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October 24, 2008

VIA E-MAIL elemke@counsel.lacounty.gov

Elaine M. Lemke
Principal Deputy County Counsel
Office of the County Counsel
County of Los Angeles
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Re: October 28, 2008 Agenda Item No. 33
Baldwin Hills Community Standards District ("CSD")
(Regional Planning) (08-2219)
Our File No. 9065.2

Dear Ms. Lemke:

This letter is written on behalf of the Greater Baldwin Hills Alliance ("GBHA" or "Alliance") and various of its individual and group members.

I am writing to demand that the Board of Supervisors for the County of Los Angeles revise its motion for adoption of a Community Standards District ("CSD") for oil drilling in the Baldwin Hills Oil Field, also known as the Inglewood Oil Field, before its adoption on October 28, 2008. Moreover, as to (i) the never before discussed provision that would allow PXP to retain its existing flare, (ii) the addition of a modification procedure for the applicant, and (iii) the elimination of the third-party audits of the oil field every five years, this cannot be done unless the CSD is first referred back to the Planning Commission.

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1. The Motion Must Be Revised To Ensure That The Average Number Of New Wells Allowed By Ministerial Review Does Not Exceed The Intensification Studied In The EIR; Alternatively, The EIR Must Be Revised And Re-circulated.

In order to comply with the California Environmental Quality Act ("CEQA"), the motion must be amended to ensure that the average rate of new oil wells allowed by the CSD does not exceed the average increase of wells studied in the Environmental Impact Report ("EIR") certified by the County Board of Supervisors

Specifically, that portion of the motion stating that the CSD be revised to:

"Add a provision, capping the total number of newly drilled wells over the next 20 years to 600 wells for an average of 30 wells per year" (Motion by Supervisor Burke, Oct. 21, 2008, p. 5)

must be revised to provide instead:

"Add a provision capping the total number of newly drilled wells over the next 20 years to **a net increase of no more than 453** ~~600~~ wells ~~for~~ **with an average of no more than 30 wells per year and a net increase of no more than 22 wells per year.**" (New language shown in bold type; deleted language shown in strikeout.)

This revision is required to comply with CEQA because the EIR assumed a maximum average of 48 new wells over the next 20 years and a minimum abandonment rate of an average of at least 26 wells per year for the next 20 years. Thus the maximum net increase of new wells studied in the EIR is an average of no more than 22 wells per year (i.e., 48 new wells minus 26 abandoned wells equals a net increase of no more than 22 new wells per year).

Unless this change is made, various members of GBHA members intend to file suit in the Los Angeles County Superior Court to challenge the CSD as adopted and the EIR as certified. The attorney's for these litigants will also seek attorney's fees under the private attorney general doctrine, Government Code Section 800, and other relevant laws.

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As the County well knows, "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 192, 139 Cal. Rptr. 396 (1977).

If the County did not intend to regulate abandonment, then the EIR should not have assumed the abandonment totals shown on Table 3.2 of the Final EIR ("FEIR"). But the EIR did assume abandonment of existing oil wells. Indeed, the EIR states:

"Well abandonments would also be conducted . . .
[¶] PXP has estimated that, over the next 20 years,
approximately 640 wells would be plugged and abandoned.
Table 3.2 provides a breakdown of the estimated well
abandonments by year and field area." FEIR at p. 3-9.

Therefore, unless the CSD either regulates abandonments or, alternatively, regulates net increases, the EIR is legally inadequate and there is no data to support the CSD as would be adopted by Supervisor Burke's October 21, 2008 motion. The EIR studied a net increase of only 453 wells in the portion of the oil field located within Los Angeles County within the next 20 years. It is not lawful for the County to permit 600 new wells to be drilled within the next 20 years by ministerial permits with no further environmental analysis. Legislation that would allow such ministerial permits cannot be adopted based on the analysis of a lower level of operations that would generate lesser impacts as studied in the FEIR.

In the case of *San Joaquin Raptor Rescue Center v. County of Merced*, 149 Cal. App. 4th 645, 57 Cal. Rptr. 3d 663 (2007), the Court rejected as inadequate an EIR that contained conflicting projections as to the peak capacity of expanded mining operations per year. The Court set aside the project approval and ordered that a new EIR be prepared and circulated "in order to clearly specify in the project description that the project includes and allows significantly increased production (over recent annual averages) up to a peak level of 550,000 tons per year." *Id.* at 657.

Here, the EIR assumes the drilling of up to 1,065 new wells over the next 20 years, including 100 new wells in the City of Culver City and 965 new wells in the unincorporated areas of the County of Los Angeles:

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Table 3.1 Future Estimated Wells Drilled per Year

Year	Field Areas					Totals
	Culver City	Viewshed ¹	Central ¹	South LAI ¹	Stocker ¹	
2008	0	11	15	3	11	40
2009	0	7	28	19	31	85
2010	1	8	35	19	12	75
2011	13	19	35	4	4	75
2012	14	28	29	2	2	75
2013	18	23	25	3	6	75
2014	9	10	23	5	18	65
2015	8	5	11	28	8	60
2016	3	11	21	10	5	50
2017	3	10	18	8	6	45
2018	3	9	17	7	4	40
2019	3	9	16	7	5	40
2020	3	9	17	7	4	40
2021	3	10	17	4	6	40
2022	3	10	18	4	5	40
2023	3	10	17	4	6	40
2024	3	10	18	4	5	40
2025	3	10	17	4	6	40
2026	3	10	18	4	5	40
2027	2	7	14	3	4	30
2028	2	7	14	3	4	30
Totals	100	233	423	152	157	1,065

1. Located in the unincorporated area of Los Angeles County.

Source: PXP

(FEIR at p. 3-3.)

And the EIR assumes future well abandonments of 640 existing wells over the next 20 years, including 128 existing wells to be abandoned in the City of Culver City and 512 existing wells to be abandoned in the unincorporated areas of Los Angeles County:

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Table 3.2 Future Estimated Well Abandonments per Year

Year	Field Areas					Totals
	Culver City	Viewshed ¹	Central ¹	South LAI ¹	Stocker ¹	
2008	3	3	3	3	3	15
2009	3	3	3	3	3	15
2010	3	3	3	3	3	15
2011	3	3	3	3	3	15
2012	5	6	5	4	5	25
2013	5	6	5	4	5	25
2014	5	6	5	4	5	25
2015	5	6	5	4	5	25
2016	5	6	5	4	5	25
2017	7	8	6	6	8	35
2018	7	8	6	6	8	35
2019	7	8	6	6	8	35
2020	7	8	6	6	8	35
2021	7	8	6	6	8	35
2022	8	9	7	7	9	40
2023	8	9	7	7	9	40
2024	8	9	7	7	9	40
2025	8	9	7	7	9	40
2026	8	9	7	7	9	40
2027	8	9	7	7	9	40
2028	8	9	7	7	9	40
Totals	128	145	116	111	140	640

1. Located in the unincorporated area of Los Angeles County.
 Source: PXP

(FEIR at p. 3-10.)

This means that within the unincorporated area of Los Angeles County, the EIR studied the impact of drilling an average of 48 new wells per year¹ combined with abandonment of an average of 26 existing wells per year.²

The impacts of drilling an average of 30 new wells per year without requiring any abandonments was not studied in the EIR. This would be a change in the project

¹ 965 new wells over 20 years equals an average of 48.25 new wells per year.

² 512 existing wells over 20 years equals an average of 25.6 existing wells per year.

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description that would require revision of the project description, new analysis, and re-circulation. (Pub. Res. Code § 21092.1.)

This is not complicated. Accordingly, the motion recommended by Supervisor Burke must be revised to restrict the net number of new wells allowed within that portion of the oil filed located in the unincorporated area of Los Angeles County to an average increase of no more than 22 new wells per year.

As proposed, the CSD would allow on average by ministerial permit more than 8 new wells per year than were studied in the EIR. This 36% increase will not be tolerated by GBHA unless the County first studies those increased impacts on our community and the surrounding environment and fully mitigates those increased impacts.

2. The Board Is Legally Required To Refer The CSD Back To The Regional Planning Commission If The Board Intends To Allow The Operator To Retain The Existing Flare, To Enact A Modification Procedure Or To Eliminate The Third-Party Audits; These Are New Issues That Were Not Previously Considered By The Commission.

Without any prior discussion or deliberation, Supervisor Burke's October 21, 2008 motion includes the following new changes never before considered by the Regional Planning Commission:

"Allow the existing gas plant flare to remain on-site as back-up if the South Coast Air Quality Management District (AQMD) determines it may stay. The CSD requires a new gas flare, estimate to cost \$2 million, to mitigate vibration impacts that have been so distressing for the community. It may, however, be beneficial to keep the existing flare as back-up, and AQMD's review and permitting of the new flare will determine whether the existing flare can stay." (Motion by Supervisor Burke, Oct. 21, 2008, pp. 7-8.)

"Include a modification procedure similar to those in other CSDs. This CSD includes a number of technical requirements, many of which are not in wide use and may be untested or which may become outdated. Thus, the CSD

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should include a procedure to modify provision when necessary." (*Id.* at p. 6.)

"The MACC process, combined with the requirement for an on-site Environmental Compliance Coordinator, will provide the strongest assurance to the County, on an ongoing basis, that the oil field complies with all local, state and federal laws, rules and regulations. This ongoing review provides the same or better oversight as the five-year third-party audit to be paid for by the Operator that was required by the Commission-recommended CSD. Thus, that audit provision should be removed from the CSD." (*Id.* at p. 8.)

Unless these amendments are withdrawn, the CSD must be referred back to the Commission for their consideration before the amended CSD can be adopted. See LA County Code § 22.16.210 ("any modification of the proposed zone change or amendment by the board of supervisors not previously considered by the commission during its hearing, shall first be referred to the commission for report and recommendation"). See also *Richter v. Board of Supervisors*, 259 Cal. App. 2d 99, 66 Cal. Rptr. 52 (1968).

To act quickly on the CSD, these new provisions (never before discussed), including the potential ability to retain the troublesome existing flare, must be withdrawn from the motion. Alternatively, the CSD must be referred back to the Commission for due consideration of these issues.

CONCLUSION

The October 21, 2008 motion must be revised to limit the net number of wells at the Baldwin Hills Oil Field to no more than was studied in the EIR. Alternatively, the EIR must be revised and re-circulated. The motion must also be revised to withdraw the ability to retain the existing flare, to withdraw the addition of a modification procedure, and to withdraw the changes to the third-party audit. Alternatively, the amended CSD must be referred back to the Planning Commission.

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This letter is written without prejudice to other legal claims of GHHA or their members with respect to the processing and legal flaws of the EIR and the CSD.

Very truly yours,



Kenneth L. Kutcher

KLK:snk

cc: Board of Supervisors
Mike Bohlke
Councilmember Bernard Parks
Senator Mark Ridley-Thomas
Speaker Karen Bass
Congresswoman Diane Watson
Mayor Scott Malsin
Bruce McClendon
Rose Hamilton
Russell J. Fricano
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