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April 11, 2007

TO: Coastal Commissioners and Interested Parties
FROM: Alison Dettmer, Manager, Energy and Ocean Resources Unit

SUBJECT: **Addendum to Staff Report for CC-079-06**

Coastal Commission staff recommends the following modifications to the staff report. Deletions are illustrated by ~~strikethrough~~ and additions by underlining.

Page 3 - The first two paragraphs shall read:

> The proposed FSRU would be about 971 feet long and 213 feet wide, and would rise to about 266 feet above the ocean surface. Its appearance would be similar to a large ship. It would be permanently anchored in place with anchor cables and pipeline risers but would be designed to "weathervane" around a pivot point to allow it to respond to wind and wave conditions. It would store up to about 9.6 million cubic feet of LNG~~natural gas~~ in three large, spherical tanks, known as Moss tanks, each with a diameter of about 184 feet, which would be located within the FSRU's double-hulled outer structure.
>
> BHP expects the facility to handle an average annual throughput of about 800 million cubic feet of natural gas per day[1], which would be delivered by up to 99 LNG carriers per year. The facility would use two types of carriers – the smaller of the two would hold about 4.8 million cubic feet of LNG~~gas~~ and the larger would hold about 7.4 million cubic feet. Each berthing, offloading, and de-berthing would take about 18 to 24 hours.

Page 15 - The last sentence of the first paragraph shall read:

> The metering station consists of 3.5-foot tall above ground valve actuators, eight-foot tall blow-down stacks, a small instrument building approximately nine feet tall, pig launchers and receivers, a backup gas odorant injection station, and concrete pads and foundation.

[1] 800 million cubic feet is about 10% of California's daily average natural gas use.

Page 17 - Insert new subsections 3.3 and 3.4 as follows:

3.3 Right of Appeal

Pursuant to 15 CFR Part 930, Subpart H, and within 30 days from receipt of the Commission's letter notifying BHP of the Commission's action, BHP may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the California Coastal Commission and the Maritime Administration ("MARAD"). The Secretary may collect fees from BHP for administering and processing its request.

3.4 Procedure if Commission Finds Activity Inconsistent with CCMP

Section 930.63(b) of the federal consistency regulations (15 CFR Section 930.63(b)) states that, if the Commission's objection is based on a finding that the proposed activity is inconsistent with the CCMP, it may identify measures, if they exist that would bring the project into conformance with the CCMP. Section 930.63 provides:

§930.63 State agency objection to a consistency certification.

(b) State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

As described in Sections 4.2 ("Air Quality") and 4.11 ("Coastal-Dependent Industrial "Override" Policy") below, the proposed project is inconsistent with the CCMP. In order to bring the activity into conformance with the CCMP, BHP needs to modify the activity to include the following provisions:

1. BHP must 1) provide offsets of stationary nitrogen oxides ("NO_x) and reactive organic compounds ("ROC") emissions, and (2) implement best available control technology ("BACT"), as required by Ventura County Air Pollution Control District ("VCAPCD") Rule 26.2.

2. BHP must fuel its fleet of LNG carriers by using 99% natural gas (or as near to that percentage as feasible to the satisfaction of the Executive Director) as the carriers transit to and from BHP's LNG export facilities and Cabrillo Port.

Page 21 – Add the following sentence to the end of the first bullet:

To address the proposed project's entrainment impacts, BHP has committed to implement three main mitigation measures, as summarized below (see Appendix B for a full description):

- BHP will conduct an entrainment study starting within 60 days of Cabrillo Port's startup. The entrainment study will follow protocols similar to the "state of the art" power plant studies as described below. BHP will also convene an independent Technical Advisory Committee to help develop and implement the study and to review the study results. <u>This study would be in addition to a similar pre-project entrainment study proposed as part of the U.S. EPA's NPDES permit for the project.</u>

Page 22 – The third paragraph shall read:

Identifying the scope and severity of this proposed project's adverse entrainment effects is a significant challenge for several reasons. First, BHP has not yet conducted the type of study generally used to determine the entrainment impacts caused by a seawater intake. These studies are best completed before the impacts associated with the intake start. Additionally, there are currently no site-specific data available that describe the numbers, types, and densities of organisms that would be subject to entrainment at the proposed project site. The nearest data are from a long-term sampling station about 14 miles from the project site, which was established as part of the California Cooperative Fisheries Investigation (CalCOFI) program, described in further detail below. These data are likely suitable for establishing an initial assessment of the proposed project's likely impacts but do not provide the level of certainty provided by a study particular to this specific site. <u>The U.S. EPA's draft NPDES permit for the proposed project would require BHP to conduct a pre-project entrainment study at the project site, as well as ongoing entrainment monitoring. While results of this study are not available for this federal consistency review, they would be available prior to project operations and would provide baseline data about the types and numbers of species likely subject to entrainment.</u> Despite these difficulties, the Commission has evaluated the best available data to determine the proposed project's likely impacts and has made several conservative assumptions about those impacts to determine whether BHP's proposed mitigation is adequate and appropriate.

Page 23 – The first and second paragraphs shall read:

Although the proposed facility would use water from a different environmental setting than the coastal power plants – i.e., open ocean water rather than nearshore or estuarine waters – the study methods and protocols used for the power plant studies appear to be suitable or adaptable for determining Cabrillo Port's entrainment impacts. We note that each of the coastal power plant studies used similar protocols and techniques even though the power plants were located in areas with different habitat types – e.g., nearshore sandy bottom, rocky reef, enclosed bay, etc. – which suggests that the standard study protocols can be adapted to the open ocean habitat that would be affected by Cabrillo Port. The studies all

share a basic approach – to collect seawater samples from near the intake for at least one year; to then identify, count, and measure the organisms in those samples; and finally, to use three different modeling techniques to determine what impact the loss of these organisms has on the affected marine environment. Both the expected U.S. EPA study and ~~T~~the BHP study would include this same general approach, methodology, and set of protocols, which are described below in more detail, to confirm the anticipated level of Cabrillo Port's entrainment impacts described later in these findings. The BHP study would also be used to determine whether BHP would need to provide additional mitigation if the proposed project's entrainment effects are greater than anticipated. Additionally, by conducting the study after the facility starts operations, its results would reflect the site conditions with the facility rather than without, and would therefore allow comparisons with conditions identified during the EPA's pre-project study. Once the facility is in place, some site conditions would change and may alter the anticipated level of entrainment – for example, both the lighting and the presence of hard substrate at the facility may change the numbers or types of entrained organisms in the area. These types of changes would also be made evident through the ongoing entrainment monitoring expected to be required in the U.S. EPA's NPDES permit.

The entrainment studies recently completed at coastal power plants and the study BHP would ~~complete~~ require collecting and compiling several sets of data about the types and numbers of organisms subject to entrainment. BHP's study would include use of the Empirical Transport Model (ETM), which requires collecting additional data to provide an estimate of the amount of habitat that would be needed to replace the productivity lost due to entrainment.[2] That estimate, known as the Area of Production Foregone, serves as the basis for identifying the extent of an intake's entrainment impacts and for helping determine mitigation that may be needed to address those impacts. The description below is a highly simplified version of the steps needed in an entrainment study to generate that estimate.

Page 29 – The second paragraph shall read:

The Huntington Beach study also included a rigorous determination of the power plant's source water area. Rather than use the entire geographic area from which the power plant draws its seawater, the study identified specific source water areas for a number of target species and then related the source water area to the level of seawater use by the power plant. The study determined that for a seawater intake flow of 254 million gallons per day, the average source water area was 104 acres – that is, the organisms entrained in a daily annual flow of 254 million gallons per day represented an annual loss of productivity in 104 acres of nearshore waters.[10] This approach provides an additional conservative assumption, in that it presumes the entire 104 acres is productive habitat used by the entrained species. The actual

[2] The other two models used in entrainment studies, Fecundity Hindcasting (FH) and Adult Equivalent Loss (AEL) model, require life history information that is not available for most species subject to entrainment on the West Coast, so these models of limited use. They are, however, often used in association with the ETM to provide confirmation of the ETM results.

productivity likely varies within the 104 acres, but this assumption is based on the productivity being equally high throughout.

Page 30 – Add a new paragraph following the first paragraph as follows:

That is, if the proportional relationships between water use and APF at these two facilities were applied to the water use at Cabrillo Port, they would result in a negligible APF of less than a square foot. It is clear from applying this approach to these three power plants that the figures derived from the Huntington Beach study are the most conservative for determining the extent of Cabrillo Port's likely entrainment effects.

Additionally, because the Commission expects to have available to it prior to project operations the results of the U.S. EPA's pre-project entrainment study, this will provide further guidance about pre-project conditions, the types and numbers of entrainable organisms at the site, and the relative accuracy of the above determinations. Those study results would also serve as a comparison between pre- and post-project conditions and would help determine locations for the artificial reef mitigation described below.

Page 31 – Add sentences to the end of the second paragraph as follows:

Regarding the amount of mitigation, the previous discussion of likely project-related impacts showed that the APF of 3.5 acres is based on several conservative assumptions. Since the anticipated APF is based on those conservative assumptions, it would be reasonable to find at the completion of BHP's entrainment study that Cabrillo Port's actual APF is somewhat less than 3.5 acres. Providing 2:1 mitigation in the form of more productive habitat than that directly affected by the proposed project is therefore likely to result in a mitigation ratio somewhat higher than 2:1. For comparison, we note that the mitigation required as a result of the Huntington Beach power plant study was at a 1:1 ratio based on the APF. In that case, the Energy Commission determined that restoration of 104 acres of nearby wetlands would provide suitable mitigation for adverse entrainment effects at the power plant that resulted in an APF of 104 acres.[11] The use of a 1:1 mitigation ratio rather than the higher ratio usually applied to mitigation determinations was based in part on the likelihood that the 104 acres of restored wetlands would be at least as productive as the same area of open coastal waters. For this proposed project, the reef habitat mitigation is likely to be substantially more productive than the area of open ocean water subject to entrainment. Along with the other conservative assumptions identified previously – i.e., assuming 100% mortality in all the facility's seawater use, assuming the entire source water area is highly productive habitat for the entrained species, etc. – these characteristics make it likely that seven acres of reef habitat could provide substantially more than 2:1 mitigation for the entrainment losses.

Page 33 – The second and third paragraphs shall read:

Similar to the entrainment impacts discussed previously, it is a challenge for several reasons to quantify what level of impingement impacts would result from Cabrillo Port operations. Impingement rates will vary for a single vessel depending on how it is operated, and rates will vary among vessels depending on their design. Additionally, there are no data available

that would describe the numbers or types of fish that may be subject to impingement and present at the proposed project site. Further, even if there were data available describing the fish present under existing conditions, the presence of the FSRU and carrier vessels is likely to change the number and type of species at the proposed project location. ~~Finally, it would be infeasible to monitor impingement during Cabrillo Port's operations to determine the actual rates, due to the number and location of the various intakes and because fish that do become impinged are likely to fall away from the intake screens fairly quickly when the water velocity is reduced.~~ To address the need for impingement information, the U.S. EPA has included in its draft NPDES permit a condition requiring BHP to submit prior to project operations a monitoring plan that will determine impingement losses caused by Cabrillo Port.

Because of these baseline and operational monitoring constraints, the Commission is unable to determine with accuracy the rate of impingement likely to occur at Cabrillo Port or the overall level of impact that the impingement would cause. Unlike the entrainment issue described above, the Commission has no credible data on which to base a determination of adverse effects or to determine appropriate mitigation. However, because of the conservative approach taken to identify the proposed project's probable entrainment impacts and the appropriateness of BHP's entrainment mitigation proposal, the Commission believes that the artificial reefs created through BHP's mitigation funding would also provide some level of mitigation for the impingement impacts likely to occur at Cabrillo Port. These impingement impacts would be made evident through the monitoring expected from the NPDES permit requirement. The created reefs would not only support productivity of numerous species in the Southern California Bight's planktonic community, but would provide habitat for a number of the same species of adult fish which may be subject to impingement at Cabrillo Port.

Page 53 – The second full paragraph shall read:

~~As such, the small vessel traffic associated with the operation of the Cabrillo Port should not result in a significantly increased risk of marine mammal or sea turtle injury or mortality from vessel collisions.~~ Nevertheless, the National Marine Fisheries Service's Marine Mammal Stranding Network indicates that as a result of vessel strikes there were three reported California sea lion mortalities statewide in 2001, eight reported harbor seal mortalities statewide between 1999 and 2003, and two northern elephant seal mortalities statewide between 1996 and 2000.

Page 54 – The first full paragraph shall read:

Large ship strikes involving marine mammals and sea turtles, although uncommon, have been documented for the following listed species in the eastern North Pacific: blue whale, fin whale, humpback whale, sperm whale, southern sea otter, loggerhead sea turtle, green sea turtle, olive ridley sea turtle, and leatherback sea turtle. Ship strikes have also been documented involving gray, minke, and killer whales. Specifically, records from the National Marine Fisheries Service's Marine Mammal Stranding Network indicate an average

observed[3] mortality of 0.2 humpback whales per year (between 1999 and 2003), 0.2 blue whales per year (between 1998 and 2002), 0.2 killer whales per year (between 1998 and 2004), and 0.4 fin whales per year (between 1997 and 2001) statewide as a direct result of vessel strikes….

Page 54 – The second full paragraph, first sentence shall read:

Despite the low probability of vessels strikes occurring, to further reduce the likelihood of impacts to marine mammals or sea turtles from the Cabrillo Port's vessels, in its consistency certification BHP has committed to the mitigation measures included in the EIS/EIR (and detailed in Appendix C) which include the requirement to restrict the operation of all crew, supply and support vessels to daylight hours and maintain marine mammal observers on all Cabrillo Port construction, crew, supply and support vessels during all construction activities, as each vessel travels to and from the construction site and as supply, support and crew vessels travel to and from the project site during operation.

Page 69 – The second bullet under "Entrainment" shall read:

Entrainment

- Reduce seawater use and entrainment impacts from about 5.2 billion gallons per year to the currently anticipated three billion gallons per year, in part through use of a closed loop cooling system rather than a once-through system;
- Along with the anticipated U.S. EPA required pre-project entrainment study, ~~C~~conduct an entrainment study starting within 60 days of startup, following protocols similar to "state of the art" power plant studies, and convene an independent Technical Advisory Committee to help develop and implement the study and to review the study results…

Page 87 – The third paragraph shall read:

In addition to the emission offsets required under VCAPCD Rule 26.2, the project would also emit 48.9 and 18.0 tons/year of NOx and ROC, respectively, in federal waters. ~~While VCAPCD does not require ERCs for emissions from vessels in federal waters,~~ E~~e~~missions from these sources (FSRU support vessels and LNG tankers) would also contribute to existing onshore violations of state and federal ambient air quality standards.

Page 92 – The first full paragraph shall read:

Subsequent to the EPA letter, BHP has indicated that it would take approximately five months (from October 17, 2006) to respond to all of the EPA's data requests regarding the feasibility of using SCR on the SCVs.64 Given the time necessary to receive and evaluate the additional information requested from BHP, the EPA has not made a final determination of BACT for the Cabrillo Port SCVs, and whether or not SCR would feasibility represent BACT for SCV NO_x emissions. However, for the reasons described above and based on the

[3] Additional mortality from ship strikes probably goes unreported because the whales do not strand or, if they do, they do not always have obvious signs of trauma.

information available to date, the Commission finds that BHP's project has ~~does~~ not ~~meet~~ demonstrated compliance with VCAPCD Rule 26 BACT requirements.

Page 186 – Following the last sentence, add the following:

BHP Argues Coastal Commission Lacks Legal Authority

In a letter dated April 6, 2007, counsel for BHP advances a number of arguments as to why the findings and conclusions of the Commission are in excess of the Commission's legal authority. The Commission disagrees and finds BHP's arguments to be either 1) based on a faulty premise, 2) irrelevant to the issue of the scope of the Commission's legal authority, or 3) otherwise lacking in merit. The following passages either quote or restate each of BHP's assertions and then provide the Commission's response.

Argument No. 1. BHP contends (4/6 letter, pp. 2, 4, and 22) that when section 307(f) of the CZMA incorporates the requirements of states adopted under the Clean Air Act into the CCMP, it incorporates such requirements into "Division 20 of the CCMP." Accordingly, the override provisions of section 30260 are applicable to the requirements of the VCAPCD Rules (as incorporated into the CCMP by section 307(f)).

Response. BHP's contention is based on the misconception that the terms "Division 20" and "CCMP" are interchangeable. For the following reasons, it is clear that they are not. First, "Division 20" is a term that is used to refer to one of the subdivisions of the California Public Resources Code (CPRC), not of the CCMP. Second, the CCMP is comprised of more than just the California Coastal Act of 1976 (Division 20 of the CPRC). For example, it also includes the Commission's administrative regulations (Title 14, Ch. 5.5, Cal. Code of Regulations) and Division 21 of the CPRC (the California Coastal Conservancy Act of 1976). Finally, "Division 20" of the CPRC consists exclusively of statutory provisions enacted into law by the California Legislature. Only the Legislature could decide to add other rules or requirements into Division 20. The VCAPCD Rules, by contrast, are the administrative regulations adopted by the VCAPCD, and are not part of Division 20. For all of these reasons, the VCAPCD Rules collectively constitute an integral component of the CCMP (by virtue of their incorporation by section 307(f)), but not of Division 20 of the CPRC. Thus, the "override" provision of section 30260, which expressly applies only to Division 20, does not apply to the VCAPCD Rules as incorporated into the CCMP by section 307(f) of the CZMA.

Argument No. 2. BHP asserts (4/6 letter, pp. 4, 13-15) that in conducting a consistency review of the Cabrillo Port project pursuant to section 307(c)(3)(A) of the CZMA the Commission lacks the authority under the CZMA to apply the VCAPCD Rules "beyond [the] stated jurisdictional boundaries [of such rules]."

Response. BHP misunderstands of the nature of the authority that the Commission exercises in conducting consistency reviews pursuant to the CZMA. Section 307(c)(3)(A) of the CZMA states unequivocally that the consistency review requirements set forth therein apply to all federally permitted activities that affect a state's coastal zone regardless of their geographic location "in or outside of the coastal zone." Further, although both the Coastal

Act and the VCAPCD Rules were enacted and adopted, respectively, to govern the regulation of land and water uses under state law and both are therefore subject to limitations common to all applications of the law of a state, the Commission is not acting solely with state authority when exercising consistency review. The CZMA confers on states with a federally approved CMP the *federal* authority to apply "enforceable policies" of the CMP where those policies would otherwise be preempted, i.e., beyond their territorial boundaries. Thus, the Commission acts with federal authority when exercising its consistency review using the standards in its CMP, under the CZMA. Under BHP's theory, neither the Coastal Act nor the VCAPCD Rules could be applied to the Cabrillo Port project under the CZMA. Such a result is completely contrary to both the express language of the CZMA as well as the Commission's over 25 years of practice and experience under the CZMA.

Argument No. 3. BHP asserts (4/6 letter, p. 14) that the Commission lacks the authority to apply the standards of section 30253(3) of the CCMP to the Cabrillo Port project because no air emission control or mitigation requirements have been "imposed" on BHP by either the CARB or an APCD.

Response. The requirements of VCAPCD Rule 26.2 for emission offsets and for BACT are mandatory and are not dependent on discretionary action by the VCAPCD to be binding upon or effective against the emissions of a new emission source that emits either specified pollutants or pollutants in quantities that exceed specified thresholds. Specifically, Rule 26.2 requires the VCAPCD to deny an Authority to Construct to any new emission source that is not equipped with BACT and for which offsets are not provided. As such, the requirements of Rule 26.2 for BACT and offsets are analogous to the Coastal Act's mandatory requirement of compliance with conditions of approval of a coastal development permit. See Cal. Pub. Res. Code §§ 30809, 30810. Accordingly, for purposes of section 30253(3) of the Coastal Act, the VCAPCD "imposed" requirements for BACT and for offsets when it adopted Rule 26.2. BHP also argues that, in the context of this matter, the Commission should interpret section 30253(3) as authorizing the Commission merely to verify consistency with requirements "imposed by the EPA." BHP's proposed interpretation is simply not supported by the language of section 30253(3) and appears to have been made up out of whole cloth. Nowhere does the Coastal Act or the CZMA impose a "verification" obligation upon the Commission.

Argument No. 4. BHP contends (4/6 letter, p. 11-12) that EPA's exclusive jurisdiction under the Deepwater Port Act to determine compliance with applicable Clean Air Act requirements means that EPA's determinations must "take precedence over any Commission action that conflicts with or duplicates" EPA's action.

Response. BHP characterizes the authority over air compliance issues that the EPA exercises under the Deepwater Port Act (DPA) as "specific, express and direct." The Commission has no quarrel with this characterization. However, BHP then proceeds to characterize the authority of a "state coastal agency" with respect to such issues "*through the DPA*" (emphasis added) as "indirect" and thus subordinate to that of the EPA. The flaw in BHP's reasoning is that the Commission's authority in this matter does not derive from the DPA; it derives instead from the CZMA and of the CCMP approved thereunder, which

include section 30253(3) and (by virtue of section 307(f) of the CZMA) VCAPCD Rule 26.2. These authorities are no less "specific, express, and direct" than those of the DPA which confer authority on the EPA. The Commission is not contesting EPA's authority under the Deepwater Port Act; however, BHP is wrong when it states that the Deepwater Port Act merely "permits" the Commission to conduct CZMA consistency review. Acting under a federal law with co-equal standing, the Commission has it's own obligation to conduct consistency review.

BHP also refers to section 307(e) of the CZMA in support of its position. However, it is not clear exactly how BHP believes the proposed findings and conclusions in this staff report run afoul of that provision. Specifically, there is nothing in the staff's recommended findings and conclusions that in any way: "diminish…Federal…jurisdiction, responsibility or rights in the…control of…submerged lands...," or that has the result or effect of "superseding, modifying, or repealing existing laws applicable to the various Federal agencies…."

Finding scant support therefore in the actual language of the DPA and the CZMA, in a footnote (no. 3) BHP seeks to bolster its argument by invoking the doctrine of federal preemption. Principles of federal preemption come into play where there is an alleged inconsistency or conflict between state and federal law with respect to a particular subject area. However, in its review of the Cabrillo Port project the Commission is not engaging in an exercise of authority under state law. It is exercising federal authority conferred on it by the CZMA, a federal law.[4] As such, the doctrine of federal preemption has no applicability to the Commission's actions in its review of the Cabrillo Port project.[5]

Argument No. 5. BHP asserts (4/6 letter, pp. 2, 15-16) that the Commission lacks authority under the CZMA to review the air impacts of the Cabrillo Port project because BHP's "mitigation package" eliminates any such impacts to the CA coastal zone.

Response. BHP is correct in its assertion that a prerequisite to the Commission's having jurisdiction to review a federally-permitted activity under the CZMA is that such activity must "affect any land or water use or natural resource of the coastal zone [of the State of California]." However, under the regulations which implement the CZMA (CFR Title 15, Part 930), the "activity" to which this "effects" test is applied is the activity as originally proposed in an application to a federal permitting agency, and before addition to the activity of measures in the nature of offsets or other compensatory mitigation. For example, 15 CFR § 930.62(d) draws a distinction between the activity that is the subject of a consistency certification and "conditions which, if met by the applicant, would permit state agency concurrence." Similarly, 15 CFR §§ 930.63(b) and (c) distinguish between the "the proposed

[4] BHP acknowledges that "the Commission's review of [BHP's] consistency certification is not strictly a state regulatory act." However, BHP errs when it goes on to assert that, notwithstanding this fact, the state law source of the environmental regulations that the Commission applies when conducting its review means that "principles of federal preemption apply."

[5] Any asserted conflict between the CZMA and another federal law would be subject to review under the doctrine of "repeal by implication." See generally *Southern Pacific Trans. Co. v. Cal. Coastal Comm'n*, 520 F. Supp. 800 (N.D. Cal. 1981).

activity" and "measures which, if adopted by the applicant, may permit [such] activity to be conducted in a manner consistent with the…management program." In this regard the CZMA is similar to air quality control requirements, the applicability of which is determined on the basis of a proposed project's "potential to emit" rather than the project's actual emissions after application of BACT or other mitigation requirements.

Even if the Commission were to take into account the air quality mitigation measures BHP has proposed for the Cabrillo Port project in applying the CZMA's "effect" test, the outcome of this test would still be in the affirmative in light of the analysis in previous sections of this staff report which demonstrates that BHP's mitigation package is inadequate to fully mitigate all project-related air impacts.

Argument No. 6. BHP asserts (4/6 letter, p. 24) that the "relevant emissions [of CO2] for purposes of Consistency Certification review are those…from the FSRU and…carriers during near approach" and that "CO2 emissions beyond California Coastal Waters…are not caused by the federal action and are not subject to the Commission's consistency review."

Response. Although in the course of making this assertion BHP acknowledges the fact that "associated facilities," i.e., facilities associated with but not actually a part of the federally permitted activity, are within the scope of the Commission's consistency review authority, BHP does not properly apply this term. 15 CFR § 930.11(d) defines the term "associated facilities" to mean "facilities which are specifically designed, located, constructed, operated, adapted, or otherwise used…to meet the needs of a federal action…and without which the federal action, as proposed, could not be conducted." LNG carrier trips at all points between the FSRU and the point of natural gas extraction and liquefaction clearly satisfy the definition of "associated facilities" set forth in section 930.11(d). Accordingly, CO2 emissions from LNG carriers in transit to or from the FSRU are within the scope of the Commission's consistency review authority.