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**CALIFORNIA COASTAL COMMISSION**

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# Th8a

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Hearing Date: 10/10/24

## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 9-21-0714-A2

**Applicant:** Southern California Gas Company

**Agent:** Rincon Consultants

**Location:** La Goleta Storage Facility, Goleta, Santa Barbara Co.

**Project Description 9-21-0714:** Removal and replacement of two above-ground natural gas pipelines and associated support structures.

**Project Description 9-21-0714 A1:** Removal of an existing creosote wood headwall; installation of a temporary metal sheet pile shoring; and expansion of a temporary staging area.

**Project Description 9-21-0714 A2:** After-the-fact (ATF) authorization of vegetation clearing and temporary trenching to underground existing utilities to accommodate a larger crane. Proposed new development includes (i) additional trenching to complete the utility undergrounding and (ii) additional vegetation clearing and extension of the previously approved temporary metal sheet pile shoring to facilitate construction equipment access.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The Southern California Gas Company (SoCalGas) requests after-the-fact (ATF) approval for vegetation clearing and trenching to temporarily underground existing utilities at the La Goleta Storage Facility in Santa Barbara County. The trench excavation is approximately 150 feet long, 2.5 feet deep, and 3 feet wide, and is located in an Environmentally Sensitive Habitat Area (ESHA). SoCalGas's biological monitoring consultant was on site when the trenching activity occurred, but the monitor was unaware that this trench excavation activity was not included within the current Coastal Development Permit's (CDPs) covered work area. Trenching activities were immediately halted following discovery and proximity to an active nesting bird buffer. In addition, a known prehistoric archaeological site is within a portion of the project area and a portion of the excavated trench also extends into the recorded site boundary.

In addition, SoCalGas proposes new development including approximately 25 feet of additional trenching to complete the temporary utility undergrounding, as well as additional vegetation clearing in support of an extension of the previously approved temporary metal sheet pile shoring by approximately 36 additional feet. The extended shoring is needed to accommodate a larger crane on the west end of the project site. After construction is completed, temporary shoring structures will be removed, and the area will be restored in accordance with an updated Revegetation and Restoration Plan.

The key Coastal Act issues of concern are the project's potential to adversely impact environmentally sensitive habitat areas (ESHA) in Goleta Sough through the clearing of vegetation; and the potential to adversely impact known archaeological resources.

Violations of the Coastal Act have occurred on the subject site, including unpermitted native vegetation clearing and excavation trenching. In order to address these violations of the Coastal Act, the applicant is seeking after-the-fact approval for developments including 4,061 square feet of temporary vegetation impacts. To address the violation related to vegetation clearing, temporarily impacted habitat will be mitigated at a 1:1 ratio consistent with the Commission approved Revegetation and Restoration Plan. The Revegetation and Restoration Plan reflecting these amended vegetation impacts will be submitted to the Executive Director consistent with the amended modification of the underlying CDP **Special Condition 3**. Additionally, to address the violation associated with the unpermitted trenching, the applicant has worked with Commission staff to develop a new **Special Condition 7** for the protection of archaeological resources. Approval of this amendment request pursuant to the staff recommendation, issuance of the permit amendment, and the applicant's subsequent performance of the work authorized by the permit amendment in compliance with all the terms and conditions of the permit amendment will result in resolution of the violations going forward.

Staff is recommending approval of the proposed coastal development permit amendment with a modification of the existing **Special Condition 3** regarding temporary impacts to native vegetation; and the addition of new **Special Condition 7**

9-21-0714-A2

Southern California Gas Company

regarding archaeological resources. As conditioned, the proposed project is consistent with the ESHA and archaeological resource policies (30240 and 30244) of the Coastal Act.

The proposed project qualifies as a repair and maintenance project that would generally be exempt from permitting under the Coastal Act; however, because the project involves the clearing of more than 500 square feet of vegetation and the removal of vegetation within an ESHA, it requires a permit. In considering a permit application for a repair or maintenance project such as this, the Commission evaluates whether the proposed method of repair and maintenance conforms with the Coastal Act and does not evaluate the underlying development's conformity with the Coastal Act. As conditioned, the method of repair in this case is consistent with the ESHA, wetlands, and water quality policies (Sections 30231, 30233 and 30240) of the Coastal Act.

Commission staff recommends that the Commission **APPROVE** coastal development permit amendment 9-21-0714-A2, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act.

**TABLE OF CONTENTS**

I. MOTION AND RESOLUTION.....5  
II. NEW AND MODIFIED SPECIAL CONDITIONS .....5  
III. FINDINGS AND DECLARATIONS.....7  
    A. Project Description and Background ..... 7  
    B. Consultations and Other Agency Approvals..... 8  
    C. Environmentally Sensitive Habitat Areas ..... **Error! Bookmark not defined.**  
    D. Archeological Resources ..... **Error! Bookmark not defined.**  
    E. Violation ..... 19  
    F. California Environmental Quality Act ..... 15

**APPENDICES**

Appendix A – Substantive File Documents

**EXHIBITS**

- Exhibit 1 – Project Location
- Exhibit 2 – Amended Project Area Overview
- Exhibit 3 – Amended Revegetation and Restoration Plan
- Exhibit 4 – Revised Shoring Plan

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Amendment No. 9-21-0714-A2 pursuant to the staff recommendation.*

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

### Resolution:

*The Commission hereby approves the coastal development permit amendment on the grounds that the development, as amended and subject to the conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.*

## II. NEW AND MODIFIED SPECIAL CONDITIONS

Except as modified by this amendment, all standard and special conditions in the original Coastal Development Permit 9-21-0714 remain in effect and are incorporated herein. This permit amendment is granted subject to the following modified and new conditions as shown below in ~~striketrough~~ and underlined text.

### Modified Existing Conditions

#### Special Condition 3 is modified as follows:

**3. Wetland Mitigation.** Prior to the initiation of project construction, SoCal Gas shall submit for Executive Director review and approval a revised version of the project Revegetation and Restoration Plan (Exhibit 3) that provides for mitigation for the permanent loss of wetland habitat from Line 247 activities at a 4:1 ratio and from Line 128 activities at a 2:1 ratio through wetland creation, consistent with CDP Amendment No. 9-22-0353-A3. Approximately 12 square feet of permanent impacts would occur as a result of Line 247 activities and 0.10 acres of permanent impacts would occur as a result of Line 128 activities. Temporary impacts to native vegetation, including wetland and ESHA habitat, shall be mitigated at a 1:1 ratio, or at a higher ratio if required by another planning or permitting agency. Approximately 0.26 acres of temporary impacts would occur as a result of Line 247 activities and ~~0.37~~ 0.697 acres of temporary impacts

would occur as a result of Line 128 activities. This plan shall also be expanded and/or revised to include the following requirements: ...

## **New Condition**

### **New Special Condition 7:**

**7. Archaeological Resources.** SoCalGas shall undertake development in compliance with the following mitigation measures to protect archaeological and tribal cultural resources to the maximum extent feasible:

(a) SoCalGas shall arrange for a qualified, locally experienced archaeological monitor, who shall be on site to monitor all construction-related ground disturbances. A qualified archaeological monitor means an individual who meets the Secretary of Interior's Professional Standards for an Archaeological Principal Investigator and/or is listed as a Registered Professional Archaeologist. The qualified archaeological monitor shall inspect any excavated and graded areas, as well as back dirt spoils piles, for evidence of cultural materials. Monitoring logs shall be prepared by the qualified archaeological monitor and shall be submitted to SoCalGas' archaeologist after all construction-related ground disturbances.

(b) Prior to initiation of ground disturbing activities, SoCalGas shall contact appropriate representatives of all California Native American Tribes identified by the California Native American Heritage Commission (NAHC) as eligible for consultation in the project area ("Designated Tribes"). SoCalGas shall provide for monitoring of ground disturbance activities by a tribal monitor, if so requested by any of the Designated Tribes. The tribal monitor shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended tribal procedures for the inadvertent discovery of tribal cultural and/or archaeological resources and/or human remains.

(c) If an area of archaeological resources is discovered during ground-disturbing activities, all construction shall cease and shall not recommence except as provided in subsection (e) hereof, and SoCalGas shall retain a tribal cultural resource specialist qualified to analyze the significance of the find in consultation with Designated Tribes listed on the NAHC list. The specialist shall immediately notify the Designated Tribes on the NAHC List and the tribal monitor. Significance testing may be carried out only if acceptable to the Designated Tribes, in accordance with a Significance Testing Plan. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area that includes a reasonable buffer zone recommended by the monitor(s). Project activities may continue outside of the exclusion zone but shall not continue within the exclusion zone until the discovery has been addressed pursuant to subsection (e) below.

(d) Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist shall notify the County Coroner within 24 hours of such discovery, and all construction activities shall be

temporarily halted until the remains can be identified. An “exclusion zone” may be established around the discovery area. If the county coroner determines that the human remains are those of a Native American, the coroner shall contact the NAHC within 24 hours, pursuant to Health and Safety Code Section 7050.5. The NAHC shall deem the Native American most likely descendant (MLD) to be invited to participate in the identification process pursuant to Public Resources Code Section 5097.98. SoCalGas shall comply with the requirements of Section 5097.98 and work with the MLD person(s) to preserve the remains in place, move the remains elsewhere onsite, relinquish the remains to the descendants for treatment, or determine other culturally appropriate treatment. Within five (5) calendar days of notification to NAHC, SoCalGas and/or the on-site archaeologist and the tribal monitor shall notify the Coastal Commission’s Executive Director of the discovery of human remains and identify any changes to the proposed development or mitigation measures that may be needed related to the inadvertent discovery. The Executive Director shall maintain confidentiality regarding the presence of human remains on the project site. The Executive Director shall determine whether the identified changes are de minimis in nature and scope.

(e) To recommence construction within an exclusion zone following discovery of archaeological resources (excluding the discovery of human remains, which shall follow Section 5097.98 as noted in (C) above), SoCalGas shall submit an Archaeological Plan prepared by the project archaeologist in consultation with the Designated Tribes for the review and written approval of the Executive Director. If the Executive Director approves the Archaeological Plan and determines that the plan’s recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction in the exclusion zone may recommence after this determination is made by the Executive Director in writing. If the Executive Director approves the Archaeological Plan but determines that the changes therein are not de minimis, construction in the exclusion zone may not recommence until after an amendment to this permit is approved by the Commission.

### **III. FINDINGS AND DECLARATIONS**

#### **A. Project Description and Background**

Southern California Gas Company (SoCalGas) has requested an amendment to Coastal Development Permit (CDP) 9-21-0714, approved by the California Coastal Commission (Commission) on December 16, 2022, which provided for the removal and replacement of two above-ground natural gas pipelines and associated support structures within the La Goleta Storage Facility. On September 7, 2023, the Commission approved permit amendment CDP 9-21-0714-A1 that included removal of an existing creosote wood headwall and installation of a temporary metal sheet pile shoring to support the embankment in the area in which a mechanical crane would be used to replace sections of the pipeline and its associated support structures (See Exhibit 1).

In this permit amendment, SoCalGas seeks ATF authorization for a portion of trenching and vegetation clearance work to temporarily underground existing utilities and seeks regular CDP authorization for the remaining portion of this work. Additionally, SoCalGas proposes to extend the previously approved temporary construction shoring alignment to accommodate a larger crane on the west end of the project site. As a result, this amendment is requesting an expanded area of vegetation clearance and ground disturbance to accommodate the work, including: 1) an additional trench excavation area to temporarily underground the existing utilities; and 2) an extended temporary shoring alignment (See Exhibit 2).

### **Trench Excavation**

ATF Development: Trenching activities occurred from January 9, 2024, through January 30, 2024. The trench was hand dug in order to underground several overhead utility lines that interfered with crane operations. SoCalGas's biological monitoring consultant was on site when the trenching activity occurred, but the monitor was unaware that this trench excavation activity was not included within the work area cover by the current Coastal Development Permit (CDP). Trenching activities were immediately halted following its discovery and proximity to an active nesting bird buffer on January 30, 2024, and SoCalGas notified Commission staff via email on February 13, 2024. Due to temporary impacts from vegetation clearing, excavation and regrading, the area of vegetation clearance and ground disturbance to accommodate the work was expanded by an additional 4,061 square feet (sq. ft).

Proposed Additional Trenching: SoCalGas proposes approximately 25 feet of additional trenching to complete the temporary utility undergrounding. Trenching activities will be completed once the nesting bird season is over and this amendment is approved. Once approved and completed, the excavated area will be backfilled with native soil, re-graded to the original elevation, and restored in accordance with the updated Revegetation and Restoration Plan for the project (See **Exhibit 3**).

### **Extended Temporary Construction Shoring**

The temporary construction shoring is being extended to facilitate a larger crane, which in turn requires approximately 36 additional linear feet of shoring on the south side of the pipeline to support the crane staging area. The revised shoring alignment moves the shoring to the east and increases the offset from jurisdictional boundaries (see the Revised Shoring Plan in **Exhibit 4**). To accommodate the additional shoring, the area of vegetation clearance and ground disturbance will be expanded by 5,394 sq. ft. After construction, temporary shoring structures will be removed, the slope will be laid back at-grade with the existing slope, and the area will be restored in accordance with the updated Revegetation and Restoration Plan for the project (See **Exhibit 3**).

## **B. Consultations and Other Agency Approvals**

### **Santa Barbara County**

The County Planning and Development Department issued a ministerial Land Use Permit (No. 22LUP-OOOOO-00311) following Planning Commission approval. A Minor

Change to the Land Use Permit was requested on August 14, 2023, and approved on August 28, 2023, which included the project description update from amendment A1. An additional Minor Change will be requested consistent with the amendment A2 project description once this CDP amendment is approved.

### **Tribal Governments**

On February 14, 2024, Rincon Senior Principal Investigator Ken Victorino, MA, Registered Professional Archaeologist, and Rincon Archaeologist Lucas Nichols, BA, conducted a cultural resources impact assessment, with assistance from Eleanor Fishburn of the Barbareño Band of Chumash Indians. As part of the impact assessment, the areas disturbed by the hand excavation of the trench, including the access route, the hand-excavated trench, and spoil piles were inspected for cultural materials.

As part of the Commission's public hearing noticing process, agency staff mailed hearing notices out to the following tribes obtained from the Native American Heritage Commission: Coastal Band of the Chumash Nation; Barbareño / Ventureño Band of Mission Indians; Northern Chumash Tribal Council; San Luis Obispo County Chumash Council; Chumash Council of Bakersfield; Coastal Band of the Chumash Nation; Santa Ynez Band of Chumash Indians; and Barbareño Band of Chumash Indians.

### **C. Permit Authority, Extraordinary Methods of Repair and Maintenance**

Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of, the structure being repaired or maintained. In some situations, repair and maintenance also includes removal and replacement. This is described in the Commission's September 5, 1978 guidance document titled, "Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirements" (1978 Guidance), which clarifies that repair and maintenance activities for natural gas storage or distribution and transmission facilities can include removal of piping and "replacement, repair, relocation, abandonment and removal work to gas storage facilities." However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact, as enumerated in Section 13252 of the Commission's regulations.

Section 30610 of the Coastal Act provides, in relevant part:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: ...

- (d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the Commission determines that certain extraordinary

methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter. [emphasis added]

Section 13252 of Title 14 of the regulations provides, in relevant part:

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact: ...

(3) 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.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits... [emphasis added]

The work on SoCal Gas' Line 247 and Line 128 previously approved under CDP 9-21-0714 is a repair and maintenance activity because it is consistent with activities described in the 1978 Guidance and the work does not involve an addition to or enlargement of the subject pipeline. The work at issue in the current permit amendment application, which is directly related to and integral to the previously approved repair and maintenance work on Line 128, also qualifies as a repair and maintenance activity. Although certain types of maintenance projects are exempt from coastal development permit requirements, Section 13252 of the regulations requires a coastal development permit for activities that are located in environmentally sensitive habitat areas or in close proximity to coastal waters or streams and include the placement or removal of solid material and/or the presence of mechanized equipment. In addition, the 1978 Guidance also specifies that "Maintenance activities shall not extend to the construction of any new roads to the site of the work. A permit is required for grading an undisturbed area of greater than 500 sq. ft., removal of trees exceeding 12 inches diameter breast height or clearing more than 500 sq. ft. of brush or other vegetation..."

The proposed trench excavation and extended temporary construction shoring would be located in and adjacent to wetland habitat consisting of arroyo willow thickets as well as adjacent to coastal salt marsh habitat with suitable nesting and foraging habitat for the Belding's savannah sparrow, a state listed endangered species. These activities would

require the disturbance and destruction of vegetation and the use of construction vehicles and mechanized equipment in or within 50 feet of ESHA. Thus, the proposed project requires a coastal development permit under Section 13252(a)(3) of the regulations.

Although Section 13252(a)(3)(B) of the regulations states that repair and maintenance activities that are specifically described in the 1978 Guidance shall not be subject to coastal development permit requirements described above, this section specifies that the exemption shall not apply if such activities “will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.” Since project activities will affect ESHA, will occur in close proximity to areas occupied by special status species, and will involve clearing more than 500 square feet of vegetation the exemption from coastal development permit requirements described under Section 13252(a)(3)(B) of the regulations does not apply to the proposed project.

Finally, in considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed method of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. In other words, the Commission’s authority over repair and maintenance activities applies only to the methods by which a repair and maintenance activity is carried out, but not the underlying use (e.g. the existing pipelines).

#### **D. Environmentally Sensitive Habitat Areas**

Section 30240 of the Coastal Act states:

- a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those resources.
- b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Proposed project activities would occur in and near Goleta Slough, an area that consists largely of ESHA as defined by the Coastal Act, including wetlands, salt marsh, and terrestrial habitat areas. In this case, the project sites consist of areas of interspersed ESHA, non-ESHA, and wetlands, with some of the activities occurring within or in close proximity to more than one of these types of areas (See Exhibit 2).

#### **Trench Excavation**

Trenching activities occurred from January 9, 2024, through January 30, 2024, and were communicated to the Commission via email on February 13, 2024. The trench was hand dug in order to underground several overhead utility lines that interfered with crane operations. The trench excavation is approximately 150 feet long, 2.5 feet deep,

and 3 feet wide, and is located in wetlands consisting of arroyo willow thickets and upland coyote brush scrub and blue elderberry scrub. SoCalGas's biological monitoring consultant was on site when the trenching activity occurred, but the monitor was unaware that this trench excavation activity was not included within the current CDP's covered work area. Trenching activities were immediately halted following its discovery and proximity to an active nesting bird buffer on January 30, 2024.

Trench activities are proposed to be completed once the nesting bird season is over (August 31<sup>st</sup>) and this amendment request is approved. Once approved and completed, the excavated area will be backfilled with native soil, re-graded to the original elevation, and restored in accordance with an updated Revegetation and Restoration Plan. Due to temporary impacts from vegetation clearing, excavation, and re-grading, the area of vegetation clearance and ground disturbance to accommodate the work is proposed to be expanded an additional 4,061 square feet (sq. ft.). (See Exhibit 2)

#### Modified Temporary Construction Shoring

As described in the project description, the temporary construction shoring is being amended to facilitate a larger crane, which in turn requires approximately 36 additional feet of shoring on the south side of the pipeline to support the crane staging area. The revised shoring alignment moves the shoring to the east and increases the offset from jurisdictional boundaries (see Exhibit 4). Construction methods and post-construction restoration for temporary shoring are consistent with the methods described in Amendment 1. After construction, temporary shoring structures will be removed, the slope will be laid back at-grade with the existing slope, and the area will be restored in accordance with the updated Revegetation and Restoration Plan (Exhibit 3).

#### Temporary Vegetation Impacts

All vegetation impacts proposed as part of this amendment are temporary and short term (5 months). No permanent impacts are proposed. As stated above, the additional trenching will result in a total of 4,061 sq. ft. of vegetation impacts, including 2,292 sq. ft. to ESHA. Specifically, 2,292 sq. ft. of native vegetation (1,963 sq. ft. of arroyo willow thickets, 326 sq. ft. of coyote brush, and 3 sq. ft. of blue elderberry) will be temporarily impacted. To accommodate the additional shoring, the area of vegetation clearance and ground disturbance will be expanded by 5,394 sq. ft. Of this additional area, 1,505 sq. ft. of native vegetation (coyote brush) will be temporarily impacted. Overall, the new project elements proposed under this amendment will require an additional 9,455 sq. ft. of temporary impacts, including, 3,797 sq. ft. of native vegetation removal.

Temporarily impacted habitat will be mitigated at a 1:1 ratio consistent with the approved Revegetation and Restoration Plan previously required under **Special Condition 3**. The plan requires the identification of restoration sites and the specific methodologies for creation of wetland habitat, invasive species removal, and native vegetation planting and maintenance. The plan requires the use of local container stock in place of seed whenever possible as well as the use of supplemental watering in drought conditions. Temporarily disturbed areas are to be stabilized and restored to pre-project conditions at the end of one year. The plan also requires achieving 90 percent

native species vegetative cover and no more than 10 percent non-native species cover at the end of three years for restoration areas. The remainder of the area, currently ice plant mats and ruderal field, will be restored with the same native hydroseed treatment and maintained the same as the native vegetation communities impacted. Monitoring of the restoration area will take place annually, and reports must be submitted to the Executive Director by November 1<sup>st</sup> of each year. If monitoring results show that wetland and ESHA habitat subjected to temporary adverse impacts have not been fully restored to pre-project conditions within one year, the applicant must submit an application for an amendment to this permit that proposes mitigation for the remaining wetland and/or ESHA impacts at a 4:1 mitigation to impact ratio. An updated Restoration and Revegetation plan reflecting these amended vegetation impacts has been included in the application for this amendment (See **Exhibit 3**).

To ensure that the amended vegetation impacts are memorialized in CDP 9-21-0714, the Commission is requiring that **Special Condition 3** of the original CDP be modified to reflect the new area(s) of temporary impacts.

All remaining project activities will occur consistent with (i) existing **Special Condition 2** to ensure protection of nesting birds, (ii) existing **Special Condition 5** to protect rare plants, and (iii) existing **Special Condition 4** to prevent and responds to spills and protect water quality.

With implementation of the modified **Special Condition 3** and on-going compliance with **Special Conditions 1 – 5** of the original CDP, the Commission finds that the amended repair and maintenance project, as conditioned, is consistent with Coastal Act Section 30240.

## E. Archaeological Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The location of the La Goleta Facility is within the historic territory of the Chumash and includes several known archaeological sites. A cultural resources survey with limited testing (extended Phase I) of the CDP's covered project area was conducted prior to project commencement. As described previously, a known prehistoric archaeological site occurs within a portion of the CDP's covered project area, and a portion of the already excavated trench also extends into the recorded site boundary.

In order to ensure that archaeological resources are protected moving forward, the Commission is requiring the addition of new **Special Condition 7**. The condition requires that a qualified archaeological monitor be on site to monitor all construction-related ground disturbances. The archaeological monitor will inspect any excavated and graded areas, as well as back dirt spoils piles for evidence of cultural materials. The

condition also requires that the applicant contact appropriate tribal representatives prior to ground disturbances and to provide for monitoring by a Tribal monitor if so requested. Furthermore, SoCalGas would be required to cease construction in the event of an archaeological resource discovery and would not be able to resume work within the zone of discovery (exclusion zone) until an Archaeological Plan that addresses the find is reviewed and approved by the Executive Director.

With addition of new **Special Condition 7**, the Commission finds that the amended project, as conditioned, is consistent with Coastal Act Section 30244.

## F. Violation

Violations of the Coastal Act have occurred on the subject site, including but not necessarily limited to, unpermitted vegetation clearing and excavation trenching. The applicant is proposing after-the-fact approval of the unpermitted development associated with vegetation clearing and trenching noted above and described in more detail in the project description. Any non-exempt development activity conducted in the Coastal Zone without a valid CDP or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

The property owner has worked with Commission staff to develop this permit amendment to authorize vegetation clearing including 4,061 square feet of temporary vegetation impacts. Specifically, 2,292 sq. ft of native vegetation (1,963 sq. ft. of arroyo willow thickets, 326 sq. ft. of coyote bush, and 3 sq. ft. of blue elderberry) have been temporarily impacted. To address the violation related to vegetation clearing, temporarily impacted habitat will be mitigated at a 1:1 ratio consistent with the Commission approved Revegetation and Restoration Plan. The remainder of the area which is currently consisting of ice plant mats and ruderal vegetation, will be restored with the same native hydroseed treatment and maintained as the native vegetation communities impacted. An update to the Revegetation and Restoration Plan reflecting these amended temporary vegetation impacts will be submitted to the Executive Director consistent with the modification of the underlying CDP **Special Condition 3**. Additionally, to address the violation associated with the unpermitted trenching, the applicant has worked with Commission staff to develop a new **Special Condition 7** related to the protection of archaeological resources.

Although certain development has taken place prior to submission of this permit amendment application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Upon issuance of the permit amendment, the subsequent performance of the work authorized by the permit amendment in compliance with all of the terms and conditions of the permit amendment will result in resolution of the violations described above going forward

Commission review and action on this permit amendment does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of

any other development, other than the development approved herein. In fact, approval of this permit amendment is possible only because of the conditions included herein, and the applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this permit amendment, would also constitute a violation of this permit amendment and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development.

## **G. California Environmental Quality Act**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of environmental review under CEQA. (14 CCR § 15251(c)).

The Commission incorporates its findings on Coastal Act consistency as if set forth in full herein. As discussed in the findings, the proposed repair and maintenance project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse impact which the proposed activity may have on the environment. Therefore, the proposed project is consistent with CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

Coastal Development Permit Application No. 9-21-0714 A2 and associated file documents.

California Coastal Commission, December 2022. Adopted Findings in support of Coastal Development Permit No. 9-21-0714.

California Coastal Commission, August 2023. Adopted Findings in support of Immaterial Coastal Development Permit Amendment No. 9-21-0714-A1.