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STAFF REPORT: REGULAR CALENDAR

Application No.:	**9-13-0204**
Applicant:	**Chevron Environmental Management Co.**
Agents:	Padre Associates, Inc.
Location:	Toro Creek Beach, Morro Bay, San Luis Obispo County.
Project Description:	Survey, excavate, sample, and test two abandoned oil transport pipelines, an outfall pipeline, and surrounding sediment in beach, intertidal and offshore areas (within 4000 feet of shore).
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

As part of the process of decommissioning the Estero Marine Terminal in Morro Bay, Chevron Environmental Management Company (Chevron) proposes to carry out pipeline and sediment testing activities on and around two oil transport pipelines and one ocean outfall pipeline. These three pipelines extend approximately 4000-feet from shore, starting at the former onshore marine terminal facility and ending at the former offshore oil tanker mooring site. The proposed sampling and testing activities involve the excavation of several sections of each 16- to 20-inch pipeline at beach, intertidal, and offshore sites as well as the removal of internal and external pipeline coatings, walls, and welded joints. In addition, Chevron proposes to sample and test

sediments at several beach, intertidal, and nearshore locations adjacent to each pipeline. The sediment and pipeline samples would be used to inform the design of future decommissioning and pipeline removal projects.

The proposed operation would require the use of heavy equipment, vehicles, and specialized machinery on beach and intertidal areas, the construction of a vehicle access ramp on the beach, as well as the mooring and operation of a work barge and use of underwater excavation equipment, subsurface survey machines, and sediment samplers offshore.

The key Coastal Act issues of concern are the project's potential to adversely affect coastal access and marine and terrestrial biological resources. Coastal access would be affected through construction and use of the proposed vehicle access ramp to the beach and terrestrial biological resources would potentially be affected by excavations, vehicle transit, and related project activities in sensitive beach and dune habitat areas and near the mouth of Toro Creek. Marine biological resources would potentially be affected by mooring of a work barge in nearshore waters and project underwater survey and sampling activities.

The Commission staff believes that with implementation of recommended **Special Conditions 1 through 6**, the project can be carried out consistent with the coastal access, environmentally sensitive habitat area, and marine resource protection policies of the Coastal Act. **Special Condition 1** would require project activities to be carried out consistent with the Western Snowy Plover Monitoring Plan developed by Chevron's environmental consultant and outside of the nesting season for the western snowy plover. In addition, **Special Conditions 2 and 4** would further reduce potential terrestrial biological resource and habitat impacts by prohibiting construction activities within dune areas and within 100-feet of Toro Creek. **Special Condition 3** would protect public beach access and beach access parking by defining where project parking and staging can occur and by prohibiting the closure of existing beach access parking and trails in the project area. **Special Conditions 5 and 6** would ensure that marine biological resources are protected by prohibiting the placement of anchoring devices or project equipment within areas of hard-bottom habitat, by requiring the establishment and monitoring of a 500-foot marine mammal safety zone during use of elevated sound generating sampling equipment underwater, and by requiring compliance with the Marine Wildlife Contingency Plan developed for Chevron by its environmental consultant.

Commission staff recommends that the Commission **APPROVE** coastal development permit amendment application 9-13-0204, as conditioned.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Project Location
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Exhibit 5 – Safety Zones for Beach Work

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 9-13-0204 subject to conditions set forth in the staff recommendation specified below.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. SPECIAL CONDITIONS

1. **Western Snowy Plover.** Project activities on beach and intertidal areas shall be conducted during fall/winter months (October through February), outside of the nesting season for Western Snowy Plover. All project activities shall be carried out in compliance with the Snowy Plover Monitoring Plan, prepared by Padre Associates Inc. and dated June 2013.

2. **Access Ramp.** The project vehicle beach access ramp shall be constructed outside of all dune and foredune areas. No dune or foredune areas shall be graded or excavated during construction of the project vehicle beach access ramp.

3. **Public Beach Access.**

   a. No project activities shall limit the availability or restrict the use of off-street beach access parking in the project area, including those sites adjacent to the Estero Marine Terminal bulkhead.

   b. All onsite project equipment storage and staging activities shall be limited to the Estero Marine Terminal onshore facility site inland of Highway 1 or to the fenced and gated area on top of the Estero Marine Terminal bulkhead.

   c. All vehicle and equipment access to and from the beach access ramp shall occur through the Estero Marine Terminal bulkhead.

d. The public beach access trail located near the southeast corner of the Estero Marine Terminal bulkhead may only be closed temporarily during construction and removal of the vehicle beach access ramp in this area and when heavy equipment and vehicles are present on the ramp. Public access on the ramp shall be provided at all other times. All other beach access trails used by the public and located near the Estero Marine Terminal bulkhead shall remain open and available for public use during all project activities.

e. The public beach access trail located near the southeast corner of the Estero Marine Terminal bulkhead shall be restored to pre-project conditions upon removal of the vehicle beach access ramp.

4. Toro Creek. No project activities, including transit or transport of project vehicles or equipment, shall occur within 100-feet of Toro Creek.

5. Anchoring and Mooring. No anchors or mooring devices shall be placed within or directly adjacent to areas of hard substrate, including all areas of rock recorded in the November 2012 side-scan sonar survey and November 2005 diver surveys of the project area.

6. Marine Mammal Precautions.

a. All project activities shall be carried out in compliance with the Marine Wildlife Contingency Plan, prepared by Padre Associates Inc. and dated June 2013.

b. This permit does not authorize harassment, disturbance, or other forms of "take" of marine mammals.

c. A marine mammal monitor approved by the Executive Director shall be present at all times during offshore project activities. The monitor shall ensure that Chevron and its contractors fully comply with the conditions of this permit related to biological protection.

d. Vibracore work shall be suspended if any marine mammals are observed within a 500 foot radius of the work site. Vibracoring may resume once the mammals are outside of this safety zone. The marine mammal monitor will be responsible for monitoring this zone during vibracoring activities. In the event that the monitor determines a marine mammal has entered this zone, the monitor shall have the authority to suspend vibracoring activities until the marine mammal has passed outside of this zone.

e. An initial ramp-up period shall occur when starting vibracoring activities to avoid potential impacts to marine mammals that may be undetected within the safety zone.

III. FINDINGS AND DECLARATIONS

A. Project Description

Chevron Environmental Management Company (Chevron) proposes to survey, excavate, test, and sample, three 16- to 20-inch pipelines that pass from the onshore Estero Marine Terminal facility to the offshore oil tanker mooring site located approximately 4,000-feet offshore (as shown in **Exhibit 1**). The onshore marine terminal facility is located on the inland side of Highway 1 near Toro Creek between Morro Bay and Cayucos. Chevron also proposes to test and sample the physical properties of the sediments surrounding the three pipelines. Both sediment and pipeline surveys and sampling efforts are proposed as an initial phase of a larger pipeline removal and decommissioning effort that would be carried out at a future date. The results of the proposed sampling and survey activities are expected to help Chevron design a decommissioning and removal plan for these pipelines.

Onshore and Intertidal Activities

The proposed pipeline and sediment survey and sampling work would require a variety of activities to be carried out on the dry sandy beach above the tide line and within the intertidal zone. These activities include (1) construction of a temporary vehicle access ramp from Highway 1 to the beach; (2) transport of vehicles and equipment from an onshore staging area to beach and intertidal work areas; (3) excavation of nine pipeline segments and removal of pipeline material samples; (4) excavation of a tap point on each of the two oil transport pipelines; (5) dewatering of the two oil transport pipelines; and (6) three sediment penetration tests to evaluate physical sediment characteristics around each pipeline. Of these activities, the sediment penetration testing and dewatering are expected to be carried out in intertidal areas during low tide.

Sand Access Ramp

A project vehicle beach access ramp is proposed to be constructed to allow project vehicles, equipment, and personnel to access the project sites located on beach areas. The proposed ramp would extend off of an existing bulkhead located between the beach and highway that remains from when a pier existed at this site (as shown in **Exhibit 2**). The bulkhead previously served as the pier abutment and is proposed to be used to stage and store vehicles and materials during the project. The bulkhead is approximately six feet above the height of the beach below and the proposed access ramp would be approximately 120 feet long and ten feet wide. The access ramp would be comprised of beach sand excavated and graded from surrounding areas of open sandy beach by an excavator and bulldozer. The sand access ramp would be in place for the approximately two month project period and would then be graded level. Chevron proposes two potential sites for this access ramp, one site on the north side of the bulkhead within an area of dune habitat and one site on the south side of the bulkhead near an existing beach access trail.

Vehicle Transit

Several vehicles and a variety of heavy equipment would be used to carry out and support proposed project activities on beach and intertidal areas. All vehicles and equipment would be stored outside of beach areas when not in use and transported to work areas as needed. In total, Chevron anticipates using a bulldozer, excavator, welding truck, utility truck, vacuum truck, and specialized cone penetrometer test truck (to carry out sediment analysis) on beach and/or

intertidal areas. Use of some of these vehicles would require temporary placement of traction material on the beach within vehicle access routes that would be designated between the access ramp and work sites. Traction material would be comprised of approximately 40 sheets of 2'x 8' plywood sheeting that would be placed in front of the vehicles during transit and removed once the vehicle leaves the beach area.

Pipeline Excavation and Sampling
In order to develop a future decommissioning plan for the three Estero Marine Terminal pipelines, Chevron proposes here to evaluate the composition and status of the pipelines, welds, and coating materials. To carry this out, Chevron proposes to excavate, with a mechanical excavator, each of the three pipelines at three separate locations and to obtain samples. Pipeline burial depths vary between approximately five and fifteen feet. Once samples are collected from each of the nine sites, the pipeline would be re-coated with epoxy and a steel patch would be welded in place to cover the hole left by sampling activities. Upon completion of sampling, each pipeline section would be re-buried using sidecast material remaining from excavation.

Tap Point and Dewatering
The two former oil transport pipelines, Loading Line 1 and Loading Line 2, are currently sealed at both their onshore and seaward ends and filled with seawater. In preparation for the pipeline material sampling work that would involve removal of pipeline wall and coating material, each pipeline must be opened and dewatered. All seawater removed would be stored at the onshore Estero Marine Terminal facility in existing storage tanks prior to testing, treatment, and disposal at an authorized facility. Approximately 20,000 gallons of storage water is expected to be recovered, stored, treated and disposed. Previous testing of this water suggests that the hydrocarbon content is less than 15 parts-per-million.

Capture and removal of storage water from the pipelines would be accomplished by using a specialized vacuum truck that would transit the beach in order to access the proposed pipeline tap sites.

Sediment Testing
Chevron also proposes to carry out cone penetrometer testing of the sediment surrounding each pipeline. This testing would be carried out by a specialized truck capable of inserting a small cone and rod approximately 20 feet into the subsurface below the truck. Once inserted, this test rod would be withdrawn. Each cone penetrometer test would require approximately one hour to complete and at least one test would be carried out adjacent to each of the three pipelines. Given the small (1.5 inch) diameter of the test rod, each test site would be expected to naturally backfill upon removal of the test rod.

Offshore Activities
The project also includes a variety of proposed offshore activities along the seaward extent of the three pipelines. These activities include (1) soils analysis testing; and (2) pipeline location and depth of burial surveys. Offshore activities would involve the use of a small work boat and temporarily moored support barge.

Offshore Sediment Testing
Chevron proposes to carry out two types of sediment testing along the offshore extent of the three Estero Marine Terminal pipelines, cone penetrometer testing and vibracore testing. Chevron proposes to carry out at least one of each test along each of the three pipelines. The proposed testing sites are shown in **Exhibit 3** and would be located approximately 1000 feet offshore in depths of roughly 20 feet. Each type of testing would be carried out from the proposed support barge and would involve temporary placement of testing equipment on the seafloor. A crane on the barge would be used to install and remove the testing equipment and the barge would be moored in place during testing to maintain a static position. Proposed cone penetrometer testing would be carried out with the use of an eight foot high by six foot wide hydraulic device capable of inserting a test rod up to 15 feet below the sediment surface. Similar to the onshore cone penetrometer testing, the test rod would be installed temporarily and removed once the necessary data is collected.

The proposed vibracore testing would involve placement and operation of a fifteen foot high sediment core sampler on the seafloor. Sediment core samples would be obtained by using a pneumatic air hammer to drive a coring tube approximately 15 feet into the seabed. Once a core sample is captured, the vibracore device and sample would be recovered to the barge through use of the barge-mounted crane.

Pipeline Location and Depth of Burial
In order to determine the precise location, alignment, and depth of the three Estero Marine Terminal pipelines, Chevron proposes to carry out surveys along the offshore length of each pipeline. Chevron proposes to make use of up to three methods to complete these surveys, (1) passive vessel mounted or diver operated electronic survey equipment; (2) skid mounted magnetic/electronic survey equipment; and (3) spot-excavation by divers.

The use of passive electronic equipment would be attempted first and the other methods would only be carried out if this method is unsuccessful. Passive electronic surveys make use of a vessel mounted or diver-held electronic detector capable of non-invasively detecting a steel pipeline by inducing a low frequency, low wattage tone into it. This method has been successfully used by Chevron at onshore locations and would simply involve transit of a vessel along the length of each pipeline or deployment of a diver with a hand-held device to track the pipelines. If this method is not successful, Chevron would tow a skid-mounted magnetic/electronic device along the length of each pipeline to reveal its precise location and burial depth. The proposed device would be mounted on an approximately eight foot long by four foot wide skid that would be dragged on the seafloor along the offshore length of each survey. If neither of these survey methods provides complete information on the location and depth of the pipelines, Chevron would carry out spot-excavations by divers using an airlife suction system to locate the pipeline and determine its burial depth. The number and size of excavations would depend on the amount of information provided by the other survey methods but could involve up to three excavations along each of the three pipelines (as shown in **Exhibit 3**).

B. Consolidated Permit

Coastal Act Section 30601.3 provides the Commission with the authority to act upon a consolidated permit for proposed projects that require a coastal development permit from both a local government with a certified local coastal program (LCP) and the Commission. This authority is triggered if the applicant, local government and Executive Director (or Commission) consent to consolidate the permit. For the proposed project, the proposed survey, sampling, and staging activities proposed to be carried out above the mean high tide line, as well as the proposed construction of a temporary vehicle access ramp from the existing Estero Marine Terminal bulkhead would take place within the jurisdiction of the City of Morro Bay under its certified Local Coastal Plan – Morro Bay's LCP. On September 19, 2013, the City of Morro Bay, with the consent of the applicant and Executive Director, agreed to consolidate permit action for aspects of the proposed work that would be carried out in the City of Morro Bay's LCP jurisdiction with aspects that would be carried out within the Commission's retained jurisdiction, consistent with Coastal Act Section 30601.3. The standard of review for such consolidated permits is the Coastal Act, with LCP policies used for guidance.

C. Other Agency Approvals

City of Morro Bay

During the preparation of this report, the Commission staff coordinated with City of Morro Bay Planning staff to address any potential concerns the City might have regarding the proposed project.

U.S. Army Corps of Engineers

The U.S. Army Corps of Engineers (ACOE) has regulatory authority over the proposed project under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 1344) and Section 404 of the Clean Water Act. Section 10 of the Rivers and Harbors Act regulates structures or work in navigable waters of the United States. Section 404 of the Clean Water Act regulates fill or discharge of materials into waters and ocean waters.

The ACOE is currently reviewing the proposed project for authorization under Nationwide Permit 6 (survey activities). Pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), any applicant for a required federal permit to conduct an activity affecting any land or water use or natural resource in the coastal zone must obtain the Commission's concurrence in a certification to the permitting agency that the project will be conducted consistent with California's approved coastal management program. The subject coastal development permit (9-13-0204) will serve as Commission review of the project under the CZMA.

California Regional Water Quality Control Board

The Central Coast Regional Water Quality Control Board (Water Board) is currently reviewing Chevron's application for certification under Section 401 of the Clean Water Act (33 USC 1341).

U.S. Fish and Wildlife Service

In September of 2013, the Commission staff was informed that the U.S. Fish and Wildlife Service would receive a request from the ACOE to initiate informal consultation pursuant to

Section 7(a)(2) of the Endangered Species Act. This consultation process is ongoing and will focus on listed species managed by the U.S. Fish and Wildlife Service that have been observed in the project area, including the Western Snowy Plover and Southern Sea Otter. During the preparation of this report, the Commission staff coordinated with U.S. Fish and Wildlife Service staff to address project activities with the potential to result in adverse impacts to biological resources.

D. Marine Resources and Water Quality

Section 30230 of the Coastal Act states:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The proposed offshore survey and sampling activities, including mooring and use of a support barge, sediment testing, spot-excavations, and operation of electronic and magnetic pipeline detection equipment, have the potential to adversely affect marine resources and the biological productivity of coastal waters by potentially causing adverse impacts to benthic habitat and organisms and to marine mammals.

Benthic Habitat

Based on information collected by divers in November of 2005 during biological surveys and by side-scan sonar in November of 2012, benthic habitat at the project site is comprised of fine and medium grained sands and scattered one- to four-foot high rock ridges and outcroppings. Invertebrate species typical of these habitat types were observed during these surveys and include sea stars, sand dollars, polychaete worms, hermit crabs, strawberry anemones, and coralline algae. No kelp or eelgrass beds are present within the project site and species assemblages and benthic conditions suggest periods with high levels of wave and/or current exposure and sand movement may be possible.

Several project activities involve temporary placement (for approximately one to three days) of devices or equipment in benthic habitat areas, including the temporary placement of 3,000 pound

mooring anchors at 48 locations and the use of a skid-mounted pipeline detection device, cone penetrometer, and vibracore on the seafloor. The temporary placement of the anchoring devices and project equipment on the seafloor may adversely affect benthic habitat and associated organisms by disturbing, displacing, and/or crushing habitat and organisms within their footprint. The maximum amount of benthic habitat that would be disturbed from project activities would be approximately 3,100 square feet. This would include 2,700 square feet spread across 48 sites that would be occupied by anchors for one to three days if the twelve proposed barge mooring sites are used (four anchoring locations for each of the twelve mooring sites) as well as six several inch wide by approximately 2500 foot long tracks that would be made by towing the skid-mounted pipeline detection device, a 36 square foot area that would be used during cone penetrometer testing and a 64 square foot area that would be used during vibracore sampling.

Soft-bottom habitats in the project area are made up of fine- and medium-grained sands that are often subject to temporary disturbance and burial due to natural patterns of sand movement. Many of the species that typically inhabit these areas are mobile and are expected to re-colonize and recover quickly after disturbance or removal of structures that may displace them. These traits as well as the small relative footprint of the proposed equipment and devices and abundance of soft-bottom habitat in the project area suggests that there would be many undisturbed habitat areas available for displaced organisms to colonize. The proposed placement and temporary presence of the anchoring devices and project equipment in soft-bottom habitat is therefore not expected to result in substantial adverse impacts to this habitat or to the organisms it supports.

Hard-bottom habitats in the project area are comprised of low- to medium-relief rocky reefs and ridges (one to four feet in height) and associated sessile organisms that may be more sensitive to disturbance and crushing impacts than their soft-bottom counterparts. Offshore of central California, hard substrate (especially higher-relief substrate) and its associated biota are relatively rare, and therefore any effect to them is potentially significant. Impacts to hard substrate habitats are additionally significant because: (a) they support a diverse assemblage of invertebrates that colonize substrate surfaces; (b) they attract fish as a nursery ground, food source, and as shelter; and (c) organisms residing on rocky substrates are sensitive to mechanical disturbance and increased sediment loads. Adverse impacts (*e.g.*, crushing, scraping, and/or displacement) to hard substrate can occur from the proposed project during installation, movement, and recovery of the proposed anchoring devices. Placement of large anchoring devices on rocky substrates would disrupt associated bottom communities, likely crushing and/or dislodging small, sessile, or relatively sedentary invertebrates within the anchoring footprint. Anchoring devices placed on rocky reef areas may also alter the physical characteristics of the habitat itself by dislodging, crushing, or dispersing the rocks and reducing the relief of the habitat and potentially its suitability as habitat for organisms that are hard substrate specialists. Additionally, placement of anchoring devices directly adjacent to areas of hard-bottom habitat may also result in disturbance or crushing impacts if the anchoring devices or associated tackle move into hard-bottom habitat as a result of wave or current action or during removal and recovery activities. Placement of project equipment such as the cone penetrometer and vibracore sampler in areas of hard substrate would not occur because these devices are only proposed to be used to sample areas of soft sediment.

To address the potential for project activities to adversely affect benthic habitat, Chevron has carried out both a diver survey and sonar survey of the project area, including all of the proposed anchor placement locations, in order to locate all areas of hard-bottom habitat. Chevron's diver survey includes an anchoring plan and recommendations for specific proposed anchor sites to be relocated in order to avoid areas of hard substrate. Further, in **Special Condition 5**, the Commission is requiring that Chevron avoid placing anchors within or directly adjacent to areas of hard-bottom habitat, including those recorded during diver and sonar surveys of the project area.

The project also includes proposed underwater excavations of pipeline segments at as many as nine locations. These excavations would be carried out by divers using an air-lift suction device to vacuum soft sediment from the seafloor and discharge them at the water surface above until the desired amount of pipeline is uncovered. These excavations would be carried out to confirm the location and depth of the Estero Marine Terminal pipelines and would only occur if less invasive pipeline survey methods (such as the vessel mounted electronic detection method or use of the skid-mounted magnetic detection device) fail to return the desired results. If the maximum number of proposed underwater excavations is carried out, a total of approximately 675 cubic yards of soft-bottom benthic habitat would be suctioned from the seafloor (75 cubic yards from each of nine sites) and discharged at the surface. Although some loss of benthic organisms inhabiting the suctioned sediment is expected, much of the marine life extracted from the seabed by the airlift would be expected to resettle along with the sediment that falls through the water column and returns to the seafloor. Additionally, the substrate itself would not be permanently removed and the excavated holes would be expected to fill-in with sand from surrounding areas and from that discharged into the water column above. Long-term or substantial adverse impacts to soft-bottom benthic habitats are therefore not anticipated to occur as a result of the proposed spot-excavations.

Marine Mammals

The proposed use of a pneumatic hammer-driven vibracore device underwater has the potential to adversely affect marine mammals due to the elevated underwater sound levels that would occur during this activity. To prevent damaging effects to marine mammals, **Special Condition 6** requires Chevron to establish a 500-foot radius stop-work zone[1] monitored by a marine mammal monitor during use of the vibracore device. The Executive Director-approved marine mammal monitor on site would have the authority to suspend or delay use of the vibracore if a mammal passes within the safety zone. Therefore, although noise and vibrations from the project could hinder the normal activities of wildlife in the area, the project is conditioned to minimize these potential effects.

Conclusion

Although the Commission finds that the proposed project has the potential to adversely impact marine resources and the biological productivity of coastal waters, with implementation of **Special Conditions 5 and 6**, the project is expected to be carried out in a manner in which

[1] This zone size was chosen based on a National Marine Fisheries Service criterion of 160 dB (received level, as transmitted through water) as the level at which disturbance or harassment of marine mammals has been shown to occur from impulsive sounds like hammer pile driving.

marine resources are maintained, species of special biological significance are given special protection, the biological productivity of coastal waters is sustained, and healthy populations of all species of marine organisms will be maintained. In addition, the proposed project, as conditioned, is expected to maintain the biological productivity of coastal waters appropriate to maintain optimum populations of marine organisms. The Commission therefore finds that the proposed project, as conditioned, is consistent with the marine resource sections (Sections 30230 and 30231) of the Coastal Act.

E. Environmentally Sensitive Habitat Area

Coastal Act Section 30240 states that:

> *(a) 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.*
>
> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

In addition, Coastal Act Section 30107.5 defines “Environmentally sensitive area" as follows:

> *"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Western Snowy Plover Nesting Areas
Due to the status of western snowy plover (*Charadrius nivosus nivosus*) as a federally listed threatened species, occupied snowy plover nests may be considered to be environmentally sensitive habitat areas. Surveys carried out by staff of the California Department of Fish and Wildlife and California Department of Parks and Recreation over the past decade have recorded wintering and nesting snowy plovers on beach areas within the project site. Although increased use of the beach by dogs in recent years is thought to have reduced the suitability of this area for snowy plover nesting, it was designated as critical habitat for western snowy plover by the U.S. Fish and Wildlife Service in 2012, due to the presence of physical and biological factors found to be essential to the species as well as its historic importance as a nesting area. The U.S. Fish and Wildlife Service estimate the beach area surrounding Toro Creek has the capacity to support as many as 25 breeding pairs of western snowy plover.

The western snowy plover is a small migratory shorebird whose coastal population has a breeding range from Washington to Baja, California. Western snowy plovers nest in sandy beach and dune habitat and make use of shallow depressions in open sandy areas. Poor reproductive success, resulting from human disturbance, predation, and inclement weather, combined with permanent or long-term loss of nesting habitat to encroachment of non-native

European beachgrass (*Ammophila arenaria*) and urban development has led to a decline in active nesting, as well as an overall decline in the breeding and wintering population of the snowy plover along the Pacific coast (Fish and Wildlife Service 1993). Western snowy plovers are particularly sensitive to disturbance during the courtship and nesting seasons (typically March through September), and disturbance during this time may result in nest abandonment.

Proposed project activities on beach areas near Toro Creek include the excavation of pipeline segments at eleven locations (as shown on **Exhibit 4**); the construction, use, and subsequent grading/removal of a vehicle access ramp adjacent to the Estero Marine Terminal bulkhead; the placement of plywood sheets along an access route between the access ramp and project work sites; and the transit of project vehicles, personnel, and equipment between the staging area and work sites.

Due to the potential presence of western snowy plover nests within or in close proximity to these proposed project work sites on beach areas, the Commission is requiring in **Special Condition 1** that all project activities in beach areas be carried out outside of the nesting season (March through September) and that project activities be carried out consistent with the Western Snowy Plover Monitoring Plan developed for Chevron by its environmental consultant. This monitoring plan establishes surveyor training requirements and would require worker awareness orientations, pre-activity surveys, delineation of project work areas, and on-site monitoring during beach work to ensure that work is stopped if a western snowy plover is observed within or adjacent to an active work area. With implementation of this condition, the Commission believes that disturbance of occupied western snowy plover nests would not occur and that potentially adverse impacts to ESHA would be avoided.

Toro Creek

As shown in **Exhibit 4**, Toro Creek crosses the beach to the north of the proposed project beach work areas. However, the exact configuration of the creek on the beach and its connection to the ocean fluctuates throughout the year depending on rainfall patterns, tides, and beach sand levels. The proximity of the creek to the work sites may therefore change from the current distance of over 100 feet to a greater or lesser distance before the proposed work begins.

Toro Creek has been designated by the U.S. Fish and Wildlife Service as critical habitat for the tidewater goby (*Eucyclogobius newberryi*) and the National Marine Fisheries Service has also designated it as critical habitat for the south-central California coast steelhead (*Oncorhynchus mykiss*). Management and conservation measures provided in the critical habitat designation documents for these species include recommendations to avoid sedimentation, disturbance, loss, filling, or modification of creek habitat and associated lagoons and estuaries.

In addition to the critical habitat designations for Toro Creek, the Morro Bay Coastal Land Use Plan – part of the Commission certified Local Coastal Program (LCP) for Morro Bay – identifies Toro Creek as an environmentally sensitive habitat area (Figure 28 – Environmentally Sensitive Habitat Areas – of Chapter XII of the City of Morro Bay Coastal Land Use Plan). The Morro Bay LCP also includes several policies (including Policy 11.01 and 11.02) which restrict development activities within or adjacent to sensitive habitat areas, including wetland and estuarine areas, and identifies Toro Creek as such an area. Policy 11.01 and Policy 11.06

provide that a minimum buffer distance of 100 feet should be established around sensitive habitat areas.

Given the sensitive biological habitat and resources it supports as well as the critical habitat designations that include the portion of Toro Creek on the beach in the project area and the identification of this creek as an environmentally sensitive habitat area, the Commission finds that this portion of Toro Creek is ESHA.

While the standard of review for this project is the Coastal Act, as established by Coastal Act Section 30601.3, the relevant LCP may be used for guidance. Accordingly, to ensure that no project activities would adversely affect the sensitive habitat and biological resources of Toro Creek, the Commission is following the guidance of LCP policies 11.01 and 11.06 and requiring in **Special Condition 4** that no project activities, including transit or transport of project vehicles or equipment, shall be carried out within 100 feet of Toro Creek. Given the limited scope, duration, and disturbance footprint of proposed work activities on the beach, a buffer distance of 100 feet is expected to be adequate to protect the sensitive resources of Toro Creek. With implementation of this condition, the Commission believes that no development would occur within ESHA at Toro Creek and that development adjacent to this ESHA would be located a sufficient distance away to ensure that adverse impacts to ESHA would be avoided.

Dune and Foredune Areas

The inland edge of the beach in the project area supports dune and foredune vegetation and topography. Although this area is prone to disturbance from informal beach access trails, invasive plant species such as iceplant, and the nearby southbound lanes of Highway 1, it also supports both dune and foredune habitat and vegetation.

Regarding dunes and dune habitat, Policy 11.20 of the Morro Bay LCP requires that "coastal dune habitats shall be preserved and protected from all but resource-dependent, scientific, educational and passive recreational use," that "all non-authorized motor vehicles shall be prohibited in beach and dune areas" and that "a buffer strip, a minimum of 50 feet in width in urban areas and 100 feet in non-urban areas shall be maintained between the dune habitat and adjacent development." To implement the guidance provided by this policy and to protect sensitive dune habitat areas, the Commission is requiring in **Special Condition 2** that the project vehicle beach access ramp proposed to be located within and adjacent to dune habitat areas shall be constructed outside of all dune and foredune areas. **Special Condition 2** further requires that no dune or foredune areas shall be graded or excavated during construction of the project vehicle beach access ramp.

Conclusion

Although the Commission finds that the proposed project has the potential to adversely impact environmentally sensitive habitat areas, with implementation of **Special Conditions 1, 2 and 4**, the project is expected to be carried out in a manner that would protect environmentally sensitive habitat areas from any significant disruption of habitat values. In addition, the proposed project, as conditioned, is expected to be sited and designed to prevent impacts which would significantly degrade those areas. The Commission therefore finds that the proposed project, as conditioned, is consistent with the ESHA section (Sections 30240) of the Coastal Act.

F. Coastal Access and Recreation

Section 30210 of the Coastal Act states:

> *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

> *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30220 of the Coastal Act states:

> *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

The proposed project site includes a beach area adjacent to Highway 1 and near the cities of Cayucos and Morro Bay. This beach and its adjacent waters is frequently used by the public for beach and water oriented recreation and two informal parking areas serving this area have been established on dirt pullouts adjacent to the southbound lanes of Highway 1 and to the north and south of the gated entrance to the Estero Marine Terminal bulkhead. Several informal beach access trails have also been established in this area, including one near the south-eastern corner of the bulkhead adjacent to one of the dirt parking areas.

Several of the proposed onshore project activities have the potential to adversely affect public access to and use of this beach area. These activities include: (1) project equipment staging, vehicle storage, and project personnel parking; (2) the construction, use, and removal of the proposed vehicle beach access ramp; and (3) on-beach project activities including vehicle transit, pipeline excavation, and sediment sampling.

Project equipment staging and vehicle storage is proposed to occur within the fenced area on top of the Estero Marine Terminal bulkhead but may include other adjacent areas, including one or both of the informal public parking areas adjacent to the bulkhead. The proposed vehicle beach access ramp would be constructed at the southeast corner of the bulkhead where an informal beach access trail currently exists. The proposed entrance to this access ramp would be the southern of the two informal public beach parking areas – an area that can support between four and six vehicles – and would likely require the closure of this parking area to ensure that project vehicle ingress and egress from the beach is not restricted. Additionally, the existing beach access trail would be graded over and the use of the ramp for public beach access would likely be prohibited for safety reasons and due to the presence and use of heavy equipment. Similarly, the proposed vehicle access route on the beach and the work areas themselves would also be closed to public access during project activities for safety (as shown in **Exhibit 5**). Chevron would

deploy a safety monitor to escort vehicles and equipment across the beach safely and would delineate project areas with temporary safety tape and stanchions.

While the temporary closure of limited beach areas (limited to within about 50 feet of active work sites) during project activities for safety reasons would not likely result in substantial or long-term adverse impacts to coastal access or recreation in the project area, closure of beach access trails or parking areas would likely result in more significant reductions in beach access and use. To prevent such adverse impacts from occurring, the Commission is requiring, in **Special Condition 3**, that no project activities limit the availability or restrict the use of off-street beach access trails or parking in the project area, including those sites adjacent to the Estero Marine Terminal bulkhead. **Special Condition 3** provides an exception for the closure of the beach access trail at the southeast corner of the bulkhead but limits such a closure to only during construction and removal of the vehicle beach access ramp at this location and when the ramp is in use by project vehicles or heavy equipment. A safety monitor would be used to implement these closures and ensure that public access through this area is done safely. During all other times, the access ramp would be available and open for use by public beachgoers. Given the limited use of this ramp by project vehicles that is expected, a maximum of approximately 6 times per day, and the short time anticipated to be needed for construction and removal of the ramp, approximately 4 total hours, limited closures during these times would not substantially restrict access to or use of the beach in the project area. In addition, closure of the access ramp to the public would occur only during weekdays in winter months because this is when the proposed beach work would occur. Use of the beach area is typically at an annual low during these times.

With implementation of **Special Condition 3**, the project is expected to be carried out in a manner that would protect existing coastal access and recreation opportunities at the project site. The Commission therefore finds that the proposed project, as conditioned, is consistent with the coastal access and recreation sections (Sections 30210, 30211, and 30220) of the Coastal Act.

G. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed project is consistent with CEQA.

EXHIBIT 1 - Project Location

EXHIBIT 1

Project Location

EXHIBIT 2 – Beach Access Schematics

EXHIBIT 2

Beach Access Schematic

EXHIBIT 3 – Offshore Work Sites

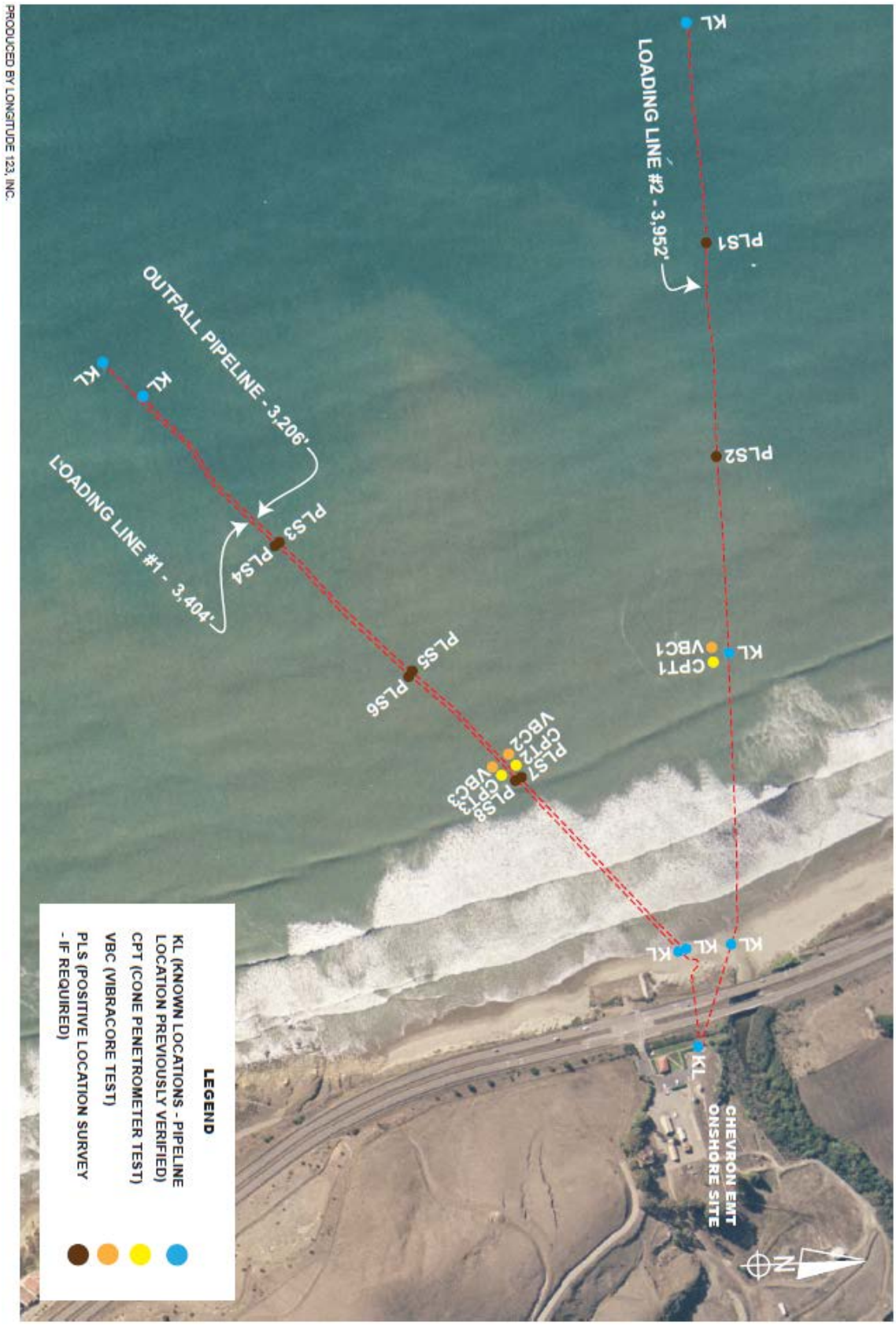

EXHIBIT 3

Offshore
Work Sites

EXHIBIT 4 – Beach and Intertidal Work Sites

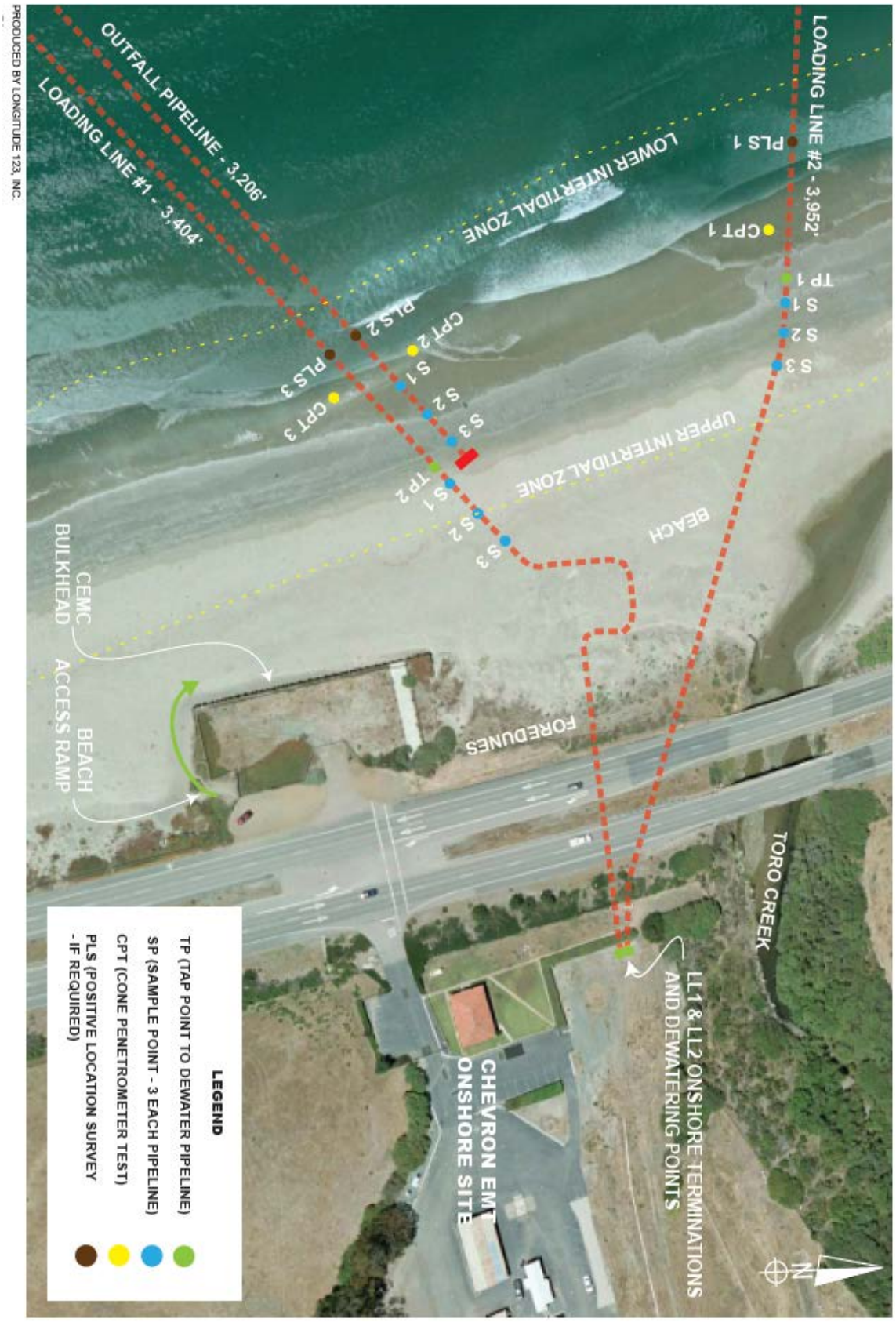

EXHIBIT 4

Beach and Intertidal Work Sites

EXHIBIT 5 – Safety Zones for Beach Work

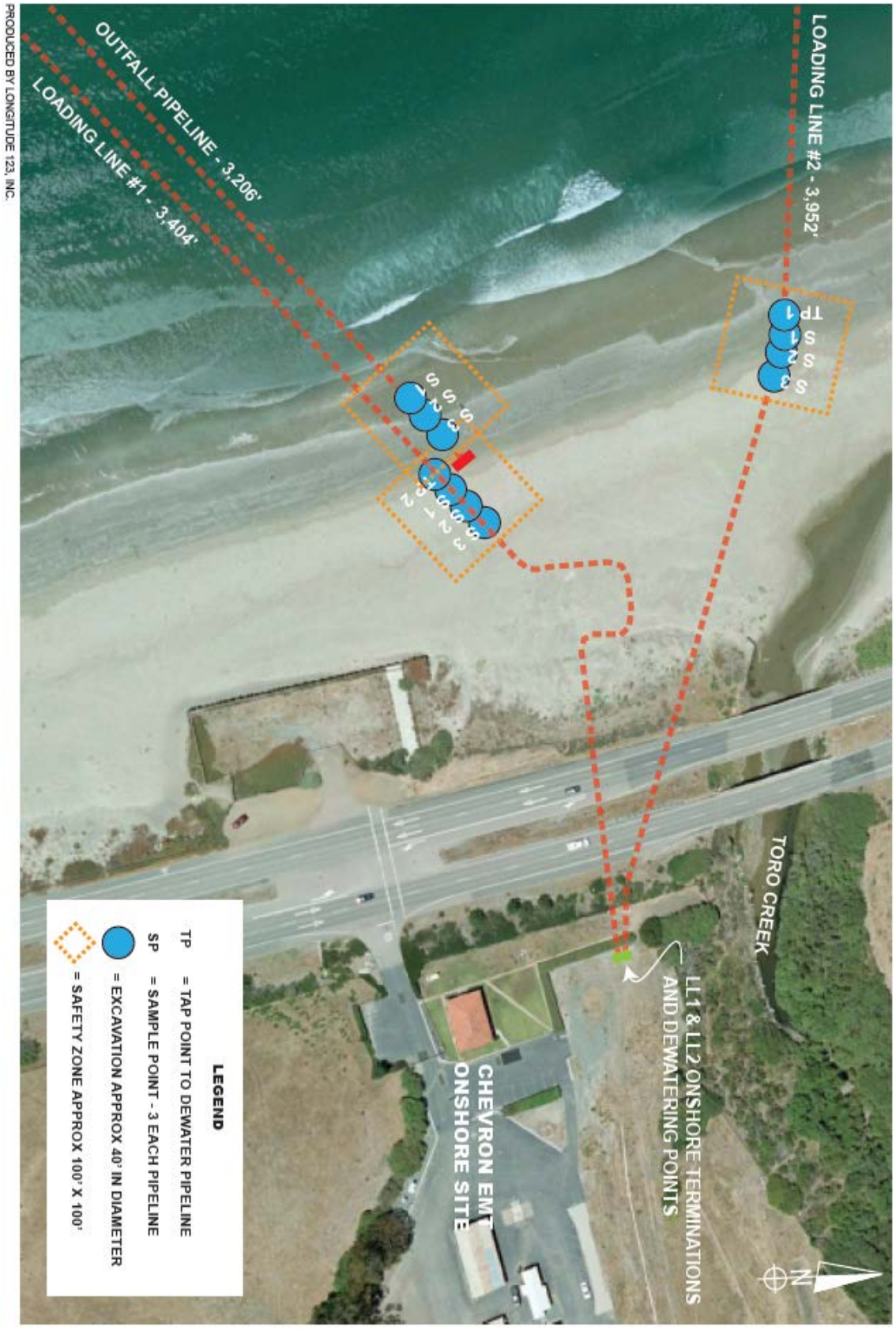

EXHIBIT 5

Safety Zones for Beach Work

APPENDIX A – Substantive File Documents

Coastal Development Permit Application No. 9-13-0204 and associated file documents.

Staff Report for Coastal Development Permit No. E-09-11.

City of Morro Bay Local Coastal Program.

U.S. Fish and Wildlife Service, 2012. Final Critical Habitat Designation for Western Snowy Plover.

National Marine Fisheries Service, 2013. Final Critical Habitat Designation for Tidewater Goby.

National Marine Fisheries Service, 2005. Final Critical Habitat Designation for South-central California Coast Steelhead.