



May 14, 2008

Jackie Campbell
Environmental Review Committee
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, California 93013

RE: Proposed Final Environmental Impact Report for the Venoco Paredon Project (State Clearinghouse # 2006051126)

Dear Ms. Campbell:

The following comments on the Proposed Final Environmental Impact Report (FEIR) for the Venoco Paredon Project are submitted by the Environmental Defense Center (EDC) on behalf of our clients, the Carpinteria Valley Association (CVA), Citizens for the Carpinteria Bluffs (CCB), Get Oil Out (GOO!), and the Sierra Club Los Padres Chapter.

CVA is a non-profit public interest group comprised of area residents who participate in issues that affect the community of Carpinteria, including land use issues and issues affecting water use, habitats, open spaces and the quality of life in Carpinteria. CCB is a non-profit organization dedicated to preserving the Carpinteria Bluffs as open space, and ensuring that the Bluffs remain an area for active and passive recreation. GOO! is a non-profit corporation whose mission is to protect the natural environment and beauty of the Santa Barbara Channel from the adverse effects of oil development. The Sierra Club Los Padres Chapter encompasses everything from National Forest Wilderness areas of the San Ynez Mountains to the Channel Islands National Park in the Santa Barbara Channel. The Chapter's activities range from traditional Sierra Club concerns with forest management and wilderness to the urban and growing problems with land use and energy development. EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast.

We urge the Environmental Review Committee to recommend that the City of Carpinteria deny certification of the proposed FEIR. Although the FEIR addresses a

number of the points we raised in comments on the Draft EIR, and we appreciate the addition of several proposed mitigation measures, the report still does not adequately analyze certain impacts of the proposed Project, including impacts from noise and vibration, greenhouse gas (GHG) emissions and impacts to water quality.

The environmental impact report for this proposed Project should provide full disclosure of critical data to decision-makers. If the Carpinteria City Council ultimately decides to approve the proposed Project, and because the FEIR identifies one or more significant and unavoidable impacts from the proposed Project, the Council will have to adopt a Statement of Overriding Concerns under Section 15093 of the California Environmental Quality Act (CEQA) Guidelines. The Statement of Overriding Concerns must supported by a series of findings that demonstrate, based on substantial evidence in the record, that the economic benefits of the Project will outweigh its adverse environmental effects. Although the 11 Class I impacts already identified in the FEIR demonstrate that the benefits of the proposed Project will not outweigh its adverse effects, CEQA requires that all potentially significant impacts be considered fully by the decision-makers.

This FEIR identifies several impacts as “Class II” (not significant) that should properly be considered “Class I,” significant and unavoidable. These additional Class I impacts should therefore be weighed in the calculations that may lead to a decision of whether to approve or deny the project.

The FEIR also discusses a range of economic returns that the Project may experience. These economic returns would also inform the calculus of a Statement of Overriding Concerns, and yet they are not described with enough specificity to satisfy CEQA Section 21082.1(c)(2), which requires that a lead agency “circulate draft documents that reflect its independent judgment.” Economic indices in the FEIR are speculative and based solely on information provided by the Project applicant.

Similarly, CEQA Section 21081.5 requires that the feasibility of proposed mitigation measures should be supported by “substantial evidence in the record.” Many of the proposed mitigation measures in this FEIR rely on self-monitoring and self-enforcement by the Applicant. Venoco and the CPF facility have been subject to numerous citations and cleanup or abatement orders both recently and over the years. Some violations have been ongoing, and this pattern does not indicate an effective degree of self-regulation at the CPF. Therefore, the feasibility of any mitigation measure that relies on Venoco to self-report or self-correct is not supported by substantial evidence in the record.

The following sections will be addressed in detail below:

2.0 Proposed Project Description.

3.0 Cumulative Projects.

4.1 Safety and Risk of Upset/Hazardous Materials.

4.2 Air Quality.

4.3 Marine Mammals.

4.5 Onshore Biological Resources.

4.6 Onshore Water Resources.

4.9 Land Use.

4.10 Noise and Vibration.

4.15 Visual Resources and Aesthetics.

5.0 Alternatives Analysis.

1.0 INTRODUCTION

1.1 Proposed Project Objectives

Section 15124(b) of the CEQA Guidelines requires that the statement of objectives “should include the underlying purpose of the project,” and it provides that “[a] clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR....” Under CEQA, a project objective cannot be so narrow as to unduly restrict the range of alternatives.¹

The FEIR sets forth the following objectives:

The main objective of the proposed Paredon Project is to efficiently and effectively develop oil and gas reserves from the Paredon and associated fields and to sell the oil and gas production to help meet the energy demand of the State of California. If implemented, this project would provide an additional supply of crude oil and natural gas to California. It is also the Applicant’s objective to develop the oil and gas resources from an onshore location, already in use as an oil and gas facility, using extended reach drilling, which would serve to consolidate operations and

¹ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 735-737 [270 Cal.Rptr. 650]. NEPA cases are also instructive on this point. See, for example, *Save the Niobara River Association, Inc. v. Andrus*, 483 F.Supp. 844 (D.Neb. 1977) (court rejected action by federal agency in defining project objective for a dam and reservoir too narrowly, and refusing to consider water conservation as an alternative); see also *City of Carmel-by-the-Sea v. Dept. of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997).

minimize environmental impacts. The Applicant has also stated that one of the objectives of the project is to provide increased royalty and tax revenue to the State and the City of Carpinteria and to provide a reasonable rate of return to investors. (FEIR 1-3.)

In other words, Venoco's objective is to produce oil and gas from the Paredon Field, using an onshore location in Carpinteria. This objective is overly narrow and precludes the consideration of a "reasonable" range of alternatives. (See discussion below regarding alternatives.) In fact, it is so narrow that only the proposed Project can meet the objective.

1.2 Agency Use of the Document

California State Lands Commission (CSLC)

The FEIR should state why Venoco has applied to the CSLC for a modification of the royalty agreement for its leases from a variable to a flat rate. It should be possible to estimate the effect that this modification will have on the collection of royalties by the State and the City of Carpinteria. Because this information will be critical to a Statement of Overriding Concerns, the FEIR should not be certified until the issue is addressed.

2.0 PROPOSED PROJECT DESCRIPTION

Potential revenues from the Project are mentioned on page 2-1. The discussion of royalty figures throughout the FEIR, however, is misleading and has raised genuine concern and confusion within the Carpinteria community. For example, royalty income is consistently described as "approximately \$15 to \$108 million over the life of the project." (FEIR 2-1.) The maximum estimate of \$108 million is referred to repeatedly as a reasonable expectation, and this number was also highlighted at the City's June 26, 2007, public workshop; however, achieving the *minimum* estimate of \$15 million is 90% probable, according to other sections of the FEIR. Achieving royalties of up to \$108 million is only 50% probable – this number should be treated as an outlier, and the "benefits" associated with the Project should be scaled back accordingly. The FEIR should also acknowledge the relative comparison of costs and benefits if the Project does not proceed with full production.

2.4 Current CPF Facilities and Operations

2.4.3.2 CPF Oil Shipping and Destination

The FEIR makes multiple references to internal pipeline inspections conducted by Venoco or its subsidiary. There has been a history of inadequate self-reporting at the

CPF.² Page 249 of the FEIR Response to Comments states that: “The extent of administrative corrections is not known. A request has been submitted to the CSFM.” The data obtained from CSFM should be included in the FEIR before it is certified. Any mitigation measures that require self-reporting by the Project Applicant should be modified to include oversight by the City and/or other responsible parties.

2.5 Proposed Paredon Project

2.5.1 Drilling

A permanent H₂S gas detection system should be part of the proposed Project.

2.5.3 Oil and Gas Processing Operations

2.5.3.6 Oil Storage

Given the problems associated with tank and Basin 861, and the outstanding directions from Regional Water Quality Control Board (RWQCB), tank 861 should be removed as soon as possible, regardless of whether the Project moves forward.

2.5.4 Facility Support and Utility Systems

Buildings

Page 251 of the FEIR, Response to Comments, states that drilling would require temporary buildings, but “there are no expected construction and demolition impacts from these trailers.” However, these structures may cause other, non-construction or demolition impacts, such as impacts from increased storm water runoff, that should be considered in the FEIR.

2.5.5 Pollution Prevention

Storm Water Collection

Page 251 of the FEIR, Response to Comments, indicates that the existing storm water collection system at the CPF is adequate to handle increased runoff. However, this information is based on calculations from Venoco. Venoco has violated storm water runoff discharge monitoring and reporting requirements in the past,³ and therefore, this data is suspect. Even though the City may be charged with ensuring compliance of mitigation measures related to storm water runoff, these mitigation measures are still inadequate in light of recent history at the CPF.

² See, e.g., Letter from Michael Broughton, SBAPCD, to Pat Corcoran, Venoco (May 21, 2007) (“Notice of Violation (NOV) #8796 for Failure to Submit an Accurate Air Toxics Emission Inventory Report (ATEIR)”).

³ See, e.g., letter from Roger W. Briggs, RWQCB, to Stephen A. Grieg, Venoco (August 17, 2006).

Site Lighting and Proposed Visual Mitigations

We reiterate a comment made on the Draft EIR – Project landscaping should utilize only native vegetation. If native vegetation is unable to provide adequate concealment of the facility, this should be accepted as un-mitigable and discussed as a heightened impact under the Visual Resources section of the FEIR.

3.0 CUMULATIVE PROJECTS

The FEIR states that the “cumulative analysis looks at the changes in the environment that result from the incremental impact of development of a proposed project and other reasonably foreseeable projects that have not been included in the environmental setting.” (FEIR 3-1.) In our comments on the Draft EIR, we pointed out that CEQA defines cumulative impacts as the “incremental impact of the project when added to other closely related *past, present, and reasonably foreseeable probable future projects.*” (Emphasis added, citing CEQA Guidelines §15355.) Hence, we criticized the Draft EIR for failing to include past and present projects in the cumulative impact analysis.

In its Response to Comments section at page 252, the FEIR restates language from the Draft EIR and further points out that: “As such, impacts of past and present projects are already considered in the analysis. Reasonably foreseeable projects were included in the cumulative analysis.” What is unclear from this statement is how the FEIR analyzes and discloses the full cumulative impacts of the project, including both past and present projects, as well as reasonably foreseeable probably future projects.

4.0 ENVIRONMENTAL ANALYSIS

4.1 Safety and Risk of Upset/Hazardous Materials

Comments on this section will also address information and analyses contained in FEIR Appendix E.

4.1.5.3 Proposed Project Impacts

Impact R.3 should be considered Class I, because the Applicant has demonstrated an inability or unwillingness to perform adequate site inspections and corrections. The proposed Mitigation Measures R.3-1 and R.3-2 are likewise inadequate and must be revised to ensure greater oversight.

4.2 Air Quality

4.2.1.3 Current Facilities Baseline Emissions

Hazardous Pollutant Emissions

The FEIR Response to Comments section, on page 256, indicates that the stack height of IR#1 was raised from 15.7 feet to 29 feet. However, on page 4.2-14, the FEIR states that this measure has not been implemented. Information regarding the stack height and all RRAP issues should be included in the FEIR, and any inconsistencies that would affect impact analyses should be corrected before the document is certified.

The FEIR Response to Comments section, at page 122, explains that different methods were used to calculate NO_x emissions from the Draft EIR to the FEIR. The different calculations used for the FEIR indicate that NO_x emissions will be below significance thresholds. This appears to be an attempt to mitigate Project impacts on paper. The FEIR should use a consistent method for assessing NO_x emissions, and that method should be conservative so as to adequately protect human health and the environment.

Mitigation Measures designed to prevent and/or correct for occurrences of sour gas are inadequate under CEQA Guidelines section 15126.4, which requires that mitigation measures be discussed in specificity and not deferred. (FEIR 4.2-36.) SBAPCD has requested “a full description and technical evaluation” of Applicant-proposed measures.⁴ The FEIR should be revised to incorporate this information.

4.2.6 Climate Change (i.e., Global Warming)

In response to our comments on the Draft EIR, the proposed FEIR includes a more lengthy discussion of the projected greenhouse gas (GHG) emissions and climate change impacts from the Project; the result, however, is the same – the FEIR fails to recognize the significant effect of the emissions and fails to require adequate mitigation measures. As noted herein, it is feasible for the City to both assess the significance of the issue and require adequate mitigation.

4.2.6.1 Background

Calculation of GHG Emissions

We agree with the statement in the FEIR that “a ‘lifecycle’ type analysis must be conducted to fairly evaluate the GHG emissions associated with the entire ‘raw material’ to ‘end use’ cycle and the proposed project’s impacts on the cycle.” (FEIR 4.2-39.) The FEIR describes the “indirect emissions” associated with the Project as including emissions from vehicles delivering materials and equipment and use of electricity. (*Id.*)

As noted in the attached report by Climate Mitigation Services (CMS), the indirect emissions should also include the “end use” emissions resulting from the

⁴ Broughton, *supra* note 2.

combustion of the oil and gas.⁵ CMS also includes indirect emissions from the refining of the crude oil.

4.2.6.4 Project Contribution of GHG Emissions

Baseline Determination Uncertainty

The FEIR states that the baseline is uncertain because oil and gas produced from the Paredon project may displace other sources of oil and gas. (FEIR 4.2-48.) Under CEQA, however, the environmental setting, from which impacts are assessed, consists of “the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published.”⁶

The discussion in the proposed FEIR confuses the “baseline” with the “No Project” alternative. Under the “No Project” alternative, the City may consider what would happen if the project is not approved; in this case, the City could determine the impacts of either (a) no oil and gas development, and an accompanying decrease in consumption; or (b) securing a commensurate amount of oil and gas from other sources.⁷ The “No Project” alternative is specifically “*not* the baseline for determining whether the proposed project’s environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline.”⁸

Accordingly, the baseline in the FEIR must consist of the existing physical conditions, without the increased emissions from the Project.

Significance Threshold Uncertainty

The FEIR states that it is not possible to determine the significance of the Project’s impacts because the agencies with jurisdiction over air quality regulation and GHG emissions have not yet established thresholds or other protocols for assessing GHG emissions and climate change. (FEIR 4.2-49.) Under CEQA, however, the lack of an established threshold does not relieve the City of its obligation to determine whether a project will result in significant impacts. Instead, the City must determine the significance of this Project’s impact on the environment based on scientific and factual data.⁹

⁵ Heede, Rick, Climate Mitigation Services, *Venoco Paredon Oil & Gas Project: GHG Emissions*, (April 28, 2008).

⁶ CEQA Guidelines §1525(a).

⁷ CEQA Guidelines §15126.6(e)(2).

⁸ CEQA Guidelines §15126.6(e)(1), emphasis added.

⁹ CEQA Guidelines §15064(b). See also §15126.2(a), which describes the factors to be considered by a lead agency in assessing the impact of a proposed project on the environment. This section does not require, or even mention, the need to consider established thresholds of significance. Section 15064.7 encourages adoption of thresholds of significance, but does not require them.

In the case of GHG emissions and climate change, it is well established that global climate change is real, that human activity is a substantial contributing factor, and that current levels of GHG emissions must be decreased to avoid further harm.¹⁰ In California, the California Global Warming Solutions Act (AB 32) requires that GHG emissions shall be reduced to 1990 levels by 2020. This requirement requires a 25% reduction in GHG emissions from 2006 levels. In addition, Executive Order S-3-05 requires that GHG emissions in the state must be reduced to 80% below 1990 levels by 2050. Leading scientists now state that such goals are likely inadequate and that “humanity must aim for an even lower level of GHGs.”¹¹

Accordingly, *any* increase in GHG emissions must be considered significant.¹² This view is consistent with the “zero-emission threshold” discussed in CAPCOA’s paper on “*CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act.*” According to CAPCOA:

A zero threshold approach is based on a belief that, 1) all GHG emissions contribute to global climate change and could be considered significant, and 2) not controlling emissions from smaller sources would be neglecting a major portion of the GHG inventory.

CEQA explicitly gives lead agencies the authority to choose thresholds of significance. CEQA defers to lead agency discretion when choosing thresholds. Consequently, *a zero-emission threshold has merits.*¹³

Contrary to the statement in the FEIR, the fact that the Project will generate GHG emissions, and that such emissions will contribute to climate change, is not speculative.

¹⁰ *Climate Change 2007: The Physical Science Basis, Summary for Policymakers*. Fourth Assessment Report of the IPCC. February 2007.

¹¹ Hansen, J. et al., *Targe Admospheric CO₂: Where Should Humanity Aim?* (April 2008) available at <http://www.columbia.edu/~jeh1>. James Hansen, the premier NASA climatologist, now concludes that “[i]f humanity wishes to preserve a planet similar to that on which civilization developed, paleoclimate evidence and ongoing climate change suggest that CO₂ will need to be reduced from its current 385 ppm to at most 350 ppm.” An emissions pathway whereby developed countries would reduce emissions to 80% below 1990 levels as envisioned under Executive Order S-3-05 would cap atmospheric concentrations of CO₂ at approximately 450 ppm. See, e.g., UNDP, *Human Development Report 2007/2008, Fighting climate change: Human solidarity in a divided world* (2007) at 46-50 available at <http://hdr.undp.org/en/reports/global/hdr2007-2008/chapters/>

¹² See letter from Edmund G. Brown, California Attorney General, to Maureen Parks, Contra Costa County Planning Commission, regarding the ConocoPhillips Rodeo Refinery Expansion project and Final Environmental Impact Report, May 8, 2007: “the requirements of AB 32 create a point of reference for determining significance. Because the state is committed to a 25% decrease in GHG emissions, anything that produces a large increase clearly could be an obstacle to complying with AB 32 and should be considered a potentially significant cumulative impact.”

¹³ CAPCOA, *CEQA & Climate Change*, January 2008, p. 27, emphasis added. Note that CAPCOA also discusses other options for dealing with GHG emissions, including the “No GHG Threshold” option and “Non-Zero Thresholds.”

In fact, the FEIR discloses specific increases in GHG emissions that will result from the Project.

Project Direct and Indirect GHG Emissions / Crude Oil and Natural Gas End-Use / Crude Oil Transportation Lifecycle and GHG Emissions Impacts

The FEIR analyzes direct and indirect GHG emissions related to the proposed Project. As noted above, however, indirect emissions are limited to offsite vehicle emissions and electrical generation and do not include emissions from refining operations and end use.

The EDC commissioned CMS to review the impact analysis in the FEIR, and to provide an independent professional evaluation of the emissions that would be generated by the Project. As noted in the attached report, CMS noted the following inadequacies in the FEIR analysis of greenhouse gas emissions from the Project:

- The FEIR under-estimates emissions from electricity demand (CMS at 4);
- The FEIR fails to include emissions caused by commuting by Paredon employees (CMS at 4);
- The FEIR fails to consider end-use emissions, e.g. from refining and combustion (CMS at 5, 7-9); and
- The methane emission rate used in the FEIR is grossly understated and is not based on methane emission inventory protocol (CMS at 6).

The result of these deficiencies is that the emissions from drilling and operations as disclosed in the FEIR significantly understate actual expected emissions.

The CMS annual emissions estimate is 46,856 tons CO₂e/yr, compared to 35,573 tons CO₂e/yr in the FEIR, or an approximately 30% increase in predicted emissions. (CMS at 7.) Over the expected life of the Project, CMS predicts 703,110 tons CO₂e, whereas the FEIR predicts 533,951 tons CO₂e. (CMS at 9.)

The FEIR includes emissions from crude oil and natural gas end-use, but states that there would be “no net increase in GHG emissions” because consumption would occur whether or not the Project is approved. (Proposed Final EIR 4.2-52.) As stated above, this analysis may be appropriate under the “No Project” alternative, but not as compared to the existing baseline. CMS predicts that the indirect end-use emissions from the Project will actually be less than that predicted in the FEIR. The notable deficiency in the FEIR, however, is that the FEIR does not consider these emissions to be relevant, whereas CMS does.

Similarly, the FEIR fails to consider emissions from refining to be an indirect impact of the Project, on the theory that “production of crude oil from the proposed project could displace crude oil from foreign sources.” (Proposed Final EIR 4.2-53.) Again, this statement ignores the clear mandate of CEQA that impacts be analyzed in comparison to the existing baseline. In any event, there is no evidence that developing this oil will result in a reduction in oil imports. For example, many refiners will continue to purchase imported oil because they own the oil and the tankers used for transportation. There is no credible evidence to support the claim that this project will displace foreign imports and thereby result in fewer greenhouse gas emissions. “To facilitate CEQA’s informational role, the EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions.”¹⁴

Because the FEIR deliberately avoids a finding that the GHG emissions from the Project would result in any significant effects, the report fails to analyze the extent and nature of those impacts. As such, the FEIR omits any discussion about how GHG emissions result in physical impacts on the environment. CEQA requires that EIRs must contain a “detailed statement” of [a]ll the significant effects on the environment of the proposed project.”¹⁵

In addition, an EIR must analyze and disclose the irreversible effects.¹⁶ The emission of greenhouse gases and resulting climate change will cause irreversible harm in California and around the world.¹⁷ The IPCC, Union of Concerned Scientists, and the California Climate Change Center have published several studies that identify how climate change will affect the environment.¹⁸ These impacts include an increase in water temperatures, rise in sea level, reduction of the Sierra snowpack, increase in intensity of storms, changes in ecosystems, and increases in heat waves, ozone formation, and the potential for wildfires.

Finally, the FEIR fails to analyze how the Project will itself be impacted by climate change. Sea level rise, increased flooding and other changes may adversely impact this coastal industrial activity.

¹⁴ *Concerned Citizens of Costa Mesa v. 32nd District Agricultural Assoc.* (1986) 42 Cal.3d 932, 935 [231 Cal.Rptr. 751].

¹⁵ Cal. Pub. Res. Code §21100(b)(1).

¹⁶ Cal. Pub. Res. Code §21100(b)(2)(B).

¹⁷ Baer, Paul and Michael Mastrandrea. 2006. “High Stakes: Designing Emissions Pathways to Reduce the Risk of Dangerous Climate Change.” Report by the Institute for Public Policy Research, available at www.ippr.org; Cayan et al. 2006. “Our Changing Climate – Assessing the Risks to California,” available at http://www.climatechange.ca.gov/biennial_reports/2006report/index.html.

¹⁸ *Climate Change 2007: The Physical Science Basis, Summary for Policymakers*, supra. Union of Concerned Scientists, *California Global Warming Impacts and Solutions* (2006), available at http://www.ucsusa.org/clean_california/ca-global-warming-impacts.html. California Climate Change Center reports include: Baldocchi and Wong, 2006; Battles et al., 2006; Cavagnaro et al., 2006; Cayan et al., 2006a; Cayan et al., 2006b; Cayan et al., 2006c; Drechsler et al., 2006; Franco and Sanstad, 2006; Fried et al., 2006; Gutierrez et al., 2006; Joyce et al., 2006; Lenihan et al., 2006; Luers et al., 2006; Luers and Moser, 2006; Medellin et al., 2006; Miller and Schlegel, 2006; Moritz and Stephens, 2006; Vicuña, 2006; Vicuña et al., 2006; Westerling and Bryant, 2006.

Project Contributions to Cumulative GHG Emissions

The FEIR acknowledges that global climate change is, “by definition, a significant cumulative environmental impact,” but concludes that “it would be speculative to determine if the potential GHG emissions associated with the proposed project would or would not contribute considerably to this significant cumulative impact.” (FEIR 4.2-53, 53.)

Under CEQA, cumulative impacts are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.”¹⁹ The fact that the impact from the project may by itself not seem significant does not detract from the fact that in combination with other projects the impact may be significant. As the CEQA Guidelines state, “[t]he cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.”²⁰

This principle was discussed in detail in *Communities for Better Env't v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120 [126 Cal.Rptr.2d 441]. In that case, the court pointed out that “the greater the existing environmental problems are, the lower the threshold for treating a project’s contribution to cumulative impacts as significant.” It would be difficult to find a greater existing environmental problem than global climate change.

In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721 [270 Cal.Rptr. 650], the court held that incremental air emissions should be considered cumulatively significant when considered in combination with emissions from other projects, given the already heavily-impacted nature of the airshed. Similar to the cumulative air quality situation in *Kings County*, greenhouse gas emissions in California and worldwide are “already heavily impacting” our global climate and environment. As noted above, scientists agree that current levels of GHG emissions are too high to be sustainable, and that we must actually decrease such levels dramatically to avoid disaster. Therefore, any contribution to the cumulative impacts of global climate change must be considered significant.

As noted in the NEPA context, “[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.” *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 550 (9th Cir. 2007)²¹; see also *City of Los Angeles v. NHTSA*, 912 F.2d 478, 501 (D.C. Cir. 1990) (“we cannot afford to ignore even modest

¹⁹ CEQA Guidelines §15355.

²⁰ CEQA Guidelines §15355(b).

²¹ Judicial interpretation of NEPA is persuasive authority for interpreting CEQA, since CEQA was modeled on the federal act. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86, fn. 21 [118 Cal.Rptr. 34].

contributions to global warming”). The cumulative analysis is just as important in CEQA as in NEPA, and the FEIR should include a full analysis of the impacts of greenhouse gas emissions on climate change.

4.2.6.5 Recommended Mitigation Measures

Because the FEIR fails to find a significant impact, it does not require implementation of mitigation measures that would avoid or substantially lessen the Project’s GHG emissions. Instead, the report includes “recommended” mitigation measures that are vague, non-binding, and meaningless. Moreover, there is no attempt made to analyze the effectiveness of these measures in reducing or avoiding the Project’s impacts.

According to CEQA, “[t]he core of an EIR is the mitigation and alternatives sections.”²² Mitigation measures must be known, effective, feasible and enforceable.²³ In this case, the FEIR lists measures without *any* analysis, so there is no means for the public or decision-makers to determine whether they are feasible or would effectively lessen the Project’s impacts. The FEIR must analyze the capacity of specific measures to reduce the impacts of the Project’s greenhouse gas emissions.

When mitigating GHG emissions, the first approach should be to mitigate impacts on-site through energy conservation and efficiency, technology improvements, etc. Once all feasible on-site mitigation has been adopted, a mitigation fee should be imposed to offset any remaining emissions from the project.²⁴ According to CEQA, a project’s contribution to a cumulative impact can be mitigated “if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact.”²⁵

EDC recently negotiated a settlement agreement with PXP, the proponent of the Tranquillon Ridge Oil and Gas Development Project in the County of Santa Barbara, which effectively mitigates and offsets all of the GHG emissions from the project. The agreement includes the following specific and enforceable measures:

- Mandatory implementation of feasible emission reduction measures identified through an independent energy efficiency and GHG emissions audit;

²² *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564-565 [276 Cal.Rptr. 410].

²³ 15126.4(a)(2); *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App. 4th 1252, 1259 [100 Cal.Rptr. 2d 301]; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 [57 Cal.Rptr. 3d 663].

²⁴ See, for example, CAPCOA’s report on *CEQA & Climate Change*, supra, 79-80: “It may be more cost-effective to reduce as much GHG on-site as feasible (economically and technologically). Then the proponent would pay into a “GHG retrofit fund” to reduce equivalent GHG emissions off-site.” Not only may on-site mitigation be preferable from a cost standpoint, but emission reductions on-site may be easier to quantify and verify, and should be the first choice for mitigation.

²⁵ CEQA Guidelines §15130(a)(3).

- Funding of offsets to compensate for any residual direct emissions from the project, thereby resulting in zero net emissions; and
- Additional funding to offset some of the indirect emissions.

These measures are specific and measurable, using performance based standards, and will result in no net GHG emission increases from direct project operations, as well as a decrease in indirect emissions associated with the project. This agreement demonstrates that it *is* feasible to mitigate GHG emissions from proposed projects.

In conclusion, the FEIR must analyze and disclose the direct, indirect and cumulative impacts of GHG emissions associated with the Project, and must identify specific, measurable and enforceable measures to mitigate such impacts.

4.3 Marine Mammals

Page 4.3-29 gives a description meant to fix a baseline of high disturbance at the seal rookery. This description merely illustrates, however, how susceptible the seals are to disturbance.

The FEIR acknowledges that current lighting on the pier and at Venoco's existing CPF exceed City standards. (FEIR 4.3-39.) Proposed Mitigation Measure MM.1-1 describes the elimination and minimization of offending light sources. An additional component of MM.1-1 should be: "*All lighting at the project site and CPF will conform to City of Carpinteria lighting standards.*" If lighting at the project or associated facilities continues to exceed City standards, this impact should be considered Class I, significant and unavoidable.

Impact # MM.2 should be revised to indicate Class I residual impacts. Even though the existing crane on Casitas Pier is larger in the foreground than the crane used to demonstrate drill rig height, the "rig" crane is significantly higher than "other features" in the area. This impact has not been adequately addressed in the FEIR Response to Comments section on page 259.

The following points are reiterated from our comments on the Draft EIR – they also have not been addressed in the Response to Comments section of the FEIR:

MM.2-1 addresses drill rig silhouette – movement of the drill rig should also be addressed as a potential cause of disturbance. Movement of vehicles and pedestrians on the bluff have been demonstrated to cause disturbances at the seal colony – the FEIR should clearly state whether the drill rig would have visible moving parts, and what the impacts of those movements may be on the seal population.

MM.2-1 also states that “the drill rig shall be painted in such a way as to be minimally conspicuous.” Painting the drill rig is not an adequate mitigation measure to protect marine mammals, and especially seals – seals are color-blind and would not register a painted drill rig as being any different than a non-painted drill rig.

Page 4.3-46 of the FEIR states that “a noise abatement study would be performed by the Applicant if the Project is approved.” Because of the sensitive nature of the seal sanctuary and surrounding areas, any mitigation measures that rely on the noise abatement study are too speculative until that data is analyzed. The California Coastal Commission has also requested the results of a noise abatement study, in that agency’s August 9, 2007, comments on the Draft EIR at page 4. The FEIR should not be certified until the study has been performed, verified by a qualified third party, and analyzed in the impacts section of the document.

Similarly, the NOAA EIS for noise impacts, or data from this study, should be used in this FEIR, in order to ensure the adequate protection of marine mammals. Existing data is more than 10 years old, and may not be sufficient to describe impacts.

4.5 Onshore Biological Resources

4.5.1.2 Wetlands

We reiterate comments that are also echoed in the August 9, 2007, letter from the Coastal Commission – a detailed wetlands delineation should be performed for the Project site to ensure that all wetlands are mapped accurately. The FEIR should not be certified until the delineation has been performed.

The FEIR states: “A few larger willows were present within the containment area on the south side of tank 861.” (FEIR 4.5-3.) The presence of willow trees outside of the “observed” wetland area indicates that the total acreage of existing wetlands may be greater than stated in the FEIR. A detailed wetlands delineation should be performed to address this issue.

4.5.1.3 Wildlife

The FEIR states that surveys will be conducted for raptor foraging in the CPF and in the windrows. This is an environmental setting issue with possible implications for impact assessment and policy consistency. (FEIR Response to Comments, 261.) The California Coastal Commission requires certain raptor survey protocols,²⁶ such as conducting site visits during different times of the day and night. These surveys, and all information pertaining to the existing biological baseline, should be conducted prior to certification of the FEIR. The Project has the potential to impact sensitive species,

²⁶ Text from these survey protocols is attached to this letter.

including raptor species in the Project area, and these impacts should be assessed and mitigated as necessary.

4.5.1.4 Special Status Species and Other Sensitive Biological Resources

The FEIR Response to Comments section, on page 262, states: “Although the EIR preparers have not described each of the suggested areas as ESHA, each of these resources and the project-related impacts are currently discussed and mitigated for in the EIR.” Coastal Act section 30240 states: “Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.” Any potential ESHA on or near the Project site, which may be affected by the Project or the Project’s cumulative impacts with existing conditions, must be described in detail, and specific mitigation measures to protect the ESHA should be included in the FEIR. The FEIR should not be certified until this analysis has been performed.

4.5.4 Proposed Project Impacts and Mitigation Measures

Impact # OB.1

Given Thresholds A, C, D and E, the definition of “substantially” on page 4.5-12, and the potential impacts to wetlands, possible removal of willows, direct or indirect impacts from vibrations, light and noise on the Monarch site, possibly the kite roost and possibly raptors (surveys appear inadequate), and given the mitigation measures proposed in the FEIR, Impact OB.1 should be a Class I or II impact, and the FEIR should be revised accordingly. Impacts to onshore water resources are classified as Class II. Because of the potential impacts to surface water quality, species that are dependent on non-degraded water are also at risk. These two impacts should be considered connected.

Mitigation Measure OB.1-1c

Proposed Mitigation Measure OB.1-1c states: “If the drainage ditches support wetland vegetation at the time of the survey, a 100-foot minimum setback shall be required.” Earlier in the FEIR, on page 4.5-4, it is stated that: “Operations of the site have been modified to ensure that wetland conditions, including standing water and wetland vegetation, do not recur within the containment area.” First, if any portion of the site has the potential to be a naturally occurring wetland, these maintenance activities may be unauthorized conversions of wetlands. Regardless, Mitigation Measure OB.1-1c is inadequate and to a degree unenforceable, if the Project Applicant has the ability to clear wetland vegetation – the Applicant could thereby ensure that 100-foot setbacks are not required.

The FEIR should contain a detailed delineation of all wetlands on the Project site or that may be affected by the Project. 100-foot minimum setbacks should then be

defined around each wetland area. The FEIR cannot be certified until these components are realized.

Impact # OB.2

Page 4.5-13 refers to aquatic reptiles, but the FEIR does not refer to any specific aquatic reptiles. If 2-striped garter snakes or western pond turtles (both state species of concern) are present and potentially affected, this impact should be disclosed and classified as Class I.

Impact # OB.3

The analysis of Impact # OB.3 should explain in detail the potential for impacts to sensitive species.

Other impact analyses and mitigation measures the FEIR should include:

Biological surveys, such as those required by Mitigation Measure Bio OB.1-1b, should be performed prior to certification of the FEIR. CEQA requires consideration of the existing biological baseline, and that baseline cannot be determined without appropriate surveys.

4.6 Onshore Water Resources

In addition to the questions and concerns detailed below, EDC incorporates by reference comments submitted on behalf of Santa Barbara Channelkeeper, which address water quality issues in the FEIR.

4.6.1.3 General Water Quality

Impact OWR.2 should be considered Class I, because Venoco cannot demonstrate an ability to adhere to prevention and mitigation plans addressing surface water quality.

Similarly, Mitigation Measure OWR.2-1 is infeasible and should be revised to reflect Venoco's historic non-compliance. The proposed SWPPP should be included for discussion in the FEIR.

4.6.5 Cumulative Impacts and Mitigation Measures

As discussed above, Mitigation Measure OWR.2-1 is infeasible and should be revised. Without Mitigation Measure OWR.2-1, cumulative impacts would be significant.

4.9 Land Use

There is a distinction between a “coastal-dependent” industry, and an industry that is “coastal-related.” In this case, the bulk of the Project does not necessarily have to lie within the Coastal Zone. A portion of pipe or related drilling materials may have to pass through the Coastal Zone, but this does not make the Project as a whole “coastal-dependent.” There may be inland locations that are more suitable for the type of facility proposed by the Applicant, and that would still provide adequate access to or through the Coastal Zone, while avoiding sensitive coastal resources. The FEIR should acknowledge that this Project is not “coastal-dependent” and revise the Alternatives analysis and various land use issues accordingly.

The FEIR fails to include a complete assessment of the Project’s inconsistencies with the City’s GP/LCP. These additional inconsistencies must be addressed before the FEIR is certified.

4.9.7.1 City of Carpinteria General Plan/Local Coastal Land Use Plan

The proposed Project would be inconsistent with Policy LU-1d. Despite proposed mitigation measures, the proposed Project land use would not be compatible with open space/recreation resources and it would be detrimental to those resources.

The proposed Project would be inconsistent with Policy CDS6-b. View corridors of the ocean and bluff top edge, in addition to views of the mountains, would be obstructed.

The proposed Project would be inconsistent with Policy CDS6-d. The proposed Project would not be “respectful of the natural character of the Bluffs” nor would it “enhance existing native plant communities” or “environmentally sensitive habitat areas.” All impacts associated with these features and resources are detrimental.

The existing CPF and the proposed Project are/would be inconsistent with Policy CDS6-e, addressing Project lighting.

The proposed Project would be inconsistent with Policy OSC-1a. ESHA would potentially be affected by the proposed Project, even if it is not located within the Project boundaries.

The proposed Project would similarly be inconsistent with Policy OSC-1b.

The proposed Project would be inconsistent with Policy OSC-2e. Project-related pipelines that cross riparian habitat – for example, Carpinteria Creek – would potentially impact that riparian habitat.

The proposed Project would be inconsistent with Policy OSC-2f. The Chumash people have identified the Bluffs as a cultural site which would be affected by the proposed Project.

The proposed Project would be inconsistent with Policy OSC-2h. There is no conceivable way that a 140 to 175-foot drilling rig would not significantly degrade viewsheds on the Bluff.

The proposed Project would be inconsistent with Policy OSC-5a. Harbor seal hauling grounds would likely be disturbed by the proposed Project.

The proposed Project would be inconsistent with Policy OSC-10a. As discussed above, Mitigation Measure OWR.2-1 is not feasible given historic and ongoing water quality violations and reporting deficiencies at the proposed Project site.

For similar reasons, the proposed Project would be inconsistent with Policy OSC-10c.

For reasons discussed above, the proposed Project would be inconsistent with Policy S-6b. Hazardous discharge and runoff already occurs or has occurred at the proposed Project site, and there is no reasonable guarantee that the pattern will not be repeated.

The proposed Project would be inconsistent with Policy S-6e. Offshore or remote project alternatives are discussed in the FEIR and would achieve more consistency with Policy S-6e.

4.9.7.3 Coastal Act

The proposed Project would be inconsistent with California Public Resources Code Section 30240. ESHA would potentially be affected by the proposed Project, which is not compatible with “the continuation of such habitat areas.”

The proposed Project would be inconsistent with California Public Resources Code Section 30251. There is no way for a 140 to 175-foot drilling rig to be “visually compatible with the character” of Carpinteria or the Bluffs.

The proposed Project would be inconsistent with California Public Resources Code Section 30253. The proposed Project would actually encourage energy consumption, as opposed to “minimizing energy consumption.”

4.10 Noise and Vibration

4.10.4 Proposed Project Impacts and Mitigation Measures

Impact N.1 should be considered Class I or II. The FEIR states on page 4.10-25:

Noise levels at the closest residence would increase from a background of 56 dBA daytime to a daytime noise equivalent of 65 dBA. Because of the distinct noises associated with the construction machinery ... noise could be perceived as annoying ... and therefore adverse but not significant.

Criteria threshold (dBA) at the CPF South boundary (75 dBA) are also exceeded. These impacts may be mitigated to less than significant levels, but the efficacy of mitigation measures must be demonstrable. At the least, these are Class II impacts.

4.15 Visual Resources and Aesthetics

The FEIR correctly concludes that the impacts on visual resources constitute a Class I impact that cannot be adequately mitigated. However, the impacts on visual resources are even greater than the FEIR indicates, and the FEIR should be revised to reflect this fact. In addition, story poles should be installed while the public is reviewing the FEIR and when public officials are deliberating Project approvals. A crane or tower with relative height, bulk and other intrusive qualities such as motion should be re-installed at the proposed Project site.

4.15.3 Significance Criteria

The significance criteria do not discuss the impact that movement has on the perceived impact of a structure. If a drilling rig moves up and down, accompanied by loud noise, it appears even more noticeable and visible than something that is stationary and quiet.

5.0 PAREDON PROJECT ALTERNATIVES ANALYSIS

As stated above, the FEIR includes an impermissibly narrow objective that restricts the range of alternatives in the report. If the objective is to help meet California's energy demand, there are many alternatives that can feasibly meet that objective and avoid the adverse impacts of the proposed project. However, if the objective is to produce oil and gas from the Paredon and associated fields, there are a limited number of alternatives available. Limiting the discussion to these few, largely similar (with similar potential impacts) alternatives fails to meet the requirements and intentions of CEQA, which is to provide decision-makers with a "range of reasonable alternatives" to the project.²⁷

²⁷ CEQA Guidelines §15126.6, emphasis added.

CONCLUSION

The FEIR concludes that the Project will result in *eleven significant and unmitigated impacts to air and water quality, public safety, marine mammals, recreation, views, noise and agriculture*. These impacts will degrade our environment, negatively impact our coastal economy, and harm our State's public trust resources. In addition, the Project will result in unmitigated levels of greenhouse gas emissions that will contribute to global warming and interfere with goals for increasing renewable energy supplies to the State. Some of these Class I impacts should be analyzed in greater detail, and more adequate mitigation measures should be proposed. This information will also be pertinent to a finding of Overriding Concerns, if necessary. Several impacts that were identified as Class II or III, such as impacts from construction noise and greenhouse gas emissions, should be considered Class I impacts. The FEIR should be revised to include new and significant information about impacts, mitigation measures and alternatives, as described above, and the revised FEIR should be re-circulated for public review and comment. This FEIR should not be certified.

Thank you for this opportunity to comment on the FEIR. Please do not hesitate to contact me at (805) 963-1622 with any questions or for clarifications.

Respectfully submitted,

/s/

Nathan G. Alley
Staff Attorney
Environmental Defense Center

Atts: Heede, Rick, Climate Mitigation Services, *Venoco Paredon Oil & Gas Project: GHG Emissions* (April 28, 2008).

Cc: Carpinteria Valley Association
Citizens for the Carpinteria Bluffs
Get Oil Out!
Sierra Club
California Coastal Commission
California State Lands Commission