas have not yet been produced from these 36 leases, they have remained in effect through a series of suspensions either directed by the MMS or granted by the MMS upon request of the lessees. The effect of suspending a leases is essentially to extend its term, in some cases, well beyond the original five-year term granted to produce oi and gas, Indeed, these leases have been in-place between 21 and 39 years.

The projected schedule for producing oil and gas varies widely among the 36 leases, as do expectations that the leases would be produced at all. Approximately 11 of these leases may be developed from existing offshore and onshore infrastructure, using extended-reach drilling technology. Accordingly, they may be developed in the foreseeable future with little or no need to install new infrastructure. The remaining 25 leases require new infrastructure to be developed, including new production facilities, and therefore would not be produced for several years, if at all. All the leases have been subject to buy-out negotiations between the lessees and the Federal government, as well as litigation brought forward by the lessees, contending breach of contract (e.g., lease agreement) by the Federal government.

Background: Congress enacted the CZMA to develop a national coastal-management program that comprehensively manages and balances competing uses of and impacts to any coastal use or resource.² This program is implemented through individual state coastal management programs.

The Federal Consistency Process, a cornerstone of the CZMA, requires the activities of a Federal agency that affects the coastal zone to be consistent to the maximum extent practicable with the enforceable policies of a

¹ The Federal government also leased another 333 tracts during this same period, 43 of which are being produced currently, and 290 of which have expired or otherwise been terminated.

² NOAA, "Coastal Zone Management Act Federal Consistency Regulations," *Federal Register*, December 8, 2000 (Vol. 65, No. 237), page 77124.

state's coastal management program.³ It also requires non-federal activities that require a Federal permit or license (e.g., oil and gas exploration and development on the Outer Continental Shelf) to be fully consistent with a state's coastal management program.

Initially, the Federal government did not consider lease sales to be a Federal activity subject to the CZMA's consistency review provision, a position that was affirmed in a 1984 U.S. Supreme Court ruling.⁴ This limitation was removed subsequently when the Coastal Zone Act Reauthorization Amendments of 1990 amended the applicability of the consistency-review provision of the CZMA in a manner that, as shown in the quote below, would include lease sales if ultimate development of the leases could have an effect on a state's coastal zone.

"The conferees intend the determination of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone to include ... cumulative and secondary effects. Therefore, the term "affecting" [as used in CZMA § 307(c)] is construed broadly, including direct effects which are caused by the activity and occur at the same time and place, and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable."⁵ (Emphasis added.)

However, applicability of the CZMA's consistency review process to lease extensions was still unclear when the U.S. Department of the Interior (DOI) initially granted suspensions for 36 of the 41 oil and gas leases in November of 1999.⁶ At the time, the MMS opined that such actions were not subject to federal consistency review because it considered the lease extensions to be an administrative action that merely provided a lessee more time to carry out functions otherwise authorized by the lease itself. MMS also believed, and continues to believe, that any consistency review of lease extensions only duplicates subsequent consistency determinations well established and long practiced for approval of Exploration Plans and Development and Production Plans.

The State of California challenged DOI on procedural grounds in court (*California v Norton*); several parties intervened on behalf of the State in the lawsuit, including the counties of Santa Barbara and San Luis Obispo. The challenge contended that DOI failed to comply with federal consistency review provisions of the U.S. Coastal Zone Management Act and environmental review provision of the National Environmental Policy Act.⁷ The petitioners ultimately won in both the lower and appellate courts. Essentially, the court disagreed that the lease extensions were merely administrative, noting that:

³ The term "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by law (15 CFR 930.32). The Coastal Commission will use the standard of full consistency in its consideration of the proposed lease extensions because the MMS has not raised the issue of practicability.

⁴ *Secretary of the Interior v. California*, 464 U.S. 312 (1984). This ruling affirmed that lease sales did not directly affect the coastal zone, and therefore, were not subject to consistency review.

⁵ Quoted from House Conference Report No. 101-964; 1990 *U.S. Code Cong. & Adm. News*, p. 2017, by California Coastal Commission, *Staff Report and Recommendation on Consistency Determination*, CD-051-05, p. 12.

⁶ The USDOl granted requests to extend 36 leases in 1999, and denied extensions for four other leases, because they did not contain payable quantities of oil and gas reserves. Lessees have appealed the latter denial of these four requested suspensions. This past April, MMS added another lease to the list of those addressed by the *Consistency Determinations*, that being the quarter of currently producing lease OCS P 0450 situated in the Bonito Unit. Production from the lease is counted only to the three-quarters situated in the adjacent Point Arguello Unit. As a result, the number of leases subject to consistency determinations varies from 36 to 37 and from 40 to 41.

⁷ Earlier this year, the MMS issued Final Environmental Assessments and Findings of No Significant Impacts in order to satisfy the courts' findings that it did not previously comply with the National Environmental Policy Act. Subsequently, the Natural

*“These lease suspensions represent a significant decision to extend the life of oil exploration and production offshore California’s coast, with all of the far reaching effects and perils that go along with offshore oil production.”*⁸

The Ninth Circuit also relied on the fact that, because these 36 leases were issued prior to the 1990 CZMA amendments, these leases had never undergone a consistency review. The Court reserved the issue of whether a consistency review would apply to lease suspensions that had previously been through a consistency review. Based on the court rulings, these consistency determinations represent the first application of the CZMA to lease suspensions.

After its initial review, Coastal Commission staff responded to the MMS that the consistency determinations lacked essential information necessary to determine if these proposed lease suspensions are consistent with the CCMP. In its letter, dated April 22, 2005, Coastal Commission staff detailed specific information necessary to complete its review, and requested a two-month extension in time to review that information.⁹ On May 3, 2005, the Board of Supervisors approved a letter to the MMS that supported the Coastal Commission’s request for more information and extension in time (included herein as Exhibit B).

MMS granted the Coastal Commission’s request for more information and the two-month time extension to August 12, 2005. MMS also approved to the Coastal Commission’s request for more information, but did not provide any additional information until June 23, 2005. When the information was finally received, the Coastal Commission staff concluded it was substantially less than what was requested. MMS opined that it was not obligated to provide much of the requested information, deferring instead to a future time when the lessees seek new or modified Exploration Plans or Development and Production Plans.

Summary of Coastal Commission Staff Review & Recommendation: The Coastal Commission staff concluded that there still is not sufficient information to support a determination that lease suspensions are consistent or inconsistent with the CCMP.

Principle examples of information that Coastal Commission staff believes the MMS can and should provide for these consistency determinations, but has not provided, include:

1. Consideration of how long the anticipated development would extend the life of offshore platforms, pipelines, and onshore facilities in order to answer the question: Will the age of existing facilities pose additional risks or can they be updated, if needed, to support additional years of production in an acceptably safe manner?
2. Consideration of alternatives to new fixed platforms, e.g., floating tension-leg platforms or producing the Gato Canyon unit from an onshore location to avoid repetition of difficult issues and controversy associated with decommissioning.
3. Consideration of an alternative pipeline route that would connect the Gato Canyon Unit to existing Platform Hondo pipeline for transport to shore, rather than a new offshore-onshore pipeline corridor with

Resource Defense Council and the local Environmental Defense Center filed a lawsuit against the MMS, challenging the adequacy of the environmental documents in light of the action being taken.

⁸ United States Court of Appeals for the Ninth Circuit, *California v. Norton*, No. 01-16637, filed December 2, 2002, p. 24.

⁹ Both Federal regulation and a subsequent Court ruling define a 75-day period of review that may be extended upon consent of specific parties.

all of its related impacts to near-shore biology and disruption to recreation at El Capitan and Refugio State parks.

4. Specific analyses of oil spill risk posed by the anticipated development, based on readily available information.

Coastal Commission staff recommends that the Commission object to the consistency determinations, based on the lack of information regarding the above and other matters. If the Commission does object, the MMS may choose to either provide the information or notify the Commission that it will proceed with the lease extensions. In the latter case, the Coastal Commission may choose either to request mediation through the U.S. Department of Commerce or return to the court to obtain more clarity about the scope of consistency review as applied to the case at hand.

Recommendation: Staff has reviewed the information requested by the Commission staff of the MMS and concurs that such information is essential to determine if these leases suspensions are consistent with the CCMP. Therefore, we recommend that the Board execute a letter to the California Coastal Commission, included herein as Exhibit A, which concurs with the Coastal Commission staff recommendations.

Mandates and Service Levels: There is no mandate to submit the proposed letter. Review of Federal Consistency Determinations is conducted primarily by the California Coastal Commission. However, both the regulations of the Coastal Zone Management Act (15 CFR 930.2 and 930.6(b)) and the California Coastal Management Program (1977, page 91) encourage input by affected local jurisdictions. Santa Barbara County often participates as an interested party because the Federal government historically has concentrated most of its oil and gas leasing efforts offshore California within the Santa Barbara Channel and Santa Maria Basin. Santa Barbara County has been involved

Fiscal and Facilities Impacts: Expenses incurred in preparing the comment letter for the Board's consideration are part of the Energy Division's approved FY 05-06 budget appearing on page D-304 under the title "Long-Range Planning." Expenditures are charged to fund 0001, program 5080, and project PKR.

Special Instructions: Clerk of the Board will contact Doug Anthony as soon as the attached letter is signed by the Chair of the Board of Supervisors.

Concurrence: N/A.

Exhibits Attached:

- A. Recommended letter to the California Coastal Commission
- B. Board of Supervisors letter of May 3, 2005, to the Minerals Management Service in support of Coastal Commissions request for more information

Exhibits Available at Clerk of the Board and at <http://www.coastal.ca.gov/mtgcurr.html> (scroll down agenda to item 5 on August 11, 2005).

- C. Coastal Commission staff report and recommendation – Cavern Point Unit
- D. Coastal Commission staff report and recommendation – Gato Canyon Unit
- E. Coastal Commission staff report and recommendation – Bonito, Sword, and Rocky Pt. Units
- F. Coastal Commission staff report and recommendation – Lion Rock, Point Sal, Santa Maria, Purisima Pt. Units & non-unitized lease OCS-P 0409

Exhibit A

**Staff-Recommended Letter from Board of Supervisors
To California Coastal Commission, August 2, 2005**

August 2, 2005

Ms. Meg Caldwell, Chair
Members of the Commission
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

RE: Coastal Commission Hearing of August 11, 2005, Item No. 5 – Consistency Determinations, Minerals Management Service, OCS Lease Suspensions, Lion Rock Unit (CD-042-05), Point Sal Unit (CD-043-05), Santa Maria Unit (CD-044-05), Purisima Point Unit (CD-048-05), Lease 0409 (CD-046-05), Bonito Unit (CD-047-05), Rocky Point Unit (CD-048-05), Sword Unit (CD-049-05), Gato Canyon Unit (CD-050-05), and Cavern Point Unit (CD-051-05).

Dear Chairwoman Caldwell and Commissioners:

The County of Santa Barbara urges you to object to the foregoing consistency determinations, based on the lack of sufficient information identified in your staff reports. The County's position is based on a desire to realize a full and thorough review of the lease suspensions with all adequate information and analyses necessary to help guide future planning and development in a manner that best protects our coastal resources and minimizes conflicts with other coastal uses. Accordingly, this letter should not be construed in any way to represent a position of the County of Santa Barbara for or against any future offshore oil and gas development. We reserve such decisions to a later date when the information and analyses are adequate to make informed decisions.

The Board recognizes that the application of the consistency review process to lease suspensions lacks precedent, and that disputes which arise the first time through this application should not be viewed as unavoidable or irresolvable. We are hopeful that the Minerals Management Service and Coastal Commission can find common ground as to the adequacy of information and analyses necessary to consider the proposed lease suspensions on their merits. Success will depend upon the will of each participant in this process to put aside past differences and work constructively toward resolution. We offer whatever assistance we may reasonably provide to help achieve that resolution.

For the record, we believe the following information and considerations, at a minimum, need to be exposed to the light of day and thoroughly vetted before we may proceed with a sufficiently informed decision regarding consistency of the proposed lease suspensions with the Coastal Act.

- What is the estimated extension in the life spans of existing infrastructure, if any, to develop all or some of the leases in the Cavern Point, Rocky Point, Sword, and Bonito Units? What is the current status of that existing infrastructure, considering its structural integrity, and ability of that infrastructure to safely perform throughout an extended life span?
- What is the comparative effect to the County's coastal resources and coastal uses of developing leases with other types of production facilities other than fixed platforms? Can the Gato Canyon Unit be developed from an onshore location in a manner that better protects the spectacular aesthetic, biological, and recreational resources of the Gaviota Coast? Do floating drill ships or semi-submersibles offer better alternatives to the use of fixed platforms where appropriate onshore drill sites are infeasible? These alternatives should be addressed at the earliest possible stage so the appropriate Federal, State, and local governments may provide sufficient guidance to the lessees before they invest money and time into the design of their proposed developments.
- What is the comparative effect to the County's coastal resources and coastal uses if production from the Gato Canyon Unit were routed to Platform Hondo, assuming a new offshore production facility? Would this alternative not avoid adverse effects to the near-shore environmental and disruption to popular state beaches that occurred during the installation of the Santa Ynez Unit pipelines? Did we not require those pipelines to operate as common carriers in order to avoid repetition of the adverse effects incurred during their installation?
- How would the proposed development affect risk of oil spills? Are we better advised to update our knowledge and methods for examining the frequency and consequences of oil spills that may occur from any new development? Do we not risk public credibility if we understate or overstate those factors through overly generalized analyses?

We thank you for your careful consideration of our testimony, and we look forward to assisting your staff in finding adequate resolutions and conclusions to this process.

Respectfully yours,

Susan J. Rose, Chair
Board of Supervisors

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Congresswoman Lois Capps
Congresswoman Elton Gallegly

Exhibit B

**Letter from Board of Supervisors To
Minerals Management Service, May 3, 2005**

May 3, 2005

Ellen Aronson
Regional Manager
United States Department of Interior
Minerals Management Service
Pacific OCS Region
770 Paseo Camarillo
Camarillo, California 93010-6064

RE: Consistency Determinations, MMS Proposed Lease Suspensions for Outer Continental Shelf Leases located offshore Santa Barbara County, California.

Dear Ms. Aronson:

The County of Santa Barbara urges you to grant the request of the California Coastal Commission for additional time and more information necessary to review the consistency determinations submitted by the Mineral Management Service ("MMS") for the proposed suspension of 40 undeveloped Outer Continental Shelf ("OCS") leases located offshore Santa Barbara County. The California Coastal Commission submitted that request to you in a letter dated April 22, 2005. In particular, the Commission has determined that the MMS' consistency determinations do not contain all the necessary data and information to enable the Commission to evaluate fully the consistency of the activities described in the materials submitted by MMS to the Commission on April 7, 2005. The County has also reviewed MMS' submittals and concurs that essential data and information necessary to find consistency with the State Coastal Management Program is lacking.

In light of the important public policy issues raised regarding the proposed suspension of these OCS leases, County urges you to allow for a full and thorough review by the State of these consistency determinations. This can only be accomplished if the extension request is granted and the requested information is timely submitted.

Sincerely,

Supervisor Susan Rose
Chair
Santa Barbara County Board of Supervisors

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Congresswoman Lois Capps
Congressman Elton Gallegly