B-5

GOLETA VALLEY CHAMBER OF COMMERCE

July 14, 2006

Mr. and Mrs. Joseph Connell
7114 Del Norte Drive
Goleta, CA 93117

Dear Mr. and Mrs. Connell:

I am writing to you to ask for your help. The Goleta City Council is about to make a decision that will severely harm our city for years – if not decades – to come.

In the coming weeks, the City Council will adopt a General Plan for the city of Goleta.

The General Plan is a document that guides all public decision making and physical changes to a city. It serves as the primary means for establishing all major public policies including housing, the local economy and jobs, environmental protection, and traffic on our roads and intersections.

The General Plan that the Goleta City Council has drafted is extremely flawed, and will have serious negative long-term effects on our city. The only individuals directly involved in crafting the plan have been members of the City Council, limiting the amount of public input and scrutiny over the process. They have refused to appoint a citizen's advisory committee to participate in the planning process, a committee that is established by virtually every city and county when developing a General Plan.

B.5-1

The General Plan's various elements contain dozens of inconsistencies that will limit the ability of local businesses to operate. They will also take away the rights of Goleta property owners to utilize their properties as permitted by law.

If it is adopted in its current form, the Goleta General Plan will stop business growth in our city dead in its tracks.

Adoption of the current form of the General Plan will also undoubtedly result in more litigation for the city. Since Goleta's incorporation 4 years ago, many of the actions taken by the City Council have entangled the city in numerous lawsuits that have cost taxpayers millions of dollars. Due to its complexity and the sheer number of people it will affect, the General Plan could result in the most costly lawsuit the city has ever faced.

As a non-profit organization representing more than 400 locally-based businesses in Goleta, the Goleta Valley Chamber of Commerce is urging the City Council to slow down its review process so that a thorough examination of the concerns that are being raised about the General Plan can be conducted.

Our city's General Plan needs to be crafted carefully to ensure that it is done correctly. This document will guide decisions made concerning every aspect of our city for years – if not decades – to come.

We need your help to convince the City Council to slow down the review process of the General Plan and make changes to the plan so that we can avoid the damage it will cause to our city, its residents and businesses.

Please write a letter to the City of Goleta to share your concerns about the General Plan and its environmental review document.

The last day to submit public comments is Tuesday, July 18th. We don't have much time to convince the city to fix the General Plan and its draft EIR. We can only make a difference if we all participate together and speak with a voice that is loud and clear for the City Council to hear. You should address your letter to:

B.5-1

City of Goleta
Planning & Environmental Services Department
ATTN: Ken Curtis
130 Cremona Drive, Suite B
Goleta, California 93117

This is one of the most important issues that we will face as members of the Goleta community. Please do your part and take action now to ensure that the General Plan is fixed before it is too late.

I have attached a fact sheet that outlines some of the key problems contained in the General Plan. The fact sheet may be helpful to you in writing a letter. If you need assistance in drafting a letter, or have any questions about the General Plan, please call me directly at (805) 967-2500.

Thank you very much for your interest and participation in ensuring that our city's General Plan is done correctly.

Sincerely,

Kristen Amyx
President / CEO

271 N. Fairview, Suite 104 • P.O. Box 781 • Goleta, CA 93117 • P: 805-967-2500 • F: 805-967-4105
info@goletavalley.com • www.goletavalley.com

Goleta Valley Chamber of Commerce

CITY OF GOLETA
DRAFT GENERAL PLAN AND EIR

The General Plan drafted by the Goleta City Council is extremely flawed. The plan contains dozens of inconsistencies that will severely harm residents and local businesses, and will take away the rights of Goleta property owners to utilize their properties as permitted by law.

How you can help...

The General Plan drafted by the Goleta City Council is extremely flawed. If it is adopted in its current form, the Goleta General Plan will stop all business growth in our city dead in its tracks.

Our city's General Plan needs to be crafted carefully to ensure that it is done correctly. This document will guide decisions made about every aspect of our city for years – if not decades – to come.

We need your help to convince the City Council to slow down the General Plan review process so that a thorough examination of the concerns being raised can be conducted.

Please write a letter to the City to share your concerns about the General Plan and its environmental review document.

Write a letter to the city:

CITY OF GOLETA
Planning & Environmental
Services Department
ATTN: Ken Curtis
130 Cremona Drive, Suite B
Goleta, California 93117

Public Comment Deadline:
TUESDAY, JULY 18TH

THERE IS INSUFFICIENT PUBLIC OVERSIGHT OR REVIEW

- General Plans typically undergo three layers of review to ensure that the public's voice has been fairly and adequately represented by the individuals who vote on the General Plan's ultimate adoption. These three tiers are the General Plan Advisory Group, the Planning Commission, and the City Council.

  Unlike most other cities and counties – including Santa Barbara County – Goleta's General Plan will be reviewed by only one body. The Goleta City Council is the only public body that will review and ultimately vote on the city's General Plan. In most jurisdictions, General Plans undergo three tiers of review, with 15 to 20 different people voting on the General Plan. In Goleta's case however, there is only one tier of review in place, allowing only 5 people get to vote.

- By law, the Goleta City Council was required to hold a public hearing to review each Element of the General Plan. The council typically released the contents of each Element on the Friday before the public hearing was held to review the Element (usually Monday or Tuesday).

  This means that the public was severely limited in accessing and reviewing documents before each public meeting. While releasing documents the Friday prior to a Monday meeting is in accordance with the law, it is a very dishonest and disingenuous approach to collecting "public input."

- Typically, a General Plan is released to the public at the same time as an Environmental Impact Report being prepared for the plan. This means that the General Plan is a stable project, and allows the public to understand the anticipated environmental impacts of the plan when reviewing it and making comments.

  In our city's case, the General Plan has continued to change even after the release of the plan's EIR. In fact, substantial changes have been made to the General Plan as recently as July 11 - one week before the deadline for the public to submit comments on the EIR. These changes are not reflected or analyzed in the EIR, and the public is not given an opportunity to understand the impacts of the changes.

Proposed Zoning is Unfeasible Due to Constraints and Contradictions

- The General Plan's "Visual Resources" Element designates essentially every main thoroughfare in Goleta, including Hollister and Patterson, as a "view corridor." This designation prohibits development in areas that would block any views. This means that no development can occur along any of these major thoroughfares, which could greatly affect the ability of Goleta Valley Cottage Hospital to perform the state mandated seismic upgrades or expand to meet the needs of the growing and aging population.

- The General Plan places overreaching noise restrictions throughout the city. These restrictions are much tougher than those established by the state, or those enacted by other cities in California. As a result of these unreasonable noise restrictions, locations that the city proposes for affordable housing will not be built out.

- The General Plan establishes a 100 ft. "buffer" area around all active AND abandoned bird nests. This buffer zone is highly unusual, and could severely restrict what is allowed to be built on private property.

- The General Plan re-designates several plots of agricultural land currently being used for farming as "residential" zones. At the same time, the plan also re-designates several residential neighborhoods with existing homes as "agricultural" zones. These designations are outrageous, and would result in massive impacts if they were carried out.

- The 20-acre property across from the Costco on Hollister Avenue is currently designated as a shopping mall. The General Plan rezones that property as high-density residential, a zone change that is widely welcomed by the community. This means that up to 20 homes can be built on the property per acre – a total of 400 homes.

  However, other elements of the plan place severe restrictions – including height limits and traffic constraints on what can actually be built there. In addition, the city is well-aware that part of the property is inside Santa Barbara Airport's "flight approach zone". Such properties are limited to only one unit per acre.

  Based on all of the existing and new constraints on this property, it will be impossible to build the number of homes that the General Plan will technically allow under the "high density residential" designation that has been given to the property.

- The General Plan mandates that 55% of the homes that are built on "opportunity sites" be designated as "affordable" housing. "Opportunity sites" are vacant properties where cities encourage low-income housing. On paper, this mandate will help the city provide much-needed affordable homes to working families.

  But in reality, a 55% threshold will make it impossible for development projects to be financially viable. Even Ken Curtis, the city's Planning Director has publicly stated his opposition to this unrealistic mandate, because it is completely unrealistic and will essentially render "opportunity sites" useless. Their objections have been rejected by the City council.

Response to Comment No. B.5-1

The commentator states the opinion that the GP/CLUP is flawed, contains inconsistencies that will limit the ability of local businesses to operate, takes away the rights of Goleta property owners, stops business growth, and will result in more litigation for the City. The commentator attaches a "fact sheet" outlining key problems that they perceive with the GP/CLUP. The letter comments and "fact sheet" are prepared without providing reference to specific GP/CLUP policies and without connecting the comments to the adequacy of the EIR. As such, no response is necessary.

The commentator states concern that the GP/CLUP was prepared without an appointed citizen's advisory committee and requests that the City Council slow down its review process of the GP/CLUP. Although not an EIR-related comment, City staff point out that City held 50 public meetings and 15 separate public hearings beginning in 2003 through 2006 to collect and consider input from the public at large. Based upon the number of public meetings/hearings over nearly a three year period, revisions made to the plan to reflect public input, the City does not feel additional time to review the document is warranted.

B-6

HOLLISTER & BRACE
A PROFESSIONAL CORPORATION

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RETIRED FOUNDERS
WILLIAM A. BRACE
J. JAMES HOLLISTER III

July 18, 2006

CITY OF GOLETA
CALIFORNIA
JUL 18 2006
RECEIVED

HAND DELIVERED

CITY OF GOLETA
130 Cremona Drive, Suite B
Goleta, CA 93117

Attn: Mr. Kenneth Curtis

RE: Comments on Draft Environmental Impact Report for the City of Goleta's Draft General Plan / Coastal Land Use Plan

Dear Mr. Curtis:

This office represents Venoco, Inc. owner/operator of Platform Holly and various oil and gas production, processing and transportation facilities located in or adjacent to the City of Goleta. These facilities include the Ellwood Onshore Facility (EOF), the Line 96 pipeline, and the Ellwood Marine Terminal (EMT). We have reviewed the Draft Environmental Impact Report ("DEIR") for the City of Goleta's Draft General Plan / Coastal Land Use Plan ("DGP") as it relates to these and other Venoco facilities in the area and respectfully submit the following comments for Council's consideration.

1. Venoco's Vested Rights and the DEIR.

Of primary concern to our client is the protection of its vested rights in connection with existing and planned oil and gas operations within and adjacent to the City of Goleta. Thus, most of our comments in this section address areas where the DEIR appears to be based upon mistaken or inaccurate assumptions regarding the nature and scope of Venoco's vested rights. Because the DEIR has borrowed most of these mistaken and inaccurate assumptions from the DGP, many of the concerns we raised in our three previous letters (May 3, June 16, and June 28, 2006) to the City regarding the DGP apply to the DEIR as well. A copy of each of these letters is attached here for ready reference.

B.6-1

Venoco's vested rights rest in part upon the South Coast Oil & Gas Consolidation Policies and assurances given by the County to ARCO, Venoco's predecessor in interest (please see our May, 3, 2006 letter to the City for a more detailed explanation of this matter). These assurances run to the benefit of Venoco and are binding upon the City of Goleta as successor in interest to the County of Santa Barbara. Venoco's full field development project proposal is consistent with the Consolidation Policies, as worded and as applied.

The County's Comprehensive Plan, Coastal Land Use Plan, Coastal Zoning Ordinance and Article III (inland) Zoning Ordinance were amended in 1987 to include the County's Consolidation Policies. The primary purpose of the policies is to establish and implement the consolidation of oil and gas processing facilities on the South Coast of the County. These policies generally require "new production" processed in the South Coast Consolidation Planning Area (SCCPA) to be processed at the remaining consolidated site located at Las Flores Canyon. However, the Consolidation Policies neither affect existing production, nor have any preclusive effect on the possibility of processing new production at a nonconsolidated site.

B.6-1

Under the Coastal Zoning Ordinance as adopted by the County and City, the term "new production" expressly excludes development of any oil and/or gas from an existing well or platform. CZO Art. II, Section 35-154.1. This important exception was included in the policies in an effort to avoid constitutional challenges to the policies, such as those based upon claims of impairment of the vested rights of owners of existing facilities or violations of the Commerce Clause. Venoco's full field development proposal involves the development of oil and gas from new wells drilled from Platform Holly, such an existing platform. Accordingly, any such oil or gas production would not constitute "new production" under the Consolidation Policies. This means that such production could lawfully be processed at the EOF, at least to the extent of the EOF's vested (or "permitted throughput") capacity.

These principles have been reaffirmed many times over the years by the County. For example, in his February 15, 1990 letter to the Western Oil and Gas Association's ("WOGA") counsel, Deputy County Counsel Alan Seltzer set forth the following clarifications and assurances as part of the settlement of WOGA's suit that challenged the County's adoption of the Consolidation Policies:

- "[T]he consolidation policies neither affect existing production nor have any 'preclusive' effect on the possibility of processing new production at a non-consolidated site."

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- "The program EIR and consolidation policies do not affect existing production. The definition of new production exempts the development of oil from an existing platform. Under this analysis, ARCO [Venoco] would vest to processing production from platform Holly at its Ellwood facility within its current capacity limitations of 20,000 barrels of oil per day and 22 million standard cubic feet of gas per day."

WOGA and the County also agreed that, "[A] new well from an existing offshore platform is not to be considered new production subject to the Consolidation Policy and related ordinances." Michael Monahan's May 16, 1992 letter to County Counsel and Deputy Attorney General.

Following dismissal of WOGA's lawsuit, the County reaffirmed these principles on several occasions with specific reference to Ellwood operations. For example, during proceedings on Mobil's proposed "Clearview Project" County Staff stated: B.6-1

- "The SLC's [State Lands Commission] Clearview proposal, as presented, would be 'new production' as defined by County Consolidation Policy 6-6B. However, new oil well drilling from Platform Holly within existing permit throughput limits would not be 'new' production under the definition." (Emphasis added).

- "As long as no 'new production' is processed at the Ellwood facility or transported through the marine terminal, no consolidation policies would be violated." Staff Report, *Clearview Proposal* dated June 18, 1993,

Moreover, the County stated in its 2001 amortization analysis:

> "Any amortization ordinance must consider the economic impact of the regulation on the landowner. Further, the amortization study has proceeded on the assumption that Venoco has a vested right to produce the oil and gas reserves from the South Ellwood Fields until the economically recoverable reserves in those fields have been produced." Santa Barbara County Board Agenda Letter, *Amortization Analysis of Nonconforming Oil and Gas Facilities on South Coast,* dated November 28, 2001.

The foregoing assurances in the letters between counsel for the parties to the litigation were given to the oil industry, including Venoco's predecessor in interest, in order to obtain the dismissal of WOGA's lawsuit. The County therefore continues to be bound by these assurances under various doctrines, including the doctrine of judicial

estoppel. *People v. Torch Energy Services* (2002) 102 Cal.App.4th 181, 189 ("Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position.")

When the City of Goleta was incorporated in February 2002, the City adopted the County's existing zoning ordinances as ordinances of the City. (See City Ordinance 02-01 and 17). Under well-established principles of California law, the City is successor in interest to and is in privity with the County of Santa Barbara with respect to the EOF, and is therefore also bound by the County's actions and commitments with respect to the Ellwood properties. See e.g., *People v. Volz*, (1972) 25 Cal. App. 3d 480, 490 ("Thus a chain of privity exists which fastens upon the state the county's estoppel . . .").

Moreover, a legal non-conforming use is a real property right that runs with the land to the benefit of successive owners of the property. Venoco is successor in interest to ARCO, and is therefore entitled to the rights, benefits and protections of the prior owner established before the City was incorporated. *Hansen Bros. Enterprises v. Board of Supervisors of Nevada County* (1996) 12 Cal.4th 533, 540 fn. 1 ("The use of the land, not its ownership, at the time the use becomes nonconforming determines the right to continue the use. Transfer of title does not affect the right to continue a lawful nonconforming use which runs with the land."). B.6-1

Accordingly, the City of Goleta cannot lawfully preclude EOF processing of oil and gas production obtained from new extended reach wells drilled from Platform Holly. To do otherwise would constitute an unlawful impairment of Venoco's vested right. *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1529-1531 (legal nonconforming use constitutes a fundamental vested right entitled to judicial protection).

There are a number of instances where the conclusions or analysis of the DEIR are inconsistent with Venoco's vested rights. In most cases, the problem stems from the DEIR's incorporation of legally suspect or invalid policies from the DGP as mitigation for various impacts related to the operation of Venoco's facilities.

Policy LU 10: Energy-Related On- and Off-Shore Uses

We are particularly concerned that the DEIR uses two legally defective draft policies within Policy LU 10 as mitigation measures for identified impacts of the Venoco onshore facility (EOF). As explained below, because these policies are inconsistent with Venoco's vested rights, they are legally infeasible under CEQA and, as such, cannot be considered legitimate mitigations measures. *See* 14 Cal Code Regs §15126.4(a)(5) (if "a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed.") B.6-2

LU 10.3b provides as follows:

"Any oil and gas produced from extended-reach drilling at Platform Holly shall not be transported to, or processed at, the EOF unless there is no feasible, less damaging alternative."

This draft policy is contrary to the provisions of the South Coast Oil & Gas Consolidation Policies and to the assurances given by the County to ARCO, Venoco's predecessor in interest. Venoco has a vested right to process up to 20,000 barrels of oil per day and 22 million standard cubic feet of gas per day at the EOF. Because LU 10.3b would restrict this vested right, it is not a legally feasible mitigation measure under CEQA. B.6-3

The DEIR potentially relies upon subpolicy LU 10.3b for mitigation for the following alleged impact related to the resumption of S.L. 421 operations (we say "potentially" because the DEIR does not specify which subpolicies under LU 10 are being relied upon for mitigation. More on this lack of specificity below):

- *Impact 3.7-9 Contaminated Soils* (Class II, Long-Term)

LU 10.4b provides as follows:

"If resumption of production is considered for approval, on-pier processing of the oil at a site within the tidal zone should not be approved unless it is demonstrated that there is no feasible and less environmentally damaging alternative to processing on the pier."

This draft policy would impose a regulatory limit on the operation of S.L. 421 contrary to Venoco's vested right. Because LU 10.4b attempts to restrict this vested right, it is not a legally feasible mitigation measure under CEQA. B.6-4

The DEIR relies on LU 10.4b for mitigation of the following alleged impacts:

- *Impact 3.7-1 Risk of Upset at Venoco Facilities* (Class I, Long-Term)
- *Impact 3.7-3 Risk of Upset at S.L. 421 Wells* (Class II, Long-Term)

SE 8.2, Consideration of Offshore Gas Processing

As most recently proposed by staff this policy would provide as follows: B.6-5

"Any project that requires discretionary permit approval by the City of Goleta and that proposes to substantially increase the existing throughput of the EOF should include as a project component the cessation of gas sweetening (H_2S removal) from the onshore facility and relocation of such gas treatment facilities and processes to Platform Holly. This requirement applies to any extended field development proposal or other similar project that substantially increases the production of the South Ellwood Field. The intent is to decrease the risk of a H_2S release within the City's boundaries."

Venoco has a vested right to process at the EOF production from Platform Holly within the EOF's current capacity limitations of 20,000 barrels of oil per day and 22 million standard cubic feet of gas per day. Any oil and gas produced from new wells drilled from Platform Holly are not considered "new production" under the South Coast Consolidation Policies. Thus, any such production may be processed at the EOF within the foregoing capacity limitations. Any requirement that production within Venoco's vested capacity limitations must be processed offshore would substantially impair Venoco's vested right to process such production onshore. Because SE 8.2 attempts to restrict this vested right, it is not a legally feasible mitigation measure under CEQA. B.6-5

The DEIR relies on SE 8.2 for mitigation for the following alleged impact:

- *Impact 3.7-11 Ellwood Facility* (Class III, Long-Term)

These problems are unnecessary and can easily be avoided by deleting the policy all together, or by revising it to read as follows:

*"**SE 8.2 Consideration of Offshore Gas Processing.** The environmental document prepared in connection with any project proposal requiring discretionary permit approval by the City of Goleta for a substantial increase in EOF throughput should include among the reasonable range of project alternatives the cessation of gas sweetening (H_2S removal) at the EOF and relocation of such gas treatment facilities and processes to Platform Holly. The intent is to provide an analysis of the feasibility of this method of reducing the risk of an H_2S release within the City's boundaries."*

The approach urged here ensures that the feasibility of offshore gas sweetening will be considered at the appropriate time and under the appropriate circumstances. This approach avoids fatal flaws in the General Plan and EIR and facial impairment of Venoco's vested right.

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2. DEIR violates CEQA requirements by failing to include mitigation measures where necessary or by including measures that are too vague or speculative to be effective.

Aside from the vested right and legal feasibility matters addressed in the previous section, the DEIR fails to meet other CEQA requirements regarding mitigation measures. In attributing alleged impacts to Venoco's operations, either existing or planned, the DEIR generally fails to provide any data or analysis to substantiate the impacts alleged. Moreover, the DEIR typically fails to provide the basis for assigning a particular CEQA impact classification to the impact alleged. These flaws should be corrected in the final environmental document. B.6-6

A. The DEIR neglects to provide any mitigation for certain alleged Class I and Class II impacts attributed to Venoco.

CEQA requires that mitigation be identified for all potentially significant impacts. §15126.4(a)(1). The following are alleged Class I impacts attributed to Venoco where the DEIR provides no mitigation measures as required by CEQA (see DEIR Table ES-1, Summary of Environmental Impacts, Mitigation Measures and Residual Impacts):

- (Hazards and Hazardous Materials): *Impact 3.7-1 Risk of Upset at Venoco Facilities* (Class I, Long-Term)
- (Hazards and Hazardous Materials): *Impact 3.7-2 Transport* (Class I, Long-Term) B.6-7
- (Air Quality): *Impact 3.3-2 The GP/CLUP Rate of Increase in Vehicle Miles Traveled is Greater Than the Rate of Population Growth for the Same Area* (Class I, Long-Term)
- (Air Quality): *Impact 3.3-5 Cumulative ROG and NO_x* (Class I): The DEIR mentions that this impact would be reduced by adherence to requirements for the State Implementation Plan and certain land use policies, but it does not identify these as mitigation measures.

The following are alleged Class II impacts attributed to Venoco where the DEIR provides no mitigation measures as required by CEQA (see DEIR Table ES-1, Summary of Environmental Impacts, Mitigation Measures and Residual Impacts). It should also be noted that the DEIR's own definition of a Class II impact in Section B.6-8

3.02.3 requires that mitigation be proposed as the necessary means of reducing the impact to a less-than-significant-level:

- (Air Quality): *Impact 3.3-3 Construction Emissions* (Class II, Short-Term) B.6-8
- (Air Quality): *Impact 3.3-6 Cumulative Particulate PM_{10} Emissions* (Class II)

B. The DEIR uses mitigation measures that are too vague or ill-defined to meet CEQA's minimum requirements.

Among the basic purposes of CEQA is to "[p]revent significant, avoidable damage to the environment by requiring changes in projects through the use of … mitigation measures" that are "feasible." §15002(a)3. CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. §15364. The public cannot know whether a proposed mitigation measure is feasible if the DEIR's description of the mitigation measure is so vague or speculative that one cannot adequately evaluate the measure's likely effectiveness. The following proposed mitigation measures, which are all related to Venoco's facilities, fail to meet this minimum CEQA standard: B.6-9

- *Impact 3.7-1 Risk of Upset at Venoco Facilities* (Class I, Long-Term)

While the DEIR provides no mitigation for this alleged Class I impact as explained above, it does imply that LU 10.4 b would help reduce potential impacts associated with the possible recommissioning of production at S.L. 421. The DEIR concludes, with no supporting analysis, that recommissioning of production at S.L. 421 would create risks to marine and land resources, and neighboring populations should there be a leak, spill, or pipeline rupture. Presumably, these impacts either constitute a Class I impact by themselves, or contribute to an overall Class I impact when combined with, for example, the DEIR's other expressed concern about the fire risk from the separation and storage of LPG and NGL at EOF. Either way, even though the DEIR seems to present LU 10.4b as a type of mitigation, the DEIR does not identify it as such in Table ES-1. However, even if LU 10.4b is intended to be mitigation, it fails due to its legal infeasibility as discussed above. Moreover, the reader is given no idea of the degree to which such a policy would mitigate any significant impacts. The entire discussion of impacts and mitigation under Impact 3.7-1 is too vague and ill-defined to be of any analytical use to the public. B.6-10

- *Impact 3.11.5 Exposure of Noise Sensitive Land Uses to Industrial and Other Point Sources* (Class I, Long-Term)

It appears that the DEIR's discussion of this alleged impact inappropriately attributes certain Class I noise impacts to the EOF (or at least indiscriminately includes Venoco's noise impacts with city-wide industrial noise impacts). The DEIR states that noise from EOF already exceeds the 65 dBA CNEL at certain locations along the property line, but then notes that local regulations and Venoco's development permit require only that sound levels not exceed 65 dBA CNEL for any public receptors and 70 dBA CNEL at the property line. From this information, there is no reason to believe that the EOF is not currently compliant with all relevant noise regulations. If this is true, why is Venoco being mentioned by name as part of a Class I impact? The answer may be that the DEIR anticipates that noise from the EOF will result in noise levels above 65 dBA CNEL that will impact "planned noise sensitive land uses," such as residential development. To support this presumed contention, the DEIR mentions certain areas, all identified in DGP Figure 10A-3 Sites Suitable for Residential Development, as potential areas that are vulnerable to future noise impacts. However, none of the areas identified in the DEIR as locations of concern for noise impacts are anywhere near the EOF site. In fact, the only site that is close to EOF — site 37 (Residences at Sandpiper) — is not included in the DEIR as a one of the future development sites that Venoco's noise might impact. Thus, we can find no reason provided in the DEIR for including Venoco's facilities in this Class I impact or to subject Venoco to any of the identified mitigation measures which could impose requirements on Venoco that were intended for other facilities. B.6-11

The DEIR also notes that while implementation of Policies NE 1 (Noise and Land Use Compatibility Standards), NE5 (Industrial and Other Point Sources), and NE 7 (Design Criteria to Attenuate Noise), would reduce most noise impacts to less-than-significant levels, there would still be some cases where it will be practically impossible to reduce levels to less-than-significant levels, making this an alleged Class I impact. The DEIR, however, does not identify where or to whom the Class I impacts would actually take place. It simply concludes that sometime in the future, and at some unspecified area of the City, there will likely be a Class I noise impact from some industrial source. This alleged impact is too speculative to serve any useful purpose. B.6-12

- *Impact 3.7-3 Risk of Upset at S.L. 421 Wells* (Class II, Long-Term)

The DEIR also uses LU 10.4b as a mitigation measure to reduce alleged impacts from an upset related to oil operations at S.L. 421. LU 10.4b specifies that no on-pier processing at S.L. 421 should take place unless there is no environmentally-superior feasible alternative. In addition to the fact that this policy would place a regulatory limit B.6-13

on the operation of S.L 421 that is contrary to the vested rights of Venoco (see above), the value of this policy as mitigation is itself questionable. This policy only provides mitigation in the event that an environmentally-superior feasible alternative exists. The DEIR provides no analysis or explanation as to the likelihood or degree to which this policy would provide meaningful mitigation for this specific significant alleged impact. Without such basic information, the public has no basis on which to judge the feasibility or effectiveness of this proposed mitigation measure. B.6-13

The DEIR also mentions that "[i]mplementation of several elements of Policy SE 8 [Oil and Gas Industry Hazards], would minimize the risk of hazards" at S.L. 421 from oil production and oil emulsion transportation equipment and facilities. There are 15 different subpolicies in this policy that could pertain to this alleged impact. The DEIR should specify which ones are intended as mitigation, not just categorically include them all, whether they apply or not. Furthermore, to comply with CEQA, the DEIR should provide a clear analysis on how and to what degree each policy would mitigate the alleged impact. B.6-14

Finally, the DEIR states that if S.L. 421 is recommissioned, it is the City's preference to pump any produced oil from the pier to the EOF. The DEIR then states that "[i]mpacts due to releases [of] oil emulsion during pumping from the S.L. 421 production well to the EOF would be significant but mitigable." While it is correct for the DEIR to address the potentially significant impacts of the mitigation measure or project alternative itself, the DEIR provides little more than more general speculation as to how the impacts in question would be mitigated. For example, the DEIR notes only that implementation of a pipeline safety, maintenance, operation, and inspection program "could" reduce impacts, or that a QRA under SE 8.6 will be required to assess potential releases. B.6-15

- *Impact 3.7-4 Risk of Upset at Ellwood Marine Terminal* (Class II, Long-Term)

The DEIR concludes, without any analysis, that the oil storage and transfer operations at EMT create significant risks to marine and land resources, and neighboring populations should there be a leak, spill, or pipeline rupture. The DEIR goes on the say that the impacts of oil releases would be mitigated by SPCC Plans as required by federal law. In addition, a QRA under SE 8.6 would be required by the City to assess the risks of potential releases. More generally, the DEIR simply concludes that implementation of Policy SE 8 (Oil and Gas Industry Hazards), "would minimize risk of hazard associated with EMT operations to a less-than-significant level." No analysis of any kind is provided to support these claims. Furthermore, the DEIR again categorically includes over 15 separate subpolicies to mitigate a single alleged impact. It B.6-16

should specify each applicable subpolicy and briefly explain how each one would help mitigate the alleged significant impact. B.6-16

- *Impact 3.7-9 Contaminated Soils* (Class II, Long-Term)

The DEIR concludes that sites with past oil production may have contaminated soils that could affect surrounding populations. Furthermore, it concludes that future development of these sites might generally expose workers and others to contaminated materials. The DEIR fails to state whether this risk is "significant," but presumably it must be if it is classified as a Class II impact. The DEIR should be corrected to provide a clear statement of the alleged impact. B.6-17

The DEIR then states that "[i]mplementation of *various elements* [emphasis added] of Policy SE 10 would significantly reduce the public health/safety risks pose by contaminated soils within the City." The DEIR should specify which elements of SE 10 are intended as mitigation and which elements are not. The reader, as well as any allegedly affected landowners, have no idea what mitigations might apply due to this vague mitigation analysis. The DEIR also mentions that a Soil Management Plan, as required per MM 3.7-1, would help reduce impacts to less-than-significant levels. The DEIR makes mostly conclusory statements about the alleged impacts and mitigations without any substantive analysis of either. B.6-18

3. The DEIR's alternatives analysis violates numerous CEQA requirements. In particular, the "No Project" Alternative is defined incorrectly.

Summary: By mistakenly claiming that the "no project" alternative is illegal, the DEIR incorrectly analyzes this alternative by not defining it as buildout under current plans and regulations, as required by CEQA. The DEIR thus denies the public any opportunity to compare the impacts of the City's proposed General Plan to the existing Santa Barbara County General Plan. To resolve these deficiencies, and to protect its citizens from irresponsible development, the City should temporarily adopt the County's General Plan and amend the DEIR's analysis accordingly. B.6-19

A. CEQA Defines the "No Project" Alternative as Buildout under Current Plans and Regulations

CEQA requires a description of a range of reasonable alternatives to the proposed project, including the "no project alternative." CEQA Guidelines § 15126.6. The purpose of the "no project" alternative is to "allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." *Id. at* §15126.6(e)(1). An adequate "no project alternative" discussion B.6-20

in the environmental document needs to do two things: a) discuss the existing conditions at the time the NOP is published; and b) discuss what would reasonably be expected to occur in the foreseeable future if the project were not approved, based upon current plans and consistent with available infrastructure and community services. *Id. at* § 15126.6(e)(1) & (2). B.6-20

In cases where the EIR is for a general plan amendment, the "no project" is buildout under the current county plans and regulations. *See Environmental Planning & Info. Council v. County of El Dorado* (1982) 131 CA3d 350 (concluding that the "no project" alternative for a general plan amendment is defined as buildout under the current general plan, not as existing conditions (i.e., existing conditions are instead the baseline against which the no project and all other alternatives must be analyzed)). The regulations also state that "[w]hen the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future." Guidelines §15126.6(e)(3)(A). B.6-21

We anticipate that the City may respond that because it is adopting a *new* general plan, not amending an existing one, the usual CEQA requirements that pertain to the "no project" alternative are inapplicable in this case. The City appears to be using the fact that it did not adopt the Santa Barbara County General Plan upon incorporation as a license to dismiss the "no project" alternative as "illegal under State law" or, if not illegal, then one that would lead to "no control over development and degradation of the environment" due to lack of guiding policies from an adopted General Plan. In so doing, the City has created a "no project" alternative that is either patently infeasible (i.e., illegal) or practically infeasible (i.e., allowing only 356 housing units over the next 24 years cannot be considered a serious General Plan option). The DEIR also provides no legal justification for its novel approach to the "no project" alternative. For the reasons provided below, the City's approach is inconsistent with CEQA, inconsistent with typical incorporation procedure, and easily resolved.

B. The City's Conclusion that the "No Project" Alternative is "Illegal" is Neither Justified in the Record nor Supported by Law

First, the City's unexplained decision to not adopt Santa Barbara County's General Plan when it incorporated is the central problem. We are unaware of any newly incorporated city that has made a similar decision. For example, the recently incorporated cities of Rancho Cordova (2003), Elk Grove (2000), Rancho Santa Margarita (2000), and Oakley (1999), all adopted the underlying County General Plans and zoning ordinances when they incorporated. They did so for a very good reason: to ensure they had the regulatory tools to responsibly control development until they B.6-22

adopted their own General Plan and zoning ordinances. This raises the question of why the City would knowingly expose its citizens to, as it admits in the DEIR, "uncontrolled development" by choosing to not temporarily adopt the County's General Plan. The City then compounds this unwarranted decision by using it as an excuse to gut the full and fair analysis of the "no project" alternative, thereby denying its citizens and others the opportunity to properly evaluate the relative impacts of the City's proposed plan. These issues aside, the City's decision to not adopt the County General Plan does prevent the City from complying with CEQA's alternatives analysis requirements. B.6-22

We find no merit in the unsupported conclusion in Section 5.3.1 that the "no project" alternative is "illegal under State law." The document seems to base this conclusion on the assumption that no future development could be allowed legally under the "no project" alternative because, as a newly incorporated city without a General Plan, the City *must* adopt a new General Plan, otherwise it cannot continue to legally approve future development under its interim zoning regulations alone. And since State law requires all cities to have a General Plan, the penalty of not having one would be, in essence, a moratorium on growth. Thus, the argument continues, the "no project" alternative cannot allow future development beyond projects already approved but not constructed — hence the 356 total units allowed. (Or perhaps the theory is that the alternative is illegal because the 356 housing units would not be enough to meet the City's State-mandated housing requirement.) Without any explanation in the DEIR, the public is left to speculate about these fundamental questions. We can find no legal support for the City's position, much less any legal authority even addressing this particular matter. It seems that the City has positioned itself in a place that to our knowledge no other City has ventured to go and has done so for no apparent good reason. B.6-23

The City's approach also mistakenly assumes that denial of its proposed General Plan would mean the City could take no additional action to extend the current interim status of its zoning ordinance or to adopt, as discussed above, the current General Plan of Santa Barbara County in order to remedy the alleged problem. We are unaware of any legal or practical hurdles preventing the City from pursuing this remedy. With little expenditure of time and money, the City could adopt the County's General Plan and gain whatever time it needs to complete a compliant DEIR. To proceed in the DEIR as if these options do not exist is a fundamental flaw in the process. B.6-24

Furthermore, if the "no project" is truly illegal, then according to CEQA, the alternative is not "feasible" due to legal impossibility and should not be analyzed at all. See *Save San Francisco Bay Ass'n v. San Francisco Bay Conserv. & Dev. Comm'n.* (1992) 10 CA4th 908 (holding that an EIR need not examine alternatives that are contrary to law). §15126.6(e)(1). If it is not illegal, then the lack of clarity regarding the

scale of the potential growth is no small matter because this number drives the entire impact analysis of the "no project" alternative. For the reasons stated above, we strongly believe that the "no project" alternative is legal (or can easily be made legal by adoption of the County General Plan) and that CEQA requires analysis of a clearly defined "no project" buildout under current zoning and General Plan.

In absence of a justification for its actions, the City's so-called "illegality" problem seems to be mostly of its own making. The City has chosen to be in a regulatory "no man's land" when it does not have to be. A review of applicable case law has uncovered no case that provided special treatment for newly incorporated cities regarding the treatment of "no project" alternatives. The CEQA Guidelines also make no special provisions regarding this matter. The practical result is that the DEIR never compares the most basic environmental relationship of all: that of the current County General Plan to the City's proposed General Plan. *See* §15126.6(e)(3)(A) (stating that the projected impacts of the proposed amended plan are normally compared to the impacts that would occur under buildout of the existing plan). Whether avoiding this comparison was the City's intent or not, the DEIR denies the public any opportunity to know if the proposed plan is better than the existing plan. This is a fundamental deficiency in the DEIR and it cannot be squared with CEQA's purpose of allowing "meaningful evaluation" of the alternatives by the public. *See* §15126.6(d). B.6-24

C. The DEIR's Analysis of the "No Project" Alternative is Internally Inconsistent

Despite the fact that the DEIR claims the "no project" is illegal, it analyzes the alternative as if it were a legally valid alternative. Thus, for the purpose of providing comments, the following comments set aside any broader legal questions and assume that the alternative is legal. These comments focus instead on the adequacy of the "no project" alternative as presented on its own terms.

In this context, is clear from our review that the DEIR's "no project" definition is, on its face, internally inconsistent such that it violates CEQA requirements. B.6-25

The DEIR seems to initially define the "no project" correctly as buildout under the current regulations. For example, Section 5.3.1 of the DEIR begins by defining the "no project" as "existing conditions plus the projects that had received planning approvals but were not completed prior to preparation of the Draft GP/CLUP." The DEIR also defines the "no project" as including implementation of "existing zoning and other City regulations and ordinances continued into the future without a GP/CLUP." Thus, at the outset, the DEIR acknowledges that future development as allowed by current zoning "continued into the future" is part of the "no project" alternative.

However, the only instance where this definition is applied (and only to a partial degree) is in Section 5.4.1, Aesthetic and Visual Resources. Here the DEIR finds a Class I impact to visual resources due to the 1,028 housing units that could be "accommodated" by the "no project" alternative. The 1,028 housing units is presented as a buildout number, but the estimate is derived from the Housing Element (HE 6.2) which provides that this is the number of "units in projects already developed or approved since the beginning of the RHNA [Regional Housing Needs Allocation] period." The DEIR fails to explain why this RHNA number has any relevance to the "no project" alternative. The 1,028 units represents neither full buildout (because it neglects development of units to be built after 2009, when the current RHNA period ends), nor existing conditions (because it includes almost 700 units that were already built between 2001 and 2005). This leaves the reader totally confused as to what scale of development is actually being analyzed under the "no project" alternative in this Section. B.6-26

Adding to the confusion and internal inconsistency of the DEIR, the 1,028 housing unit number contradicts Table 5-1, Project and Alternative Land Use Scenarios, which describes the "no project" as including only 356 additional housing units and 268,000 sq. ft of commercial/industrial space. The Table states that this amount of development is the "net change in comparison to existing conditions." The logical conclusion then is that there will be 356 new houses built in the future under the "no project" alternative. This conclusion, however, contradicts yet another "no project" description found in the Population and Housing Section which states that the 356 units is derived from residential projects "that have been completed between January 2001 and September 2005" or "have been approved but not yet completed as of October 2005." This description raises more questions than it answers. Of what relevance is the January 2001 date? Why should projects completed before Goleta incorporated be included in the "no project" alternative? More fundamentally, this description gives the reader no idea how many of the 356 houses already exist (along with their impacts) and how many do not. Occupying a middle ground in this confusion, the Air Quality Section (§ 5.4.3.1) begins with the unqualified statement that "no new development would be permitted under this alternative [no project]," but ends by analyzing the impacts from "anticipated growth under the No Project alternative." The Section never defines what level of "anticipated growth" is analyzed. Other DEIR sections characterize the "no project" alternative in variations of these themes. No reliable analysis can be conducted with such differing B.6-27

More fundamentally, the DEIR is internally inconsistent when it concludes, as mentioned above, that the "no project" alternative is either "illegal" or would allow "uncontrolled growth." These two options are mutually exclusive because the former would allow no future growth while the latter anticipates considerable future growth. The DEIR, consequently, must decide which of these very different "no project" scenarios it B.6-28

wants to analyze. The DEIR ignores this reality and leaves the ambiguity unresolved for its entire analysis.

B.6-28

The DEIR provides the reader with no clear and consistent identification of the amount of development analyzed under the "no project" alternative.

4. DEIR Analysis of "Alternatives Considered but Rejected" is Incomplete and Fundamentally Flawed.

The DEIR provides inadequate justification for rejecting the four "Planning Alternatives." In addition, the alternatives seem to have been designed to be infeasible, violating CEQA requirements.

The DEIR provides four "Planning Alternatives" that were considered early in the CEQA review process, but rejected as not feasible. Each alternative was designed to target the protection of a particular major interest, such as the environment, economy, or housing. The DEIR provides little more than conclusory statements that the alternatives do not meet basic project objectives. The DEIR instead refers readers to the City's website for more detail on each alternative. While CEQA allows agencies to provide additional information concerning rejected alternatives in the administrative record (see §15126.6(c)), we were unable to locate the referenced material on the City's website. Without that information, evaluating the DEIR's conclusions regarding the inability of any of these alternatives to meet most of the project objectives is difficult. If this information is in fact not available, it should be made available on a timely basis so that the public knows what standards were used to eliminate these alternatives from consideration.

B.6-29

Another concern is the fact that each alternative is rejected for the same reason; the maximization of the primary goal leads to unacceptably negative impacts to other important goals. This formulaic rejection of each alternative gives the appearance that these were fatally-flawed alternatives from the beginning, designed more to promote general discussion than to be workable alternatives. Was a good faith attempt made to reconcile these competing goals to create a feasible "compromise" alternative(s)? Are the proposed action or Alternatives 1 or 2 intended to represent such an attempt? If so, the DEIR makes no mention of it, and there is little other evidence in the DEIR to suggest that they do. These questions lead to the comments immediately below.

B.6-30

5. The DEIR Lacks a Reasonable Range of Alternatives.

Summary: Alternatives 1 and 2 are so similar in purpose, design, and impact, that they are analytically indistinguishable. The practical result is that the DEIR provides the

B.6-31

public with only two real choices: the proposed action and a lesser development scenario under Alternative 1 or 2 (keeping in mind that the "no project" alternative is either illegal or not feasible). Providing only one viable alternative to the proposed action does not qualify as a reasonable range of alternatives under CEQA.

B.6-31

CEQA requires that an EIR examine a "reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation." *See* §15126.6(a). In addition, "[a] reasonable range of alternatives would typically include *different levels of density* (emphasis added)." State of California, Governor's Office of Planning and Research, General Plan Guidelines 2003, 137. While the courts have acknowledged that there is no formula for defining what constitutes a reasonable range, alternatives that are almost identical do not meet the intent of this standard. In this case, the DEIR concludes that for a vast majority of the environmental impact categories the impacts from Alternative 2 would be the same, or substantially the same, as the impacts from Alternative 1 (see DEIR sections on Air Quality, Biological Resources, Cultural Resources, Geology, Soils and Mineral Resources, Hazards and Hazardous Materials, Land Use and Recreation, Noise Impacts, Public Services and Utilities, Transportation and Circulation, and Water Resources). In many sections, the entire analysis for Alternative 2 is nothing more than a sentence or two stating the impacts are the same, or basically the same, as Alternative 1. The DEIR itself admits in Section 5.3.3 that the land uses under Alternative 2 are "similar to" and only "somewhat different than" those of Alternative 1.

B.6-32

The close similarity is not surprising given that both alternatives are designed to promote the same narrow goal of "reduce[ing] traffic impacts to Storke Road and Hollister Avenue." Each tries to accomplish this goal by proposing less development than the proposed action, but there is little difference in scale or location of development *between* the two alternatives (the buildout for Alternative 2 has only 760 fewer houses and 104,000 sq. ft. less of commercial/industrial space than Alternative 1 — all in a city with 11,615 existing houses and 12,119,000 sq. ft. of existing commercial/industrial space). What is surprising is that neither alternative is remotely successful at addressing the one issue they were designed to address: The DEIR concludes that "no significant [traffic] improvements in City intersections" are expected to result from implementation of either alternative. Why then were these alternatives chosen? What is the meaningful difference between the two alternatives? How can the public make an informed choice between the two alternatives if the alternatives are basically identical in purpose, design, and impact? Perhaps the small range of difference can be explained by the fact that the City appears to be mostly built out, leaving little land left to develop under either alternative. But even if true, CEQA demands more than simply providing two versions of essentially the same alternative.

B.6-33

The DEIR should analyze an alternative that includes *more* development than the proposed project. While this alternative may not be an absolute CEQA requirement, the failure to include a greater density alternative results in the public having only two development choices: the proposed action and the smaller development scenario represented by Alternatives 1 and 2. We already know that the fourth alternative — the "no project" alternative — is not a viable option because the DEIR calls it illegal, or, alternatively, attributes so little development to it (e.g., 356 houses over the next 24 years) that it is not a feasible general plan option. B.6-34

A solution to many of the above problems would be to amend the "no project" alternative to include a reasonable buildout under the current Santa Barbara County General Plan and regulations. Doing so would not only make this alternative comply with CEQA, but could serve (presumably) as a higher development scenario and thereby improve the range of alternatives in the DEIR. B.6-35

6. Neither Alternative 1 nor 2 Reduces Significant Environmental Impacts as Required by CEQA.

By the DEIR's own terms, Alternatives 1 and 2 do not meaningfully reduce significant environmental impacts for nearly all environmental resources.

An EIR is required to analyze alternatives that would "avoid or substantially lessen" a project's environmental impacts. §15126.6(a). The DEIR, however, provides little, if any, evidence that Alternative 1 or 2 avoids or substantially lessens any environmental impacts. As best can be determined, both alternatives create the same class of impacts as the proposed action (i.e., for every Class I (II, III, or IV) impact identified in the proposed action, Alternatives 1 and 2 have the same Class I (II, III, or IV) impact). The only difference is that the DEIR often includes qualifications that the impacts from Alternative 1 or 2 are still "less than" or "slightly less than" those of the proposed plan, even though both impacts are considered, for example, Class II impacts. These differences are rarely, if ever, quantified or elaborated on so the assumption must be that the differences are too small to accurately measure. B.6-36

At minimum, the DEIR should provide a matrix clearly comparing the relative impacts of all four development alternatives. While a matrix as such is not a CEQA requirement, it is recommended and it would be particularly helpful in this case because it would immediately reveal the near uniformity of impact from each development option (except for the "no project"). The Toro Canyon Community Plan and 1993 Goleta Community Plan each provide a clear matrix to show the relative impacts that each alternative would have on existing conditions. B.6-37

Furthermore, as mentioned above, the DEIR also concludes that neither of the alternatives would produce significant improvements in traffic conditions for intersections in the Storke Road and Hollister Avenue corridors. This is true even though doing so was the defining purpose behind each alternative. Consequently, these alternatives fail to meet the CEQA requirement that alternatives be chosen that are likely to substantially lessen significant impacts. *See* §15126.6(a). B.6-38

7. The DEIR Does Not Include a Map of Current Zoning for Properties in the City of Goleta.

By failing to include a map of current zoning, the DEIR violates the CEQA requirement that land use impacts be measured against existing conditions.

CEQA requires that the impacts of each alternative be compared to both existing conditions (often called the baseline), and to each other. *See Environmental Planning & Info. Council,* 131 CA3d 350 (finding EIR for general plan amendment inadequate because it primarily compared the impacts of buildout under the proposed amendment to impacts of buildout under the current general plan, rather than to existing conditions as required by CEQA). Thus, because the DEIR fails to include a map of current zoning, there is no way for a reader to determine the extent of land use change contemplated by the alternatives and proposed action. B.6-39

DEIR Figures 5-1 & 5-2, Land Use Plans for Alternatives 1 & 2 respectively, are intended to show the land use changes proposed by Alternatives 1 and 2. These changes, however, are not overlaid on a current zoning map, but on the zoning map as proposed to be modified under the proposed project. This assertion can only be verified by reliance on information found outside of the DEIR because the DEIR, oddly enough, contains no map of existing zoning. This is a major omission and one that should be rectified. The closest map is Figure 3.10-1, but this only shows "Existing Land Uses," not actual zoning. B.6-40

Conclusion

The DEIR relies upon a number of policies contained in the DGP that are legally defective because the policies improperly infringe upon the vested rights of Venoco. These policies are legally infeasible and cannot be relied upon for mitigation under CEQA. In addition, this letter documents many instances where the DEIR fails to either identify required measures to mitigate alleged significant impacts, or fails to adequately define and analyze the mitigations measures it does identify. Finally, the DEIR's alternatives analysis suffers from a lack of internal consistency, specificity, and general compliance with basic CEQA requirements, such as correctly analyzing the "no project" B.6-41 B.6-42 B.6-43

alternative and providing a reasonable range of alternatives. Until these deficiencies are corrected and the public given adequate time to review the changes in a recirculated document, the DEIR will remain incomplete and inadequate. B.6-43 B.6-44

Thank you for this opportunity to comment.

Very truly yours,

HOLLISTER & BRACE

By Sylvia A. Data for
Steven Evans Kirby

SEK/sgt
copy: Venoco, Inc.

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May 3, 2006

CITY OF GOLETA
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Attn: Mr. Kenneth Curtis

Re: Comments on Behalf of Venoco, Inc.
Land Use Element
Draft Goleta General Plan/Coastal Land Use Plan

Dear Mr. Curtis

This office represents Venoco, Inc. owner/operator of Platform Holly and various oil and gas production, processing and transportation facilities located in or adjacent to the City of Goleta. These facilities include the Ellwood Onshore Facility (EOF), the Line 96 pipeline, and the Ellwood Marine Terminal (EMT). We have reviewed the Land Use Element of the March 2006 draft General Plan/Coastal Land Use Plan as it relates to these facilities and respectfully submit the following comments on this element of the plan for Council's consideration:

Preliminarily, we note that the Environmental Impact Report for the General Plan is not yet available. We understand that the draft EIR is to be released during May 2006. Without the benefit of the draft EIR, the public is deprived of the discussion of the environmental impacts, mitigation measures and alternatives relative to the draft General Plan. In our view, this is a significant flaw in the process, one that precludes a more meaningful opportunity for review and comment.

Policy LU 10: Energy-Related On- and Off-Shore Uses (GP/CP)

LU 10.1 Oil & Gas Processing Facilities (Venoco Ellwood Onshore Oil & Gas Processing Facility)

The draft states that gas processing facilities, including the EOF, cause a number of environmental impacts. In order to present a balanced and accurate picture, the draft should also mention the environmental benefits derived from existing Platform

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EXHIBIT 1

Holly-related operations. These include depressurization of the subsea reservoir, which helps reduce the natural hydrocarbon seeps that adversely impact air quality and coastal resources. The seep containment facilities operated by Venoco also capture considerable volumes of naturally occurring hydrocarbon emissions and turn them into a productive source of energy.

LU 10.1.c of the draft provides that the "EOF shall be subject to the standard limitations applicable to nonconforming uses; . . . ." We suggest that the draft instead provide that: "The EOF shall continue to be subject to all of the rights and limitations applicable to nonconforming uses under California law."

LU 10.2 Decommissioning of the Venoco Ellwood Onshore Oil & Gas Processing Facility

This section of the draft provides in part: "The existing nonconforming use shall be terminated as soon as it is economically feasible." This statement is confusing and inappropriate. It is confusing because there is no explanation about what is meant by the phrase "terminated as soon as it is economically feasible." It is inappropriate because Venoco has a vested right to operate the facility and it would be misleading for the General Plan to imply otherwise.

We also recommend deletion of the draft provisions related to abandonment. In our view, such detail is more properly the subject of a separate ordinance, not a general plan. Such an approach has been taken by Santa Barbara County and other jurisdictions.

LU 10.3b provides as follows:

"Any oil and gas produced from extended-reach drilling at Platform Holly shall not be transported to, or processed at, the EOF unless there is no feasible, less damaging alternative."

The draft policy is contrary to the provisions of the South Coast Oil & Gas Consolidation Policies and to the assurances given by the County to ARCO, Venoco's predecessor in interest. These assurances run to the benefit of Venoco and are binding upon the City of Goleta as successor in interest to the County of Santa Barbara. Venoco's full field development project proposal is consistent with the Consolidation Policies, as worded and as applied.

The County's Comprehensive Plan, Coastal Land Use Plan, Coastal Zoning Ordinance and Article III (inland) Zoning Ordinance were amended in 1987 to include

the County's Consolidation Policies. The primary purpose of the policies is to establish and implement the consolidation of oil and gas processing facilities on the South Coast of the County. These policies generally require "new production" processed in the South Coast Consolidation Planning Area (SCCPA) to be processed at the remaining consolidated site located at Las Flores Canyon. The SCCPA includes the unincorporated area of Pt. Arguello to the City of Santa Barbara, extending from the ridge of the Santa Ynez mountains to the three-mile offshore limit line. As explained more fully below, the Consolidation Policies neither affect existing production, nor have any preclusive effect on the possibility of processing new production at a nonconsolidated site.

Under the Coastal Zoning Ordinance as adopted by the County and City, the term "new production" expressly excludes development of any oil and/or gas from an existing well or platform. CZO Art. II, Section 35-154.1. This important exception was included in the policies in an effort to avoid constitutional challenges to the policies, such as those based upon claims of impairment of the vested rights of owners of existing facilities or violations of the Commerce Clause. Venoco's full field development proposal involves the development of oil and gas from new wells drilled from Platform Holly, an existing platform. Accordingly, any such oil or gas production would not constitute "new production" under the Consolidation Policies. This means that such production could lawfully be processed at the EOF, at least to the extent of the EOF's vested capacity limitations.

In our view, the City's draft General Plan Policy LU 10.3b, which would purport to preclude the EOF processing of production from new wells drilled from Platform Holly absent special administrative findings, could not lawfully preclude the processing of such production at the EOF.

Soon after the Consolidation Policies and related ordinances were adopted by the County, the Western Oil & Gas Association (WOGA) filed suit against the County. The suit challenged the policies on CEQA, Due Process and Commerce Clause grounds. At the urging of Superior Court Judge Patrick McMahon, the parties engaged in settlement discussions. Those discussions led to WOGA'S dismissal of the suit in reliance on the County's representations set forth in an exchange of letters between WOGA's counsel and County Counsel. These letters are critical to an understanding of the policies and how they are to be implemented, especially with respect to existing facilities such as the EOF that became legal nonconforming uses as a result of the adoption of the policies and related ordinances.

In his February 15, 1990 letter to WOGA's counsel, Deputy County Counsel Alan Seltzer set forth a number of clarifications and assurances, including the following:

- "[T]he consolidation policies neither affect existing production nor have any 'preclusive' effect on the possibility of processing new production at a non-consolidated site." Attachment A, p. 2.

- "The program EIR and consolidation policies do not affect existing production. The definition of new production exempts the development of oil from an existing platform. Under this analysis, ARCO [Venoco] would vest to processing production from platform Holly at its Ellwood facility within its current capacity limitations of 20,000 barrels of oil per day and 22 million standard cubic feet of gas per day." Attachment A, pp. 6-7.

WOGA and the County also agreed that, "[A] new well from an existing offshore platform is not to be considered new production subject to the Consolidation Policy and related ordinances." Michael Monahan's May 16, 1992 letter to County Counsel and Deputy Attorney General. Attachment B, p. 1.

Following dismissal of WOGA's lawsuit, the County reaffirmed these principles on several occasions with specific reference to Ellwood operations. For example, during proceedings on Mobil's "Clearview Project" application County Staff stated:

- "The SLC's [State Lands Commission] Clearview proposal, as presented, would be 'new production' as defined by County Consolidation Policy 6-6B. <u>However, new oil well drilling from Platform Holly within existing permit throughput limits would not be 'new' production under the definition</u>." (Emphasis added).

- "As long as no 'new production' is processed at the Ellwood facility or transported through the marine terminal, no consolidation policies would be violated." Staff Report, *Clearview Proposal* dated June 18, 1993, Attachment C, pp. 7 and 12.

Moreover, the County stated in its 2001 amortization analysis:

> "Any amortization ordinance must consider the economic impact of the regulation on the landowner. Further, the amortization study has proceeded on the assumption that Venoco has a vested right to produce the oil and gas reserves from the South Ellwood Fields until the economically recoverable reserves in those fields have been produced." Santa Barbara County Board Agenda Letter,

Amortization Analysis of Nonconforming Oil and Gas Facilities on South Coast, dated November 28, 2001, Attachment D, p. 3.

The foregoing assurances in the letters between counsel for the parties to the litigation were given to the oil industry, including Venoco's predecessor in interest, in order to obtain the dismissal of WOGA's lawsuit. The County therefore continues to be bound by these assurances under various doctrines, including judicial estoppel. *People v. Torch Energy Services* (2002) 102 Cal.App.4th 181, 189 ("Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position.")

When the City of Goleta was incorporated in February 2002, the City adopted the County's existing zoning ordinances as ordinances of the City. (See City Ordinance 02-01 and 17). Under well-established principles of California law, the City is successor in interest to and is in privity with the County of Santa Barbara with respect to the EOF, and is therefore also bound by the County's actions and commitments with respect to the Ellwood properties. See e.g., *People v. Volz*, (1972) 25 Cal. App. 3d 480, 490 ("Thus a chain of privity exists which fastens upon the state the county's estoppel . . .").

In addition, a legal non-conforming use is a real property right that runs with the land to the benefit of successive owners of the property. Venoco is successor in interest to ARCO, and is therefore entitled to the rights, benefits and protections of the prior owner established before the City was incorporated. *Hansen Bros. Enterprises v. Board of Supervisors of Nevada County* (1996) 12 Cal.4th 533, 540 fn. 1 ("The use of the land, not its ownership, at the time the use becomes nonconforming determines the right to continue the use. Transfer of title does not affect the right to continue a lawful nonconforming use which runs with the land.").

Accordingly, the City of Goleta cannot lawfully preclude EOF processing of oil and gas production obtained from new extended reach wells drilled from Platform Holly. To do otherwise would constitute an unlawful impairment of Venoco's vested right. *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1529-1531 (legal nonconforming use constitutes a fundamental vested right entitled to judicial protection).

Venoco therefore requests that **LU 10.3b** be revised to read as follows:

As owner of the EOF, Venoco has a vested right to process production from Platform Holly at the EOF within the facility's current capacity limitations of 20,000 barrel of oil per day and 22 million standard cubic feet of gas per day. Any oil and gas produced from new wells drilled from the existing Platform Holly are not considered "new production" under the

South Coast Consolidation Policies. Any such production may be processed at the EOF within the foregoing capacity limitations.

LU 10.4 State Lands Commission Lease 421.

The draft states that it is the City's intent that oil production not be recommenced at State Lease 421 because of alleged environmental hazards and impacts. This statement is not accompanied by any environmental analysis and the draft EIR is unavailable. A more meaningful comment is therefore not possible at this time. However, Venoco has vested rights in State Lease 421 operations. See our firm's November 2, 2005 letter to Eric Gillies of the California State Lands (Attachment E hereto).

Subsection **10.4(b)** of the draft provides that processing on the pier should not be approved, absent certain findings, and that development of new processing facilities would result in an increased and unacceptable level of risk of environmental damage. Again, no environmental analysis is provided and, taken by themselves, the statements are factually unsupported. We suggested that they be deleted.

We anticipate having additional comments on other elements of the plan, and perhaps on the draft EIR when available. We appreciate the opportunity to provide input.

Respectfully submitted,

HOLLISTER & BRACE

By _____
Steven Evans Kirby

SEK/sgt
copy: Venoco, Inc.

COUNTY COUNSEL
SANTA BARBARA COUNTY

DAVID NAWI
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By Federal Express

February 15, 1990

Michael A. Monahan
McCUTCHEN, BLACK, VERLEGER & SHEA
600 Wilshire Blvd.
Los Angeles, California 90017

Re: WOGA v. County of Santa Barbara, et al.
Case No. 174311

Dear Michael:

On December 21, 1988, the Honorable Patrick L. McMahon, presiding in Dept. 5 of the Santa Barbara Superior Court, heard the County and Coastal Commission's Motion for Judgment on the Pleadings and WSPA's Petition for Writ of Mandate as to the South Coast Consolidation policies. A transcript of that hearing is attached.

The Court tentatively ruled in favor of the County and Coastal Commission's motion for judgment as to WSPA's commerce clause action (RT 4.) The Court then focused the hearing on its concerns that adoption of the two-site policy might result i_ the phasing out of existing facilities. The Court initially understood the policy to "lock

ATTACHMENT A

in" the "amortization" of existing nonconsolidated facilities. (RT 20:7-10.) However, as was made clear, the consolidation policies neither affect existing production nor have any "preclusive" effect on the possibility of processing new production at a nonconsolidated site.

First, the consolidation policies provide for a determination of vested rights to process new production at an existing nonconsolidated site:

> An operator who claims a constitutionally-protected vested right exists within the scope of existing permits to process new production at a facility which is not at a County-designated consolidated site may request the Planning Commission for a determination of exemption to allow processing of that production at the nonconsolidated site. (Article III, § 35-296.1; Article II, § 35-154.1.)

At the hearing, you stated that further clarification of the vested rights exemption could resolve your client's concerns regarding the so-called "preclusive" effect of the consolidation policies. (RT 56.) Thus, the hearing was continued to provide an opportunity to resolve this litigation without further proceedings.

Second, the consolidation policies were adopted after certification of a program EIR. The program EIR specifically addressed whether it was preferable to have a two-site policy for new production (the "proposed policy scenario") or to allow new production to be processed at existing nonconsolidated sites (the "existing policy scenario"). These program policies were never intended to and, in fact, cannot preclude site-specific project applications to process new production at nonconsolidated sites. The County does not, and has never, contended that anything in the record could be understood to preclude the County from considering an application to process new production at nonconsolidated sites. (See Court's comment at RT 35.)

The findings for adoption of the consolidation policy amendments specifically acknowledge that "additional site(s) within the South Coast consolidation planning area may be considered through the planning and zoning process." (AR 864, Legislative finding B.3.) The Board of Supervisor's authority to change land use and zoning designations and make text amendments to the Coastal Zoning Ordinance and LCP is set forth in Article II, § 35-180 et seq.

WSPA members thus have two means by which to obtain relief from the two-site consolidation policy: (1) through the vested rights exemption or (2) by subsequent site-specific applications to process new production at a nonconsolidated site and for an LCP or comprehensive plan amendment and zone change. The application for an LCP amendment and zone change cannot be characterized as futile. LCP and rezone applications are regularly processed by the County. Indeed, the Chevron Gaviota, Union Pt. Pedernales, and Exxon/POPCO Las Flores Canyon oil and gas processing facilities were all sited as a result of zone changes and comprehensive plan amendments. (RT 28; see also Exhibit A to County's Request for Judicial Notice.) See e.g. the Hyatt project described in Citizens of Goleta Valley v. County of Santa Barbara 216 CalApp.3d 48 (Nov. 1989, Petition for Review filed).

In addition, WSPA members may request the Coastal Commission to amend the County's LCP if the County rejects an amendment to its local coastal program to permit processing of new production at an existing facility. Under such circumstances, the Coastal Commission is authorized to approve and certify the proposed plan amendment. (Public Resources Code, § 30515.) Because it cannot be stated positively what the County and Coastal Commission's decision would be in a particular case involving the request to process new production at an existing site, exhaustion of

administrative remedies cannot be excused. Cf. Ogo Associates v. City of Torrence (1974) 37 Cal.App.3d 830, 834.

County believes the following statements are clarifying principles of its consolidation policies:

1. The consolidation policies provide that a WSPA member, or other interested party, may make an application for a determination of a vested right to process "new" production, as defined in the Consolidation policies consistent with the California and United States Constitutions.

2. The consolidation policies allow a WSPA member, or other interested party, to make an application for a permit to process new production at an existing nonconsolidated facility, with an LCP or comprehensive plan amendment and zone change, on its individual economic and environmental merits.

3. The County's consolidation policies do not preclude consideration of such an application, as described in number 2 above, on its merits; it being acknowledged that the Consolidation Policies Program EIR and Consolidation Policies are not the equivalent of a site specific EIR and project decision. Further, the Program EIR and Consolidation policies do not in themselves determine whether an applicant has a vested right to process new production at an existing nonconsolidated facility or make a future showing that any alternative site is preferable.

The Court has suggested that if clarification of the vested rights policies resolve WSPA's concerns regarding the "preclusive" effect of the policies, this litigation might be resolved under the doctrine of retraxit, which is the common law name for dismissal with prejudice. Torrey Pines Bank v. Superior Court (89 Daily Journal D.A.R. 15314). The above discussion is responsive to the Court's request. In furtherance of the goal of resolving this controversy, the County has additionally provided below a preliminary evaluation of the methodology for applying the Constitutional vested rights doctrine to potential requests to process new production at WSPA members' nonconsolidated sites.

California vested rights law is rooted in the Constitution and protects a party detrimentally relying on the promises of government. AVCO Community Developers, Inc. v. South Coast Regional Com. (1976) 17 Cal.3d 785, 791; Halaco Engineering Co. v. South Central Coast Regional Coast Com. (1986) 42 Cal.3d 52; Monterey Sand Co. v. California Coastal Com. (1987) 191 Cal.App.3d 169, 177. In determining the extent to which oil and gas companies have detrimentally relied upon permits to process new production at an existing site, the County must examine the extent to which permits define the production that may be processed at an existing facility. This definition may be made by reference to leases, fields, platforms or wells. If permit conditions do not adequately define the production that may be processed at an existing facility, the County must look to the record to determine the scope of the permitted project. Important factors would include the investment made in reliance on the permit, life expectancy of the investment, investment realization or recovery to date, and depreciation for income tax and other purposes. Any evaluation of the scope of permits and their relationship to investment backed expectations requires a case by case analysis. Nevertheless, we believe the following information will be helpful in understanding the scope and in defining the parameters of future vested rights determinations.

Arco Ellwood

In March 1966, the County issued Permit No. 66-CP-13, authorizing construction and operation of an oil and gas processing facility. The proposed purpose was for "treating, handling, measuring and sampling crude oil produced from four offshore state lease nos. PRC 308, 309, PRC 3242.1 (Parcel 24) and PRC 3120.1 (Parcel 18A) together with the compression and refrigeration of gas produced therefrom to extract

liquids from such gas." The permit required compliance with all existing and future state and local laws and regulations.

In reliance on the permit, ARCO constructed facilities with a maximum physical design capacity of 9,600 to 11,000 barrels of oil per day (BPD). The facility was unable to process gas containing levels of sulfur compounds. Sweet gas was compressed and returned to the platform for use in production operations. The oil and gas processing facility at Ellwood served production from platform Holly, located approximately 2½ miles from the Ellwood facility near Coal Oil Point.

In 1974, ARCO proposed the expansion of the Ellwood facility to accommodate increased production from 13 to 30 wells at Platform Holly. The objectives of the ARCO Ellwood facility expansion were analyzed in the Final Environmental Impact Report, 75-EIR-5. ARCO's desire to modify its conditional use permit was based upon the fact that future oil and gas production would be primarily from a Monterey production zone which had "sour" oil and gas. ARCO was required to add to its equipment at Ellwood in order to "sweeten" the new sour oil and gas onshore and achieve an increased rate of flow to 20,000 BPD and 22 million standard cubic feet of gas per day (MMSCFD). ARCO's 1974 application for the Ellwood expansion makes clear that the anticipated 20,000 BPD and 22 MMSCFD was to come only from Platform Holly.

The Ellwood project expansion was expected to deplete the field of production by 1993 versus the year 2010 with existing facilities (EIR I-3), reducing the duration o time the facility would be required for the field (EIR I-17). (EIR Table IV-1.)

The program EIR and consolidation policies do not affect existing production. The definition of new production exempts the development of oil from an existing

platform. Under this analysis, ARCO would vest to processing production from Platform Holly at its Ellwood facility within its current capacity limitations of 20,000 barrels of oil per day and 22 million standard cubic feet of gas per day.

ARCO's recent applications to develop the Coal Oil Point project recognize these limitations. The first application requested a permit to reconfigure Ellwood for oil processing only; gas processing was to occur at Las Flores Canyon. The second application proposed abandonment of the Ellwood facility and provided for oil and gas processing at Las Flores Canyon.

Phillips Tajiguas

Conditional use permit No. 63-CP-70 for construction and operation of a sweet gas processing plant at Tajiguas Station was issued to Phillips Petroleum on July 24, 1963. Testimony before the Planning Commission by Phillips indicated that the facility would serve offshore lease PRC 2933.1. In reliance on the permit, Phillips constructed a plant with a capacity of 30 MMSCFD. Between 1963 and 1984, Phillips removed plant equipment as production declined to 1 MMSCFD. In 1984, Phillips sought a modification of its CUP in order to construct up to four pipelines to serve four new offshore wells within PRC 2933 and to restore the gas processing facility to its original capacity of 30 MMSCFD. After denial of the request at the Planning Commission (a 2-2 vote), the Board of Supervisors found that no such modification was necessary as the processing proposed was in substantial conformity with the original permit. In October 1984, 84-CDP-147 was issued to Phillips. Condition 15 of the Coastal Development Permit states:

> Upon completion of use of the pipelines, which is estimated to be around the year 2005, the pipeline shall be removed and site restored to pre-pipeline conditions.

Without further review of the record before the Planning Commission and Board of Supervisors, it is difficult to ascertain whether Phillips restored the gas processing plant to 30 MMSCFD in reliance on processing production from the four new wells or further development of PRC 2933. A vested rights determination would require further analysis of at least Phillips' investment backed expectations and whether the condition 15 sunset date, estimated to be around 2005, is applicable to the facility as well as the four new pipelines.

Union Cojo Bay

In November 1965, the County issued CUP No. 65-CP-92 to Union Oil for processing facilities between Point Conception and Government Point. There is no reference in the permit to the production area. However, the facility has been processing oil and gas from State Lease 2879.

Union is the current owner of a storage facility and marine terminal on a separate parcel at Government Point (Parcel 81-610-12). In 1961, Phillips Petroleum Company was issued a conditional use permit for parcel 81-610-12 for processing facilities associated with the development of State Lease 2207. The development of Lease 2207 has been completed; the development lease has been quitclaimed back to the State Lands Commission. With the exception of the storage tank, Phillips removed offshore Platform Harry and the onshore processing facility from Parcel 81-610-12. Union, however, has continued to use the storage tank for its development of Lease 2879.

The final determination whether Union has vested to use of its Cojo Bay processing facility for development of new production from Lease 2879 requires information regarding Union's development plans, retrieval from archives of the record before the Board and Planning Commission for the original conditional use permit for Cojo Bay processing facility, and further analysis of Union's investment, depreciation and return on investment. On February 14, 1990, Union requested an application for a determination of vested rights exemption from the Energy Division. It is anticipated that the County will make a determination on Union's application in the near future.

Arco Dos Pueblos

No land use permits exist for the ARCO Dos Pueblos facility. The facility predates County zoning ordinances and was constructed without any land use permits. In 1988, ARCO sought a vested rights exemption based on Air Pollution Control District permit to operate No. 6696, which established throughput at 2,000 barrels of oil per day and 14,000 barrels of water per day.

As a "grandfathered" facility under APCD Rule 205C, however, ARCO was not required to install any pollution control devices, nor was it required to expend any sums in reliance on that permit. ARCO withdrew its application for a vested rights determination after the County sought additional information.

The Dos Pueblos facility is a nonconforming use. It is the objective of zoning to eliminate nonconforming uses and prevent their extension or enlargement. See Sabek, Inc. v. County of County of Sonoma, (1987) 19 Cal.App.3d 163, 166-168. The County's coastal zoning ordinance reflects this policy of discouraging long-term continuance of nonconformities and of preventing their expansion and survival. (Article II, § 35-160 et

seq.) If ARCO was to reapply for a vested rights determination, the County would be required to examine whether the existing design capacity and use of the facility is a Constitutionally protected nonconforming use that encompasses processing new production. In order to make that determination, it will be necessary to consider at least whether new production is from an existing field already processed by the facility and whether introduction of new production would extend the life of the nonconforming use.

Shell Molino

This site has been abandoned by Shell Oil and is not considered here.

Conclusion

The analysis of the application of the Constitutional vested rights doctrine provided above is preliminary; final decisions must await specific applications for exemption determinations and be made by the appropriate bodies. Nevertheless, WSPA members can obtain some certainty from the analysis provided above. Under the South Coast Consolidation Policies, County agencies would apply the above described factors in determining whether a particular facility was vested to process new production.

Even if no vested right exists for new production, the County is obligated to and will consider on its merits an application to process new production at a nonconsolidated site if accompanied by an application for a rezone and/or LCP amendment. As discussed above, the consolidation policies cannot preclude such a consideration. It is hoped that these comments will alleviate the concerns of WSPA

members and that this lawsuit may be resolved without further proceedings as suggested by the Court.

Very truly yours,

DAVID NAWI
COUNTY COUNSEL

By _____
Alan L. Seltzer
Deputy County Counsel

ALS:lm

cc: John Saurenman
Deputy Attorney General

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BAKER
&
HOSTETLER
McCUTCHEN BLACK
COUNSELLORS AT LAW

600 WILSHIRE BOULEVARD • LOS ANGELES, CALIFORNIA 90017 • (213) 624-2400 • FAX (213) 975-1740
WRITER'S DIRECT DIAL NUMBER (213)

May 16, 1990

Stephen Shane Stark, Esq.
Alan Seltzer, Esq.
Santa Barbara County
Counsel
105 East Anapamu Street
Santa Barbara, CA 93101

John Saurenman, Esq.
Deputy Attorney General
Office of the Attorney
General
3580 Wilshire Boulevard
Sixth Floor
Los Angeles, CA 90010

Re: Western Oil and Gas Association v. County of Santa Barbara, Santa Barbara Superior Court Case No. 174 311

Gentlemen:

This is to propose a resolution of the outstanding suit.

Our latest discussions have focused on the interpretation of the vested rights exemption to the Consolidation Policy ordinances. You have represented that companies will not be required to provide "as-built" drawings of a facility in order to pursue vested rights applications. You have also agreed that a new well from an existing offshore platform is not to be considered new production subject to the Consolidation Policy and related ordinances.

WSPA appreciates the effort put into Alan's letter of February 15, 1990, discussing the County's position. As we have discussed, there is disagreement between WSPA, on one hand, and the County and Coastal Commission, on the other hand, on a number of issues regarding the showing required to obtain a vested right. At this point, however, WSPA will agree with the County and the Coastal Commission that it is in the interests of the parties not to pursue litigation regarding vested rights issues at this time, subject to your agreement that the filing and dismissal of this case will not prejudice WSPA or its members in the event of future

ATTACHMENT B

CLEVELAND, OHIO (216) 621-0200 | COLUMBUS, OHIO (614) 228-1541 | DENVER, COLORADO (303) 861-0600 | HOUSTON, TEXAS (713) 236-0028 | LONG BEACH, CALIFORNIA (213) 432-2827 | ORLANDO, FLORIDA (407) 649-4000 | WASHINGTON, D.C. (202) 861-1500

May 16, 1990
Page 2

litigation on any claim pertaining to this case. Further, the parties agree that all claims and issues (other than the specific CEQA challenge to the program EIR) will be available should future litigation be necessary. We hope that the processing of specific company vested rights applications can be resolved in the future without any need for litigation.

With respect to the CEQA claim, our discussions occurred primarily at the hearing before Judge McMahon on December 21, 1989. Your position, as stated at the December 21 hearing, is that the Consolidation Policy Program Environmental Impact Report ("EIR") will not preclude individual companies from demonstrating through a subsequent, site-specific EIR that an alternative to the consolidated sites, including an existing nonconsolidated site, is environmentally preferable; it being acknowledged that the Consolidation Policy Program EIR and Consolidation Policies are not the equivalent of a site-specific EIR and project decision. Such a demonstration may be done by and implemented through a company application for appropriate changes to the County Land Use Plan and related ordinances. Further, the Program EIR and Consolidation Policies do not in themselves determine whether an applicant has a vested right to process new production at an existing nonconsolidated facility, or whether an applicant may make a future showing that any alternative site is preferable.

We propose, if you agree with the foregoing, that all parties stipulate to a dismissal of the remainder of the case without prejudice, each party to bear its own costs. We have prepared, and previously forwarded to you for holding, a short stipulation of dismissal. Assuming this resolution of the case is acceptable, please execute it and file it.

Very truly yours,

Michael A. Monahan
Of BAKER & HOSTETLER, McCUTCHEN BLACK

Enclosure

bcc: WSPA Santa Barbara Consolidation Litigation
Task Force (with Stipulation)

pcc: Mr. Hsiao

STAFF REPORT
to the
SANTA BARBARA COUNTY BOARD OF SUPERVISORS

State Lands Commission Staff
Mobil Oil Exploration & Producing Inc.

CLEARVIEW PROPOSAL

Staff Report Date: June 18, 1993
Board of Supervisors Hearing Date: June 29, 1993

Prepared By:

Energy Division
Resource Management Department
1226 Anacapa Street
Santa Barbara, CA 93101
Staff Contacts: Kevin Drude and Dev Vrat, AICP
(805) 568-2040

ATTACHMENT C

Attachment 1

SUMMARY OF QUESTIONS RAISED AT THE FEBRUARY 2, 1993
BOARD OF SUPERVISORS MEETING
WITH RESPONSES

June 18, 1993

Introduction

On February 2, 1993 the Santa Barbara County Board of Supervisors heard the State Lands Commission (SLC) staff present a proposal for onshore development of the South Ellwood offshore oil and gas field using extended reach drilling technology. In response to that proposal, Mobil Exploration & Producing U.S. Inc. (Mobil) is considering submitting permit applications for the Clearview Proposal. A number of questions, listed below, were raised at the February 2, 1993 hearing regarding the SLC proposal. In reply to those questions, Energy Division staff, after consultation with Mobil and SLC and consideration of public input, presents the following responses addressing the State Lands Commission and Mobil proposals. Questions and responses are presented in the order they were made at the February 2, 1993 hearing.

Mr. Bob Sollen representing the Sierra Club

1) **How does the proposal square with the County policy requiring limited and consolidated oil facilities along the south coast? Will this policy have to be amended?**

The SLC proposal, as presented on February 2, 1993, is not consistent with County Local Coastal Plan (LCP) consolidation policies. The South Coast Consolidation Policies (LCP 6-6C through 6-6G) designate Las Flores Canyon and Gaviota as consolidated oil and gas processing sites, and require that all oil and gas defined as "new production" in the LCP (LCP 6-6B) produced within the South Coast area must be processed at one of these two facilities. The Clearview proposal contemplates "new production." Therefore, for the proposal to be developed as presented, amendments to the consolidation policies would be required.

2) **How does the proposal square with the legal non-conforming status of the present facilities? Can increased or new production, and I think they are different categories, can either be permitted without zoning amendments?**

The parcels on which the Ellwood processing facility and the marine terminal are located were rezoned to non-industrial designations (REC and PRD, respectively) in the adoption of the South Coast Consolidation Policies. Consequently, both facilities have legal non-conforming use status which prohibits any modifications other than those legally mandated by health and safety codes. Under the non-conforming regulations, continued use of existing facilities is allowed along with regular maintenance activities. The continued operation of Platform Holly, the Ellwood processing facility, and the Ellwood Marine Terminal as presently permitted may continue within the permitted capacities and under constraints described above.

Onshore extended reach production would be considered "new production" under the County's LCP and would require LCP and CZO amendments allowing drilling from onshore sites and either

zoning or be rezoned to a compatible designation. It is possible that areas adjacent to the proposed marine terminal drilling site may be developed for residential use. How this development would be affected by continued or increased industrial use at the marine terminal or Ellwood facility would have to be analyzed in an environmental document which addresses cumulative development effects. For further clarification, see the responses to Bob Sollen's Questions 1 & 2.

2) **If you were to relocate the processing plant to Las Flores Canyon would you have to carry sour gas over a stretch of nine miles through inhabited areas?**

The relocation of the processing facilities to Las Flores Canyon would require the transportation of sour gas via high pressure pipeline over a distance of approximately twelve miles. However, rather than an overland transportation route, Mobil would construct an offshore pipeline from Ellwood to Las Flores Canyon which would pose less of a threat to the population in the unlikely event of a pipeline rupture. In fact, all potential proposal design scenarios contemplate offshore gas pipelines.

3) **Is this considered a new production or is it considered an old production?**

The SLC's Clearview proposal, as presented, would be "new production" as defined by County Consolidation Policy 6-6B. However, new oil well drilling from Platform Holly within existing permit throughput limits would not be considered "new" production under the definition.

4) **Because we're going to be drilling over 5,000 ft. below the ocean floor, does that now give us the right to go into sanctuaries?**

See response to Bob Sollen's Question 12.

Ms. Connie Hannah, President Santa Barbara League of Women Voters

1) **The UCSB community has not been consulted in the discussions to date and we think that they should be involved immediately.**

Since the February 2, 1993 presentation to the Board of Supervisors, the University has been consulted. The County, State Lands, and Mobil staffs met with UCSB administration and staff in February and May to brief them on the proposal alternatives and continues to coordinate with University officials.

2) **We do not know what the State Lands Commissioners themselves think about this proposal. Since it would break the existing moratorium on tidelands development, we wonder if they really want to do that.**

RMD Energy Division Responses -- June 18, 1993,
To Questions Raised in Board of Supervisors Hearing February 2, 1993

9) **Section 8952 of the draft legislation states that the SLC proposal would not preempt the County's oil transportation policies. How would the SLC proposal affect the County's oil transportation policies, which have been interpreted to allow tankering under limited circumstances?**

The draft legislation is more restrictive than the County policies which allow alternative modes of oil transportation under certain circumstances. The legislation has not been introduced yet. Without legislation, Mobil could only be required to comply with the County oil transportation policies unless Mobil applied for and accepted permit conditions relating to transportation which are more restrictive than the County policy. For further clarification, see response to Krop Question #4.

10) **The ARCO facility is intended to be abandoned when production stops at Platform Holly, which is going to be in the next few years. With this project, that facility would be used for another 20 some years and we think the County should take a good look at its consolidation policies and the reason that these sites were rezoned residential and recreational.**

Under the Joint Operating Agreement (JOA) between ARCO and Mobil for the development of P.R.C.'s 3120 and 3242, ARCO had the right to relinquish its interest to Mobil at any time. Most JOA's typically contain such provisions. Late in 1992, ARCO determined to relinquish and requested Mobil to make a decision regarding takeover. Since, in Mobil's view, there are significant reserves under the leases that can be economically developed from Holly, Mobil elected to take over operations in the field from ARCO. Therefore, effective April 1, 1993, Mobil is the 100% owner and operator of the leases and the related facilities. Significant reserves remain to be recovered from these leases. Mobil's current economic analysis indicates production should be economic beyond the year 2016. As long as no "new production" is processed at the Ellwood facility or transported through the marine terminal, no consolidation policies would be violated.

11) **It's our understanding that the facility is currently permitted to handle 20,000 barrels per day production. Under this proposal, the production levels at South Ellwood could go anywhere from 20,000 to 40,000 barrels per day. What type of facility upgrades would be required to increase the permitted capacity of the facility?**

By consolidation of platform operations with onshore operations, efficiencies can be realized that reduce treating vessels and energy requirements. A number of Mobil's proposal alternatives include increased production at the Ellwood facility and the Marine Terminal. Additional equipment needed onsite would include new drilling pads and a rig, gas compression, dehydration and separation equipment, oil heating equipment and possibly additional storage capacity. Any additions would be within existing industrial footprints.

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SANTA BARBARA C. NTY
BOARD AGENDA LETTER

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:	
Prepared on:	11/28/01
Department Name:	Planning and Development
Department No.:	053
Agenda Date:	12/3/01
Placement:	Departmental
Estimate Time:	1 hr. staff; 3 hrs. total
Continued Item:	NO
If Yes, date from:	

TO: Board of Supervisors

FROM: John Patton, Director, Planning and Development
Shane Stark, County Counsel

STAFF CONTACT: Steve Chase, Deputy Director, Energy Division (568-2520)
Bill Dillon, Deputy County Counsel (568-2950)

SUBJECT: Amortization Analysis of Nonconforming Oil and Gas Facilities on South Coast

RECOMMENDATION(S):

That the Board of Supervisors:

(1) Receive and file the Ellwood Amortization Analysis prepared by Baker & O'Brien, Inc., under contract to Santa Barbara County;
(2) Receive and file this staff report, which outlines four options for consideration by the appropriate decision-making bodies for whether or not to proceed with the amortization of the nonconforming oil and gas facilities on the South Coast; and,
(3) Transmit the Ellwood Amortization Analysis and staff report to the City Council of Goleta for further action on the Ellwood Onshore Facility as warranted.

ALIGNMENT WITH BOARD STRATEGIC PLAN:

The recommendation is primarily aligned with Goal No. 2.: A Safe and Healthy Community in which to Live, Work, and Visit.

EXECUTIVE SUMMARY AND DISCUSSION:

In July 1999, the Board directed staff to pursue the first step in determining if amortization was feasible relative to Venoco's oil and gas plant and marine terminal at Ellwood. That first step was to retain a qualified consultant to prepare an economic analysis necessary for such a study. If that economic analysis provides evidence that supports legally amortizing these facilities, then the Board would be in a position to consider the next two steps in the process, which are: drafting of an amortization ordinance and the preparation of an environmental impact report. Baker & O'Brien completed their economic analysis in October 2001, and that report is now available to the public.

The initiation of an amortization process followed a period of numerous gas releases attributable to the Venoco facilities. Hydrogen sulfide odors were detected by the public throughout the Ellwood area, UCSB

ATTACHMENT D

In both cases, 2016 is selected as the end date, since this coincides with the available estimates for the remaining life of reservoir. Such estimates are based on the sound professional judgment of experts and the best available information; however, they are also based on a set of assumptions (such as price projections for oil and available production technology) that are subject to change over time.

Venoco's leases with the State Lands Commission to produce oil and gas from the South Ellwood Field remains valid so long as Venoco continues to produce oil and gas in paying quantities from these leases. Venoco's lease from the University of California for the EMT property expires in 2016.

Any amortization ordinance must consider the economic impact of the regulation on the landowner. Further, the amortization study has proceeded on the assumption that Venoco has a vested right to produce the oil and gas reserves from the South Ellwood Fields until the economically recoverable reserves in those fields have been produced. Therefore, the study also proceeded on the assumption that a viable relocation scenario is fundamental to any amortization analysis that requires early termination of the EOF and EMT.

The County identified 9 oil and 4 gas relocation options for review by Baker & O'Brien. (*See* Report, Appendix F.) These options were identified on both policy and technical constraints, including consolidation and transportation policies, environmental factors, and economics. In particular, the County requested that Baker & O'Brien evaluate the option of taking current oil production to the local coastal plan designated consolidated facility at Las Flores Canyon. Further, the County focused on options that minimized environmental and safety risks by looking at scenarios that kept oil transportation onshore and gas transportation offshore as much as feasible.

Notwithstanding the availability of a consolidated oil and gas processing facility and site at Las Flores Canyon, Baker & O'Brien have determined the cost of any relocation to be sizable. Indeed, after studying various options, Baker & O'Brien have determined only one option is economically viable and technically feasible. This scenario includes moving gas processing and primary water separation from the oil emulsion to Platform Holly, moving final oil processing to the Las Flores Canyon consolidated oil and gas processing site, and shipping treated oil to market via the All American Pipeline. Marine tankering of crude oil would cease by 2005; the EMT would be decommissioned, as would most of the EOF in 2005; and a new 9-mile pipeline would be constructed between the EOF and Las Flores Canyon over a two-year period in 2003 and 2004. At the EOF, the water injection well and the SCE electrical substation would be retained, and these could be decommissioned once production from Platform Holly ended.

Baker & O'Brien determined that the cost of relocation for this scenario would be $34 million. This is in addition to the $35.1 million Baker & O'Brien estimates is necessary to cover the eventual cost of abandonment of the entire project – the EOF, EMT, and Platform Holly and associated pipelines.

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November 2, 2005

Eric Gillies
CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825

Re: Vested Rights and "No Project Alternative"
Venoco's Resumption of Lease PRC 421 Operations

Dear Mr. Gillies:

This office represents Venoco, Inc. in connection with the resumption of Lease PRC 421 operations. In his July 5, 2005 letter to you, Tom Luster of the California Coastal Commission asked whether Venoco has any vested rights in oil and gas production activities on the leasehold. Venoco has asked us to give our opinion on this question and on an ancillary issue, i.e. the appropriate description of the "no project alternative" in the environmental document being prepared for this project. We address both of these matters below.

I.

VENOCO'S RIGHTS IN LEASE PRC 421 OPERATIONS

A. **Facts**.

We understand the essential facts to be as follows:

The subject lease (originally referred to as State Lease No. 89) was granted to a predecessor-in-interest of Venoco in 1929. The lease was reissued in 1949, and later amended in 1959. The leased lands consist of certain State public trust tide and submerged lands in the Ellwood Field administered by the State Lands Commission (CSLC). The leased lands were formerly within the territory of the County of Santa Barbara, but have been within the City of Goleta since the City's incorporation in 2002.

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ATTACHMENT E

Existing production facilities include two piers located on the leasehold premises about one-half mile south of the Ellwood Onshore Facility (EOF) on APN 079-210-059. These two piers provide structural support for two idle wells located on separate concrete caissons. The wells are designated Well Nos. 421-1 and 421-2. Well 421-2 is currently an idle fluid production well historically produced by means of a beam pump artificial lift system. Well 421-1 is an idle fluid injection well used for disposal of the produced water from Well 421-2. The well 421-1 pier contained production separation equipment, including a 1,000 bbl crude oil tank, a 60 bbl free water knock-out vessel, a 20 bbl test tank, an oil shipping pump, water injection pump, natural gas fired internal combustion shipping pump engine, together with miscellaneous instrumentation and piping. The production site is accessed by means of a road from the EOF.

PRC 421 produced oil and gas continuously for more than 60 years from 1930 through 1993, and intermittently during 2000 and 2001. Operations were conducted by various companies, including Signal, Arco, Mobil and Venoco. During Mobil's operatorship in 1994, a leak was discovered in the transfer line connecting PRC 421 to Line 96. Mobil shut-in the wells and made the necessary repairs. In October 1994, Santa Barbara County confirmed Mobil's right to resume shipping through the transfer line subject to Mobil's submission of a "Recommissioning Plan" (SBC 94-FDP-009, Condition 4).

In May 1997, Venoco acquired all of Mobil's right, title and interest in the leasehold and facilities. CSLC approved the assignment of the lease to Venoco in July 1997. Since acquiring the lease, Venoco has been attempting to resume operations. Venoco submitted recommissioning plans in 1997, 1998 and 2001. None of these applications was approved due to Santa Barbara County's refusal to allow PRC 421 production to be processed at the EOF as proposed in each of the applications.

In November 2000, gas and oil were discovered leaking from the wells. Venoco obtained an emergency permit from the County (00-EMP-006) authorizing the appropriate remedial work. Venoco successfully completed a three-phase corrective action program in 2001 in accordance with the terms of the County's emergency permit. This consisted of road repairs, pier fortification and well stabilization. This work was completed at a cost to Venoco of approximately $3.8 million. In May 1997, the Santa Barbara County APCD granted Venoco Permit to Operate No. 8103 for PRC 421 operations. The permit was renewed in November 2002 and remains current.

Without conceding that the EOF cannot legally accommodate PRC 421 production, Venoco submitted a revised recommissioning plan in May 2004.[1] Under the revised plan, Well 421-2 will be returned to service as a production well equipped with a new downhole electric submersible pump (ESP). Well 421-1 will be returned to service as a produced water injection well. All separation and handling of produced substances will take place on the Well 421-2 pier utilizing state-of-the-art cyclonic technology. The existing pipelines for oil, produced water and gas will be repaired or replaced, and new direct power and communications cables will be installed, together with process monitoring and control facilities. A minor amount of trenching will occur along Venoco's upland easements through Sandpiper Golf Course. As in the past, leasehold production will be transported through the transfer line to Line 96. PRC 421 production will not go to the EOF. The only activity at the EOF will be installation of an electrical service connection to power PRC 421 operations. This connection is proposed to be made within the boundary of the EOF for equipment protection reasons. If this location is unavailable, the connection can be made elsewhere.

The remaining productive life of Lease PRC 421 is estimated to be about 12 years. Oil production is projected to be at an average rate of about 700 bpd. CSLC, as lead agency, has issued a Notice of Preparation of the Draft EIR for the recommissioning project (SCH. No. 2005061013).

B. **Venoco's Rights**.

In our opinion, Venoco has both the contractual right and a constitutionally protected vested right to resume PRC 421 operations.

i) **Contractual Right: The Lease**

Venoco's lease for PRC 421 is valid and subsisting. CSLC expressly approved Mobil's assignment of the lease to Venoco on July 11, 1997. Venoco's efforts

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[1] Venoco's recommissioning application to CSLC will apparently be processed pursuant to 2 Cal. Admin. Code § 2137, which provides as follows:

> "A lessee shall suspend immediately any drilling and production operations, except those which are corrective, protective, or mitigative, in the event of any disaster of or contamination or pollution caused in any manner or resulting from drilling and/or production operations under its lease. Such drilling and/or production operations shall not be resumed until adequate corrective measures have been taken and authorization for resumption of such operations has been made by the Staff. Corrective measures shall be taken immediately whenever pollution has occurred."

to resume operations have been ongoing since then, and CSLC has never sought to cancel the lease. Pub. Res. Code § 6805.

Paragraph 1 of the lease grants to the lessee the exclusive right to drill for and produce substances from the leasehold. Paragraph 21 encourages "the maximum recovery of oil and gas". See also, 2 Cal. Admin. Code § 2119 (lease production operations shall be at maximum efficient rate); and Pub. Res. Code § 6830.1(a), in which the California Legislature declared the following:

> "That the people of the State of California have a direct and primary interest in assuring the production of the optimum quantities of oil and gas from lands owned by the state, and that a minimum of oil and gas be left wasted and unrecovered in such lands." Emphasis added.

Thus, upon the implementation of adequate corrective measures to ensure safe operations (2 Cal. Admin. Code § 2137), Venoco has a contractual right to resume leasehold operations in accordance with the terms of the lease and applicable CSLC regulations. The resumption of operations is also consistent with State policy to achieve maximum recovery of hydrocarbons from the leased lands.

ii) **Vested Right.**

Venoco also has a constitutionally protected vested right in these operations. In *Avco Community Developers, Inc. v. South Coast Regional Com. (Avco)* (1976) 17 Cal.3d 785, 791, the California Supreme Court set forth California's vested right doctrine applicable in the land use setting:

> "It has long been the rule in this State and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. [Citation.] Once a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he relied."

The vested right to complete construction includes the right to use or operate the project once it is completed. *McCaslin v. City of Monterey Park* (1958) 163 Cal.App.2d 339, 347 ("Plaintiff had a vested property right in the use of his project as a

quarry of decomposed granite of which he could not be constitutionally deprived without due process of law.") See also, *Hansen Bros. Enterprises v. Board of Supervisors of Nevada County* (1996) 12 Cal.4th 533, 552 ("The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected [Citation omitted]"). As more fully explained below, when land use regulations, such as zoning restrictions or permit requirements, change after the vested right is established, the vested use is commonly described as a "grandfathered" or "legal non-conforming" use. Subsequently enacted regulations that would otherwise preclude or require a discretionary special use permit to operate are generally inapplicable. Thus, where the use is lawfully established prior to the adoption of permit requirements, a special use permit is not necessary to continue the use. Its grandfathered status is regarded as the legal equivalent of a "deemed approved" conditional use permit. *Korean Am. Legal Advocacy Fund v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 391-392, fn. 5.

Lease 421 operations constitute such a vested use. PRC 421 drilling and production operations began lawfully in 1929, long before the adoption of zoning ordinances by Santa Barbara County and the City of Goleta, and long before enactment of the California Coastal Act. Thus, prior operators of PRC 421 established the vested right in leasehold operations. This vested right passed to Venoco with its acquisition of the leasehold in 1997. As the California Supreme Court explained in *Hansen Bros. Enterprises v. Board of Supervisors of Nevada County, supra,* 12 Cal.4th at 540, fn. 1, "[t]he use of the land, not its ownership, at the time the use becomes non-conforming determines the right to continue the use. Transfer of title does not affect the right to continue a lawful non-conforming use which runs with the land."

Santa Barbara County in 1991 rezoned the parcel on which the EOF is located to REC ("Recreation"). Thus, from the standpoint of zoning, the EOF is today considered a legal non-conforming use, while operations on the leasehold itself remain a legal conforming use (SBC Staff Report 01DVP-0-00040, Section 6.1.1.7). The transmission line running from the piers to Line 96 is also considered a legal conforming use, since oil and gas pipelines are an expressly permitted use in the REC zone district (CZO § 35-157.2).

From the standpoint of special use permit requirements, such as those in the Coastal Zoning Ordinance which were adopted after the vested right in PRC 421 operations was established, Venoco's operations are properly characterized as grandfathered. As stated above, this vested right in Lease PRC 421 operations means that, as a matter of law, no such discretionary special use permit to operate can be required. See, e.g., *City of Oakland v. Superior Court* (1986) 45 Cal.App.4th 740, 747,

fn. 1 ("Grandfathered businesses are non-conforming uses that are not required to seek permits under local zoning ordinances ...."); *O'Mara v. City of Newark* (1965) 238 Cal.App.2d 836, 841 ("Furthermore, as stated in *McCaslin v. City of Monterey Park*, 163 Cal.App.2d 339, 348-349 [cites omitted] 'Having established the nonconforming use, [the owner] was entitled to continue his operations as a matter of right. He was not required to obtain a special use permit.'"); and *Bauer v. City of San Diego* (1999) 75 Cal.App.4th 1281, 1285, fn.

a) The vested right has not been abandoned.

Venoco's vested right to operate PRC 421 has not been abandoned despite years of non-production. In California, the mere cessation of operations does not constitute an abandonment of the vested use. Instead, in order to forfeit the vested right the holder must intend to abandon it. As the Supreme Court in *Hansen Bros. Enterprises, supra,* 12 Cal.4th at 569 held:

> "Cessation alone does not constitute abandonment. '[A]bandonment of a non-conforming use ordinarily depends upon the concurrence of two factors: (1) an intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the non-conforming use [citations omitted]."

Venoco has never manifested an intent to abandon its right to operate Lease PRC 421. To the contrary, Venoco has spent millions of dollars rehabilitating PRC 421 facilities, and Venoco's administrative efforts to resume operations have persisted since acquiring the leasehold in 1997. Thus, the vested right in PRC 421 operations remains intact today. See also, *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal.App.2d 776, 792 ("Respondent has not referred us to any law, and we have found none, which says that a vested right is divested because the owner of the right is prevented from exercising it by circumstances over which he has no control.").

b) Scope of the vested right.

We also conclude that the scope of Venoco's vested right accommodates repair and replacement activities necessary for Venoco to resume operations safely and efficiently. Because of the doubtful constitutionality of a municipality's ability to immediately terminate a pre-existing lawful use, courts have used their inherent powers to protect the vested rights of property owners in these situations. *See, e.g., McCaslin v. City of Monterey Park, supra;* and *La Mesa v. Tweed & Gambrell Mill* (1956) 146

Cal.App.2d 762, 768 (to prevent a taking of property without just compensation).

The vested right to continue an existing grandfathered use also includes the right to construct certain additional facilities integral to the operation where the nature and scope of the operation contemplate it. *Halaco Engineering Co. v. South Central Coast Regional Commission* (1986) 42 Cal.3d 52, 74-77. Thus, if a municipality were to refuse to apply its own permit exemptions or refuse to issue ministerial permits for modifications to be made so that operations could continue, the municipality would unlawfully impair the vested right to operate; *i.e.*, the municipality would take the property without due process of law.

It is our opinion that the City of Goleta could not lawfully deny Venoco's right to resume operations. This conclusion necessarily follows from the nature of Venoco's vested right to operate, and from the preemptive nature of CSLC's exclusive jurisdiction over the tide and submerged lands comprising Lease PRC 421.

Lease PRC 421 and its onshore project components are located in the City of Goleta. These facilities, and the right to operate them, were established long before the City was incorporated on February 1, 2002. The City has adopted wholesale the County's Coastal Zoning Ordinance, including the County's non-conforming use regulations in CZO § 35-160 (City of Goleta Ord. Nos. 02-01 & 17).

As explained above, while local ordinances governing uses of the character involved here now require the operator to obtain discretionary special use permits, it is well established that no such special use permit can be required for one to continue operating a project with a vested right to operate, such as Venoco's upland operations associated with PRC 421. In other words, it is Venoco's vested right in the pre-existing legal use - - a right that includes the right to operate without the need for a special use permit - - that supplants the need for a discretionary use permit that might otherwise be required for a new development of a similar character. See, e.g., *Korean Am. Legal Advocacy Fund v. City of Los Angeles, supra,* 23 Cal.App.4th at 391-392, fn. 5; *Bauer v. City of San Diego, supra,* 75 Cal.App.4th at 1293; and *McCann v. Jordan* (1933) 218 Cal. 577, 580 ("It is well settled that the new ordinance may operate retroactively to require a denial of the application . . . , provided that the applicant has not already engaged in substantial building or incurred expenses in connection therewith" [citation omitted; emphasis added]).

Condition 47 of the Final Development Plan issued by Santa Barbara County in 2001 for the well stabilization work provides that "resuming well production will require separate permits from P&D as necessary and appropriate environmental

review." Any such permit(s) would necessarily be ministerial entitlements. The same is true with respect to the recommissioning plan for the resumption of pipeline operations as required by Mobil's 1994 Final Development Plan. None of the FDP conditions purports to require a discretionary special use permit and we find no evidence that either Mobil or Venoco ever agreed that the County (hence, the City) would have the discretion to deny the right to resume PRC 421 operations. We conclude that no discretionary special use permit can be required in connection with the resumption of operations.

It is also clear to us that the City of Goleta could not lawfully frustrate the resumption of leasehold operations by denying any building or other land use entitlements needed for the relatively minor onshore work necessary to safely and efficiently resume PRC 421 operations. This includes repair or replacement of the transmission line and installation of an electrical service connection. CSLC has exclusive jurisdiction over the leased tide and submerged lands. The City of Goleta has no proprietary interest therein, and the City cannot lawfully prevent operations from being conducted thereon by Venoco who holds the lease under authority of the State of California. See e.g., *City of San Pedro v. Southern Pacific Co.* (1894) 101 Cal. 333; and *Monterey Oil Company v. The City Court of the City of Seal Beach* (1953) 120 Cal.App.2d 31, 38-40, citing *Pacific Asso. v. Huntington* Beach (1925) 196 Cal. 211 ("Conversely, a direct conflict will arise if the local ordinance attempts to prohibit what the state law permits."). As the California Attorney General has explained: "As to the ungranted tide and submerged lands, jurisdiction and control is vested in the State Lands Commission . . . and the Coastal Act makes no change in that authority . . . . Local Zoning & Planning Ordinances would, as a general proposition be pre-empted by the state as to such lands." 63 Op. AG Cal.107.

By similar reasoning, the City's police power could not lawfully be employed indirectly to frustrate the State's jurisdiction and control over these public trust lands in a situation such as this involving vested operating rights, at least in the absence of proof that the upland operations would constitute an unmitigable nuisance or unmitigable danger to public health and safety. *Bauer v. City of San Diego, supra,* 74 Cal.App.4th at 1294-1295; and *Trans-Oceanic Oil Corp. v. Santa Barbara, supra*, 85 Cal.App.2d at 789 ("The owner of a property right to drill for and extract oil in a proven field acquired under a permit, may not constitutionally be deprived thereof without payment of just compensation except upon a showing that its exercise constitutes a nuisance."). It would be unreasonable to contend that the resumption of PRC 421 operations would constitute an unmitigable nuisance or danger to public health and safety.

The City's Coastal Zoning Ordinance includes a large number of permit exemptions, including the following:

- Section 35-169.2.1.a: "Repair and maintenance activities that do not result in addition to, or enlargement or expansion of, the object of such repair or maintenance activities (see Sec. 35-169.10.)"

- "d. Installation, testing, placement in service, or the replacement of any necessary utility connection between an existing service facility and any development that has been granted a Coastal Development Permit." This naturally applies to a development, that does not legally need a Coastal Development Permit to operate, i.e. such as here where the vested right is the legal equivalent of a "deemed approved" permit.

- "g. Grading, excavation, or fill which does not require a Grading Permit pursuant to Chapter 14 of the Santa Barbara County Code." This includes utility trenching and the like.

- Coastal Zoning Ordinance § 35-169.10 adopts by reference the "County Guidelines on Repair and Maintenance, Utility Connections to Permitted Development." These permit exemptions include the following activities set forth in Appendix C II:

> "D. **INDUSTRIAL FACILTIES.** No permit is required for routine repair, maintenance and minor alterations to existing facilities, necessary for ongoing production that do not expand the area or operation of the existing plant. No permit is required for minor modifications of existing structures required by governmental safety and environmental regulations, or necessary to maintain existing production capacity, where located within existing structures, and where height or bulk of existing structures will not be altered.
>
> "E. **OTHER STRUCTURES**. For routine repair and maintenance of existing structures or facilities not specifically enumerated above, no permit is required provided that the level or type of use or size of the structure is not altered."

Thus, many if not all of the changes desirable for the safe and efficient operation of PRC 421 can be made without the need for any permit at all. In the event any ministerial permits are required, the City's urgency Ordinance No. 02-24 provides the procedure for such permits to be issued, despite the fact that the City does not yet have a Local Coastal Program approved by the California Coastal Commission. Ordinance No. 02-24.

It is therefore our opinion that Venoco has a valid and subsisting lease in PRC 421, and that Venoco has the right to resume production operations.

II.

THE "NO PROJECT ALTERNATIVE" SHOULD DESCRIBE THE RESUMPTION OF LEASEHOLD OPERATIONS IN THE TRADITIONAL MODE

In its pending application to CSLC to resume operations, Venoco proposes certain new work described above. This includes installation of a new ESP in Well 421-2, installation of oil, gas and water separation equipment on the piers, repair of existing subsurface pipelines for produced substances, installation of buried power and communications cables, and provision for process monitoring and controls.

In addition to a description of environmental impacts of the proposed project, CEQA requires a description of a range of reasonable alternatives to the proposed project, including the "no project alternative." CEQA Guidelines § 15126.6. An adequate "no project alternative" discussion in the environmental document needs to do two things: a) discuss the existing conditions at the time the NOP is published; and b) discuss what would reasonably be expected to occur in the foreseeable future if the project were not approved, based upon current plans and consistent with available infrastructure and community services. CEQA Guidelines § 15126.6(e)(1) & (2).

The CEQA Guidelines reject the reasoning of *Dusek v. Redevelopment Agency of the City of Anaheim* (1985) 173 Cal.App.3 1029 ("*Dusek*"), which stood for the proposition that the analysis of the "no project alternative" in an EIR "must describe maintenance of the existing environment as a basis for comparison of the suggested alternatives to the status quo." *Dusek, supra* at 1043. In effect, the *Dusek* court equated the "no project alternative" with the existing environmental setting, even though future activities under existing plans or policies could result in the alteration of existing conditions. The CEQA Guidelines call for a different approach, recognizing that the denial of a proposed project does not necessarily equate with the preservation of existing environmental conditions. This is particularly true in a case such as this where, if Venoco was denied the opportunity to reconfigure its leasehold production facilities, Venoco would be entitled to resume production operations with the same or similar equipment as existed at the time production operations were interrupted.[2] Thus, in our view the "no project alternative" properly consists of a description of the reasonably foreseeable resumption of operations as historically configured.

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[2] The notable exception would be the addition of new air pollution control equipment to capture gas that had historically been vented to the atmosphere from the pier.

III.

CONCLUSION

For the foregoing reasons, we conclude that Venoco has contractual and constitutional vested rights to resume PRC 421 operations, at least with repaired and replacement facilities as configured prior to the interruption of operations. Venoco needs no new discretionary special use permit to resume operations, and the City of Goleta is precluded from applying its land use and building permit regulations in a way that would frustrate the resumption of the operations. Discussion of the "no project alternative" in the EIR should include a description of operations in the previously configured mode, together with the associated environmental effects.

We hope that you have found this discussion helpful. Should you have any questions, please contact me.

Very truly yours,

HOLLISTER & BRACE

By /S/
Steven Evans Kirby

SEK/sgt
copy: Venoco: Terry Anderson, Steve Greig, Mark DePuy
California Coastal Commission: Alison Dettmer, Tom Luster
City of Goleta: Len Wood, Ken Curtis
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June 16, 2006

CITY OF GOLETA
130 Cremona Drive, Suite B
Goleta, CA 93117

Attn: Mr. Kenneth Curtis

Re: Comments on Behalf of Venoco, Inc.
Noise and Safety Elements
Draft Goleta General Plan

Dear Mr. Curtis

In our May 3, 2006 letter to you, we expressed concerns on behalf of our client, Venoco, Inc., about portions the draft Land Use Element. We now take the opportunity to address portions of the draft Noise and Safety Elements.

Noise Element

Policy NE 5.6: Reduction of Noise at the Venoco Ellwood Onshore Oil and Gas Processing Facility

The draft requires the City to continue to monitor noise at the Ellwood Onshore Facility (EOF) to determine whether noise levels comply with standards and provides that the City may require Venoco to implement measures to avoid exceedences of the standards. The draft would also require any major facility upgrade to include measures to bring sound levels into compliance with the plant's operating permit.

The implication of the draft is that EOF operations currently are out of compliance. This is untrue. We suggest rewording the last sentence as follows: *"Any major facility upgrades shall include measures to ensure that levels of sound generated by the facility comply with applicable standards."*

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EXHIBIT 2

Safety Element

SE 5.1: Introduction

The General Plan should be "general". Specific requirements for individual landowners are more properly the function of zoning ordinances and permits. Otherwise, the issuance of permits could require amendments to the General Plan. This is generally to be avoided.

SE 8.2: Consideration of Offshore Gas Processing

The draft is overly specific in requiring that any proposal to substantially increase existing throughput at the EOF shall include as a project component the cessation of gas sweetening (H_2S removal) at the EOF and relocation of these operations to Platform Holly. Such a requirement is inappropriate for the General Plan. Any such mitigation measure or project alternative should evolve out of a project-specific EIR. It is wholly inappropriate for the General Plan to prejudge the feasibility of such a requirement. The proper forum for this is the application review process for the requested increase, including the benefits–feasibility analysis in the environmental document.

SE 8.3: Annual Safety Audits Required

The draft requires annual safety audits of all new and existing oil production, processing and storage facilities. The draft would require that any deficiency noted in the audit must be addressed promptly within the time frames recommended by the audit's conclusions. Such specificity is inappropriate for the General Plan. These types of requirements should be evaluated in connection with the issuance of permits, which should in turn incorporate procedures for ensuring compliance. The proposed draft would institutionalize the requirement that whatever time frame is recommended in an audit must be met. Such details do not belong in the General Plan.

SE 8.6: Quantitative Risk Assessment

The draft obligates the City to require a quantitative risk assessment as a component of any new oil and gas production or processing facility, or of any proposed substantial alterations to existing facilities.

This too is not an appropriate provision for the General Plan. Such requirements are more appropriately considered in the EIR and as possible conditions of project

approval. We also do not believe that a general plan can properly impose such conditions, after the fact, on existing facilities.

SE 8.7: Routing of Gas Pipelines

The General Plan should acknowledge the preemptive authority of the federal Office of Pipeline Safety (DOT) over interstate pipelines (Pipeline Safety Act 49 USC § 60104(c)), and the jurisdiction of the State Fire Marshall and Public Utilities Commission over intrastate pipelines.

SE 8.11: Safety Measures for Pipelines Transporting Produced Gas

The draft provides that pipelines carrying new natural gas production shall be required to incorporate feasible operating methods for reducing hazards along the pipeline corridor commensurate with the level of risk. Potential mitigation measures and project alternatives are identified. These measures and project alternatives are inappropriate for the General Plan and should be left to the EIR-permit processes. The General Plan should also acknowledge the limitations of the City's jurisdiction over such pipelines as mentioned above.

We appreciate the opportunity to provide these comments. We and our client consider these matters to be of considerable importance and believe that they deserve careful attention. Should you have any questions, or if we can provide you with any information to assist in your revisions to the General Plan, please le us know.

Very truly yours,

HOLLISTER & BRACE

By /S/
Steven Evans Kirby

SEK/sgt
copy: Venoco, Inc.

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June 28, 2006

HAND DELIVERED

CITY OF GOLETA
130 Cremona Drive, Suite B
Goleta, CA 93117

Attn: Mr. Kenneth Curtis

Re: Revised Policy SE 8.2
Consideration of Offshore Gas Processing
Safety Element: Coastal and Other Hazards
Proposed City of Goleta General Plan

Dear Mr. Curtis

This supplements our May 3 and June 16, 2006 comments on behalf of our client, Venoco, Inc., concerning portions of the City's draft General Plan. We have considered staff's June 26, 2006 proposed revisions to Safety Element Policy SE 8.2 (Consideration of Offshore Gas Processing) and offer the following comments:

As proposed by staff, the revised policy would read as follows:

> ***"SE 8.2 Consideration of Offshore Gas Processing.*** *Any project that requires discretionary permit approval by the City of Goleta and that proposes to substantially increase the existing throughput of the EOF should include as a project component the cessation of gas sweetening (H_2S removal) from the onshore facility and relocation of such gas treatment facilities and processes to Platform Holly. This requirement applies to any extended field development proposal or other similar project that substantially increases the production of the South Ellwood Field. The intent is to decrease the risk of a H_2S release within the City's boundaries."*

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EXHIBIT 3

We strongly urge that this proposal be deleted - - or at least further revised - - for the following reasons:

While the precise meaning of the policy is not entirely clear, one interpretation is that in order for a project application involving substantially increased EOF throughput to be deemed complete by the City, the project description would have to include offshore H_2S removal. Thus, the General Plan would dictate major technical features of the project before the application is filed and before environmental review begins. As we explained in our June 16, 2006 letter, such a requirement is wholly inappropriate for the General Plan.

An applicant has the right to design his/her own project. Any such alternative to Venoco's project design can be included among the range of alternatives analyzed in the project-specific EIR. CEQA Guidelines § 15126.6. The General Plan should not pre-judge the feasibility of such an alternative, especially where as here there is absolutely no technical data or analysis to support the revised draft's implied proposition that such offshore gas sweetening is feasible. *Citizens of Goleta Valley v. Board of* Supervisors (1990) 52 Cal.3d 553, 574 (project alternatives must be feasible). "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors. Pub. Res. C. § 21061.1. At a minimum, such determinations must be based upon substantial evidence. "[S]peculation, unsubstantiated opinion . . . is not substantial evidence." *Id.*; Pub. Res. C. § 21080(e)(1) & (e)(2). As OPR'S General Plan Guidelines provide at p. 15: "Solid policy is based on solid information."

The only technical data and expert analysis available to date demonstrates that offshore gas sweetening is infeasible in this context. See attached "Venoco Ellwood Pipeline Project Comment Responses (Project Alternatives - Infeasibility of Gas Processing at Platform Holly)," the substance of which was earlier submitted to the City on February 2, 2006.

A discussion of Venoco's vested rights in EOF operations is included in our May 3, 2006 letter. One of the conclusions reached there is that as owner of the EOF, Venoco has a vested right to process at the EOF production from Platform Holly within the EOF's current capacity limitations of 20,000 barrels of oil per day and 22 million standard cubic feet of gas per day. Any oil and gas produced from new wells drilled from Platform Holly are not considered "new production" under the South Coast Consolidation Policies. Thus, any such production may be processed at the EOF within the foregoing capacity limitations. Any requirement that production within Venoco's vested capacity limitations must necessarily be processed offshore would substantially impair Venoco's vested right to process such production onshore. In our view, a

requirement such as that in proposed SE 8.2 would constitute a serious flaw in the General Plan and EIR.

These problems are unnecessary and can easily be avoided by deleting the policy all together, or by revising it to read as follows:

> *"**SE 8.2 Consideration of Offshore Gas Processing.** The environmental document prepared in connection with any project proposal requiring discretionary permit approval by the City of Goleta for a substantial increase in EOF throughput should include among the reasonable range of project alternatives the cessation of gas sweetening (H_2S removal) at the EOF and relocation of such gas treatment facilities and processes to Platform Holly. The intent is to provide an analysis of the feasibility of this method of reducing the risk of an H_2S release within the City's boundaries."*

The approach urged here ensures that the feasibility of offshore gas sweetening will be considered at the appropriate time and under the appropriate circumstances. This approach avoids fatal flaws in the General Plan and EIR and facial impairment of Venoco's vested right.

Thank you once again for considering our views on these matters.

Very truly yours,

HOLLISTER & BRACE

By /s/
Steven Evans Kirby

SEK/sgt
Attachment
copy: Venoco, Inc.

Venoco Ellwood Pipeline Project Comment Responses

CITY OF GOLETA LETTER

#2 Project Alternatives: Please provide additional information on the infeasibility of gas processing at Platform Holly....

Initial conceptual design attempts focused upon attempts to provide for the offshore separation of H2S and CO2 from the produced gas stream. A number of constraints are in effect on Platform Holly; notably

1) *Platform size is very limited, and all available deck space is presently committed to existing operations. Thus, any offshore processing scheme would necessitate the installation of deck extensions to accommodate new gas sweetening equipment. Due to limitations in the existing jacket structure design, there are limitations on allowable weights that may be added to the existing platform structure.*
2) *Platform power is limited. Offshore gas processing would require significant expansion of Motor Control Center and Switchgear equipment, as well as a new power cable. This again generates significant space and weight issues.*
3) *Chemical deliveries and/or transportation of Sulfur product would require a significant increase in boat traffic. This would result in the impacts associated with that traffic: i.e. emissions from exhaust potential impact o fisheries.*
3) *Operational flaring as a means of acid gas disposal is not allowed under the current APCD rules. Flaring of the volume of gas, including the high concentration of H2S, which would be required was deemed to be environmentally unacceptable.*

Subject to above constraints, a number of gas processing options were evaluated, to enable the sweetening of gas offshore on Platform Holly.

These included the following:

1) *Shell for their Sulfinol, Sulferox and ADIP/ADIP-X Processes*
2) *UOP for their Hot Potash, Benfield, Selectox, Selexol and Amine Guard FS Processes*
3) *Dow for their Ucarsol and Selexol Processes*
4) *BASF for their activated MDEA Process*
5) *ExxonMobil for their Flexsorb Process*
6) *Atofina for their Physical Solvents*

7) Crysta tech for their CrystaSulf Process
8) Connelly-GPM for their Iron Sponge Process
9) Gas Technology Products for their LoCat Process
10) Synetix for their Puraspec Process
11) Lurgi Oel Gas Chemis for their Purisol/Rectisol Process
12) Sulfa Treat for their Caustic Sulfa Treat "LoCost" Process

The solvent-based separation methods (Sulfinol, Selexol, BASF, Flexsorb, and Ucarsol) emerged as the most likely technologies for offshore gas sweetening, offering the most compact equipment footprints, lowest circulation rates, and operating costs for heat and solvent make-up. However, none of the reviewed systems could satisfy the constraints that were imposed.

Summary technical descriptions of the generic types of processing and reasons for not incorporating on Platform Holly are provided here:

Membranes

Membrane based processes separate natural gas stream components based on how quickly they permeate through the membrane. Membranes are best for separation of CO2 because of how quickly CO2 permeates through membranes. Membranes are most effective at high pressure (1,000 to 1,200 psi). If H2S is not removed upstream of the membrane, the tubes must meet NACE standards, which is stress relieved carbon steel.

Membrane systems generate off gases which need to be collected and either disposed of in a Class II injection well or used as a fuel gas in combustion equipment. The greater percent reduction of CO2 required through the membrane, the greater volume of "off" gas. The composition of "off" gas is typically composed of primarily methane and CO2 with less than 5% C2+ hydrocarbons. A single stage membrane treating 13 MMSCF per day of gas from Platform Holly would produce approximately 10 MMSCF per day of sales gas with 3% CO2. Methane loss to the permeate would be about 15%. With additional compression, the permeate could be recycled to the front end of the membrane system with up to 50% methane recovery from this recycled permeate stream.

Use of membranes for combined H2S and CO2 removal were evaluated and deemed to be impractical, due to the high sulfur loading, compression, and physical space requirements. In addition, this method might only offer promise if an acid gas stream containing H2S and CO2 could be disposed of downhole; and as discussed supra, this was determined to by physically impossible.

SulFerox

The SulFerox process is a proprietary system that selectively remove H2S from natural gas streams by contact with an alkaline scrubbing solution. The process employs an

iron-based aqueous liquid reduction-oxidation chemistry in the conversion of H2S into elemental sulfur. SulFerox solution is corrosive to a variety of metals, including carbon steel. As such, all equipment that comes into contact with the solution must be constructed from austenitic stainless steel. The system is able to handle fluctuating inlet gas flow rates and operates at ambient temperature and pressure. The SulFerox solution can be regenerated by contact with air.

Chevron originally selected this system for treatment of 18MMscf per day of sour gas from Platform Gail, generating up to 7.5 tons of elemental sulfur per day. The Platform Holly gas stream at 13 MMSCF per day, by comparison, would generate 10 tons of elemental sulfur per day.

However, after detailed simulation modeling of the Holly produced gas, the vendor of the process declined to guarantee adequate H2S removal effectiveness. In part, this was due to interference in the chemical reactions caused by other sulfur compounds, such as Carbonyl Sulfide and mercaptans.

Finally, the offshore production of sulfur was deemed undesirable. From a marketing standpoint, the market for sulfur is minimal. From a platform size standpoint, deck space did not facilitate installation of a complete sulfur recovery plant. In addition, providing 30 day storage for sulfur (either filter cake or molten sulfur) was deemed to be impractical, due to space and structural limitations inherent in the existing platform design. The preferred method of sulfur disposal was determined to be via acid gas injection into a downhole reservoir.

Lo Cost Caustic and SulfaTreat

Both Lo Cost Caustic and SulfaTreat processes are considered non-regenerative, batch treatment processes. The Lo Cost Caustic process puts the natural gas stream in contact with dilute caustic (2 to 5% NaOH) to remove high concentration of H2S with mercaptans. The solubility of both H2S and CO2 decreases with increasing solution concentration. Higher concentrations of NaOH limit solubility of both gases. As such, the empirical range identified for an effective caustic concentration is 2 to 5%. Higher concentrations severely depress H2S solubility and removal. Because CO2 also reacts with NaOH, caustic contact time should be kept to 0.02 seconds per stage to reduce caustic consumption by reaction with CO2.

Tidelands used a two stage caustic process to reduce H2S levels in sour gas from 8,000 ppm and 250 ppm in the Wilmington oilfield. The resulting gas stream was then polished, using a two stage SulfaTreat process, to meet the sales specification. A two stage caustic system to reduce the H2S levels from 18,000 ppm to 500 ppm for the 13 MMSCF per day gas stream from Platform Holly would require a 1.5 mole of caustic to 1.0 mole of H2S ratio.

SulfaTreat is a patented non-regenerative, batch treatment process using a proprietary iron oxide material to remove H2S from natural gas. Solid residue is generated by the process which is suitable for disposal at a Class III (non-hazardous) landfill. The best application for a high H2S natural gas stream is downstream of another H2S removal treatment process as an H2S polish. The SulfaTreat chemical is typically contained in 8' diameter by 20' long vessels run as a two stage process. Typically, the lead vessel is run to absolute exhaustion. The SulfaTreat chemical is then replaced, and this vessel becomes the lag vessel. Approximately 35 tons of SulfaTreat would need to be replaced every 13 days to reduce a 500 ppm H2S gas stream to 4 ppm.

Non-regenerative processes such as Lo Cost and SulfaTreat were deemed undesirable, given the transportation, storage, and disposal logistical problems associated with the use of non-regenerative batch treatment processes. Due to high sulfur loading, processes which are dependant upon "one-time" adsorbent media (e.g., Sulfatreat) were deemed to be impractical for this application. Such systems could require change-out of over 60,000 pounds of media every 13 days, while caustic based systems would require consumption of over 200 Bbls per day of Caustic and 8,000 Bbls per day of soft fresh water. Inventory requirements would be 80 tons of SulfaTreat and minimum 1700 tons of 50% caustic solution.

Fluor Proprietary Solvent Process

The Fluor Solvent Process is a proprietary system that uses propylene carbonate as a physical solvent to remove CO2 and H2S. Solvent temperatures below ambient (40 to 50 deg F) are generally used to increase the solubility of acid gas components, thereby decreasing circulation rates. As such, chilling of the gas stream is required. Propylene carbonate also removes C2+ hydrocarbons, COS, SO2, CS2 and H2O from the natural gas stream. Thus, in one stream the natural gas can be sweetened and dehydrated. This process can be used for bulk removal of CO2 but not to treat the Produced gas to less than 3% CO2.

The chilling requirements proved to be a formidable challenge, as there is not enough deck space, power, or structural support to accommodate the required gas chilling plant. In addition, this method would only be viable if an acid gas stream containing H2S and CO2 could be disposed of downhole; and as discussed supra, this was determined to be physically impossible.

Lurgi Oel Gas Chemis Proprietary Purisol/Rectisol Process

Similar to the Fluor Process, Rectisol (and a derivative Purisol Process) operates at a very low temperature (-20 degrees F.) and requires significant refrigeration equipment and power to operate. In addition, this process is not commercially in use in the United States, especially for offshore applications.

Due to lack of commercial support, as well as the large amount of refrigeration space and equipment that would be required, this process was deemed to be unacceptable for Platform Holly.

Hot Carbonate Systems/Benefield Process

The hot potassium carbonate (K2CO3) system uses hot K2CO3 to remove both H2S and CO2. It works best on gas streams with CO2 partial pressures in the range of 30 to 90 psi. H2S alone can not be removed unless there is sufficient CO2 present to provide KHCO3, which is needed to regenerate the K2CO3. The proprietary Benefield process uses several activators to increase performance of the hot K2CO3 system by increasing the reaction rates both in the absorber and the stripper. The hot carbonate system operates at high temperatures (approximately 250 deg F) to increase the solubility if K2CO3. Hot potassium carbonate systems are extremely corrosive. A variety of corrosion inhibitors are available to decrease corrosion.

This is a very complex process, requiring a lot of physical space, and is best suited for a land-based application. Large chemical storage tanks and recirculation systems are required. A number of potential worker safety issues need to be considered when hot, extremely corrosive chemicals are used. This process was deemed to be unacceptable for an offshore application.

Amines and Physical Solvents

Amine processes are categorized as primary, secondary and tertiary systems. Monoethanolamine (MEA) is a primary amine that can meet nominal pipeline specifications for removing both H2S and CO2. MEA also reacts with carbonyl sulfide (COS) and carbon disulfide (CS2) to form heat stable salts that can not be regenerated. MEA is usually recirculated in an aqueous solution of 15 to 20% by weight for a solution loading of 0.3 to 0.4 mole of acid gas removed per mole of MEA. Solution strength and loading are limited to avoid excess corrosion. Because MEA has a relatively high vapor pressure, MEA losses of 1 to 3 lbs/MMSCF are common.

Diethanolamine (DEA) has replaced MEA in recent years as the most common amine. DEA reacts with COS and CS2 to form compounds that can be regenerated in the stripping column. Approximately 1.7 pounds of DEA must be circulated to react with the same amount of acid gas as 1.0 pound of MEA. However, because of its lower corrosivity, the solution strength of DEA ranges up to 35%. Loading in DEA systems ranges up to 0.65 mole of acid gas per mole of DEA. As such, the recirculation rate is slightly less than a comparable MEA system. DEA systems do not have the same regeneration per mole of acid gas removed.

Diisopropanolamine (DIPA) is a secondary amine that is the reactive chemical solvent used in the Sulfinol process patented by Shell. It is similar to DEA but offers the advantages that carbonyl sulfide can be removed and regenerated more easily, the

system is generally non-corrosive and less heat input is required. At low pressure, DIPA will preferentially remove H2S. At increasing pressures, DIPA removes increasing amounts of CO2 as well as H2S.

Methyldietyhanolamine (MDEA) is a tertiary amine that is selective for H2S removal in the presence of CO2 (known as high slippage). Because of this, the process plant can be much smaller, which reduces the heat load, saving energy. Up front removal of CO2 by membranes further reduces the size and heat load of an MDEA system but requires compression upstream of the membranes.

Dehydration must follow sweetening because use of amines in aqueous solution saturates the sweet gas with water vapor. Upstream removal of C4 and C5 hydrocarbons aids amine plant operation but requires refrigeration upstream of the plant. Acid gas ("off" gas) produced by an amine system needs to be routed to a Class II injection well for disposal or used as a fuel gas in combustion equipment.

A wide variety of formulated solvents can be blended with DIPA and MDEA amines to reduce corrosion and lower energy requirements. These solvents have a high affinity for aromatics and C3+ hydrocarbons. The Sulfinol process (Shell) blends the physical solvent sulfolane with DIPA. Selexol (Union Carbine) is another physical solvent that can be blended with DIPA. (See description of Sulfinol and Selexol in the discussion of physical solvents below). Dow Chemical has developed a wide variety of propriety MDEA based specialty amines covering the full range of treatment of sour gas from maximum CO2 slip to complete removal of CO2. Specialty amines are typically used in concentration of up to 50% by weight allowing for more acid gas removal per gallon of solution. Other products include TEXTREAT (Texaco) and UCARSOL (Union Carbide). Some vendors provide in-depth chemical analysis and selection assistance and take responsibility for quality control, shipping and inventory.

Physical solvent processes are based on the solubility if H2S and CO2 within the solvent instead of on the chemical reaction between the acid gas and the solvent. Solubility depends first on the partial pressure and then on the temperature. Higher acid gas partial pressure and lower temperature increases the solubility of H2S and CO2 in the solvent and thus decrease the acid gas components. Physical solvents have a high affinity for heavy hydrocarbons. If the natural gas stream is rich in C3+ hydrocarbons, use of a physical solvent may result in a significant loss of C3+ into the acid stream.

Sulfinol combines the properties of a physical and chemical solvent. The Sulfinol solution contains a mixture of sulfolane (a physical solvent), DIPA and water. Sulfolane is an excellent solvent of sulfur compounds such as H2S, COS and CS2. Heavy hydrocarbons are soluble in sulfolane to a lesser degree. The relative amounts of DIPA and sulfolane are adjusted for each gas stream to custom fit each application. Sulfinol is usually used for streams with an H2S to CO2 ratio greater than 1:1 or where it is not necessary to remove the CO2 to the same levels are required for H2S removal. The physical solvent allows much greater solution loadings of acid gas than for pure amine-based systems. Typically, a Sulfinol solution of 40% sulfolane, 40% DIPA and 20%

water can remove 1.5 moles of acid gas per mole of Sulfinol solution. The chemical solvent DIPA acts as a secondary treatment to remove H2S and CO2. A stripper is required to reverse the reactions of the DIPA with CO2 and H2S. This adds costs and complexity to the system compared to other physical solvents but the heat requirements are much lower than for amine systems.

Selexol is a physical solvent that is selective towards sulfur compounds but can also reduce CO2 levels by 85%. The process is used economically when there are high acid gas partial pressures. Selexol is also typically used at lower operating pressures, but requires larger contact vessels. Selexol also removes heavy hydrocarbons in the natural gas stream as well as removing H2O to less than 7 lb/MMscf. DIPA can be added to the solution to remove CO2 to sales specifications in a manner similar to blending Sulfinol with DIPA.

Sulfinol emerged as the best all-around solvent for treating the Platform Holly gas. A representative amine plant was found to require approximately 2,500 SF of deck space and would add over 750,000 pounds of weight to the platform. This estimate does not include a Low temperature Separation (LTS) plant which would also be required for optimum amine operation. However, this alternative is predicated upon the ability to utilize an offshore amine plant to successfully provide for offshore separation of the sulfur compounds from the produced gas stream, and to produce an acid gas stream that would be disposed of using an acid gas injection well into the Rincon formation. Due to reservoir volume limitations, it was discovered that it would be necessary to limit the acid gas flow stream to sulfur compounds that are removed by the amine plant, and to minimize the amount of Carbon Dioxide (CO_2) that would be injected into the Rincon formation. This requires the use of a "High Slip" amine, which permits the unhindered passage of CO_2 with the sweetened gas.

However, after exhaustive technical research and discussions with several amine manufacturers it was determined that the produced gas stream aboard Platform Holly is not a viable candidate for a "High Slip" process. Certain produced gas constituents (notably, Carbonyl Sulfide and mercaptans) were found to cause interference with the amine reactions and prevent "High Slip" reactions from occurring. This was found to be the case even if moderately sour gas (say 300 ppm H_2S) were to be produced instead of sweet gas. The use of "Low Slip" amines was additionally evaluated; but the increase in volume of the produced acid gas stream was found to be beyond the capacity of the intended reservoir to receive the acid gas.

Additional offshore processes for reducing the volume of CO_2 in the acid gas stream, such as membrane separation, to be utilized in tandem with an amine plant were also evaluated. Such tandem processing would also require the offshore installation of a Low Temperature Separation (LTS) plant. However, the physical space available aboard the platform was found to limit the amount of additional process equipment that could be installed offshore, without significant expansion of the platform, which would require additional structural modifications, such as additional jacket legs and/or platform piles.

The use of a platform flare for disposal of acid gas was also evaluated. This method of disposal is feasible; however, flaring of the acid gas stream would produce undesirable air emissions, notably sulfur dioxide, and was determined to not be an environmentally sound method of disposal.

In addition, flaring or downhole disposal of the acid gas streams results in a net loss of energy, which could otherwise be recovered in the preferred project. The preferred project maximizes the capture of usable BTU energy from the produced gas.

Response to Comment No. B.6-1

The commenter objects to certain policies in the GP/CLUP that serve to reduce or mitigate impacts noted in the DEIR and asserts that such policies are in conflict with Venoco's vested rights for its Ellwood Onshore Oil and Gas Processing Facility (EOF). The determination of Venoco's vested rights at the EOF is a complex legal issue that is beyond the scope of this EIR. Notwithstanding this, some of the policies in the GP/CLUP that the commentator objects to have been revised to reflect that the implementation of these policies may be subject to certain vested rights determinations. Policies LU 9.2, LU 10.1, LU 10.2, LU 10.3, and SE 8.2 have all been revised. Policy LU 10.4 already contained language acknowledging that certain vested rights determinations would have bearing on the applicability of the policy.

In some cases, the determination of a certain vested right and granting of certain permits for a proposed project seaward of the mean high tide are decisions within the jurisdiction of other agencies, for example, the California State Lands Commission and California Coastal Commission. In these cases, proposed policies and mitigation measures provide a basis for City comments on a proposed project to these agencies. The EIR notes policies and mitigation measures that seek to reduce significant impacts that could affect territory within the City of Goleta. This comment does not necessitate changes to the EIR.

Response to Comments No. B.6-2 through B.6-4

The commentator claims that Policies LU 10.3b (comment B.6-3) and LU 10.4b (comment B.6-4) are contrary to certain assurances given by the County of Santa Barbara to Arco, Venoco's predecessor in interest and cannot be used as mitigation. Policy LU 10.3b has been revised to reflect rights and limitations on the non-conforming Ellwood Facilities. Policy LU 10.4b relates to State Lands Commission Lease 421. A decision on the vested rights to produce this lease would not be made by the City, but would be by the State Lands Commission. Policy LU 10.4 provides a basis for the City to comment to those agencies that would be determining vested rights or would be issuing a permit for portions of a proposed project seaward of the ordinary high water mark.

The commentator also states the opinion that the DEIR is inadequate because it does not specify which policy subsections under LU 10 are relied upon for mitigation. In response, City staff note that the level of detail regarding policies that reduce impacts is appropriate for a programmatic level EIR. However, the text of the EIR is revised to note policy subsections per the commentator's request.

Response to Comment No. B.6-5

The commentator objects to the wording of GP/CLUP Policy SE 8.2 Consideration of Offshore Gas Processing and the EIR's reliance on this policy to lessen Impact 3.7-11. The policy in question has been revised. Refer to Response to comment B.6-1.

Furthermore, the commentator correctly attributes this policy as being identified in the EIR as reducing the Impact 3.7-11, but incorrectly states that the DEIR relies upon this policy for lessening Impact 3.7-11. The DEIR identifies Impact 3.7-11 as a Class III (Less than significant) impact. No mitigation is required for a Class III impact, and the DEIR correctly characterizes this policy as one that would further reduce Impact 3.7-11.

Response to Comment No. B.6-6

The commentator states the opinion that the DEIR fails to provide data or analysis to substantiate impacts of Venoco's operations and also fails to provide a basis for assigning CEQA impact classifications. The commentator is referred to EIR Section 3.7.3.1 for a discussion of the thresholds of significance. As such, the EIR properly identifies the basis for assigning impact classification. In addition, the impacts of Venoco's operations derive from all of the following:

a) impacts from an increase in the amounts of hazardous materials being handled by the Venoco facilities, if certain expansion and/or recommissioning requests are approved;

b) Impacts from exposing a higher number of people in the vicinity of Venoco's operations under full build-out of the general plan; and

c) Impacts from increasing amounts of hazardous material being handled in proximity to Environmentally Sensitive Habitat Areas or other sensitive biological resources.

Response to Comment No. B.6-7

The commentator references DEIR Table ES-1 and opines that the DEIR fails to provide mitigation for the certain Class I impacts. In response, the purpose of the programmatic-level EIR Executive Summary is not to recapitulate each policy and policy subsection that reduces, avoids, or lessens individual impact. It's not the function of the Executive Summary table to replicate that level of detail. The commentator is referred to the applicable EIR section for more detail regarding use of policy to reduce impacts.

The commentator incorrectly asserts that the DEIR fails to provide mitigation for Class I impacts including Impact 3.7-1 Risk of Upset at the Venoco Facilities and Impact 3.7-2 Transport. The commentator is directed to EIR Section 3.7.3.3 for the analysis of project impacts and a discussion of the policies that would reduce impacts. For example, the text of Section 3.7.3.3 identifies Policy LU 10.4 as a measure that would lessen impacts, but concludes that this policy would not reduce the impact to a less than significant level, consistent with Class I findings. In addition, Policies LU 10.4b, SE 8.2, SE 8.3, SE 8.4, SE 8.6, and SE 8.10 are included in the FEIR as measures that would reduce Impact 3.7-1, but not to a level of insignificance. The text identifies conformance with DOT and Caltrans regulations as a measure that would reduce Impact 3.7-2, but not to a level of insignificance. In addition, Policy SE 11 Emergency Preparedness is included as a policy that would also reduce Impact 3.7-2, but not to a level of insignificance. The text revisions do not alter the conclusions of the EIR.

With respect to air quality impacts, the analysis has been revised for Impact 3.3-2. The impact conclusion has been changed to Class III (adverse but less-than-significant impact). Therefore, no mitigation measures are required. Refer to response to comment A.2-5 for a detailed discussion regarding Impact 3.3-2.

The cumulative air quality analysis remains unchanged for Impact 3.3-5. Even though implementation of the proposed GP/CLUP provides opportunities for additional development in the City of Goleta, and regional growth will occur in the County as a whole, the continued reduction in vehicular emissions will offset additional development to some extent. However, the emissions for the cumulative scenario will be significant when compared to the daily significance threshold of 25 pounds per day for NO and ROG emissions.

Although the cumulative projects will result in significant regional air quality impacts, the proposed GP/CLUP is consistent with the 2004 CAP and other regional plan strategies to reduce the number of trips and the length of trips in the region, and to improve the balance between jobs and housing land uses. The proposed GP/CLUP contains goals, policies, and actions that address in preventing potential impacts on air quality. Such potential impacts would need to be mitigated on a project-by-project basis. No other mitigation is considered feasible to address cumulative air quality impacts.

Response to Comment No. B.6-8

The commentator is of the opinion that mitigation measures should be provided for all potentially significant impacts. Comment noted. Goals and policies (e.g., CE 12) included in the proposed GP/CLUP will facilitate continued City cooperation with the SBCAPCD and SBCAG to achieve regional air quality improvement goals and implementation of construction emission reduction strategies. The mitigation measures outlined in the Air Quality section (see Impact 3.3-3) of the EIR include all feasible standard and discretionary control mitigation measures recommended by the SBCAPCD *Scope and Content of Air Quality Sections in Environmental Documents*. Most mitigation measures identified in the SBCAPCD Scope and Content are qualitative in nature. Additionally, because the SBCAPCD does not require or recommend detailed, quantitative analysis of construction emissions, it is not possible to precisely calculate the reductions from implementing mitigation measures.

Response to Comment No. B.6-9

The commentator's opinion that the text of the measures to reduce Impact 3.7-1 is too vague has been noted. The commentator is referred to the revised discussion of policies in the FEIR that serve to lessen Impact 3.7-1, as discussed in response to comment B.6-7.

Response to Comment No. B.6-10

The commentator restates the opinion that the text of the measures to reduce Impact 3.7-1 is too vague. See response to comment B.6-7.

Response to Comment No. B.6-11

The commentator takes issue with the analysis on Impact 3.11-5, particularly the inclusion of the Venoco facility. Impact 3.11.5 discusses impacts related to industrial noise sources located within City limits. Because the Venoco facility is one of the largest industrial facilities located within in the City, it is appropriate to discuss this facility in some detail. The mention of the Venoco facility is not "indiscriminate" but rather an appropriate disclosure of a large industrial facility that generates noise. Research conducted during preparation of the noise baseline report determined that noise from the facility exceeds 65 dBA CNEL at certain locations along its property line. The EIR does not state that the Venoco facility is "not in compliance with all relevant noise regulations." Rather, it draws the reasonable conclusion that the "Venoco Ellwood facility and other commercial and industrial properties in the City may result in noise that exceeds 65 dBA CNEL at existing or planned noise sensitive land uses." The EIR does not subject the Venoco facility to any mitigation measures (none are specified for this impact). The facility would, however, be subject to the same policies that any other industrial facility in the city would be subject to.

Site 37 has been added to the list of planned development sites that could be exposed to commercial or industrial noise exceeding 65 dBA CNEL. Text has been added to the EIR indicating that Site 37 is the only site listed that has potential to be exposed to noise from the Venoco facility.

Response to Comment No. B.6-12

The commentator believes that the Class I impact conclusion is incorrect because future development is unknown at this time. The EIR presents a program-level analysis of potential noise impacts associated with implementation of the General Plan. The EIR discusses noise levels associated with primary sources of noise, including the Venoco facility, and identifies those areas where significant impacts to potential development area could occur. The level of analysis is reasonable and appropriate for a general plan, program-level analysis.

Response to Comment No. B.6-13

The commentator restates the opinion that LU 10.4b in a deficient policy as it relates to S.L 421 and that the policy is contrary to the vested rights of Venoco. See response to comment B.6-2.

Response to Comment No. B.6-14

The commentator requests specification for policy subsections that would lessen impacts at S.L. 421, per Impact 3.7-3. Based on comments received during the public review, Impact 3.7-3 is revised to include specific policy subsections that pertain to this impact. See also response to comment B.6-2 for more information regarding use of Policy LU 10.4b.

Response to Comment No. B.6-15

See response to comment B.6-2.

Response to Comment No. B.6-16

The commentator alleges that the analysis for the EMT is inadequate and incorrectly characterized. This impact associated with the EMT is correctly characterized as less than significant with the application of SE 8. SE 8 incorporates legally required policies, for example, requiring a SPCC Plan. This is appropriate for a facility that transfers and transports crude oil across shoreline habitat and near residential areas. Impact 3.7-4 is however, revised to include the specific policy subsections that pertain to this impact.

Response to Comment No. B.6-17

The commentator has requested clarification for Impact 3.7-9. The text for Impact 3.7-9 in the FEIR is revised to clarify the importance of unmitigated contaminated soils.

Response to Comment No. B.6-18

The commentator has requested specification for policy subsections that would lessen impacts to Impact 3-7.9. The text is revised in the FEIR to include the relevant policy subsections.

Response to Comment No. B.6-19

The “No Project” Alternative is defined in DEIR Section 5.3.1 as follows:

> CEQA requires that the EIR address a *No Project* alternative. In this instance, the No Project alternative is defined as the existing conditions plus the projects that had received planning approvals but were not completed prior to preparation of the Draft GP/CLUP. The interim plan policies are not part of the No Project alternative because the interim plan measures anticipate the adoption of a GP/CLUP.
>
> Buildout under this alternative would result in an additional 356 housing units, and 268,000 square feet of commercial/industrial development. No new parks, open space, or street and highway improvement projects would be constructed under this alternative.
>
> A No Project, or no plan, alternative would be illegal under State law, and even if it were not, would place the City in the position of having no comprehensive long-range policy direction, which could lead to no control over development and degradation of the environment.

The commentator alleges that CEQA requires that the No Project Alternative be defined as buildout under current plans and regulations. The City disagrees because the CEQA Guidelines Section 15126(e)(3) state:

> (A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

In the subject case, the project comprises the adoption of the City's first General Plan, rather than the revision of an *existing* Plan as referred to above in CEQA Guidelines Section 15126(e)(3). The City of Goleta did not adopt the Santa Barbara County General Plan upon incorporation and is effectively operating without an existing land use plan.

The commentator's assertion that this situation effectively renders the City as operating in a "regulatory no man's land" is simply untrue; the City is currently able to legally approve future development under interim plan measures that anticipate the adoption of a GP/CLUP. What the City cannot do is continue in this manner indefinitely without an adopted GP/CLUP (i.e., the No Project Alternative scenario), since the OPR's time extension pursuant to government code sections 65360 and 65361 expires on 12/31/2006 and cannot by law be further extended.

The commentator's objection that the DEIR never compares the City's proposed GP/CLUP to the current County General Plan is irrelevant because the baseline condition for evaluating environmental impacts in the DEIR is the existing physical land use, not the County General Plan. The subject project—the potential environmental effects of which are evaluated in the EIR—is the adoption of the City of Goleta General Plan. The commentator's request that the City adopt the County of Santa Barbara General Plan in the interim is not contemplated by the GP/CLUP.

Response to Comment No. B.6-20

See response to comment B.6-19.

Response to Comment No. B.6-21

See response to comment B.6-19.

Response to Comment No. B.6-22

See response to comment B.6-19.

Response to Comment No. B.6-23

See response to comment B.6-19.

Response to Comment No. B.6-24

See response to comment B.6-19.

Response to Comment No. B.6-25

The commentator has alleged that the No Project Alternative is internally inconsistent. Because CEQA requires analysis of a No Project Alternative (even though the No Project Alternative in this case is infeasible by definition), the City has included the No Project Alternative in the DEIR to meet the basic CEQA requirement for such analysis.

The baseline condition for evaluating environmental impacts in the DEIR is the existing physical land use, not the County General Plan. This is noted in Section 2.2.2 of the DEIR, which states:

> For purposes of this EIR, the environmental setting (existing condition) is considered to be made up of those land uses and environmental conditions now physically existing as of the date of preparation of this document.

This approach is consistent with CEQA Guidelines Section 15126.6(e)(3)(C), which states:

> After defining the no project alternative…, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved.

The "existing conditions" referenced in Section 5.3.1 of the DEIR are, in fact, the existing physical land uses. See also response to comment B.6-19.

Response to Comment No. B.6-26

The commentator expresses confusion over what scale of development is being analyzed under the No Project Alternative, specifically with respect to the number of housing units presented as buildout. This section has been revised to include the correct number of residential units that are specified under the No Project Alternative. In addition, text has been added to Section 5.4.8.1 for additional clarification.

Response to Comment No. B.6-27

The commentator expresses confusion over the number of additional housing units proposed under the No Project Alternative, and suggests that there are related inconsistencies in the Air Quality section. See response to comment B.6-25. This section has been revised to include the correct number of residential units that are specified under the No Project Alternative. In addition, text has been added to Section 5.4.8.1 for additional clarification

Response to Comment No. B.6-28

The commentator alleges that the DEIR is internally inconsistent when it concludes that the No Project Alternative is either illegal or would allow uncontrolled growth. For the subject project (adoption of the City GP/CLUP), the No Project Alternative is illegal because – by definition – it would mean that the City has no GP/CLUP. For the hypothetical scenario required to meet the CEQA requirement that such a No Project alternative be analyzed, it would not allow uncontrolled growth because the City would not have authority to approve new development without a valid GP. See response to comment B.6-25.

Response to Comment No. B.6-29

The commentator has alleged that the justification for rejecting the four Planning Alternatives is inadequate. The DEIR's discussion of alternatives rejected as infeasible meets the requirements of CEQA Section 15126.6(c), which states:

> The EIR should briefly describe the rationale for alternatives to be discussed. The EIR should also identify any alternatives that were considered by the Lead Agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the Lead Agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record.

Another reason for not considering further evaluation of the four alternatives is that the purpose of evaluating alternatives is to focus on those alternatives that are capable of avoiding or substantially lessening any significant effects of the proposed Plan. The four alternatives do not all meet this criterion (15 126.6(b)). The City's website will be updated to include a link referring readers to more detail on each alternative.

Response to Comment No. B.6-30

The commentator has alleged that each alternative was rejected for the same reason. The basis for rejecting alternatives as presented in the DEIR meets the requirements of CEQA Section 15126.6(c), which states:

> Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

DEIR Sections 5.2.1 through 5.2.4 includes a paragraph for each rejected alternative explaining the specific basis for rejection. CEQA does not require that the DEIR provide an exhaustive explanation addressing the types of peripheral questions raised by the commentator.

Response to Comment No. B.6-31

The commentator's opinion that Alternatives 1 and 2 are "analytically indistinguishable" is not supported by their descriptions. The differences between the project, No Project Alternative, Alternative 1, and Alternative 2 are addressed in Section 5.3 of the DEIR. Each alternative presents different land use scenarios in terms of the quantities and locations of future development allowed for residential, commercial, and industrial uses. Alternative 1 proposes to add 3,030 residential units and 1,215,000 sq. ft. of commercial and industrial development. Alternative 2 proposes to add 2,270 residential units and 1,111,000 sq. ft. of commercial and industrial development. Because the basic objective of the project is to adopt a long-range

development plan for the City, it is reasonable to expect that the alternatives evaluated in the DEIR will differ principally in the amount and location of development.

Response to Comment No. B.6-32

The commentator alleges that the alternatives are too similar to meet the CEQA requirements. The CEQA Guidelines Section 15126.6(c) requires that the DEIR identify a reasonable range of alternatives, but it does not require that the type and extent of environmental impacts identified for those alternatives be substantially different from each other.

Response to Comment No. B.6-33

See response to comment B.6-32. CEQA Guidelines Section 15126.6(c) requires only that the alternatives chosen for analysis feasibly accomplish *most* of the basic objectives of the project. The inability of either Alternative 1 or 2 to substantially reduce traffic impacts to Storke Road and Hollister Avenue is not sufficient reason to dismiss these alternatives from evaluation in the DEIR.

The commentator correctly observes that the City is mostly built out, leaving little land left to develop under either alternative.

Response to Comment No. B.6-34

The commentator has requested the analysis of an alternative that would propose *more* development than that contemplated by Alternatives 1 and 2 in the DEIR. Such an alternative would intuitively result in greater impacts than either Alternative 1 or 2, and therefore would not meet the criteria for alternatives selection identified in CEQA Guidelines section 15126.6(c), which states:

> The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.

Response to Comment No. B.6-35

The commentator suggests that the No Project Alternative be amended to include a reasonable buildout under the current Santa Barbara County General Plan and regulations. The baseline condition for evaluating environmental impacts in the DEIR is the existing physical land use, not the County General Plan. This is noted in Section 2.2.2 of the DEIR. See responses to comments B.6-25 and B.6-34.

Response to Comment No. B.6-36

See response to comment B.6-32.

Response to Comment No. B.6-37

The commentator suggests that a comparison matrix be provided comparing the relative impacts of all four development alternatives. The comment is noted; however, the City believes that the alternatives analysis, as presently formatted, discloses the potential environmental impacts of the alternatives with sufficient detail and clarity.

Response to Comment No. B.6-38

See response to comment B.6-33.

Response to Comment No. B.6-39

The commentator has alleged that failure to include a map of current zoning violates CEQA requirements. The baseline condition for evaluating environmental impacts in the DEIR is the existing physical land use. This is noted in Section 2.2.2 of the DEIR, which states:

> For purposes of this EIR, the environmental setting (existing condition) is considered to be made up of those land uses and environmental conditions now physically existing as of the date of preparation of this document.

CEQA does not require that existing land uses be presented on a current zoning map.

Response to Comment No. B.6-40

Existing land uses are shown in DEIR Figure 3.10-1, as observed by the commentator. In addition, DEIR Figures 5-2 and 5-3 provide a clear delineation and text description of land use changes proposed by Alternatives 1 and 2. CEQA does not require that existing land uses be presented on a current zoning map.

Response to Comments No. B.6-41 and B.6-42

The commentator repeats the concern that the policies in the GP/CLUP that are used to lessen impacts described in the DEIR infringe upon the vested rights of Venoco. Refer to response to comments B.6-1 through B.6-7 for a response to this repeated comment. The commentator also repeats concern that policy subsections used to lessen impacts are not identified in the impact discussion in DEIR Section 3.7. Refer to response to comments B.6-1 through B.6-18, noting that there are a number of FEIR text changes in Section 3.7.

Response to Comment No. B.6-43

See responses to comments B.6-19 through B.6-40.

Response to Comment No. B.6-44

See response to comment B.2-4.