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Staff: Alison Dettmer-SF
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Hearing Date: June 15, 2006

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION

LOCAL GOVERNMENT: **San Luis Obispo County**

APPEAL NO.: **A-3-SLO-06-015**

APPLICANT: **Unocal Corporation**

DECISION: Approved Amendment to Coastal Development
Permit/Development Plan D890558D

PROJECT DESCRIPTION: Change methodology of disposal of up to 860,000 cubic yards of Non-Hazardous Hydrocarbon Impacted Soil (“NHIS”) from on-site treatment to transport via truck from the Guadalupe Oil Field site to the City of Santa Maria Landfill, and increased use of sand from the Q4 site as excavation backfill material.

PROJECT LOCATION: Guadalupe Oil Field, San Luis Obispo County (Exhibit 1)

APPELLANTS: Daniel J. Kirk
Thomas C. Gibbons
David J. White
Raymond R. Alexander

EXECUTIVE SUMMARY

This appeal involves the ongoing clean up of petroleum hydrocarbon contamination in soil and groundwater at the former Guadalupe Oil Field site in San Luis Obispo County (“County”). In 1998, the Central Coast Regional Water Quality Control Board ordered Unocal in Cleanup or Abatement Order 98-38 to remediate, mostly by excavation, certain petroleum hydrocarbon plumes and sumps known to exist on the 2,700-acre site. County-approved Coastal Development Permit/Development Plan D890558D and Commission-approved Coastal Development Permit E-99-009 authorize the remediation activities required by Cleanup or Abatement Order 98-38. The County-issued permit allows Unocal to treat the contaminated soil on site in a Land Treatment Unit and then reuse the treated soil as backfill material in future excavations.

In July 2005, the County Planning Commission approved an amendment to Coastal Development Permit/Development Plan D890558D allowing Unocal to dispose of the contaminated soil by an alternative method -- to truck the material to the City of Santa Maria Landfill. It also allows Unocal to take additional sand from the Q4 site (a very large sand dune) as future excavation backfill material. The basis for the amendment request is explained in Section 5.1 of this report.

The appellants’ contend: (a) The County did not provide notice to citizens of Santa Barbara County of the Guadalupe Restoration Project Supplemental Environmental Impact Report (“SEIR”); (b) the County certified an inadequate SEIR; (c) the County approved a permit amendment to dispose of contaminated soil in Santa Barbara County, an area beyond its jurisdiction; and (d) the County did not satisfy the public noticing provisions of its Local Coastal Program (“LCP”).

As described in Section 5.4 of this report (pages 8-12), there is no evidence of failure by the County to comply with the public notice and hearing requirements of the LCP. Further, the County acted properly within its jurisdiction when it approved a permit amendment authorizing a change in the method of disposing contaminated soil from on-site treatment to disposal at the City of Santa Maria Landfill. Finally, a number of the appellants’ reasons for appeal are specific to the County’s role as “lead agency” under the California Environmental Quality Act, which are not valid grounds for an appeal to the Commission. Grounds for an appeal of a local government decision to the Commission are limited to an assertion that the development (in this case, a permit amendment to allow an alternative means of disposing contaminated soil) does not conform to the LCP.

For these reasons, the staff recommends that the Commission, after a public hearing, determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed because the appellants have not raised any substantial issue with respect to the consistency of the approved project with the LCP.

EXHIBITS:

1. Guadalupe Location Map
2. Appellants' Appeal
3. San Luis Obispo County's Notice of Public Hearing

1.0 APPELLANTS' CONTENTION

Appellants' contend: (a) San Luis Obispo County did not provide notice to citizens of Santa Barbara County of the Guadalupe Restoration Project Supplemental Environmental Impact Report ("SEIR"); (b) San Luis Obispo County certified an inadequate SEIR; (c) San Luis Obispo County approved a permit amendment to dispose of contaminated soil in Santa Barbara County, an area beyond its jurisdiction; and (d) San Luis Obispo County did not satisfy the public noticing provisions of its LCP.

2.0 LOCAL GOVERNMENT ACTION

On February 7, 2006, the San Luis Obispo County Board of Supervisors unanimously denied the appeal and upheld the July 28, 2005, Planning Commission decision to certify the SEIR and approve Unocal's proposed amendment (described in Section 5.0 below) to Coastal Development Permit/Development Plan D890558D.

3.0 APPEAL PROCEDURES

After certification of a LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within the appealable areas as defined by Section 30603(a) of the Coastal Act. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 feet of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed to a de novo hearing on the merits of the project at the same meeting if the staff has prepared a recommendation on said merits, or at a subsequent meeting if there is no such recommendation.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project at either the same or a subsequent meeting as described above. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed

development is in conformity with the certified local coastal program. In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires a finding that the development conforms to the public access and public recreation policies of Chapter 3.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

4.0. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Pursuant to Sections 30603(b) and 30625(b)(2) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act. The proper motion:

Motion

I move that the Commission determine that Appeal No. A-3-SLO-06-015 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings, and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the appointed Commissioners present.

Staff Resolution to Find No Substantial Issue

The Commission finds that Appeal No. **A-3-SLO-06-015** does not present a substantial issue with respect to the grounds on which the appeal has been filed under section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program.

5.0. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

5.1 Project History and Permit Amendment Description

The Guadalupe Oil Field occupies over 2,700 acres of the larger Nipomo Dunes Complex and is located on the central California coast in San Luis and Santa Barbara counties (Exhibit 1). From 1946-March 1994, the principal land use at the site was the production of oil and gas. In the 1950s, a petroleum hydrocarbon known as diluent was introduced at the field to assist in the production of heavy crude oil. Over the years, diluent released from the pipelines and storage tanks and is now present in soils and ground water at the site. Under direction from the Regional Water Quality Control Board (“RWQCB”), the Union Oil Company of California (“Unocal”), beginning in 1993, has performed extensive site characterization activities to assess and locate areas of petroleum hydrocarbon contamination. It found over 90 diluent plumes and 150 sumps. No one knows how many gallons of petroleum hydrocarbons spilled onto soil and into ground water, but estimates range from 8.5-20 million gallons.

In 1998, San Luis Obispo County (“County”) certified under the California Environmental Quality Act (“CEQA”) an environmental impact report (“EIR”) that evaluated the impacts of a variety of potential remediation actions, including excavation of the diluent sources and treatment methods for the excavated materials. In 1998, the RWQCB issued to Unocal Cleanup or Abatement Order 98-38, requiring “Phase 1” remediation actions, such as the excavation of specific diluent plumes and sumps. In 1999, the County issued Coastal Development Permit/Development Plan D890558D, which covers Unocal-proposed oil field abandonment activities and the remediation activities required by Cleanup or Abatement Order 98-38. Also, in 1999, the Coastal Commission issued Coastal Development Permit E-99-009 to cover oil field abandonment and remediation activities occurring within the Coastal Commission’s retained coastal permit jurisdiction.

As of the first quarter 2001, Unocal completed approximately half of the excavations required by Cleanup or Abatement Order 98-38. About 57,000 cubic yards of sump material and 350,000 cubic yards of diluent affected material were excavated. This material is currently stockpiled at the Guadalupe site. All of the excavated sites were backfilled with clean sand from active dunes (Q12 and Q4) on site.

Unocal’s original plan was to treat excavated material in a land treatment unit (“LTU”) and then reuse it as backfill in subsequent excavations. The permits issued for the project were based upon the use of the LTU for treating the excavated material. Unocal conducted LTU pilot studies and began to process permit applications for the construction and operation of a LTU. In 2000, Unocal submitted an application to the RWQCB for Report of Waste Discharge Requirements (“ROWD”) and a Project Description to the County for a substantial conformity review to gain final approval for the construction and operation of a full scale LTU. The processing of these LTU applications/reviews generated numerous agency questions, highlighting the need for additional information.

Screening-level bioassays of leachate from LTU-treated material indicated that intermediary toxicity could be transferred to water in contact with the treated soil. By 2001, Unocal and the RWQCB determined that soil from the LTU would not be acceptable material for backfilling purposes. The oversight agencies and Unocal agreed that remaining excavations would be postponed until appropriate soil management is defined. Currently, about 360,000 cubic yards of contaminated soil are stored at four stockpiles on site. The largest, at site TB8, is composed of 335,000 cubic yards and is 65 feet high with a 5.6-acre footprint. A stabilizing and vapor suppressant material was sprayed on the stockpile in 2001 and continues to be maintained.

Unocal evaluated a range of alternative treatment/disposal options, which culminated in a 2005 Supplemental Environmental Impact Report (“SEIR”). The SEIR addresses disposal of the volume of soil currently stockpiled on site, as well as contaminated material to be excavated during the remainder of the cleanup operations required by Cleanup or Abatement Order 98-38, for a total of 860,000 cubic yards. The “preferred alternative” identified in the SEIR, which is supported by the RWQCB, San Luis Obispo County, and City of Santa Maria, is trucking the material to the City of Santa Maria Landfill for use in the landfill’s Non-Hazardous Impacted Soils (“NHIS”) Program.

In accordance with California Code of Regulations Title 27, which contains provisions to use NHIS to construct foundation layers for landfill closure, on May 18, 2001, the RWQCB issued Revised Waste Discharge Requirements (“WDR”) Order No. 01-041 to the Santa Maria Landfill. WDR 01-041 provides guidelines for the acceptance of NHIS from the restoration and cleanup of oil-producing sites. The City of Santa Maria Landfill needs close to five million cubic yards of soil to close their remaining active cells, well in excess of the amount located at the Guadalupe Oil Field. The landfill has been accepting NHIS since 2003 from other sump locations in the Santa Maria Valley. However, these sources are winding down and the landfill needs other sources of materials for closure. In 2004, the City of Santa Maria certified a Supplemental EIR that addresses the environmental impacts of trucking to, disposal of, and use of contaminated material from Guadalupe site (which qualifies as NHIS) in the landfill’s NHIS Program.

The permit amendment, which is the subject of this appeal, is to transport via truck up to 860,000 cubic yards of NHIS from the Guadalupe Oil Field to the City of Santa Maria Landfill, and to increase the amount of sand taken from the Q4 dune¹ site (from a maximum of 500,000 cubic yards to up to 1,000,000 cubic yards) for use as future excavation backfill material.

5.2 Amendment and Appeal History

On July 28, 2005, the County Planning Commission certified the SEIR and approved Unocal’s proposed amendment to Coastal Development Permit/Development Plan D890558D. On February 7, 2006, the County Board of Supervisors unanimously denied an appeal of, and thus upheld, the Planning Commission’s decision. On March 9, 2006, the Coastal Commission received the County’s Notice of Final Action to start the 10-working-day appeal period, which ended March 23, 2006. The appeal was filed on March 23, 2006.

¹ The Q4 dune is a very large dune with about 9,600,000 cubic yards of sand.

5.3 Permit Jurisdiction

The project is located within the coastal zone in San Luis Obispo County and is subject to the County's certified Local Coastal Program ("LCP"). Since the purpose of the Guadalupe Restoration Project is the abandonment and remediation of a former oil production site (i.e. an energy project), all County coastal permit decisions on the project can be appealed to the Coastal Commission. Additionally, as noted above, a portion of the overall Guadalupe Restoration Project is located within the Commission's retained permit jurisdiction.

5.4 Standard of Review

The standard of review for this appeal is consistency with San Luis Obispo County's LCP.

5.4 Appeal Issues Not Raising a Substantial Issue

5.4.1 Public Notice

The appellants' contend:

- a) *The approval of the Guadalupe Restoration Project and certification of the project Supplemental Environmental Impact Report violated the California Coastal Act and the California Environmental Quality Act. Additionally, the decisions to approve the project and certify the DEIR (sic) do not conform to the standards set forth in SLO County's certified Local Coastal Program (LCP) and the California Coastal Act... (The appellants reference Coastal Act Sections 30006, 30012(a), 30320(a), 30339(d); See Exhibit 2).*
- b) *SLO County evaluated environmental impacts outside of its jurisdiction and completely excluded the public living in Santa Barbara County from participating in any scoping meeting, public hearing. This is especially egregious given the fact that the majority of environmental impacts evaluated for the project occur in the County of Santa Barbara.*
- c) *SLO County failed in the implementation of its Local Coastal Program to assure open consideration and more effective public participation in its programs or activities by not providing notice or opportunities for the public in the County of Santa Barbara to know of the Guadalupe Restoration Project SEIR. The potential environmental impacts evaluated by SLO County will actually occur within the County of Santa Barbara, and the public in that jurisdiction was not invited to participate in the scoping, evaluation and approval hearings for the project.*

The appellants' assert in (a), (b) and (c) that San Luis Obispo County did not provide notice of public hearings within the County of Santa Barbara regarding the project's SEIR. This is not a valid ground for an appeal to the Coastal Commission. As stated above, the grounds for an appeal are limited to an assertion that the development proposed (in this case the development sought by Unocal is an alternative means of disposing of contaminated soil) does not conform to the LCP. The Commission nevertheless is interpreting the appellants' grounds broadly, and will address whether or not the County complied with the public notice and hearing requirements of

the LCP with respect to Unocal's proposed amendment to Coastal Development Permit/Development Plan D890558D.

For the subject permit amendment request, public notice and hearing requirements are governed by San Luis Obispo County's Coastal Zone Land Use Ordinance Section 23.01.060. Section 23.01.060(1) of the County's Coastal Zone Land Use Ordinance states:

23.01.060 Public hearing.

When a public hearing is required by this title before action on a minor use permit (Section 23.02.033), development plan (Section 23.02.034), variance (Section 23.01.045), appeal (Section 23.01.042) or amendment (Section 23.01.050), the hearing shall be conducted as provided by this section.

(1) Notice of Hearing. Notice of a public hearing shall be given as follows:

- (A) Content of Notice. The hearing notice shall contain the information required by Government Code Section 65094 and any additional information the planning director deems appropriate. Where the public hearing is for the purpose of considering an application for land use permit or variance approval, or for appeals to decisions on such applications, the notice shall also include the following information:
 - (i) A statement that the development is within the coastal zone;*
 - (ii) The date of filing of the application and the name of the applicant;*
 - (iii) The county file number assigned to the application;*
 - (iv) A description of the development and its proposed location;*
 - (v) The date, time and place at which the application will be heard;*
 - (vi) A brief description of the general procedure of county concerning the conduct of hearing and county actions;*
 - (vii) The system for county and coastal commission appeals, including any fees required.**
- (B) Method of Notice Distribution. Notice of public hearings pursuant to this title shall be given as follows:
 - (i) Permits, Permit Amendments and Appeals. Notice shall be given as provided by Government Code Section 65091² and shall be provided by first class mail to each**

² 65091. (a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be given in all of the following ways:

(1) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant.

- applicant, to all persons who have requested to be on the mailing list for the development project or for coastal decisions within the county, to all property owners within three hundred feet as shown on the latest equalized assessment role and residents within one hundred feet of the perimeter of the parcel on which the development is proposed and to the coastal commission.*
- (ii) *Local Coastal Program Amendments. Notice shall be given as set forth in Sections 65090 and 65091 et seq. of the Government Code and Sections 13515 and 13552 of Title 14 of the California Administrative Code.*
- (C) *Timing of Notice. Public hearing notices shall be mailed by first class mail and published where required by the Government Code at least ten days before the first public hearing on the matter.*

The County's public noticing provisions require that "all owners of real property as shown in the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing" be mailed or deliver noticed at least 10 days prior to the hearing. The "real property" that is the subject of the amendment request is the Guadalupe Oil Field site. On June 23, 2005,

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- (2) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.
- (3) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In lieu of utilizing the assessment roll, the local agency may utilize records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (1) is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing.
- (4) If the notice is mailed or delivered pursuant to paragraph (3), the notice shall also either be: (A) Published pursuant to Section 6061 in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing. (B) Posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding.
- (b) The notice shall include the information specified in Section 65094.
- (c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.
- (d) Whenever a hearing is held regarding a permit for a drive-through facility, or modification of an existing drive-through facility permit, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation in any hearing on, or appeal of the denial of, a drive-through facility permit. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled, is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.

the County mailed a hearing notice to all owners or real property within three miles of the Guadalupe Oil Field site, as shown on the County Assessor Records, which was more than 10 days prior to the July 28, 2005 Planning Commission hearing on this matter.

The County was not required to notify residents of the City of Santa Maria of a public hearing on this matter, nor was it required to hold a hearing within the City of Santa Maria. However, on or before June 27, 2005, the County published a public notice in the Tribune of San Luis Obispo announcing the July 28, 2005 Planning Commission Hearing on Unocal's amendment request (See Exhibit 3).

Owners of real property near the City of Santa Maria Landfill were presumably notified by the City of Santa Maria when, in July 2004, it prepared a Supplemental EIR and approved acceptance of receiving Guadalupe Oil Field contaminated soil at the landfill.

Thus, there is no evidence of failure by the County to comply with the noticing provisions of the LCP. Therefore, for the reasons cited above, the Commission finds that no substantial issue exists with respect to the project's conformity with the County's LCP public noticing and hearing provisions.

5.4.2 Jurisdiction

The appellants' contend:

- d) The San Luis Obispo Board of Supervisors approved a permit for the transportation and disposal of some 860,000 cubic yards of diluent impacted sand in Santa Barbara County, an area beyond their jurisdiction. Using a Coastal Development Permit for an inland project exceeds the authority of the Coastal Act and the contracted agreement between the Coastal Commission and San Luis Obispo County. Additional jurisdictions impacted are Santa Barbara County and the City of Guadalupe. Part of the Guadalupe site is clearly inside of Santa Barbara County and are outside of the subject discretionary authority under the contract.*

The appellants' further assert in (d) that in approving the permit amendment, the County exceeded its authority by approving the disposal of contaminated soil in an adjacent county (Santa Barbara County), an area outside its jurisdiction.

The issue before the County was whether Unocal's proposed alternative means of disposing of contaminated soil is consistent with the policies of the LCP. To dispose of the contaminated soil by means other than treating it in an LTU and then reusing the treated soil as backfill material in future excavations requires an amendment to the original coastal permit. The County concluded that the alternative method of disposal (i.e., trucking the soil to an approved landfill) is consistent with the standards of the LCP. The County's action on the permit amendment request did not include within its scope the acceptability of the Santa Maria Landfill receiving this material from the Guadalupe Oil Field. The landfill is located outside of the coastal zone of the County and thus is not subject to the regulatory requirements of the Coastal Act. (Public Resources Code §

30604(d); see generally *Sierra Club v. Cal. Coastal Com'n* (2005) 35 Cal.4th 839.) The decision as to whether the City of Santa Maria Landfill should accept this material was made in 2004 by the City of Santa Maria and the RWQCB (as described in Section 5.1 of this report). The City of Santa Maria's decision to accept the material was made after it certified a Supplemental EIR evaluating the environmental impacts of trucking the contaminated soil to the landfill from the Guadalupe Oil Field site. Therefore, it was during the City of Santa Maria's proceedings of 2004 that the impacts of receiving this Guadalupe soil at the landfill were evaluated and considered, and hearings were conducted within Santa Barbara County.

Thus, the Commission believes the County acted properly within the scope of its jurisdiction under the LCP and Coastal Act. The Commission therefore finds that no substantial issue exists with respect to the project's conformity with the County's LCP.

5.5 Assertions That Are Not Valid Grounds to Appeal

The appellants' contend:

- e) *The San Luis Obispo Board of Supervisors approved an inadequate SEIR and violated State Law, the Coastal Act, and CEQA Guidelines.*
- f) *The County of San Luis Obispo did not provide for a Public Hearing on the Draft SEIR in Santa Barbara County where significant amounts of traffic will be generated.*
- g) *The protection given to the Citizens of San Luis Obispo County to participate in the hearing on the Draft SEIR was greater than the protection given the citizens of Santa Barbara County, a violation of Due Process and Equal Protection clauses of the Federal and California State Constitutions.*
- h) *There was no published notice of a scoping hearing and no scoping hearing held in Santa Barbara County where all of the significant transportation impacts will occur.*

The above-stated reasons for appeal are specific the County's role as "lead agency" under the CEQA. These are not valid grounds for an appeal to the Coastal Commission. Grounds for an appeal of a local government decision to the Coastal Commission are limited to an assertion that the development (in this case, approving a permit amendment to allow an alternative means of disposing contaminated soil) does not conform to the LCP.