



TO: Mayor and Councilmembers

FROM: Michael Jenkins, City Attorney
Peter Imhof, Planning and Environmental Review Director

CONTACT: Anne Wells, Advance Planning Manager

SUBJECT: Memorandum of Understanding between the California State Lands Commission Regarding Oil and Gas Facility Jurisdictional Issues

RECOMMENDATION:

Approve and authorize the City Manager to sign a Memorandum of Understanding (MOU) between the City of Goleta (City) and the California State Lands Commission (CSLC) for the transfer of management and oversight of Venoco's Ellwood Facilities¹ from the City to the CSLC.

BACKGROUND:

On April 17, 2017, Venoco quitclaimed its interests in State Oil and Gas Lease No. PRC 421 (PRC 421) and Platform Holly (Leases PRC 3120 and PRC 3242) to the CSLC. On the same day, Venoco filed a petition for relief under Chapter 11 of the Bankruptcy Code. The CSLC immediately assumed operational control of the facilities within its jurisdiction (Platform Holly and PRC 421), and negotiated a temporary services agreement with Venoco to enable it to operate and maintain all of the onshore and offshore facilities associated with the quitclaimed leases, including the Ellwood Onshore Oil and Gas Facility (EOF) and the portions of PRC 421 within the City's jurisdiction.

On May 15, 2017, the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR) issued an order requiring Venoco to plug and abandon the 32 wells associated with PRC 421 (two wells) and Platform Holly (30 wells). The CSLC, anticipating that Venoco would not comply with the DOGGR order, commenced with developing plans to plug and abandon the 32 wells on Venoco's former leases. After Venoco terminated its staff in September 2017, the CSLC hired Beacon West Energy Group, comprised of former Venoco employees, to manage daily operations at Platform Holly and the EOF. This management is ongoing and is anticipated to continue for the duration of the plugging and abandonment (P & A) work.

¹ For purposes of the MOU, the "Ellwood Facilities" include the EOF and the PRC 421 infrastructure and all associated facilities located within the City's jurisdiction.

On June 29, 2018, the CSLC entered into an agreement with ExxonMobil, the predecessor lessee to Venoco, to plug and abandon the 30 Platform Holly wells and the two onshore PRC 421 wells. To accomplish this work, CSLC will need to use the EOF, the PRC 421 access road, and surrounding surface streets, all of which lie in the City's jurisdiction and are subject to its land use and zoning authority. Additionally, communications and utilities at the EOF serving Platform Holly will be used for the P & A work. Safety monitoring equipment at the EOF also services the platform and interconnecting pipelines, all of which will also be needed.

CSLC is currently working with ExxonMobil personnel to upgrade Platform Holly's equipment and facilities in preparation for the P & A work and anticipates that work will commence on or around the end of the first quarter of 2019, with the decommissioning of Platform Holly (and eventual decommissioning of the EOF) to follow. Work at the EOF will include trucking of Platform Holly-extracted product. Some new infrastructure and connections will be necessary to support this and other P & A-related work efforts.

ExxonMobil is also working with the CSLC to plug, abandon, and decommission PRC 421 infrastructure, including the wells, caissons, piers, pipelines and cables, shoreline access road, and road revetment. In the process of depressurizing the oil wells, trucking from the piers to a receiving site, either to the north of Goleta or south of Goleta, will be necessary to support this and other P & A-related work efforts. During decommissioning, debris from the caissons, piers, and revetments will require removal and disposal. Trucking to offsite facilities for debris and material disposal will be required as part of decommissioning.

DISCUSSION:

The CSLC has jurisdiction over the offshore portions of Venoco's former leases, namely the 32 oil and gas wells and Platform Holly, as well as portions of the PRC 421 piers and caissons below the mean-high tide line. However, it does not have jurisdiction over the onshore portions of the leases, which are within the City's boundaries. Because these facilities are integral to the CSLC's efforts to plug and abandon the 32 wells, and because the CSLC is undertaking this work on behalf of the State of California for purposes of preserving public and environmental health and safety, the CSLC has assumed regulatory authority over the Ellwood Facilities, effectively preempting the City's land use jurisdiction.

The CSLC has determined that this exercise of the sovereign power of the State is the most efficient and practical way for the CSLC to safely and expeditiously complete the necessary work. As such, the CSLC is fully relieving the City from any associated regulatory responsibility or liability, while ensuring that the City has all the information it needs to address public health, safety and the environment, as well as the concerns of the public.

City staff has negotiated the attached MOU with the CSLC memorializing the CSLC's assumption of regulatory authority over the Ellwood Facilities for the purposes of the

Platform Holly and PRC 421 plug and abandonment work. The MOU includes the following key provisions:

- CSLC oversight and management of the Ellwood Facilities shall not be subject to City regulations, including permitting requirements.
- CSLC oversight and management of the Ellwood Facilities remains subject to all applicable federal and state requirements, including CEQA.
- The CSLC will engage independent consultants to perform the monitoring and reporting activities ordinarily performed by the City.
- The CSLC relieves the City from legal responsibility arising from CSLC's management and oversight of the Ellwood Facilities.
- The CSLC shall coordinate with the City regarding its management of the Ellwood Facilities, including regular meetings, updates and provision of relevant information in a timely fashion.

FISCAL IMPACTS:

Since the Venoco bankruptcy, third-party funding has been unavailable for monitoring and enforcing compliance with the various permits and conditions of approval associated with operation of the Elwood Facilities. Until recently, to ensure permit compliance and to provide support to the CSLC in its efforts to decommission local Venoco assets, the City has relied on General Fund monies to backfill what previously had been paid by Venoco. Funds expended include contracts with Rincon Consulting, Storrer Environmental, and Willdan. These contractors have supported the City's oil and gas project oversight, monitoring, and safety inspections for over 10 years.

Currently, contract work for previous Venoco assets located in Goleta is funded from the Advance Planning Professional Services Line Item (101-5-4300-500). To date, \$350,000 has been spent from allocated General Fund monies, not including staff time and not including work to decommission Old Line 96. Staff time amounts to approximately 0.25 full time equivalent (FTE) to manage contracts, oversee regulatory requirements, coordinate with various agencies, and communicate with the public. The proposed MOU will eliminate the need for the City to pay these contractors, saving the City approximately \$150,000 per year of General Fund monies. The MOU would also free-up staff time to re-focus on other priority projects in the Advance Planning work program.

ALTERNATIVES:

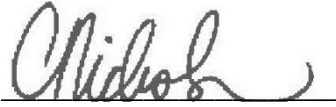
The Council may choose not to enter into the MOU. In that event, the City would endeavor to retain its land use jurisdiction over the CSLC's management of the Ellwood Facilities, likely resulting in a conflict with the State. Competing, overlapping and potentially conflicting regulatory activities would be expensive, would squander the goodwill and collaboration the City has developed with the CSLC, and potentially lead to a legal conflict. The City would continue to be both legally and financially responsible for

ongoing monitoring and oversight of the EOF and PRC 421 facilities during the P & A process, consistent with existing permits.

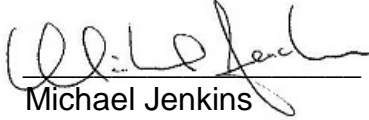
Reviewed By:

Legal Review By:

Approved By:



Carmen Nichols
Deputy City Manager



Michael Jenkins
City Attorney



Michelle Greene
City Manager

ATTACHMENTS:

1. Memorandum of Understanding between the City of Goleta and the California State Lands Commission

Attachment 1

Memorandum of Understanding between the City of Goleta and the
California State Lands Commission

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CALIFORNIA STATE LANDS COMMISSION AND THE CITY OF GOLETA

This Memorandum of Understanding (“MOU”) is entered into by and between the California State Lands Commission (“Commission”), and the City of Goleta (“City”), to address and resolve jurisdictional issues regarding the management and oversight of certain oil and gas facilities located within the City’s land use jurisdiction (“Ellwood Facilities”) and owned by Venoco, LLC (“Venoco”). As used herein, Commission and City are referred to collectively as “Parties”, and each individually is referred to as a “Party.”

RECITALS

- A. The City is a general law city duly incorporated under the laws of the State of California in 2002, and located on the south coast of Santa Barbara County, partially within the California Coastal Zone. The City has land use and zoning authority over the Ellwood Facilities, which, for purposes of this MOU, include the following:¹
1. The Ellwood Onshore Oil and Gas Processing Facility (“EOF”) located at 7979 Hollister Avenue in the City, Assessor’s Parcel Number (APN) 079-210-042. Connected by a series of onshore and offshore pipelines and cables, the EOF has been used since the 1970s to process oil and gas from Platform Holly, which was formerly owned by Venoco subject to State oil and gas leases with the Commission, located two miles off the coast of Goleta in the Santa Barbara Channel. The EOF has been a legal non-conforming use since 1991, when it was rezoned from Industrial to Recreational by the County of Santa Barbara. When the City was incorporated in 2002, the EOF was zoned as “Recreation.” Pursuant to the City’s Municipal Code (Section 35.160 et seq.), legal non-conforming uses may not, subject to limited exceptions, be modified in a manner that would result in the enlargement, extension or expansion of the facility. The EOF has been “shut in” since the 2015 Refugio Oil Spill, caused by the rupture of Plains All American Pipeline Company’s Line 901. The EOF is isolated and disconnected from regional oil product pipeline infrastructure because Line 901 remains non-operational.
 2. Infrastructure and facilities associated with State Oil and Gas Lease No. PRC 421 (“Lease PRC 421”), including, but not limited to, the portions of the PRC 421 piers located above the Ordinary High-Water Mark (“OHWM”) as measured by the mean high tide line (“MHTL”) and the PRC 421 access road and revetment, cables, and pipelines (“onshore 421 facilities”) located on easements within the Sandpiper Golf Course, located at 7925 Hollister Avenue in the City.

¹ For purposes of this MOU, the Ellwood Facilities do not include the oil transportation pipelines known as old Line 96 (within the City’s jurisdiction) or new Line 96 (within Santa Barbara County’s jurisdiction), or the Ellwood Pier located up coast at 8301 Hollister Ave. It does include road transport of produced product in light of the fact that the new Line 96 is non-operational.

- B. The Commission is a public entity vested with certain statutory powers pursuant to the laws contained in Division 6, Part 2 of the California Public Resources Code. The Commission administers and manages tide and submerged lands along the coast of California and has jurisdiction over Lease PRC 421 in all areas seaward of the OHWM (including two onshore wells and caissons, or “offshore 421 facilities”), and Platform Holly (30 offshore wells), along with associated infrastructure and facilities. The Commission approved the assignment of Lease PRC 421 and the leases associated with Platform Holly to Venoco in 1997.
- C. On April 17, 2017, Venoco served the Commission with quitclaim deeds releasing its interests in Lease PRC 421 and Platform Holly (Leases PRC 3120 & PRC 3242) to the Commission. On the same day, Venoco filed a petition for relief under Chapter 11 of the Bankruptcy Code. Venoco explicitly stated that it could not fulfill its obligations to the State of California and was planning to eliminate staff necessary to safely operate and manage both Platform Holly and the Ellwood facilities soon.
- D. Faced with concerns about public health and safety and the marine environment from the risks of an oil spill or a release of hydrogen sulfide (H₂S) gas, the Commission acted, without admitting or assuming liability for fulfillment of Venoco’s lease or other obligations, to develop plans to plug and abandon the 32 wells on the former leases to the satisfaction of the California Department of Conservation Division of Oil, Gas and Geothermal Resources (“DOGGR”) and all other applicable State and/or federal authorities, including continued monitoring and oversight of daily operations, maintenance, and equipment/product transport required at the Platform Holly, EOF, onshore 421 facilities, and offshore 421 facilities, collectively referred to as the Ellwood Facilities (the “Project”). The Commission’s actions were necessary to protect public health and safety, given the extreme dangers posed by the H₂S gas associated with the hydrocarbon production from Platform Holly and processed at the EOF, and the environment. Concurrent with Venoco’s quitclaims and bankruptcy, the Commission immediately negotiated a temporary services agreement with the Venoco estate to provide emergency funding to ensure that qualified staff remained onsite to operate and maintain both the onshore and offshore 421 facilities, EOF, and Platform Holly.
- E. On May 15, 2017, DOGGR issued an order requiring Venoco to plug and abandon the 32 onshore and offshore wells at Lease PRC 421. Although Venoco has abdicated its responsibilities and obligations under statute, leases, and DOGGR’s order, it still retains all liability associated with the safe operation of the Ellwood Facilities.
- F. On September 15, 2017, Venoco terminated its staff and the Commission hired the Beacon West Energy Group (Beacon West) to manage the daily operations at Platform Holly and the EOF. The Commission also entered into an agreement on June 29, 2018, with ExxonMobil, the predecessor lessee to Venoco, to plug and abandon the 30 Platform Holly wells and two onshore PRC 421 wells. The Commission anticipates that this work

will commence on or around the end of the first quarter of 2019, with the decommissioning of Platform Holly (and eventual decommissioning of the EOF and onshore and offshore 421 facilities) to follow.

- G. The Parties acknowledge that the Commission may assert a variety of claims against Venoco based on Venoco's liability for the Project or other decommissioning activities and may also assert claims against other entities based on liability for the Project or other decommissioning activities. The Parties acknowledge that the Project and other decommissioning activities are matters of both statewide and local importance. The Parties further acknowledge that the Project is being undertaken as a sovereign governmental function of the Commission on behalf of the State of California for purposes of preserving public and environmental health and safety, and not for commercial profit or for participation in the oil and gas market. For these reasons, and to safely and successfully undertake and complete the Project, thereby ensuring the permanent protection of the surrounding population and the environment from the risk of an uncontrolled release of oil, gas, or H₂S, the State of California, by and through the Commission, agrees to assume regulatory authority over the Ellwood Facilities for the purposes of the plugging and abandonment work, thereby supplanting the City's land use jurisdiction.
- H. Venoco, as the legal owner, has operational responsibility for and control over the Ellwood Facilities as assets within the bankruptcy estate (*In Re Venoco, LLC*, case no. 17-10828 (KG) (District of Delaware)). The Commission's access to the Ellwood Facilities may be impacted as a result and nothing in this MOU shall require the Commission to maintain operational control of the Ellwood Facilities.
- I. The Parties have mutually agreed that this MOU is the most efficient and practical method for the Commission to assume regulatory authority over the Ellwood Facilities. The Parties now wish to clarify and formalize the Commission's ongoing management and oversight of the Ellwood Facilities so that the Commission may safely and successfully undertake and complete the Project in a transparent fashion and provide the City with all necessary information to adequately address public health, safety, and the environment, as well as local community concerns.
- J. For the reasons recited herein, the Parties have determined that this MOU contains a mutually acceptable balance between the Commission's decision to oversee and manage the Ellwood Facilities in order to complete the Project and the City's desire to accommodate and facilitate the expeditious completion of the Project, as well as the eventual decommissioning and remediation of the Ellwood Facilities, while also ensuring that the health, safety and welfare of City residents and businesses, and the environment, are protected.
- K. The Parties have negotiated in good faith and agreed to the terms of this MOU.

Now, therefore, in consideration of the promises, covenants and provisions set forth herein, the Commission and the City agree as follows:

1. Management and Oversight of the Ellwood Facilities

- a. The Parties understand and agree that the Commission is managing the Ellwood Facilities on behalf of the State of California as a sovereign governmental function, to preserve public and environmental health, and is not operating as an owner, operator, or guarantor of the Ellwood Facilities. As such, the Parties agree that the Commission's management of the Ellwood Facilities is not subject to local municipal (City) regulations, including, but not limited to, City permitting requirements. Additionally, the parties agree that the City shall have no discretionary actions over the Project or the Commission's management of the Ellwood Facilities, or the Commission's use of onshore roads to transport product and other materials necessary for the plugging and abandonment process, including any discretionary actions that could require California Environmental Quality Act ("CEQA") review or compliance.
- b. The Parties further understand and agree that the Commission's management of the Ellwood Facilities is subject to all applicable state and federal regulatory requirements, and that the Commission shall comply with said state and federal regulatory requirements, including, but not limited to, CEQA.
- c. The Parties further understand that the Commission is undertaking the Project in its sole discretion in order to protect public health and safety, and the terrestrial, fresh water, and marine environments. Nothing herein shall create an obligation on the Commission to undertake the Project or shall entitle the City to specific performance of the Project or of the Commission's ongoing operation and maintenance of the Ellwood Facilities.
- d. Subject to all other provisions contained in this MOU, the Parties agree that beginning on May 1, 2017, and ending on the earlier of the date that the Project is completed or the expiration or termination of this MOU, the Commission's management and oversight of the Ellwood Facilities as a sovereign function is not subject to municipal regulation, and the City is not responsible for any claims, causes of action, demands, or liabilities arising out of the Commission's or its employees', contractors', or agents' management, oversight, or operation of the Ellwood Facilities.

2. Coordination between the Commission and the City

- a. As soon as possible, with the intent of being no more than 10 days after the effective date of this MOU, designated representatives of the Commission and the

City will meet and confer, in person or by telephone, regarding the development of a detailed communications plan to ensure effective ongoing communication between the Commission and the City regarding management of the Ellwood Facilities and the Project, including identifying interested parties and establishing appropriate contacts for each party.

- b. Unless otherwise agreed, during the term of the Project, the Commission's Project Manager and the City's designee will negotiate and adhere to a schedule for regular meetings, in person or by phone, to share updates, communicate local concerns, and discuss methods to address local concerns regarding the Project or the Commission's management of the Ellwood Facilities.
- c. The Commission agrees to provide the City, in a timely manner, the following items and information:
 - i. All submitted or approved applications, amendments, or formal notices to or from any state or federal agencies regarding the Project or the Ellwood Facilities;
 - ii. Copies of all final reports, inspection results, and other information that are part of the Project or management of the Ellwood Facilities;
 - iii. Copies of the approved Emergency Response Plan, Fire Protection Plan, and Oil Spill Contingency Plan for the Ellwood Facilities, and any update or amendment to those plans, as they are available;
 - iv. Forecast of expected vehicular traffic associated with the operation of Ellwood Facilities throughout the Project.
 - v. Immediate notification of any and all incidents or threat of incidents.
 - vi. Advance notification of siren testing, H2S and other alarm testing, and planned drills.
- d. The Commission agrees to provide the City with reasonable notice of planned inspections of the Ellwood Facilities to be undertaken by the Commission or other state or federal agencies. The City may send representatives to participate in planned inspections, subject to safety and operational considerations.
- e. The Commission may hire a consultant to coordinate communications regarding the Project. In that event, the City agrees that the consultant may undertake the Commission's coordination responsibilities described in this MOU.

- f. The Commission agrees to communicate with the City and provide the information set forth in this paragraph 2(a)-(f). Nothing in paragraph 3 shall constitute an affirmative legal obligation binding on the Commission.
3. The Commission and City understand and agree that the Commission is not, in any respect, waiving the State of California's sovereign immunity by entering into this MOU or by taking any actions pursuant to this MOU, nor is the Commission, on its own behalf or on behalf of the State of California or any other agency thereof, waiving any of its or their legal rights or claims under applicable law, state or federal, or any other laws whose applicability is not permitted to be contractually waived. Nothing herein is intended to admit any liability on behalf of the Commission for the Project or any other liability of a potential 3rd party resulting from Venoco's failure to fulfill its myriad regulatory, statutory, contractual or other obligations.
4. The Commission and the City shall bear their own costs with regards to activities contemplated by this MOU.
5. The persons executing this MOU represent that they have the capacity and authority to execute this MOU as the representatives of their respective Party.
6. Nothing in this MOU is intended to or shall be construed to restrict the City or the Commission from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
7. This MOU shall expire upon completion of the Project. This MOU may be canceled by either party by providing 30 days prior written notice to the other party or may be amended at any time by written agreement of the Parties.
8. This MOU may be executed with counterpart signatures, all of which taken together shall constitute an original without the necessity of all Parties signing each document. This MOU may also be executed by electronic signatures and via electronic transmittal, if the Parties agree.
9. The Designated Representatives for the Parties are:

California State Lands Commission

Name: Jeff Planck
Phone: 562-590-5306
E-mail: Jeff.planck@slc.ca.gov

City of Goleta.

Name: Michelle Greene
Phone: 805-961-7500
E-mail: mgreene@cityofgoleta.org

10. This MOU shall be effective as of the latest date written below:

Michelle Greene Date
City Manager
City of Goleta

Jennifer Lucchesi Date
Executive Officer
California State Lands Commission