



February 12, 2004

Cy Oggins  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento CA 95825-8202

**Re: Chevron 4-H Platform Shell Mounds Disposition DEIR  
(CSLC EIR No. 718, State Clearinghouse No. 2002061002)**

Dear Mr. Oggins:

This letter offers written comments in response to the Draft Environmental Impact Report (DEIR) for the Chevron 4H Platform Shell Mounds Disposition project. The Environmental Defense Center offers these comments on behalf of the Santa Barbara Chapter of the Sierra Club, the Citizens Planning Association, Get Oil Out!, and the Pacific Coast Federation of Fishermen's Association.

The main areas of comment covered by this letter are:

- To more clearly state the goal of the program/project in relation to the requirements of the original permit granted to Chevron;
- To redesign the analysis of Project Alternative 1 by removing the option of off-shore disposal, or alternatively, by subdividing PA1 into two sub-alternatives, clarifying classifications of impacts associated with on- versus off-shore disposal of mounds materials;
- To reclassify certain impacts currently identified as class II more accurately as class I;
- To make better comparisons between short and long term impacts of the different project alternatives;
- To do a feasibility analysis of the economic and administrative impacts of each project alternative;
- To provide a more complete analysis of impacts to fishing; and
- In keeping with CEQA environmental review protocols, to identify the environmentally superior project alternative.

Our focus is on ensuring that each proposed alternative receive accurate consideration in keeping with a clearly defined project goal and clearly identified environmentally superior project alternative.

### Statement of Project Goal

The revised EIR should more clearly define the goal of the program/project under review. As currently stated, the EIR identifies the goal only as “the final determination of the disposition of the shell mounds and remnant caissons that lie at the former sites of Chevron Platforms Hilda, Hazel, Hope, and Heidi.” (Sec. 1.0) The project goal should be further clarified in terms of the original 4H Platform Abandonment Permit (CDP No. E-94-6) issued by the California Coastal Commission; the U.S. Army Corps of Engineers permit; and State Lands Commission permit, defined by the “Final Mitigation Monitoring Program for the Offshore Oil Platform Abandonment and Removal in the Santa Barbara Channel - Chevron Project” (Mitigated Neg. Dec.), on record for August 1994. The emphasis on all of the above-cited permits is to remove debris created by the oil platforms and their removal, eliminate obstacles to trawling, and restore the marine environment to its natural state.

The Coastal Commission CDP No. E-94-6 requires that the permit holder complete its platform abandonment in keeping with the provisions of Chapter 3 of the California Coastal Act of 1976. (Chevron 4H Platform Abandonment (CDP No. E-94-6) Adopted Findings: Feb. 8, 1995) Chapter 3 of the California Coastal Act requires that “[m]arine 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, recreational, scientific, and educational purposes.” (Coastal Act, sec. 30230) The Act calls also for protection against spillage of hazardous substances (Coastal Act, sec. 30232), and recognition and protection of the economic, commercial and recreational importance of fishing activities (Coastal Act, sec. 30234.5) Each project alternative of this EIR should thus be analyzed in accordance with Chapter 3 of the Coastal Act.

The Coastal Commission CDP also requires compliance with the California Environmental Quality Act (CEQA). CEQA defines a significant adverse impact on the environment as ““a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.” (CEQA, sec. 15382) Therefore, analysis of each project alternative should consider the extent to which, as the CDP requires, it “will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.” (CDP No. E-94-6.) Although the DEIR does consider individual impacts, it does not assess each project alternative for its overall likelihood of creating “substantial, or potentially substantial, adverse change” as defined above.

The USACE permit requires, as a condition of the 4H platform removals, “that the sites be free of debris and trawlable upon completion.” (Chevron 4H Platform Shell Mounds Disposition

DEIR, ES-1) Similarly, the State Lands Commission Negative Declaration, which defines the terms of its abandonment permit, also requires removal of debris, restoration of trawling, and “restor[ation of] the marine environment to its natural state.” (Mitigated Neg. Dec., Aug, 1994, 5-107) Each project alternative should thus consider of the extent to which it results in sites free of debris, trawlable, and restored to their natural state.

The revised EIR should clarify in its statement of purpose and objectives that the goal of the EIR is to evaluate the project alternative(s) in relation to the objectives required by the permits. Identification of the environmentally superior alternative should also include reference to these criteria.

### Redesign/Reclassification of Project Alternative 1

#### ***Redesign of PA1***

As currently presented, the DEIR offers a confusing picture of the class I impacts associated with Project Alternative 1. The EIR needs to distinguish more clearly between on- and off-shore disposal. On-shore disposal has only one, purely potential class I impact associated with it:

- 1) Marine Benthic Life-4: transport of materials *may* result in accidental spillage or pose collision risks with other vessels, thus adversely affecting marine benthic habitat and biota [see below for discussion of reclassifying this impact].

By contrast, off-shore disposal has the following class I impacts associated with it:

- 1) Water Quality-4: toxicity and bioaccumulation of dredged materials at the offshore disposal site;
- 2) Marine Benthic Life-4: transport of materials may result in accidental spillage or pose collision risks with other vessels, thus adversely affecting marine benthic habitat and biota [residual impact identified as class I or II depending on the amount of spill];
- 3) Marine Benthic Life-5: potential toxic effects of ocean disposal of shell mound sediments;
- 4) Marine Wildlife-7: transport, ocean disposal, smoothing of shell mounds, and testing resulting in release of bioaccumulation of toxic substances;
- 5) Commercial and Recreational Fishing-6: potential toxic effects of ocean disposal of shell mound sediments.

The simplest way of correcting this misimpression would involve removal of off-shore disposal as an element of PA1.

Although we understand that the initial goal was to present all possible alternative methods of dealing with the shell mounds, in fact elsewhere the DEIR does eliminate an element of a project alternative where it is clearly unfeasible. One such example is the purely mechanical removal of the caissons at the Hazel Mound (sec. 2.1.2.2), an option which is discussed, then ruled out and not included in overall assessments of PA1 because of its evident negative impacts. Similarly, elimination of off-shore disposal, which the EIR clearly indicates would be unacceptable under several environmental laws, would allow a clearer assessment of PA1. CEQA permits such

exclusions: “Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project.” (CEQA sec. 15126.6(f)) Indeed, given clear statements as to the infeasibility of off-shore disposal, it seems illogical to include that option as a serious project alternative, since section 5.1 of the DEIR clearly indicates that off-shore disposal would be in violation of the California Coastal Act, compliance with which is a condition of the abandonment permits.

Alternatively, the EIR should break PA1 into two subalternatives, (a) on-shore disposal, and (b) off-shore disposal. Such a distinction would clarify that four of the five class I impacts currently identified with removal of the mounds apply only in the case of subalternative (b) (off-shore disposal). They do not apply in the case of subalternative (a) (involving on-shore disposal), which currently has only one potential class I impact. This reworking of PA1 would result in a clearer and more accurate description of associated impacts. Currently, summary charts such as Table 7-1 present class IV and class I impacts in such a way as to give a misleading impression of the number of class I impacts associated with PA1. In fact, almost all of the class I impacts for PA1 are linked to subalternative (b) only.

In addition, both removal of the off-shore disposal element and redesign of PA1 into two subalternatives, would allow the EIR to do a better job of distinguishing between short and long-term impacts, since the long-term class I impacts of ocean disposal would be separated from possible short-term, class II impacts associated with removal and transport of mounds materials.

#### ***Reclassification of on-shore disposal class I impact***

The one class I impact associated with on-shore disposal under PA1 is not only purely potential, but we would argue that that impact should be reduced to class II status. The EIR characterizes accidental releases as class II for project alternatives 3, 4, and 6, even those which we would argue should be class I precisely because they may happen without immediate detection and remediation. By contrast, any accidental spillage associated with dredging and transport under PA1 would receive immediate remediation; nor is there any reason to think that such an accident would result in a spill the impact of which could not be reduced to less than significance by the very mitigations that the EIR recommends. Therefore MB-4 should be reclassified as a class II impact. In so doing, and with removal of off-shore disposal as an element, PA1 would no longer require a Statement of Overriding Consideration should it be adopted as the final project.

#### **Reclassification to Identify Class I Impacts**

There are several areas of the EIR that offer questionable classifications of impacts from project alternatives, for which we recommend reclassification.

Misclassification of impacts is a significant problem where the EIR discusses non-removal project alternatives. Specifically, there are several impacts currently identified as class II for project alternatives 3, 4, and 6 that do not make sense generally, or in relation to statements made elsewhere in the EIR. For PA3, PA4, and PA6, the EIR should identify many of the Class I

impacts identified for the No Project Alternative (e.g., risk of release of toxic contaminants; preclusion of fishing; loss of habitat) as Class I impacts for these other alternatives as well.

### ***Project Alternative 3***

Currently, the EIR lists only class II impacts for PA3, despite the fact that toxic bioaccumulants will remain onsite. By definition, this should receive the same class I status as PA7, the No Project Alternative. Remediation via the proposed cap might reduce the impact to class II status, except that the EIR makes it clear that the cap is a theoretical proposition and its design “somewhat experimental” (sec. 2.4.1)—thus, in fact, its effectiveness is unknown and its failure potentially significant. The EIR repeatedly notes that capping may be ineffective:

Erosion or loss of the cap could be caused by a resumption of bottom trawling on the site, anchoring, biological activity, currents, and/or seismic events. ***These circumstances cannot be readily predicted or addressed through design of the cap, and restrictions on trawling or other types of fishing would be inconsistent with the purpose of the cap. The loss of the cap itself would not have significant impacts, but it would increase the risk of deeper erosion that could cause the release of contaminants from the shell mounds*** [emphasis added]. This impact is considered significant but mitigable through the replacement of capping material as needed (Class II). (sec. 3.2.4.3; 3.3.20)

The EIR proposes monitoring as a justification for its class II designation, but we are skeptical that annual monitoring and as-needed replenishment would be sufficient, since erosion or breach, followed by acute releases, might go eleven months without detection or remediation. (See the discussion of feasibility, below, for other issues relating to the long-term monitoring and replenishment required for this PA.) Nor does this assure the restoration of trawling, a condition of the abandonment permits.

Further, it is not clear how the cap would protect the mounds against toxic releases caused by catastrophic events such as earthquakes (of which there is a high likelihood, according to the EIR). This too justifies reclassification of class II impacts to marine benthic life, water quality, and commercial/recreational fishing as class I.

### ***Project Alternative 4***

As with PA3, PA4 leaves toxic materials on site and thus should receive the same class I designations as the No Project Alternative.

Again, we understand that the construction of artificial reefs is intended to mitigate the possible dangers of a release to class II status by providing protections for the mounds. However, it is not at all clear from the current EIR how a six foot high rock wall will provide protection, given that the mounds are up to five times taller, against the kinds of forces that would lead to class I impacts similar to those identified for PA6 or PA7. Presumably the wall would provide protection only for the bottom six feet of the mounds, not for any exposed areas above it, or against events such as seismic activity that would affect the mounds from underneath. The additional suggestion of placing recycled concrete over the tops of the mounds is unclear—if

suspended, this might provide some protection, but would presumably also pose a countervailing risk should the structure fail, a risk that needs to be analyzed in the EIR. If the concrete is to be placed directly on top of the mounds, what would be the impact of their weight, given the presumably lesser dangers of “squeezing” identified for PA3? This proposed mitigation needs further elaboration in order to support the claim that resulting impacts would be class II rather than class I in nature.

Further, the EIR does not address the issue of harm caused by the ongoing presence of toxic bioaccumulants in a structure that is supposed to be environmentally clean. The State Lands Commission’s Negative Declaration, upon which the abandonment permit is based, notes the CDFG policy that reefs are not to be created from such scrap materials. (2-31) The CDFG’s *Guide to the Artificial Reefs of Southern California* (2001) states further that reef site selection must involve “minimal negative environmental impacts” (p. 6). Materials used must not pose an environmental risk; thus the artificial reefs program discontinued the use of automobile tires because of the “potential for release of harmful chemicals . . . over time.” (p. 3) An analysis of any artificial reef program needs to include the state’s requirements regarding the toxicity of reef materials.

Finally, PA4 does not provide class II mitigation for lost fishing, since the artificial reefs would not provide a fishing environment equivalent to what would be lost to trawling. This impact should be reclassified as class I.

### ***Project Alternative 6***

PA6 is most clearly in need of reclassification in the areas of water quality, marine benthic life, marine wildlife, and commercial/recreational fishing, since it leaves the mounds in place as-is. PA6 offers nothing in the way of protection or reinforcement for the mounds, and therefore represents a continuing risk of contaminant release equivalent to that described for the No Project Alternative: “The No Project Alternative would result in unmitigated risks of contaminant releases to the marine environment if the integrity of the shell mounds were compromised, ***a Class I impact if such releases were to occur.***” (ES-6) [emphasis added] Indeed, if the mounds materials do not qualify for off-shore disposal under the Ocean Act as the DEIR states (sec. 3.2.1.3) and would incur a class I impact if disposed of at LA-2, then leaving those materials where they are, without mitigation, would simply be another form of off-shore disposal, with the same class I impacts. Thus the need to redesignate this as a class I impact seems inarguable.

The 1:1 replacement offered under this project alternative addresses lost habitat and fishing stock by offering an equal amount elsewhere, but not the other consequences of an acute toxic release in relation to the terms of the Coastal Act and CEQA, as per the original permit.

### Analysis of Short versus Long Term Impacts

Along with reclassification of impacts, the EIR needs to include a more extensive comparison of the short-term and long-term consequences of each project alternative, with emphasis on any

project that leaves the shell mounds in place. As noted, the EIR needs to consider the fact that leaving the mounds in place under PA3, PA4, and PA6 involves many of the same long-term class I impacts associated with PA7.

Further, a separate analysis of short and long term impacts would allow integration of the above-discussed redesign and reclassifications with other sections of the EIR, e.g., section six, "Other CEQA/NEPA Considerations." That section identifies long-term class I impacts associated with PA3, 4 and 6 that are not factored into section three's environmental analysis. These impacts include an irreversible/irretrievable commitment of seafloor habitat, an irreversible/irretrievable commitment to modification of the seafloor, and loss of trawling area. The long-term significance of each deserves further consideration given the permit requirements.

In addition, a short- versus long-term analysis needs to address the fact that the goal of the project is to make a "*final determination*" (ES, sec. 1.0) [emphasis added] regarding the disposition of the mounds. Indeed, sec. 1.0 of the EIR notes that "[p]ursuant to the State CEQA Guidelines section 15168(c)(5), 'With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.'" (sec. 1.2) However, PA3, 4, and 6 all leave open the possibility of requiring future environmental analysis, should the proposed project fail to achieve the goals of protecting against adverse environmental impacts and restoring trawling. PA3 requires ongoing monitoring and replenishment, and may not restore trawling; PA4 would also involve long-term monitoring and possible alternative funding for habitat enhancement, since trawling would not be restored; and PA6 would simply leave the mounds as-is, possibly requiring an entirely new set of actions not identified by this EIR should there be significant future contaminant releases at the mounds. The EIR also notes that if 1:1 fishing replacement were not achieved under PA6 as currently proposed, Chevron would have to institute a variety of additional measures, which it does not submit to environmental analysis. (sec. 3.5.4.6) Thus, far from being final, PA6 leaves open the possibility of a whole new set of actions requiring study and permitting.

The EIR thus needs to provide a substantial, extensive discussion of short- versus long-term impacts for all seven project alternatives. Such a comparison should give a fuller picture of the present and future losses and gains that each proposed project entails. In addition, since finality is one of the identified goals of the EIR, the ability to achieve it should be an element of each project analysis, and of the final identification of the environmentally superior alternative.

### Feasibility Analysis

CEQA assumes a feasibility analysis as part of any complete assessment of a proposed project. Feasibility addresses not only the mechanical means of accomplishing a project, but other factors as well: "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (CEQA, sec. 21061.1) Further, CEQA sec. 15124(c) specifically calls for consideration of the economic characteristics of a proposed project. Simply put, for any of the

project alternatives that require ongoing or future, as-yet-undetermined, actions, the EIR should consider who will be responsible over the long term, fiscally and administratively, for those actions.

The current EIR needs to consider the implications of PA3, PA4, and PA6, each of which require monitoring, replenishment and/or some other form of future additional action. The Executive Summary notes that in any scenario that leaves the mounds in place, “long term monitoring and provision for remediation would be required to ensure that any contaminant releases are identified and minimized.” (ES-8) The EIR suggests, in its description of PA4, additional funding for enhancement of habitat in the Carpinteria Marsh, presumably to make up for habitat lost to the reefs, but does not indicate the source of that funding. For any mitigation involving the provision of GPS equipment to fishers, the EIR needs to consider the funding and administrative elements required, since provision of such equipment would continue into perpetuity: will the permit holder provide this service indefinitely? What mechanism should be put in place in the event that the permit holder becomes unavailable to meet its obligations in this or any other area of future action?

A feasibility analysis should address the following questions:

- who would be responsible over time for any project that requires ongoing oversight, monitoring, funding, and/or administration?
- in what fashion would the permit holder be held to account for the financial burdens thus imposed?
- what would happen in the event that the permit holder discontinued the required future action?

The results of this analysis should be linked to the comparative short and long term analysis (see above) and incorporated into the final identification of the environmentally superior alternative.

### Impacts to Fishing

Given that restoration of fishing is an essential element of the original CDP, the EIR needs to do more to assess the impact of proposed project alternatives on commercial and recreational fishing. To begin with, the EIR should describe the current conditions for commercial and recreational fishing (including the success or failure of past mitigation efforts, such as marking the mounds with buoys). In addition, it needs to treat the impacts on fishing equally for each project alternative; to clarify that PA6 does not guarantee effective mitigation of impacts to fishing; and to address the issue of physical harm to fishers.

The current EIR analysis of fishing suffers from insufficiently identified class I impacts and long-term impacts. Given that the permit requires that the sites be trawlable upon completion of the project, the EIR does not provide adequate discussion of the fact that PA3, 4, and 6 preclude this. (See above discussion of reclassification.) The analyses of PA3 and PA4 need to give more complete attention to the fact that trawling and equivalent commercial fishing may or will not be

possible, and that this means that a basic goal of the EIR may or will not be met. In addition, the EIR should discuss the fact that PA6 raises problems regarding the provision of additional mitigations in the event that 1:1 replacement is not achieved. The EIR notes:

Applicant would need to implement a package of additional fishery enhancement measures to reach the 1:1 requirement. These measures could include the following, based on input from fisheries organizations: 1. *Funding a marine weather station on East Anacapa Island through the Santa Barbara Fisheries Enhancement Fund.* 2. *Upgrading onboard safety equipment and/or refrigeration systems on trawl vessels.* 3. *Funding research on stock assessment and/or enhancement of commercial fish.* (3.5.4.6)

These additional mitigations require further consideration, since they add to the requirements imposed on the applicant, involve additional allocation of resources, and might require separate environmental review. Nor do they fulfill the objective of 1:1 replacement of lost fishing, the stated goal of the project alternative.

In addition, the EIR's assessment of impacts to fishers does not adequately address questions of physical harm to fishers under PA3, PA4, PA6 and PA7, which consider only risks to equipment. Such impacts need to be considered.

#### Identification of the Environmentally Superior Project Alternative

The goal of the EIR is to identify the project or combination of projects which will best fulfill the permit's requirement that the sites be free of debris, trawlable, restored to their natural state, and compliant with the California Coastal Act and CEQA. The EIR should identify the project which fulfills these goals and is environmentally superior. This is in keeping with CEQA and the Coastal Act, as required by CDP No. E-94.6 and the USACE and State Lands Commission permits. Identification of the environmentally superior project alternative should come only after the EIR has been reworked to reflect more clearly stated goals, to redesign PA1, to reclassify impacts more accurately, to do a short-vs.-long term analysis, to consider feasibility, and to offer a more thorough analysis of impacts to fishing.

Sincerely,

Karen Kraus  
Staff Attorney

cc: California Coastal Commission  
County of Santa Barbara  
Sierra Club  
Get Oil Out!

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Citizens Planning Association  
Pacific Coast Federation of Fishermen's Assn.