

CALIFORNIA COASTAL COMMISSION

ENERGY, OCEAN RESOURCES AND FEDERAL CONSISTENCY

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Th9a

**9-22-0219
(DCOR Pipeline 0919 Repair Project)**

March 9, 2023

CORRESPONDENCE



March 2, 2023

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Re: Coastal Development Permit for Repairs to Pipeline 0919

The Center for Biological Diversity and Orange County Coastkeeper commend the California Coastal Commission for requiring DCOR to obtain a coastal development permit for activities related to the repair of Pipeline 0919—the pipeline that spilled oil in California waters between Platform Eva and the coast in December 2021. The Coastal Commission’s authority under the California Coastal Act to require a coastal development permit in this situation is unambiguous and the Coastal Commission’s actions are necessary to protect our marine environment.

In December 2021, an undersea pipeline connected to drilling platforms off Orange County, the traditional homelands of the Tongva and Acjachemen Nations, ruptured, spewing oil into the ocean and resulting in a sheen visible from the air.¹ This pipeline rupture was only the most recent in a long line of oil spills in Orange County. In October 2021, a different undersea pipeline connected to drilling platforms off Orange County ruptured, spewing tens of thousands

¹ Priscilla Vega, California-based oil company identified as source of latest sheen off Orange County coast, LA Times, Dec. 26, 2021.

of gallons of oil into the ocean.² That spill, and many before it, fouled sensitive beaches and wetlands, forced the closure of fisheries, and harmed or killed dozens of fish and birds, including threatened snowy plovers.

Offshore oil development is inherently dangerous and encompass a slew of wide-ranging impacts. The recent oils spills in Orange County highlight one of the many dangers drilling for oil poses to wildlife and to the coastal communities and ecosystems of California. In addition to oil spills, oil and gas operations endanger many imperiled species, deepen the climate crisis, and harm the coastal economy via air pollution and spills. The aging oil and gas infrastructure in the Pacific Ocean, including corroded pipelines, guarantee that without vigorous management, more disasters are forthcoming.

By requiring DCOR to obtain an after-the-fact coastal development permit, the Coastal Commission is upholding one of the central tenets of the Coastal Act, enacted for the protection and preservation of California’s coastal resources, including the prevention of oil spills. Cal. Pub. Res. Code, § 30001.5 (recognizing the coastal zone is a “distinct and valuable recourse of vital and enduring interest to all the people” and that the “permanent protection of the state’s natural and scenic resources is a paramount concern to present and future residents of the state and nation”).

To that end, any person wishing to engage in development in the coastal zone must obtain a coastal development permit that is consistent with the Act. Cal. Pub. Res. Code, § 30600(a). Applicable “developments” include those “on land, in or under water, [that involve] the placement or erection of any solid material or structure. . . includ[ing] . . . any . . . pipe [or] conduit.” *Id.* § 30106.

This action is required by law and necessary to protect wildlife, marine fisheries, and the natural environment from offshore oil and gas. In issuing any coastal development permit, the Commission must ensure the continued health of our coastal ecosystem by considering whether such development complies with the Commission’s directive to “protect the ecological balance of the coastal zone.” Cal Pub. Res. Code § 30001.

The Coastal Act also requires oil companies to be accountable for their pollution, *Id.* § 30820. The Coastal Commission’s mitigation settlement with DCOR related to the Pipeline 0919 spill is a necessary tool envisioned by the Coastal Act to ensure unlawful discharges from oil and gas operations are not treated with impunity.

The Center for Biological Diversity and Orange County Coastkeeper commend the Coastal Commission for its mitigation settlement with DCOR and for requiring the company to

² Hannah Fry, et al., Massive oil spill sends crude onto Orange County beaches, killing birds, marine life, LA Times, Oct. 2, 2021.

obtain a CDP for pipeline repairs. We hope this portends a new era in which oil and gas development along the California coastline is held to rigorous and demanding standards.

Sincerely,

Emily Jeffers

Senior Attorney

Center for Biological Diversity

Lauren Chase

Senior Staff Attorney

Orange County Coastkeeper

Laura Walsh

California Policy Manager

Surfrider Foundation



March 2, 2023

California Coastal Commission
455 Market Street Suite 300
San Francisco, CA 94105

Re: Th9a Application No. 9-22-0219 DCOR, LLC, Orange County

Dear Chair Brownsey and Commissioners:

We are writing to encourage Commissioners to increase the fine for yet another oil spill off California's coast, and to designate the monies be earmarked for Bolsa Chica environmental efforts.

The offshore oil spill in December of 2021, caused by a leak in a pipe owned by DCOR LLC, occurred next to Bolsa Chica State Beach and put the fragile Bolsa Chica Wetlands at risk.

The Commission staff recognized that a Coastal Act violation had occurred. It now is recommending that the violation be settled by the payment of \$200,000 to the Violation Remediation Account administered by the Coastal Conservancy. We would encourage Commissioners to increase that amount to \$500,000, in hopes the oil company will not let this happen again.

Unfortunately, poorly maintained pipelines, and the spills they cause, are all too common up and down our coastline.

The Coastal Conservancy has an established procedure for applying for grants from its Violation Remediation Account. Among the projects it funds are those that protect the natural and scenic beauty of the coast, enhance wildlife habitat, help the public to get to and enjoy beaches and parklands, improve water quality, and prepare communities for the impacts of climate change.

Although the Commission does not administer the grant program, we note that the spill and violation occurred off Bolsa Chica and could have impacted the wetlands directly.

Under the circumstance, we suggest that if the Commission determines that DCOR LLC should contribute to the Violation Remediation Account, by way of a finding or direction, it communicates its desire that the funds be directed toward projects designed for the benefit of the Bolsa Chica Wetlands.

We encourage the Coastal Commission to not let any oil company off easy, and to be vigilant with terms and conditions that can be monitored and enforced.

We thank you in advance for considering our request.

Sincerely,

Nancy Okada

Nancy Okada
Chair
Sierra Club Coastal Subcommittee



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March 1, 2023

California Coastal Commissioners
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Via Email: EORFC@coastal.ca.gov

Re: Application No. 9-22-0219 (DCOR, LLC., Orange County)
Agenda Item: Th9a – March 9, 2023

Dear Commissioners:

The offshore oil spill in December of 2021 caused by a leak in a pipe owned by DCOR LLC occurred next to Bolsa Chica State Beach and put the fragile Bolsa Chica Wetlands at risk. The Commission staff recognized that a Coastal Act violation had occurred. It now is recommending that the violation be settled by the payment of \$200,000 to the Violation Remediation Account administered by the Coastal Conservancy.

The Coastal Conservancy has an established procedure for applying for grants from its Violation Remediation Account. Among the projects it funds are those that protect the natural and scenic beauty of the coast, enhance wildlife habitat, help the public to get to and enjoy beaches and parklands, improve water quality, and prepare communities for the impacts of climate change.

Although the Commission does not administer the grant program, we note that the spill and violation occurred off Bolsa Chica and could have impacted the wetlands directly. Under the circumstance, we suggest that if the Commission determines that DCOR LLC should contribute to the Violation Remediation Account, by way of a finding or direction, it communicates its desire that the funds be directed toward projects designed for the benefit of the Bolsa Chica Wetlands.

Yours very truly,

Melvin L. Nutter
President, Amigos de Bolsa Chica



February 8, 2022

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Re: The Coastal Commission's Authority to Require a Coastal Development Permit before DCOR Begins Repair of Pipeline 0919

The Center for Biological Diversity urges the California Coastal Commission to require DCOR to obtain a coastal development permit for any activities related to the repair and restart of Pipeline 0919—the pipeline that spilled oil in California waters between Platform Eva and the coast in December 2021. The state has confirmed that the threat of pollution from the pipeline has been abated because the pipeline has been shut down, clamped, and purged of oil. Before the pipeline restarts, the Coastal Commission must act. The Coastal Commission's authority under the California Coastal Act to require a coastal development permit in this situation is unambiguous and is necessary to protect our marine environment.

In December 2021, an undersea pipeline connected to drilling platforms off Orange County ruptured, spewing oil into the ocean and resulting in a sheen visible from the air.¹ This pipeline rupture was only the most recent in a long line of oil spills in Orange County. In

¹ Priscilla Vega, California-based oil company identified as source of latest sheen off Orange County coast, LA Times, Dec. 26, 2021.

October 2021, a different undersea pipeline connected to drilling platforms off Orange County ruptured, spewing tens of thousands of gallons of oil into the ocean.² That spill, and many before it, fouled sensitive beaches and wetlands, forced the closure of fisheries, and harmed or killed dozens of fish and birds, including threatened snowy plovers.

Offshore oil and gas are an ever-present threat to California’s coastal communities and wildlife. Oil pipelines and infrastructure in our ocean are inherently dangerous and risk oil spills, and oil and gas production deepens the climate crisis. The Commission can and should use its authority to protect Californians, our beaches, and wildlife from offshore oil and gas.

The Commission can take concrete, proactive steps under the Coastal Act to address the risk to state waters of restarting Pipeline 0919 and ensure the continued health of our coastal ecosystem. The Commission must use the robust powers given to it by the California Coastal Act to require DCOR to obtain a coastal development permit prior to the repair and restart of the aging oil pipeline. This action is required by law and necessary to protect wildlife, marine fisheries, and the natural environment from offshore oil and gas.

Ultimately, the Commission should deny any application by DCOR to repair and restart its ageing pipeline because of the risks of offshore oil and gas to the climate, public health, wildlife, marine fisheries, and the coastal environment of California.

The Commission has a broad delegation of authority under the California Coastal Act to protect and preserve the coastal zone.

The California Legislature passed the California Coastal Act in 1976 to “[p]rotect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment” and to “[a]ssure orderly, balanced utilization and conservation of coastal zone resources.” Cal. Pub. Res. Code, § 30001.5. Another goal is to “minimize, and mitigate the adverse environmental and economic effects of sea level rise within the coastal zone.” *Id.* § 30001.5(f). In so doing, the legislature recognized that the coastal zone is a “distinct and valuable recourse of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.” *Id.* § 30001(a). “The permanent protection of the state’s natural and scenic resources is a paramount concern to present and future residents of the state and nation.” *Id.* § 30001(b).

The conservation purposes of the Act are interpreted broadly by the courts. *See La Fe Inc. v. County of Los Angeles*, 73 Cal. App. 4th 231, 235 (1999) (“The act is to be liberally construed to accomplish its purposes and objectives.”). This broad interpretation “is consistent with the legislative policy of the Act found in section 30001.5 and the broad grant of power to the agency to adopt any regulations or take any action it deems reasonable and necessary to carry out its provisions.” *Stanson v. San Diego Coast Reg’l Comm’n*, 101 Cal.App.3d 38, 47 (1980)

² Hannah Fry, et al., Massive oil spill sends crude onto Orange County beaches, killing birds, marine life, LA Times, Oct. 2, 2021.

(citing Cal. Pub. Res. Code, § 30333). When conflicts arise between the Act’s policies, they must be resolved in a manner favoring the protection of the significant coastal resources. See Cal. Pub. Res. Code, § 30007.5; *see also Bolsa Chica Land Trust v. California Coastal Comm’n*, 71 Cal. App. 4th 493, 506 (1999) (“[t]he courts are enjoined to construe the statute liberally in light of its beneficent purposes. The highest priority must be given to environmental consideration in interpreting the statute.”).

Repairs to Pipeline 0919 constitute a development for which DCOR must obtain a coastal development permit.

The Coastal Commission has direct permitting authority over offshore oil and gas development in state waters, including repair of ruptured pipelines. Because repairing and restarting Pipeline 0919 between Huntington Beach and Platform Eva will threaten the coastal environment the Commission must consider whether such development complies with the Commission’s directive to “protect the ecological balance of the coastal zone.” Cal Pub. Res. Code § 30001. The Commission must require a Coastal Development Permit for any such repair activities.

The Coastal Act created the California Coastal Commission for the protection and preservation of California’s coastal resources, including the prevention of oil spills. Amicus Curiae Brief of Commission at *1, *People of the State of California v. Torch Operating Co.*, WL 32146821 (2002). This state agency was delegated authority to plan and permit development along the California Coast. *See* Cal. Pub. Res. Code, § 30600(a). Any person wishing to engage in development in the coastal zone must obtain a coastal development permit that is consistent with the Act. *Id.* at § 30600.

The Act requires a coastal development permit for non-emergency “development” in the coastal zone. *Id.* § 30600 (exemption for “immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area”). The coastal zone is “that land and water area of the State of California . . . extending seaward to the state’s outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea.” *Id.* § 30103(a).

The Legislature established this permitting process as the mechanism through which the Coastal Commission and local governments review proposed projects to ensure that they will not have impacts inconsistent with the environmental protection policies of the Coastal Act. The Act’s expansive definition of the activities constituting development has been interpreted to include actions not commonly regarded as development of real property. *See Gualala Festivals Comm. v. California Coastal Comm’n*, 183 Cal. App. 4th 60, 67 (2010) (fireworks display is

development); *Monterey Sand Co. v. California Coastal Comm'n*, 191 Cal. App. 3d. 169, 176 (1987) (offshore sand extraction is development).

Applicable “developments” include those “on land, in or under water, [that involve] the placement or erection of any solid material or structure. . . includ[ing] . . . any . . . pipe [or] conduit.” *Id.* § 30106. While the Coastal Commission has delegated most permitting authority over coastal development to local governments through certified local coastal programs, the Coastal Act specifically requires any developments located on tidelands, submerged lands, public trust lands, or any development which constitutes a major public works project or major energy facility to obtain a coastal development permit directly through the Coastal Commission. Cal. Pub. Res. Code §§ 30519, 30601.³

This pipeline repair and restart development would not be covered by exceptions because it is in coastal waters, which are an environmentally sensitive habitat. There are some exceptions to the permit requirement, including one for incidental repairs that do not enlarge an existing development. Cal. Pub. Res. Code § 30610(d). However, if an otherwise incidental repair requires “extraordinary methods of repair and maintenance” that “involve a risk of substantial adverse environmental impact” a coastal development permit is required. *Id.* Such “extraordinary methods of repair” include

Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

- (A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;
- (B) The presence, whether temporary or permanent, of mechanized equipment or construction materials. Cal. Code Regs. tit. 14, § 13252(a)(3).

The repair and restart of Pipeline 0919 constitutes development for which DCOR must obtain a coastal development permit. The pipeline is in California state waters, the repair involves the “placement” or “erection” of pipe and therefore satisfies the definition of “development” in the Public Resources Code, and the work is not of an emergency nature.⁴ Cal.

³ Major energy facility is defined to include any “public or private . . . transmitting . . . facility for . . . natural gas [or] petroleum” that “cost[s] more than \$299,188 with an automatic annual increase in accordance with the Engineering News Record (ENR) Construction Cost Index.” Cal. Pub. Res. Code §§ 30601(3), 30107; Cal. Code Regs. tit. 14, § 13012(a).

⁴ According to Liaison Update #13, an emergency repair has already been completed on the pipeline. “Operations to locate and isolate the source of petroleum have been successful and have effectively removed the pollution threat. Divers were able to identify a small leak in the pipeline and a clamp was placed over a 1/8-inch diameter hole (confirmed to be the source). The pipeline has been evacuated of oil

Pub. Res. Code, § 30600. In addition, the repair is for a petroleum transmission facility (major energy facility), and therefore requires approval directly from the Commission. *Id.* § 30601(3).

Finally, the project will constitute an extraordinary repair and will not qualify for the exemption for incidental repairs under Public Resources Code section 30610(d). The project will occur in environmentally sensitive coastal waters and undoubtedly require some onsite construction equipment to cut and hoist out the broken pipeline, dig a trench for the new pipeline, and attach the new section to the existing pipeline. In other words, the repair would meet the criteria of section 13252(a)(3) and involve a risk of substantial adverse environmental impacts from vessel traffic, sedimentation, and noise pollution, among others. Thus, the repair would require a coastal development permit for authorization.

Should DCOR not seek to obtain a coastal development permit, the Coastal Commission must initiate an enforcement proceeding. The Commission uses Cease and Desist Orders to halt ongoing violations, to order removal of unpermitted development, and to obtain compliance with requirements of the Coastal Act, including failure to obtain a coastal development permit. Cal. Pub. Res. Code § 30810. The Commission also has the ability to seek judicial penalties should DCOR proceed with repairs without first obtaining a permit. Where action is taken and orders have been issued, they have been quite effective in deterring, halting, and correction of illegal development activities in the coastal zone. The Commission should issue such orders to any Pipeline 0919 development activities that proceed without a coastal development permit.

The Coastal Commission should deny DCOR’s application for a coastal development permit because restart of Pipeline 0919 is inconsistent with the goals of the Coastal Act.

In evaluating permits for coastal development, the Coastal Commission weighs the environmental impacts against the public benefit, and ensures that the proposed development is consistent with the goals of the Coastal Act. *Gherini v. California Coastal Comm’n*, 204 Cal. App 3d 699, 707 (1988). (“It is clear . . . that a determination of what will adversely affect the public welfare requires consideration of the preservation and protection of the state’s natural resources and the ecological balance of the coastal zone as well as the need for a particular type of coastal-dependent development.”).

A coastal development permit may be issued only upon a finding that the proposed development is in conformity with chapter three of the Act. Cal. Pub. Res. Code § 30200 *et seq.*; *Sierra Club v. California Coastal Com.*, 35 Cal. 4th 839 (Cal. 2005). Chapter three requires that the “biological productivity and the quality of coastal waters . . . shall be maintained, and where feasible, restored through, among other means, minimizing adverse effects of waste water discharges.” Cal. Pub. Res. Code § 30231. It further requires that

using seawater and cleaning pigs.” Any subsequent repair of the pipeline will be to enable restart transmission of oil from offshore platforms to land.

marine resources shall be maintained, enhanced, and where feasible, restored. . . . 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, recreation, scientific, and educational purposes.

Id. at § 30230.

The Coastal Act requires that “[d]evelopment in areas adjacent to environmentally sensitive habitat areas . . . shall be sited and designed to prevent impact which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.” Cal. Pub. Res. Code § 30240. Environmentally sensitive habitat areas are defined as those areas in which “plant or animal life or their habitat are either rare or especially valuable.” *Id.* at § 30107.5.

In addition, pipelines transporting oil to shore must use the most advanced technology to protect public health and the delicate ecology of the California coast. Cal. Pub. Res. Code § 30262(7)(A) (“The pipelines used to transport this oil shall utilize the best achievable technology to ensure maximum protection of public health and safety and of the integrity and productivity of terrestrial and marine ecosystems.”). The Commission must also consider the environmental justice impacts, or the “equitable distribution of environmental benefits” on the issuance of a coastal development permit. *Id.* 30604(h).

In short, the Commission must ensure that any permits it issues ensure that public health and the health of the coastal ecosystem is protected and preserved. *See* Cal. Pub. Res. Code § 30001.5 (First goal of the Coastal Act is to “Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment”). Allowing Pipeline 0919 to repair and restart oil and gas operations in California waters is incongruent with the Coastal Act because it results in a suite of risks to the coastal environment, including, but not limited to: oil spills, greenhouse gas emissions, degraded air quality, pollution from repair activities, vessel traffic and noise pollution. All of these impacts could prove injurious to public health and the biological productivity and integrity of coastal waters. *Id.* at §§ 30230-30231.

First, repair of this pipeline threatens additional ruptures and oil spills from aging infrastructure.

The recent oils spills in Orange County highlight one of the many dangers drilling for oil poses to wildlife and to the coastal communities and ecosystems of California. Indeed, even before the most recent spill, new information highlighted the risks and dangers of oil spills. For example, a recent analysis of federal records from the Pipeline and Hazardous Materials Safety Administration (PHMSA) found that from 1986 to July 2021, nearly 1,400 oil and gas pipeline leaks, spills, and other significant incidents in California have caused at least \$1.2 billion in

damages, as well as 230 injuries and 53 deaths.²³ Nationally, there were 18,087 oil and gas pipeline incidents from 1986 until March 2020, including 638 deaths and 3,752 injuries.²⁴ The PHMSA data also indicate that there are more incidents in the first two years of pipeline's life than in the next seven years combined.²⁵

The risks of an oil spill or other accident are all-the-more heightened in the Pacific Ocean, where oil and gas companies have been drilling *for decades* from infrastructure that went into place between the 1960s and 1980s.²⁶ For example, the 1985 environmental impact statement prepared for the construction and operation of the Plains All American Pipeline (a pipeline that ruptured and caused a massive oil spill in California's coastal environment in 2015) by the Bureau of Land Management and California State Lands Commission acknowledged that spills happen, and determined that the risk of a spill *more than doubles* as the pipeline aged from 20 to 40 years.²⁷

Moreover, according to scientists, aging poses risks of corrosion, erosion, and fatigue stress to subsea pipelines.²⁸ Subsea pipeline corrosion appears to accelerate over time,²⁹ and can act synergistically with fatigue stress to increase the rate of crack propagation.³⁰ Marine environments are especially known to produce significant corrosion on steel surfaces, and when a steel structure is at or beyond its elastic limit, the rate of corrosion increases 10 to 15 percent.³¹ One offshore pipeline study found that after 20 years, the annual probability of pipeline failure increases rapidly, with values in the range of 0.1 to 1.0, which equates to a probability of failure of 10 to 100 percent per year.³² Another study covering 1996 to 2010 found that accident incident rates, including spills, increased significantly with the age of infrastructure.³³

The U.S. Department of Transportation found that offshore pipelines can be more vulnerable than onshore pipelines. They have a greater vulnerability to severe weather conditions than onshore pipelines, especially during hurricane events. And massive wave action can alter the pipeline stability, causing gradual displacement, especially in small diameter pipelines.³⁴ Offshore pipelines can also face more corrosion than onshore pipelines due to higher temperature and pressure conditions that occur during the laying of these pipelines.³⁵

Consistent with these findings, a report published in 2010 found that the number of oil spills from offshore rigs and pipelines between 2000 and 2009 *more than quadrupled* the rate of spills in prior decades.³⁶ In particular, from the early 1970s through the 1990s, offshore rigs and pipelines averaged about four spills per year of at least 50 barrels (or 2,100 gallons). The average annual total spills skyrocketed to more than 17 from 2000 to 2009, and averaged 22 per year from 2005 to 2009 alone.³⁷ And the number of spills, as well as the quantity of spilled oil, grew significantly worse even when taking increased production into account.³⁸ In other words, another oil spill is not a question of if, but a question of when.

The likelihood of another spill in California waters caused by aging pipeline infrastructure, including Pipeline 0919, is in direct contradiction to the Commission's mandate to

ensure that all pipelines transport oil to shore using the “best achievable technology to ensure protection” of public health and the environment. Cal. Pub. Res. Code § 30262(7)(A).

Second, repairing and restarting Pipeline 0919 will allow further oil and gas extraction to occur and will deepen the climate crisis.

Repairing and restarting this pipeline will prolong oil extraction and greenhouse gas emissions from Platform Eva. This platform, along with others off the coast of California, should have been decommissioned many years ago, and they have outlived their intended lifespan. These platforms are also flaring or burning off produced gas — for example, the Beta Unit platforms emitted 95,226 million cubic feet of methane, a powerful greenhouse gas, from January 2015 to August 2018 alone.⁵ These greenhouse gas emissions harm California’s coastal resources through ocean warming and acidification with impacts on wildlife, sea level rise, shoreline protection, and access. New information reveals the extent of the climate crisis and the role that continued oil drilling plays in fueling the climate emergency. This in turn has harmful effects on numerous imperiled species. The Commission is charged with mitigating “adverse environmental and economic effects of sea level rise within the coastal zone,” and that includes denying permits to projects like this that actively contribute to climate change. Cal. Pub. Res. Code. § 30001.5(f).

The climate crisis is already causing devastating impacts from rising seas and coastal erosion; more destructive hurricanes and wildfires; increasing heatwaves, droughts, and floods; imperiling food and water security; and the collapse of ecosystems. The overwhelming scientific consensus has conclusively determined that without significant, rapid emissions reductions, warming will exceed 1.5 degrees Celsius and will result in catastrophic damage around the world. Every fraction of additional warming above 1.5 degrees Celsius will worsen these harms, threatening people’s lives, health, safety, and livelihoods; as well as the economy and national security for this generation and future generations.

Drilling off California contributes to the climate emergency. One study estimated, for example, that for each unit (QBtu) of federal oil production cut, other oil supplies would substitute for about half a unit (0.56 QBtu) and net oil consumption would drop by nearly half a unit (0.44 QBtu).⁶ In short, every barrel of federal oil left undeveloped would result in nearly half a barrel reduction in net oil consumption, with associated reductions in greenhouse gas emissions. The analysis recommended that “policy-makers should give greater attention to measures that slow the expansion of fossil fuel supplies.”⁷ Other studies have reached similar

⁵ Bureau of Safety and Environmental Enforcement, OGOR-B Flaring FOIA Response Spreadsheet (2015-2018).

⁶ Erickson, P. and M. Lazarus, How would phasing out US federal leases for fossil fuel extraction affect CO2 emissions and 2°C goals?, Stockholm Environment Institute, Working Paper No. 2016-2 (2016).

⁷ Erickson and Lazarus 2016.

conclusions.⁸ For example, an analysis published in the journal *Nature Climate Change* concluded that increased oil production would significantly increase global oil consumption as the result of greater supplies and lower global oil prices.⁹ Using publicly available global oil supply curves from the International Energy Agency and peer-reviewed elasticities of demand, the analysis estimated that each barrel of increased oil production would result in an increase of 0.59 barrels of global oil consumption.¹⁰

Although this study focused on the effects of increases in Canadian tar sands production, the lead author used the same model to estimate that, for each barrel of California oil left in the ground, an added 0.4 to 0.8 barrels would be produced elsewhere.¹¹ This yields a net reduction in global oil consumption of between 0.6 and 0.2 barrels, “as consumers respond to the small price increase by making shifts in their vehicle purchases, driving habits, and other decisions.”¹²

Furthermore, repair and restart of this pipeline will only work against California’s established energy policy, which pledges to aggressively reduce carbon consumption. Senate Bill 32 in 2016 committed to reducing emissions an additional 40 percent by 2030. In 2018, California passed Senate Bill 100 outlining aggressive reductions in carbon fuel for electricity generation, targeting a 50% reduction by 2030 and a 100% reduction by 2045.¹³ Executive Order B-55-18 in the same year established the goal of statewide carbon neutrality by 2045.¹⁴ More recently, Governor Newsom announced a phase-out of gasoline-powered cars.¹⁵ These are far from idle goals. Data show that California is rapidly reducing its demand for fossil fuels. From 2014 to 2019, California’s in-state power generation from solar increased by more than 18,900

⁸ Erickson, P. and M. Lazarus, Impact of the Keystone XL Pipeline on Global Oil Markets and Greenhouse Gas Emissions, 4 *Nature Climate Change* 778 (2014); *see also* P. Erickson, Rebuttal: Oil Subsidies—More Material for Climate Change Than You Might Think (Nov. 2, 2017); United Nations Environment Programme, Emissions Gap Report 2019, UNEP, Nairobi (2019), at 25, 26; United Nations Environment Programme, et al., *The Production Gap: The discrepancy between countries’ planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C* (2019).

⁹ Erickson, P. & Lazarus, M., Impact of the Keystone XL Pipeline on Global Oil Markets and Greenhouse Gas Emissions, 4 *Nature Climate Change* 778 (2014).

¹⁰ Erickson and Lazarus 2014.

¹¹ Erickson, P. & Lazarus, M., *How Limiting Oil Production Could Help California Meet Its Climate Goals*, Stockholm Environment Institute Discussion Brief (2018) at 2.

¹² Erickson and Lazarus 2018.

¹³ S.B. 100, 2017-2018 Reg. Sess. (Cal. 2018).

¹⁴ Office of Governor Newsom, Executive Order B-55-18 to Achieve Carbon Neutrality (2018).

¹⁵ Office of Governor Newsom, *Governor Newsom Announces California Will Phase Out Gasoline-Powered Cars & Drastically Reduce Demand for Fossil Fuel in California’s Fight Against Climate Change* (Sep. 23, 2020).

GWh, a 140%+ gain, increasing solar's share of in-state power generation by 9 percentage points.¹⁶ Meanwhile, California's total oil consumption is projected to decline.¹⁷

In sum, the project is directly at odds with national and California energy policy and trends. The recent spills, including the rupture of Pipeline 0919, highlights the urgent need to phase out dangerous and dirty fossil fuel production out of California waters for good. There is no reason to resuscitate this pipeline for the benefit of the oil industry.

Third, pipeline repairs, and subsequent oil and gas operations and spills endanger many imperiled species.

The state waters surrounding Pipeline 0919 are adjacent to areas of ecological significance which provide habitat for a number of endangered species. Blue, fin, sei, humpback, and sperm whales, as well as other marine mammals, use southern California seawaters. Leatherback, loggerhead, green, and olive ridley sea turtles also occur in this area. Endangered white and black abalone are found in the intertidal zones. Protected fish, including the tidewater goby and southern California steelhead population, are in the area, and the endangered California clapper rail, endangered snowy plover, endangered California least tern, and the state endangered savannah sparrow all inhabit the coastal area.

Pipeline repairs often result in discharges to the marine environment. The ruptured pipeline may still have residual oil and oily mixtures in it that may be released into the water when repairs are undertaken. Along with this pollution, vessels and barges, generators, pipecutting, wet welding, and air jetting among other activities produce noise and disturbance that can disrupt key behaviors such as feeding, breeding and communication. Noise pollution masks important communication among whales and other marine mammals, and it can interfere with echolocation used for navigation and feeding. Depending on the precise repair activities carried out, the impacts on coastal resources could include varying degrees of additional noise and pollution, from for example cutting and removing a section of pipeline, or welding, which may also disturb the seafloor and its benthic habitat.

Seafloor construction activities DCOR may undertake (including but not limited to digging and/or dredging) will cause turbidity and resuspension of contaminants in the water column. This can expose marine mammals and their prey to toxins—which are a key threat to and bioaccumulate in marine mammals. Poor water quality conditions harm marine mammals as

¹⁶ California Energy Commission. Total Electricity System Power (2020) (comparing in-state renewables generation in 2014 [45,350 GWh of 199,193 GWh total] to in-state renewables generation in 2019 [64,336 GWh of 200,475 GWh]).

¹⁷ California Air Resources Board, *California's 2017 Climate Change Scoping Plan* (2017) at ES-8 (according to the Scoping Plan, CARB expects a decrease in fossil fuel demand of 45% by 2030).

well as fish and fish nurseries, and sediments can smother and harm or kill benthic species.¹⁸ Depending on water currents and conditions and the method of removing any dredged or other material, the plume can spread for vast distances. Finally, noise from dredging operations can range from 111 to 170 dB, with potential impacts on marine mammals and their prey.¹⁹

Moreover, if this project were to use a mooring system and cables, this would pose an entanglement risk to marine mammals. While entanglement with the mooring lines themselves may be unlikely due to their diameter, marine mammals — and baleen whales in particular — are more likely to be at risk from secondary entanglement, in which an animal becomes entangled in derelict fishing gear that has accumulated on a facility component, and tertiary entanglement, in which an animal already entangled in gear swims near a mooring line and the gear becomes entangled.²⁰

Other activities involved in oil and gas operations offshore negatively affect the marine environment. For example, oil and gas activities increases vessel traffic from servicing wells and transporting materials, or responding to oil spills. This increases the risk of vessel strikes of various endangered animals, including several species of whales. Oil and gas activity increases vessel traffic, for example, from servicing wells and transporting materials, or responding to oil spills. This increases the risk of vessel strikes of various endangered animals, including several species of whales. New information reveals, for example, that whales are increasingly being struck by vessels off California, and that these incidents may be negatively affecting whale recovery. Carretta et al. 2020 found that in 2018, vessels killed or seriously injured 13 whales in California — the highest number on record since NMFS began keeping records in 1982.²¹ Vessel strikes represented the majority of human-caused large whale deaths on the U.S. West Coast from 2014 to 2018, with a total of at least 26 whale deaths, followed by fishery-related entanglements (at 21 deaths).²² For fin whales, eight died from vessel strikes during this time, representing the leading cause of human-caused injury and death.²³ For both blue whales (three deaths) and humpback whales (13 deaths), vessel strikes are the second leading cause of injury and death after fishery interactions.²⁴

¹⁸ Wenger et al., A critical analysis of the direct effects of dredging on fish, *Fish and Fisheries* 18:967–985 (2017).

¹⁹ *Id.*

²⁰ Cassoff, R.M., Moore, K.M., McLellan, W.A., Barco, S.G., Rotstein, D.S., Moore, M.J., 2011. Lethal entanglement in baleen whales. *Dis. Aquat. Org.* 96, 175–185; Farr, H., Benjamin Ruttenberg, Ryan K. Walter, Yi-Hui Wang, Crow White, Potential environmental effects of deepwater floating offshore wind energy facilities, *Ocean & Coastal Management*, Volume 207, 2021.

²¹ Carretta, James V. et al. 2020. Sources of Human-Related Injury and Mortality for U.S. Pacific West Coast Marine Mammal Stock Assessments, 2014- 2018, U.S. Department of Commerce, NOAA Technical Memorandum NMFS-SWFSC631.

²² Carretta et al. 2020.

²³ Carretta et al. 2020

²⁴ Carretta et al. 2020.

This level of vessel strike is impeding the recovery of endangered whales off California. Indeed, scientists have concluded that “death from vessel collisions may be a significant impediment to population growth and recovery.”²⁵ For example, the minimum estimate of blue whale abundance is 1,050 whales, which gives a potential biological removal (PBR) level for U.S. waters of 1.23 whales.²⁶ Ship strikes alone exceed the blue whale’s PBR several times over. Additionally, the current stock assessment report for humpback whales off California provides a PBR for U.S. waters of 16.7 whales (which does not properly account for the listing of the Central America and Mexico DPSs under the ESA or the low population size of the endangered Central America humpback whale DPS).²⁷ The estimated humpback whale mortality from vessel strikes is over this PBR level.

As described above, additional oil spills are inevitable from this pipeline and others. Oil spills have a wide array of lethal and sublethal impacts on marine species, both immediate and long-term.²⁸ Direct impacts to wildlife from exposure to oil include behavioral alteration, suppressed growth, induced or inhibited enzyme systems, reduced immunity to disease and parasites, lesions, tainted flesh, and chronic mortality.²⁹ Oil can also exert indirect effects on wildlife through reduction of key prey species.³⁰ Oil destroys the water-proofing and insulating properties of feathers and fur of birds and mammals, respectively, thereby compromising their buoyancy and ability to thermoregulate.³¹

Marine mammals can be exposed to oil internally by inhaling volatile compounds at the surface, swallowing oil, consuming oil-contaminated prey, and externally by swimming in oil.³² Exposure to toxic fumes from petroleum hydrocarbons during oil spills have been recently linked to mortality in cetaceans, even years after such accidents.³³ Studies have determined, for example, that the Deepwater Horizon oil spill caused adrenal and lung lesions in bottlenose

²⁵ Rockwood, et al. 2019.

²⁶ NMFS. Revised April 15, 2020. Stock Assessment Report: BLUE WHALE (*Balaenoptera musculus musculus*): Eastern North Pacific Stock at 188.

²⁷ NMFS. Revised April 15, 2020. Stock Assessment Report: HUMPBACK WHALE (*Megaptera novaeangliae*): California/Oregon/Washington Stock at 179–80.

²⁸ Peterson, C. H., S. D. Rice, J. W. Short, D. Esler, J. L. Bodkin, B. E. Ballachey, and D. B. Irons. 2003. Long-term ecosystem response to the Exxon Valdez oil spill. *Science* 302:2082-2086; Venn-Watson, S. *et al.* Adrenal Gland and Lung Lesions in Gulf of Mexico Common Bottlenose Dolphins (*Tursiops truncatus*) Found Dead following the Deepwater Horizon Oil Spill. *PLoS ONE* 10, e0126538 (2015).

²⁹ Holdway, D. A. 2002. The acute and chronic effects of wastes associated with offshore oil and gas production on temperate and tropical marine ecological processes. *Marine Pollution Bulletin* 44:185-203.

³⁰ Peterson et al. 2003.

³¹ Jenssen, B. M. 1994. Review Article: Effects of oil pollution, chemically treated oil, and cleaning on the thermal balance of birds. *Environmental Pollution* 86:207-215; Peterson et al. 2003.

³² NOAA. 2010. Analysis of Hydrocarbons in Samples Provided from the Cruise of the R/V WEATHERBIRD II, May 23-26, 2010, National Oceanic and Atmospheric Administration, Silver Spring, Maryland, 20910.

³³ Venn-Watson et al. 2015.

dolphins which led to an unusual mortality event in which dolphins died over the course of several years.³⁴

In addition, oiled shores can affect nesting and foraging areas of bird species. Oiled adults returning to the nest can contaminate their eggs and chicks with oil. Studies on the effects of oil on eggs have shown significant mortality and developmental defects in embryos.³⁵ Oiled birds are also at high risk of ingesting oil when they preen their feathers. Ingested oil can damage the gastrointestinal tract, evidenced by ulcers, diarrhea, and a decreased ability to absorb nutrients, and inhibit proper hormone function.³⁶ The federally protected western snowy plovers and the California least tern are extremely sensitive to disturbances such as oil spills, especially during the nesting season.³⁷ In the past few years, snowy plovers have begun successfully nesting and raising young again at Huntington Beach after a more than five decade absence.³⁸ This oil spill threatens the conservation gains snowy plovers have made on southern California beaches.

Exposure to crude oil also adversely affects fish at all stages.³⁹ Early life stages of fish are particularly sensitive to the effects of toxic oil components such as polycyclic aromatic hydrocarbons which can cause larval deformation and death. Adult fish exposed to oil can suffer from reduced growth, enlarged liver, changes in heart and respiration rates, fin erosion, and reproductive impairment.⁴⁰ Additionally, fish and sharks are at risk from lethal coating of their gills with oil, and declines in and contamination of their food sources. Exposure to crude oil has also been linked to long-term population effects in fish. A recent study based on 25 years of research demonstrated that embryonic salmon and herring exposed to very low levels of crude oil can develop heart defects that impede their later survival, indicating that the spill may have had much more widespread impacts than previously thought.⁴¹

³⁴ Venn-Watson et al. 2015.

³⁵ Jenssen 1994.

³⁶ Jenssen 1994.

³⁷ Hampton, Steve, J. Marek, L. Henkel, C. Sandoval, J. Boyce, and B. Standley. 2020. Refugio Oil Spill Bird Injury Assessment.

³⁸ Audubon, Western Snowy Plovers nest at Huntington State Beach for the first time in five decades, Aug. 2018.

³⁹ Carls, M. G., S. D. Rice, and J. E. Hose. 1999. Sensitivity of fish embryos to weathered crude oil: part I. Low-level exposure during incubation causes malformations, genetic damage, and mortality in larval pacific herring (*Clupea pallasii*). *Environmental Toxicology and Chemistry* 18:481-493; Bernanke, J., and H.-R. Kohler. 2009. The impact of environmental chemicals on wildlife vertebrates. *Reviews of Environmental Contamination and Toxicology* 198:1-47.

⁴⁰ Bernanke and Kohler 2009; U.S. Fish and Wildlife Service, *Effects of Oil on Wildlife and Habitat* (June 2010).

⁴¹ Incardona, et al. 2015. Very low embryonic crude oil exposures cause lasting cardiac defects in salmon and herring. *Scientific Reports* 5, Article number: 13499, doi:10.1038/srep13499.

Finally, restarting the pipeline is bad for the coastal economy.

One of the goals of the Coastal Act is to “assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.” Cal. Pub. Res. Code § 30001.5. Repairing and restarting Pipeline 0919 will have a detrimental effect on the California economy and is contrary to the Act’s purpose.

While many assume that oil and gas development off California’s coast benefits its economy, this pipeline, its spills, and future spills from this aging infrastructure will have a detrimental effect on California’s economy. For example, the Refugio oil spill caused more than \$36 million in natural resource damage, assessment, and Coast Guard cleanup costs.⁴² A complete and accurate assessment of this pipeline’s climate pollution, air pollution, oil spill damage and risks, and other costs would show that they outweigh any purported benefits.

Highlighting one negative facet and economic cost of this pipeline and other offshore oil development, recent research has demonstrated a strong link between fine particulate matter emissions from burning fossil fuels and serious illness and premature death.⁴³ Increases in mortality and increased incidence and prevalence of other diseases from air pollution have substantial social costs, and methods for calculating these social costs are scientifically rigorous and widely used.⁴⁴ Likewise, although a cost-benefit analysis is not necessarily the ideal or exclusive method for assessing contributions to an adverse effect as enormous and potentially catastrophic as climate change, a federal interagency working group has developed a tool to determine the costs of carbon pollution. The social cost of carbon is an estimate of the monetized damages from an incremental increase in carbon emissions in a given year, which includes — but is not limited to — climate-related changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services.⁴⁵ The Coastal Commission is required under the Coastal Act to consider the environmental justice impacts of offshore oil infrastructure and the inequitable burden placed on communities that live in close proximity. Cal. Pub. Res. Code § 60604(h).

⁴² Sahagún, Louis, *Pipeline company to pay more than \$60 million for 2015 oil spill near Santa Barbara*, L.A. Times (Mar. 13, 2020).

⁴³ See, e.g., Vohra, Karn et al., *Global mortality from outdoor fine particle pollution generated by fossil fuel combustion*, 195 Environmental Research (Apr. 2021).

⁴⁴ U.S. EPA BenMap, <https://www.epa.gov/benmap> (Environmental and Benefits Mapping and Analysis Program that assesses the health impact and economic value of PM2.5 and ozone on premature mortality, heart disease, and asthma. The economic value is based on metrics such as ‘willingness-to-pay’ and costs-of-illness. The tool has been used by many communities to assess benefits.).

⁴⁵ Interagency Working Group on Social Cost of Greenhouse Gases, U.S. Government, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990 (Feb. 2021).

We cannot continue to sacrifice our climate and our communities' health to protect this industry; instead, we have to transition workers and our economy. to a fossil-fuel free economy that meets the needs of current fossil fuel workers and creates high-road jobs is possible and necessary. A survey of more than 200 of the world's most senior economists and economic officials found that investment in clean energy infrastructure, clean research and development spending, connectivity infrastructure investment, and other incentive spending have both climate benefits and the greatest stimulus effect ("economic multiplier") over time.⁴⁶ Investing in a just transition to a clean energy economy will benefit workers and our economy. For example, one major national study has shown that every million dollars shifted from fossil fuels to renewable energy will yield a net increase of about 5 jobs.⁴⁷ California-specific research yields similar results. One recent study compared two scenarios: business-as-usual which assumed the continued gradual decline in California oil production, and no new policies, against a policy scenario that assumed that no permits for new oil wells would be issued and that ongoing oil production within 2,500 feet of homes, schools, and hospitals would be phased out.⁴⁸ The policy scenario also assumed new construction of solar power, sufficient to replace the oil cutbacks, and use of the increased solar energy to fuel electric vehicles. The state as a whole would gain about 5,000 full-time equivalent (FTE) jobs per year from the "no new permits" policy scenario.

A recent report endorsed by 20 labor unions outlines the "California Climate Jobs Plan" for economic recovery and climate stabilization that creates one million new jobs through 2030 through major investments in infrastructure and agriculture.⁴⁹ The plan offers concrete recommendations for workers in the fossil fuel industry, tailored to different career stages. This plan shows that if we want to create jobs, we can do so while also advancing broader equitable transition policies. LA County, for example, has convened a Just Transition Task Force that dovetails with the California Climate Jobs Plan. The LA Task Force initially focused on job opportunities in oil well abandonment and site remediation. It was recently expanded to develop a strategy that moves the County away from dependence on fossil fuels and toward investment in "building climate-resilient infrastructure that supports human health."⁵⁰ The rest of California and the U.S. should follow a similar path that prioritizes jobs in the new energy economy.

⁴⁶ Hepburn, Cameron et al., *Will COVID-19 fiscal recovery packages accelerate or retard progress on climate change?*, Smith School Working Paper No. 20-02, Oxford Smith School of Enterprise and the Environment (May 4, 2020).

⁴⁷ Garrett-Peltier, Heidi. *Green versus brown: Comparing the employment impacts of energy efficiency, renewable energy, and fossil fuels using an input output model*, 61 Economic Modeling (2017).

⁴⁸ Ackerman, Frank et al., Synapse Energy Economics, Inc., *Can Clean Energy Replace California Oil Production? Petroleum cutbacks and the California economy*. (2018)

⁴⁹ Pollin, Robert et al., *A Program for Economic Recovery and Clean Energy Transition in California*, (June 2021).

⁵⁰ L.A. County Board of Supervisors, September 15, 2021 Meeting Transcript, Agenda Item 24.

Conclusion

In sum, we respectfully request the Coastal Commission require DCOR to submit an application for a coastal development permit before it begins any work to repair and restore operations to Pipeline 0919. If DCOR does not obtain a coastal development permit before beginning construction, the Coastal Commission must issue a Cease and Desist order to ensure compliance with the Coastal Act. Ultimately, because the repair and restart of this pipeline is contrary to the goals of the Act and will ultimately result in more oil spills, pollution, and harm to public health and the environment, the Commission must deny DCOR's application for a coastal development permit.

Please contact me with any questions.

Sincerely,



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