

1 CAROL A. SCHWAB (SBN 120183)  
City Attorney  
2 HEATHER S. BAKER (SBN 193058)  
Assistant City Attorney  
3 CITY OF CULVER CITY  
9770 Culver Blvd  
4 Culver City, California 90232  
Telephone: 310.253.5660  
5 Fax: 310.253.5664  
6 DAVID E. CRANSTON (SBN 122558)  
DCranston@GreenbergGlusker.com  
7 GARRETT L. HANKEN (SBN 057213)  
GHanken@GreenbergGlusker.com  
8 SEDINA L. BANKS (SBN 229193)  
SBanks@GreenbergGlusker.com  
9 GREENBERG GLUSKER FIELDS CLAMAN &  
MACHTINGER LLP  
10 1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590  
11 Telephone: 310.553.3610  
Fax: 310.553.0687

12 Attorneys for Petitioner  
13 CITY OF CULVER CITY

14 [LIST OF COUNSEL CONTINUED ON NEXT  
15 PAGE]

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF LOS ANGELES CENTRAL DISTRICT

18 COMMUNITY HEALTH COUNCILS,  
INC. et al.

19 Petitioner,

20 v.

21 COUNTY OF LOS ANGELES, and DOES  
22 1 - 30, Inclusive,

23 Respondents,

24 PLAINS EXPLORATION AND  
25 PRODUCTION COMPANY, a Delaware  
corporation et al.,

26 Real Parties in Interest.

27 AND CONSOLIDATED CASES  
28

Lead Case No. BS118018  
(Consolidated with BS118023, BS118039,  
BS118056)

Assigned To: Hon. James C. Chalfant

**PETITIONERS' REPLY BRIEF**

Hearing Date: April 5, 2010  
Time: 9:30 a.m.  
Place: Department 85

Action filing dates: November 25, 2008,  
November 26, 2008 & December 1, 2008  
Trial date: April 5, 2010

1 KENNETH L. KUTCHER (SBN 110804)  
CHRISTOPHER M. HARDING (SBN 76681)  
2 HARDING LARMORE KUTCHER &  
KOZAL, LLP  
3 1250 6th Street, Suite 200  
Santa Monica, CA 90401  
4 Telephone: 310.393.1007

5 DAVID PETTIT (SBN 67128)  
JOEL REYNOLDS (SBN 85276)  
6 DAMON NAGAMI (SBN 217089)  
NATURAL RESOURCES DEFENSE  
7 COUNCIL  
1314 Second Street  
8 Santa Monica, CA 90401  
Telephone: 310.434.2300

9 Attorneys for Petitioners  
10 COMMUNITY HEALTH COUNCILS, INC.,  
NATURAL RESOURCES DEFENSE  
11 COUNCIL & MARK SALKIN

12 TODD T. CARDIFF (SBN 221851)  
LAW OFFICES OF TODD T. CARDIFF  
13 121 Broadway, Suite 358  
San Diego, CA 92101  
14 Telephone. 619.546-5123  
Fax: 619.546.5133

15 Attorney for Petitioner  
16 CITIZEN'S COALITION FOR A SAFE  
COMMUNITY

17 ROBERT GARCIA (SBN 84898)  
18 [RGarcia@cityprojectca.org](mailto:RGarcia@cityprojectca.org)  
ELISE MEERKATZ (SBN 250580)  
19 [EMeerkatz@cityprojectca.org](mailto:EMeerkatz@cityprojectca.org)  
THE CITY PROJECT  
20 1055 Wilshire Boulevard, Suite 1660  
Los Angeles, CA 90017  
21 Telephone: 213.977.1035

22 Attorneys for Petitioner  
CONCERNED CITIZENS OF SOUTH  
23 CENTRAL LOS ANGELES

24  
25  
26  
27  
28

[Request for Judicial Notice, Objections to  
Evidence & Joint Appendix Filed  
Concurrently Herewith]

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. PXP’S VESTED RIGHT CLAIM DOES NOT JUSTIFY THE INADEQUATE EIR.....	2
III. THE EIR HAS AN INADEQUATE PROJECT DESCRIPTION .....	4
A. The EIR Should Have Described the Project as PXP’s Future Development.....	4
B. The County Cannot Define the Project as the CSD and Then Not Analyze the Impacts of the CSD as Adopted.....	8
IV. THE COUNTY FAILED TO PREPARE AN ADEQUATE EIR.....	9
A. The Air Quality Impact Analysis Was Inadequate .....	9
B. The County Did Not Properly Conduct the Localized Significance Analysis .....	12
C. The Public Health Impact Analysis Was Inadequate.....	13
D. The Risk of Upset Analysis Was Inadequate.....	15
E. The Noise Impact Analysis Was Inadequate .....	16
F. The GHG Emissions Impact Analysis Was Inadequate .....	17
G. The Environmental Justice Impact Analysis Was Inadequate.....	18
V. THE CSD DOES NOT CONTAIN ALL OF THE REQUIRED MITIGATION MEASURES AND THE IMPLEMENTATION PLAN IS STILL NOT COMPLETE .....	19
VI. THE AMENDED CSD SHOULD HAVE BEEN REFERRED BACK TO THE PLANNING COMMISSION .....	19
VII. CONCLUSION.....	20

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

**CALIFORNIA CASES**

*Agricultural & Rural Env't v. County of Placer*,  
144 Cal.App.4th 890 (2006) .....8

*Bakersfield Citizens for Local Control v. City of Bakersfield*,  
124 Cal.App.4th 1184 (2004) .....19

*Benton v. Bd. of Supervisors*,  
226 Cal.App.3d 1467 (1991) .....12

*Beverly Oil Co. v. City of Los Angeles*,  
40 Cal.2d 552 (1953) .....2, 3

*Calvert v. County of Yuba*,  
145 Cal.App.4th 613 (2005) .....3

*Christward Ministry v. Superior Court*,  
184 Cal.App.3d 180 (1986) .....19

*City of Carmel-By-The-Sea v. Bd. of Supervisors*,  
183 Cal.App.3d 229 (1986) .....12

*City of Ukiah v. County of Mendocino*,  
196 Cal.App.3d (1987) .....3, 5, 7

*Communities for a Better Env't v. California Res. Agency*,  
103 Cal.App.4th 98 (2002) .....15

*Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.*,  
2010 WL 890960 (2010).....6, 11, 12, 13

*Dusek v. Redevelopment Agency*,  
173 Cal.App.3d 1029 (1985) .....8, 9

*El Dorado County Taxpayers for Quality Growth v. County of El Dorado*,  
122 Cal.App.4th 1591 (2004) .....5

*Environmental Planning & Info. Council v. County of El Dorado*,  
131 Cal.App.3d 350 (1982) .....6

*Environmental Prot. Info. Ctr. v. California Dep't of Forestry & Fire Prot.*,  
44 Cal.4th 459 (2008) .....13

*Fairview Neighbors v. County of Ventura*,  
70 Cal.App.4th 238 (1999) .....12

*Gray v. County of Madera*,  
167 Cal.App.4th 1099 (2008) .....16

**TABLE OF AUTHORITIES**  
**(continued)**

	<b><u>Page</u></b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

<i>Hansen Bros. Enters., Inc. v. Bd. of Supervisors,</i> 12 Cal.4th 533 (1996) .....	3, 6
<i>Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach,</i> 86 Cal.App.4th 534 (2001) .....	2
<i>Laurel Heights Improvement Ass'n v. Regents of the Univ. of California,</i> 47 Cal.3d 376 (1988) .....	8, 18
<i>Los Angeles Unified Sch. Dist. v. City of Los Angeles,</i> 58 Cal.App.4th 1019 .....	16
<i>San Franciscans for Reasonable Growth v. City &amp; County of San Francisco,</i> 193 Cal.App.3d 1544 (1987) .....	15
<i>San Joaquin Raptor Rescue Ctr. v. County of Merced,</i> 149 Cal.App.4th 645 (2007) .....	11
<i>Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors,</i> 87 Cal.App.4th 99 (2001) .....	11
<i>Woodward Park Homeowners Ass'n v. City of Fresno,</i> 150 Cal.App.4th 683 (2007) .....	12

**FEDERAL CASES**

<i>Marblehead Land Co. v. City of Los Angeles,</i> 47 F.2d 528 (9th Cir. 1931), <i>cert den.</i> , 284 U.S. 634 .....	2
--	---

**CALIFORNIA STATUTES**

CIV. PROC. CODE § 1021.5 .....	20
CIV. PROC. CODE § 3482 .....	1
PUB. RES. CODE § 2005 .....	3
PUB. RES. CODE § 2776 .....	3, 8
PUB. RES. CODE § 21168.5 .....	18

**CALIFORNIA CODE OF REGULATIONS**

CODE REGS. TIT. 14 § 3956 .....	3
---------------------------------	---

**TABLE OF AUTHORITIES**  
**(continued)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

CODE REGS. TIT. 14 § 3501 .....3

CODE REGS. TIT. 14 § 3951 .....3, 8

**CEQA GUIDELINES (CALIFORNIA CODE OF REGULATIONS, TITLE 14, §§ 15000 ET. SEQ)**

GUIDELINES § 15088.5 .....8

GUIDELINES § 15091(b).....18

GUIDELINES § 15125(a).....10

GUIDELINES § 15131 .....19

GUIDELINES § 15143 .....15

GUIDELINES § 15147 .....15

GUIDELINES § 15301 .....4

GUIDELINES § 15307 .....4

GUIDELINES § 15308 .....4

GUIDELINES § 15378(d) .....5, 6

**OTHER AUTHORITIES:**

Los Angeles County CEQA Guideline 307D .....5

South Coast Air Quality Management District Rule 1401 .....14

1 **I. INTRODUCTION**

2 The Final EIR for the CSD is fatally defective in numerous respects.<sup>1</sup> It also fails to  
3 provide substantial evidence to support the County’s findings, rendering the County’s  
4 certification of the EIR and approval of the CSD arbitrary, capricious, and in violation of CEQA.  
5 While the CSD improved some of the archaic zoning regulations that preceded it, in other  
6 respects it actually made things worse.<sup>2</sup> Furthermore, in the absence of the CSD, DOGGR would  
7 be the lead agency and would be responsible for CEQA review of all new drilling permits.<sup>3</sup> With  
8 the CSD, the County now seeks to approve 20 years of drilling of hundreds of new wells based  
9 solely on the Final EIR. The EIR must comply with CEQA like any other project. And against  
10 CEQA’s standards, it fails.

11 Respondent County and Real Party-in-Interest PXP (collectively, “RPs”)<sup>4</sup> attempt to

12 <sup>1</sup> The RPs erroneously assert that the Petitioners’ Opening Brief is improper because Petitioners  
13 did not provide a “notice of motion.” PXP’s Opposition Brief (“PB”) 12-13 n.3; County’s  
14 Opposition Brief (“CB”) 2 n.1. A notice of motion was unnecessary. When, at the November 9,  
15 2009 hearing, the Court set the hearing date in this action, all counsel, including PXP’s and the  
16 County’s, waived notice. RJN, Exh. C 13:8-9. When, on February 11, 2010, the Court continued  
17 the hearing, PXP and the County joined in the *ex parte* application for and Culver City gave  
18 notice of that continuance. RJN, Exh. G. The County and PXP had notice.

19 <sup>2</sup> Some examples of where the CSD provides less environmental protection than the previously  
20 applicable requirements under the Los Angeles County Code (“LACC”) include the following:  
21 CSD allows drilling within 400 feet of residences, LACC required 500 feet (BH001911; LACC §  
22 22.24.120 (D)(2); CSD allows drilling noise to exceed County noise standards by 5dBA and  
23 requires no specific mitigation; LACC requires derricks to be sound proofed, and use muffled  
24 engine or electric power; LACC requires “proven technological improvements” as they become  
25 available to mitigate “nuisance and annoyance,” CSD does not require use of any new  
26 technology; LACC prohibits any drilling or operations that constitute a “public nuisance,” CSD  
27 does not prohibit such nuisance and PXP may contend that drilling or operations specifically  
28 authorized by CSD are immune from nuisance action under CAL. CIVIL CODE §3482.

<sup>3</sup> For many years DOGGR failed to conduct CEQA review until pressed by Culver City and  
others. In 2006, it completed CEQA documentation before approving some wells (BH007927-  
00423), demonstrating that DOGGR would conduct CEQA review.

<sup>4</sup> In their Opposition, real parties-in-interest Robert Taylor, Jeffrey Stobbs and Beverly Austel,  
Trustees of the Cone Fee Trust and Artesian Company, Ltd. (collectively “RPIs”) repeat the  
assertion that the Petitions should be dismissed for failure to name indispensable parties. RPI  
Brief 1:15-8:10. The Court has rejected this argument twice, with its August 5, 2009 denial of  
PXP’s Dismissal Motion and its December 3, 2009 denial of CFT’s demurrer. RJN, Exhs. B & E.  
During the December 3, 2009 hearing, the Court ruled that the only necessary party issue the  
RPIs should brief was whether the other landowners could represent their interests in this action.  
RJN, Exh. D 11:17-19, 18:9-15 (“they’re not indispensable because other oil field owners can do  
exactly what they do.... If you want to brief that, you can brief that. But you don’t need to  
address all [the other elements] except for that one element”). There are now 17 landowners who  
have appeared and are parties to this action in addition to PXP and the RPIs. The RPIs have

1 obfuscate the many deficiencies in the EIR by repeatedly suggesting that bare conclusions and  
2 immaterial documents constitute substantial evidence. But the record’s lack of evidence, belies  
3 their efforts. The health, welfare, and safety of hundreds of thousands of residents who surround  
4 the Oil Field rest on the adequacy of the EIR and a sound decision by the County. Petitioners the  
5 City of Culver City, Concerned Citizens of South Central Los Angeles, Community Health  
6 Councils, Inc., Natural Resources Defense Council, Mark Salkin and Citizen’s Coalition for a  
7 Safe Community (collectively “Petitioners”) respectfully request that this Court issue a writ  
8 decertifying the EIR and setting aside approval of the CSD, thereby giving the County the  
9 opportunity to do it right.

10 **II. PXP’S VESTED RIGHT CLAIM DOES NOT JUSTIFY THE INADEQUATE EIR**

11 PXP’s primary defense of the inadequate EIR is its assertions that PXP has a vested right  
12 to drill new oil wells. PB 14:12-23. Even if PXP had a vested right to drill new oil wells (it does  
13 not<sup>5</sup>), that would not excuse any inadequacies in the EIR. The California Supreme Court recently

---

14 made no showing that their interests are not aligned with such parties or why the other  
15 landowners cannot adequately represent their interests. Indeed, RPIs did not brief any substantive  
16 issue on the merits that suggests that they are not sufficiently represented by PXP.

17 Baldwin Stocker, LLC (“Baldwin”) filed a separate opposition brief, in addition to that of  
18 the RPIs. During the December 3, 2009 hearing, the Court ordered that all of the Real Parties-in-  
19 Interest, other than PXP (collectively, the “Landowners”) were allowed to file a separate ten-page  
20 brief *jointly with all other Landowners*. RJN, Ex. D 17:1-12. As Baldwin’s brief fails to  
21 comply with the Court’s ruling, it should be disregarded. In any event, Baldwin’s arguments are  
22 easily rejected. First, although DOGGR and the Air District have regulatory authority over  
23 drilling, this authority does not preempt the County regulations to protect the environment, public  
24 health and safety or excuse the County from preparing an adequate EIR. Second, Baldwin cites  
25 no evidence in the record to support its assertion that the County decided to omit consideration of  
26 the appropriate project alternatives because it may have been exposed to inverse condemnation  
27 liability. As discussed in Petitioners’ Opening Brief (“OB”) (OB 53:28-54:18), the EIR  
28 considered only three limited alternatives, because the County wrongly contends they “are the  
only other regulatory schemes available to the County for regulating activities at the Inglewood  
Oil Field” FEIR-06528; *see* FEIR-06474 (For convenience, “FEIR” is substituted for the prefix  
“BH000084”). Finally, relief does not need to be granted directly against Baldwin for the Court to  
order the County to prepare and circulate a legally adequate EIR.

24 <sup>5</sup> **There Is No Common Law Vested Right To Drill New Oil Wells.** In *Beverly Oil Co. v. City*  
25 *of Los Angeles*, 40 Cal.2d 552 (1953), an oil company asserted the same “vested rights” argument  
26 as PXP to challenge an ordinance permanently forbidding drilling new oil wells in a preexisting  
27 oil field. Upholding that ordinance, the Court stated: “It must be deemed to be well settled that  
28 the enactment of an ordinance which limits the owner’s property interest in oil bearing lands  
located within the city is not of itself an unreasonable means of accomplishing a legitimate  
objective within the police power of the city.” *Id.* at 558; *see also Marblehead Land Co. v. City*  
*of Los Angeles*, 47 F.2d 528 (9th Cir. 1931), *cert den.*, 284 U.S. 634; *Hermosa Beach Stop Oil*

1 held that, even if a project proponent has a vested right that limits the mitigation an agency can  
2 impose with regard to a project, that fact does not excuse the agency from fully analyzing the  
3 project and its impacts under CEQA:

4 *Coal. v. City of Hermosa Beach*, 86 Cal.App.4th 534, 555-56 (2001).

5 **SMARA's Grant of Vested Rights Expressly Does Not Apply to the Extraction of Oil.**

6 PXP has completely misrepresented the holdings of *Hansen Bros. Enters., Inc. v. Bd. of*  
7 *Supervisors*, 12 Cal.4th 533 (1996) and *City of Ukiah v. County of Mendocino*, 196 Cal.App.3d  
8 (1987), in contending that these cases stand for the proposition that PXP has a vested right to drill  
9 new oil wells. Both cases concerned whether mining operators needed a permit under SMARA  
10 because they had vested rights under PRC § 2776 and the governing local ordinance. SMARA  
11 expressly gives mining operators vested rights to expand their mining operations if the operations  
12 are an existing use (PRC § 2776(a); CODE REGS. TIT. 14 § 3951), while expressly excluding the  
13 extraction of “natural gas and petroleum” from its purview. PRC §§ 2005, 2776; CODE REGS. TIT.  
14 § 3501; compare PRC §§ 2000 *et seq.* (mining) with PRC §§ 3000 *et seq.* (oil and gas). PXP  
15 has cited no statutory authority providing oil operators with vested rights to drill new wells.  
16 Moreover, *Hansen* cites with approval the California Supreme Court opinion in *Beverly Oil* and  
17 makes no suggestion that *Hansen* alters the holding in *Beverly Oil*. 12 Cal.4th at 553.

18 **The Diminishing Asset Exception Is Inapplicable Because it Only Applies to Non-**  
19 **Conforming Mining Operations.** *Hansen* establishes in California “the ‘diminishing asset’  
20 exception, an *exception* to the rule banning expansion of a nonconforming use that is specific to  
21 mining enterprises.” *Hansen*, 12 Cal.4th at 553 (emphasis added); see *id.* at 541 (issue is  
22 “whether the ‘diminishing asset’ doctrine is applicable to a mining operation which is carried on  
23 as a legal nonconforming use”), 541 (governing principles “are important to ... surface mining  
24 enterprises”), 551 (heading: “Scope of Vested Mining Rights”), 559 (*McCaslin* provides  
25 applicable rule for expansion of “mining uses”) (emphasis added). PXP’s oil and gas operations  
26 are neither “mining enterprises” nor a “non-conforming use.” *Hansen* defines mining in  
27 reference to “minerals.” 12 Cal.4th at 541 n.4, 544 n.7; PRC §§ 2735, 2200. “Natural gas, and  
28 petroleum” are excluded from the definition of “minerals.” *Hansen*, 12 Cal.4th at 544 n.7; PRC  
§ 2005. Because oil and gas are not “minerals,” (*Id.*) their extraction is not “mining,” and  
*Hansen*’s “diminishing asset” exception, which is “specific to mining enterprises” (12 Cal.4th at  
553), does not apply. No case applies it to oil drilling.

Furthermore, the diminishing asset exception does not apply here because the exception  
only applies when the use is non-conforming. *Hansen*, 12 Cal.4th at 553. *Hansen* characterized  
the issue for review as: “whether the ‘diminishing asset’ doctrine is applicable to a mining  
operation which is carried on as a legal nonconforming use under a zoning ordinance that  
presently excludes mining from the permissible uses of the property.” 12 Cal.4th at 540  
(emphasis added). PXP’s oil and gas operations in the CSD area are a conforming use.

**There Has Been No Vested Rights Determination.** To claim a vested right under  
*Hansen*, a landowner must obtain a vested rights determination from the governing agency, after  
giving neighbors notice and an opportunity to be heard. *Calvert v. County of Yuba*, 145  
Cal.App.4th 613, 622-27 (2005); CODE REGS. TIT. 14 § 3956. These requirements have not been  
met. The County does not claim that PXP has a vested right to drill new wells. PXP did not ask  
for and the County has not made any vested right determination. Indeed, when asked by a  
Supervisor during a Board Hearing on the CSD whether PXP has a right to drill new wells so as  
to preclude the County’s regulation of PXP if DOGGR granted a permit, County Counsel, Elaine  
Lemke, responded that the County could stop PXP from drilling new wells. BH003154-5.  
Moreover, PXP never requested that the Court make a vested right determination here. PXP did  
not raise the issue in its CEQA Statement of Issues (RJN, Exh. A), nor in its answers to the  
Petitions (RJN, Exh. F). PXP raised the issue for the first time in its Opposition.

1 “That a particular mitigation measure may be infeasible or precluded, as by the  
2 applicant’s vested rights, is not a justification for not performing environmental  
3 review; it does not excuse the agency from following the dictates of CEQA and  
4 realistically analyzing the project’s effects.... In short, an applicant’s vested rights  
5 might constitute a valid reason to forgo particular mitigation measures, but are not  
6 an excuse to avoid realistic CEQA analysis.” *Communities for a Better*  
7 *Environment v. South Coast Air Quality Mgmt. Dist.*, 2010 WL 890960 at \*7  
8 (2010)(“CBE”) (emphasis added).

9 Thus, the RPs cannot use PXP’s claimed vested right as an excuse for the EIR’s failure to  
10 properly describe the project or its failure to fully and fairly analyze the Project’s impacts.

### 11 **III. THE EIR HAS AN INADEQUATE PROJECT DESCRIPTION**

#### 12 **A. The EIR Should Have Described the Project as PXP’s Future Development**

13 Petitioners’ argument is that the EIR’s project description should have described the  
14 project as PXP’s planned future development rather than merely as adoption of the CSD. The  
15 basic foundation for this conclusion is simple: (a) A discretionary governmental act must be  
16 based, absent circumstances not present here,<sup>6</sup> on an adequate EIR; (b) The adoption of the CSD  
17 is a discretionary governmental act that was intended to have (BH027676) and will have  
18 (BH002028) the effect of entitling PXP to drill 600 new oil wells within the CSD area without  
19 further discretionary action and without further CEQA review; (c) The law requires that the  
20 *project description* reflect fact (b). The RPs do not challenge the correctness of any of the  
21 foregoing. Instead, the County attacks an irrelevant straw man, and PXP incorrectly argues that  
22 the 600 new oil wells were already entitled even before the CSD was enacted.

23 **The County’s Straw Man.** The County wrongly asserts that Petitioners’ argument is that  
24 the EIR should have described the project as “the oil field” and countering that the “oil field ...

25 <sup>6</sup> The County contends, characterizing the Project as the CSD, that several categorical exemptions  
26 apply. CB 16 n.4. However, the County made no determination that any exemptions apply, and  
27 in fact, the FEIR states that the County “has determined that the proposed CSD project needs  
28 environmental review in the form of an EIR pursuant to CEQA instead of a categorical or  
statutory exemption.” FEIR-00110. In any event, as discussed in Culver City’s comments to the  
FEIR (BH002470-71) no CEQA exemptions apply. GUIDELINES § 15301 does not apply because  
it only applies to the “permitting” of existing facilities, “involving negligible or no expansion.”  
GUIDELINES §§ 15307, 15308 and the “common sense” exemption do not apply because the CSD  
contains many requirements that will have an impact on the environment. PXP claims that the  
EIR binds and precludes further CEQA analysis by responsible agencies, including DOGGR. By  
basing the CSD on an EIR rather than an exemption, the County enables PXP to oppose further  
CEQA review by DOGGR.

1 already exists.” CB 16:15-18. In contrast, Petitioners’ *actual* argument is that the EIR should  
2 have described the project as the “intended *future development and expansion* in the CSD area  
3 over the next 20 years.” PB 15:9-10. The 600 new wells that the CSD entitles do not “already  
4 exist.”<sup>7</sup> This case is not like *City of Ukiah* or *El Dorado County Taxpayers for Quality Growth v.*  
5 *County of El Dorado*, 122 Cal.App.4th 1591 (2004). First, they are mining cases and therefore  
6 not applicable. Second, the CSD did not merely approve a reclamation plan, it entitles 600 *new*  
7 *oil wells* and their related structures and improvements. Third, neither case applied or interpreted  
8 GUIDELINE § 15378(d), the Guideline at issue here.

9 Fourth, in both cases the vested right to continue to mine required no license or permit.  
10 Here, both the County and DOGGR require permits before any new drilling.<sup>8</sup> Fifth, unlike the  
11 governmental actions in *El Dorado Taxpayers*, 122 Cal.App.4th at 1599 (“the environmental  
12 impacts of the proposed mining extension ... will have their day of review”), the CSD did not  
13 ensure future CEQA review. Instead, the CSD was explicitly devised to *insulate subsequent*  
14 *development approvals from further CEQA review*. BH027676. And yet, the CSD did not  
15 merely allow continued operation of the Oil Field *as it now is developed*; the CSD entitles 600  
16 new oil wells and their related structures without an adequate project description, in violation of  
17 GUIDELINE § 15378(d) and the County’s own CEQA GUIDELINE 307D (RJN, Exh. H).<sup>9</sup> Contrary  
18 to the County’s assertion, it is not a foregone conclusion that the drilling would have continued  
19 with less review and no restrictions on the number of wells if the CSD had not been adopted. If  
20 the CSD and EIR had not been approved, DOGGR would have been required, as the agency with

21  
22 <sup>7</sup> While the County’s argument might have force with respect to continued operation of the  
23 existing wells in the CSD area, it has no force whatsoever with regard to wells and collateral  
structures that have *not yet been built*.

24 <sup>8</sup> Prior to the CSD’s adoption, new wells could not be drilled without a drilling permit from the  
25 County Fire Department and DOGGR and a grading permit from the County Department of  
26 Public Works. Since adoption of the CSD, a director’s review permit is required from the County  
Planning Director for drilling the first 53 wells per year and for the first 600 new wells within the  
next 20 years (BH001959-60) and a CUP is required for drilling more than 53 new wells in any  
single year or for more than 600 new wells within the next 20 years (BH001961).

27 <sup>9</sup> “Where the lead agency could describe the project as either the adoption of a particular  
28 regulation ... or as a development proposal ..., the lead agency shall describe the project as the  
development proposal for the purpose of environmental analysis.” GUIDELINES § 15378(d).

1 discretionary review, to comply with CEQA for PXP’s development. Only through the CSD and  
2 its EIR could PXP hope to avoid future full CEQA review of its *development* plans.

3 **PXP’s Erroneous Claim of Entitlement to Drill More Wells.** PXP’s claim that the 600  
4 wells entitled by the CSD were a *fait accompli* is not correct. PXP’s argument is founded entirely  
5 on the vested rights claim PXP (but, significantly, not the County) derives from *Hansen*.<sup>10</sup> As  
6 noted herein, *Hansen* does not apply to oil drilling, and, even if it did, *Hansen* still allows  
7 regulation preventing undue expansion of the use. *Hansen*, 12 Cal.4th at 551, 571-75. The CSD  
8 itself confirms the right to constrain future oil drilling -- it imposes limitations on new oil drilling,  
9 including limits on the number of wells. Even if PXP had vested rights, that does not negate  
10 CEQA. As the Supreme Court recently stated, “an applicant’s vested rights might constitute a  
11 valid reason to forego particular mitigation measures, but are not an excuse to avoid realistic  
12 CEQA analysis.” *CBE*, 2010 WL 890960 at \*7. The environmental effects of allowing, as of  
13 right and without further CEQA review, 600 new oil wells are only fairly presented by the EIR if  
14 the mandate of GUIDELINES § 15378(d) is followed, and, as discussed below, proper baselines are  
15 used and proper alternatives are considered. Contrary to the RPs’ assertions, the actual project is  
16 PXP’s intended future development and expansion in the CSD area over the next 20 years. For  
17 these same reasons, the objections stated by the RPs to studying the reasonable range of project  
18 alternatives described in Petitioners’ Opening Brief are not well taken. The proposed future

19 \_\_\_\_\_  
20 <sup>10</sup> PXP wrongly asserts that the CSD does not authorize any future oil drilling because oil drilling  
21 “is a currently permitted use under the County’s code.” PB 18. FEIR Section 4.8.1.5 describes  
22 the existing zoning. The FEIR correctly states that an interim zoning ordinance was in place on  
23 the date of the County’s NOP. FEIR-00519. For the Oil Field, the interim zoning superseded the  
24 County Code at the time of the NOP. Therefore, it does not matter whether oil drilling was a  
25 permitted use under the County Code, because the EIR must compare the proposed CSD with the  
26 Interim Zoning that was in effect at the time of the NOP, not the County Zoning Code.  
27 GUIDELINES §§ 15126.2(a), 15125(a). The Interim Zoning limited the amount of drilling allowed  
28 in the Oil Field and prohibited the amount of annual drilling later authorized by the CSD. None  
of the opposition briefs addresses this comparison. In any event, for the same reason, the RPs  
cannot use existing zoning to justify a watered down project description. *Id.*; cf. *Environmental  
Planning & Info. Council v. County of El Dorado*, 131 Cal.App.3d 350 (1982) (“The dispositive  
issue on this appeal is whether the requirements of CEQA are satisfied when the EIRs prepared  
for use in considering amendments to the county general plan compare the environmental impacts  
of the proposed amendments to the existing plan rather than to the existing environment. We  
hold that the EIRs must report on the impact of the proposed plans on the existing  
environment.”).

1 development of the Oil Field should have been studied at a reduced density (*i.e.*, less than 453 net  
2 new wells) or spread over a long time horizon (*i.e.*, longer than 20 years). Similarly, the “no  
3 project” alternative to the future development of the Oil Field should have studied an ordinance  
4 that did not allow drilling new wells.<sup>11</sup>

5 **The County Had a Duty Either To Prepare an EIR that Fully and Fairly Considered**  
6 **PXP’s Future Operations or To Require Future CEQA Review.**

7 The RPs contend that the County went “beyond what was required by CEQA” (CB 19:11-  
8 13; PB 2:4) in evaluating some of the potential impacts from PXP’s future development because  
9 the project was the CSD. This argument might have had some force if the County provided for  
10 future environmental review of PXP’s future development. But under the CSD, the County  
11 intends to conduct only a ministerial review, and does not reserve discretion to deny or further  
12 limit new drilling applications that comply with the CSD. FEIR-00109; *see* BH027676; FEIR-  
13 00163; BH001959. As held by the California Supreme Court, CEQA requires that the County  
14 either fully and fairly consider the impacts from PXP’s future development in the current EIR or  
15 conduct CEQA review of each new well PXP seeks to drill and each new plan PXP submits:

16 “We hold that an EIR must include an analysis of the environmental effects of future  
17 expansion or other action if: (1) it is a reasonably foreseeable consequence of the  
18 initial project; and (2) the future expansion or action will be significant in that it will  
19 likely change the scope or nature of the initial project or its environmental effects.  
20 ... **Of course, if the future action is not considered at that time, it will have to be**  
21 **discussed in a subsequent EIR before the future action can be approved under**  
22 **CEQA.**” *Laurel Heights Improvement Ass’n v. Regents of the Univ. of California*,  
23 47 Cal.3d 376, 396 (1988) (emphasis added).

24 This goes to the heart of the issue. While the Court cannot require the County to adopt a  
25 CSD which provides for future discretionary review, because adoption of the CSD itself is a  
26 discretionary act, the law requires that the EIR prepared for whatever CSD the County adopts  
27 fully and fairly consider the impacts from PXP’s future development. The CSD was designed to  
28 give PXP “the benefit of a one-time discretionary process where the impacts and issues are  
addressed and all future operations are considered and conceptually approved.” BH027676.

<sup>11</sup> And in any event, the regulatory alternatives should have included gradual implementation of the One Big Park alternative through future legislation and future acquisition consistent with Baldwin Hills Conservancy Act. PRC § 32550, *et seq.*

1 Accordingly, under *Laurel Heights*, the County was required to analyze, as the project, PXP's  
2 future drilling of new wells that are not yet physically in existence but are entitled by the CSD.  
3 The cases cited by PXP as purportedly to the contrary (PB 18:3-16) are inapposite because all of  
4 these cases are mining cases decided under SMARA, a statute which expressly gives mining (but  
5 *not* oil and gas) operators a vested right to continue mining operations without future permits, let  
6 alone discretionary review. *See supra* fn. 5; PRC § 2776(a); CODE REGS. TIT. 14 § 3951.

7 B. **The County Cannot Define the Project as the CSD and Then Not Analyze the**  
8 **Impacts of the CSD as Adopted**

9 Even assuming for purposes of argument that the County properly defined the “project” as  
10 the CSD (as opposed to the further development of the Oil Field the CSD authorized), the EIR is  
11 inadequate because it did not even analyze the impacts from the County CSD. There is no  
12 disagreement that the EIR studied PXP's proposed CSD and did not study the County's CSD.  
13 And there is no disagreement that the County's CSD differs drastically from the CSD studied in  
14 the EIR. CB 16:16-18; 22:2-6. However, relying on *Western Placer Citizens for an Agricultural*  
15 *& Rural Env't v. County of Placer*, 144 Cal.App.4th 890 (2006) and *Dusek v. Redevelopment*  
16 *Agency*, 173 Cal.App.3d 1029 (1985), the RPs erroneously assert that these differences do not  
17 require the County to revise and recirculate the EIR because the County CSD was an  
18 “improvement” from the CSD proposed by PXP. CB 21:1-9.<sup>12</sup> These cases are inapplicable  
19 because in both cases the court found that the project changes would not create any significant  
20 impacts. *See Western Placer*, 144 Cal.App.4th at 905-06 (recirculation not required for changes  
21 to the phasing of the mining project because it did not create any new significant impacts); *Dusek*,  
22 173 Cal.App.3d at 1041 (project was “narrower than the project initially envisioned”).

23 The County's bare assertion that the changed Project will be more environmentally  
24 sensitive than the project analyzed in the EIR is unsupported by the record. *See* CB 21:7-9. As  
25 discussed in Petitioners' Opening Brief, the changes to the Project may result in significant

26 <sup>12</sup> CEQA requires an agency to recirculate the EIR whenever the “project” has “changed in a way  
27 that deprives the public of a meaningful opportunity to comment upon a substantially adverse  
28 environmental effect of the project or a feasible way to mitigate or avoid such an effect ... that  
the project's proponents have declined to implement.” GUIDELINES § 15088.5; PRC § 21092.1.

1 environmental impacts that warrant recirculation of the EIR. OB 18:5-20:24. Indeed, in contrast  
2 to the factual situation in *Dusek*, the County CSD actually authorizes more expansion and  
3 intensification of PXP’s operations than studied in the EIR. For example, while the EIR assumed  
4 the closure of 512 existing wells within the next 20 years (FEIR-00179), the CSD does not  
5 require the closure of even a single existing oil well (BH001947). The EIR also only studied a  
6 maximum “worst case” expansion by 453 new wells (FEIR-00170-79), however, the CSD allows  
7 up to 600 new wells to be drilled within the next 20 years without any further discretionary  
8 review by the County (BH001960).

9 PXP trivializes this difference by arguing: “Approximately 44 percent of the well  
10 abandonments listed in the EIR were not projected to occur until after year 14 and 75 percent of  
11 new wells drilled in the County areas were projected to occur within the first 14 years.” PB 20.  
12 However, this ignores the fact that within five years after the CSD’s adoption, the CSD already  
13 allows the intensification of drilling in the Oil Field (289 new wells by ministerial permits) to  
14 exceed the increase studied in the EIR (288 increased wells). Thus, even if the County CSD is an  
15 improvement upon PXP’s proposed CSD, the EIR never studied the impacts from the County  
16 CSD’s authorization of almost 33% more wells than studied in the EIR. Furthermore, even PXP  
17 admits that in at least “a few areas was the worst-case scenario [in the EIR] dependent upon the  
18 number of new wells operated or drilled over the 20-year life of the CSD.” PB 20.

19 **IV. THE COUNTY FAILED TO PREPARE AN ADEQUATE EIR**

20 A. **The Air Quality Impact Analysis Was Inadequate**

21 The CSD will regulate the expansion and intensification through the drilling of new wells  
22 where wells currently do not exist. The drilling of each new well is a short-term project,  
23 discretely permitted by DOGGR (PRC § 3203), which, the County concedes, is “properly  
24 considered construction activities.” CB 33:10. Absent the CSD and EIR, DOGGR would be  
25 required to conduct environmental review each time it issued a new permit to drill, as it did once  
26 it learned that the County was not conducting any CEQA review. BH007927-00423; BH003217.  
27 Thus, under no circumstances should the EIR have included drilling operations from 2006 as part  
28

1 of the baseline for air quality impacts. The County expressly excluded drilling operations from  
2 the baseline for other impact analysis because “**not all impacts would be captured had drilling**  
3 **been part of the baseline**” and “**less mitigation measures would have been developed to**  
4 **mitigate drilling impact.**” FEIR-005916-17 (emphasis added); *see also* PB 26:16-19 (admitting  
5 that the County did not include drilling operations in other impacts’ baseline “to impose more  
6 protective mitigation measures”). The RPs have not shown substantial evidence to support the  
7 County’s arbitrary inclusion of prior drilling operations in the air quality impact baseline.<sup>13</sup>

8 **Drilling New Wells Was Not An Existing Use:** Contrary to the RPs’ contentions, the  
9 drilling of new wells in 2006 was not an “existing use” or “existing condition” at the time of the  
10 2007 NOP. The drilling of each new well was a new use, individually permitted by DOGGR,  
11 drilled and completed within 7 to 10 ten days of commencement. *See* FEIR-00131. Even if PXP  
12 has the right to drill new wells, which it does not, the County can and did limit the number of new  
13 wells drilled annually under the CSD.<sup>14</sup> Thus, the 2006 drilling does not represent the  
14 “continuous use” to which PXP claims entitlement. The 2006 drilling rate was markedly  
15 increased when compared to the last 20 years.<sup>15</sup> FEIR-00125. PXP contends that because the  
16 drilling moratorium which was imposed at the time the County published the NOP was a

17 <sup>13</sup> Contrary to PXP’s assertion, Petitioners are not required to prove that the County should have  
18 excluded drilling operations from the air quality baseline (PB 26:11-14); the County’s express  
19 decision not to include drilling operations in the baseline for other impacts “to **capture the full**  
20 **impacts of new well drilling** and well re-drills” (FEIR-00190 (emphasis added)) demonstrates  
21 that the air quality baseline was not supported by substantial evidence. The County cannot  
22 arbitrarily choose different baselines for different impacts without supporting that decision by  
23 substantial evidence. *See* GUIDELINES § 15125(a). PXP’s assertion that Petitioners ignored that  
24 the EIR disclosed that other issue areas did not consider well drilling in the EIR (PB 26:6-11) is  
25 completely false. *See* OB 21:26-23:5.

22 <sup>14</sup> The number of wells that PXP could drill annually without obtaining a CUP was an issue of  
23 great debate. Indeed, PXP represented to the community it would only drill 15-20 wells annually  
24 but later urged the County to increase the annual number. BH025011.

24 <sup>15</sup> Contrary to PXP’s assertion that 2006 represented pre-project usage (PB 24:16-18), the  
25 increased drilling in 2006 was a response to concerns over future regulation and CEQA review.  
26 At the time of PXP’s increased drilling, PXP knew that Culver City had contacted DOGGR and  
27 was investigating whether any CEQA review was being done at the Oil Field. *See* BH007864-68.  
28 A former DOGGR employee advised PXP, that DOGGR was “about to tell [him] to not process  
ANY Inglewood new drill NOI’s at any moment!!! If your guys have any they are writing get  
them to me ASAP, I will process them ASAP, that way they get done BEFORE I am told to stop  
processing your Inglewood Drill NOI’s.” BH007867 (emphasis in original).

1 “temporary measure,” it cannot be used to set the baseline. PB 24:13-16. Regardless, the County  
2 cannot use the 2006 emission levels because that year was not representative of historical “pre-  
3 project” usage. See OB 24:21-25:13; *San Joaquin Raptor Rescue Ctr. v. County of Merced*, 149  
4 Cal.App.4th 645, 658 (2007). There is no substantial evidence to support using 2006 new drilling  
5 emissions as a baseline. The RPs also contend that well drilling “are properly considered  
6 construction activities.” CB 33:10. This would be unprecedented, and contrary to CEQA, to use  
7 pre-project “construction” emissions to set the baseline for project-related construction emissions.  
8 It would be like using the emissions from the construction of a shopping center as the baseline for  
9 new construction of the shopping center’s expansion.

10 Courts admonish against deviating from using as the baseline the existing conditions at the  
11 time the NOP is published if it will be less protective of the environment. See e.g., *Save Our*  
12 *Peninsula Comm. v. Monterey County Bd. of Supervisors*, 87 Cal.App.4th 99, 126 (2001).<sup>16</sup>  
13 Moreover, when using earlier usage as the baseline, substantial evidence must support a finding  
14 that it represents historically “established levels of a particular use.” *San Joaquin Raptor*, 149  
15 Cal.App.4th at 658; *Save Our Peninsula*, 87 Cal.App.4th at 126. Here, not only is the baseline  
16 decision not supported by substantial evidence, the County admitted in the FEIR that there “was  
17 higher than historical drilling” in 2006 (FEIR-06006), which had the second highest rate of  
18 drilling in any of the last 20 years. FEIR-00125, 128. Indeed, it was that increased drilling that  
19 led the County to consider further regulation. It would be incongruous if the evil sought to be  
20 regulated were treated as the baseline condition for CEQA analysis.

21 **PXP Does Not Have a Vested Right to Drill New Wells:** PXP also contends that  
22 because it has a vested right to continue drilling at the Oil Field, emissions from well drilling are  
23 properly included in the air quality baseline. PB 22:4-24:9. However, as discussed in footnote 5,  
24 PXP does not have vested right to drill new wells. Moreover, even if PXP had a vested right,  
25 that right “is not a justification for not performing environmental review.” *CBE*, 2010 WL

26 <sup>16</sup>For example, in the case that PXP’s cites, *Save Our Peninsula*, the court stated that the baseline  
27 water use should be set at the time of the commencement of the environmental review process  
28 instead of average conditions set during the environmental review process because the water  
usage during that time period was higher. 87 Cal.App.4th at 126.

1 890960, at \*7 (rejected argument that agency should use project proponent’s vested rights as the  
2 baseline rather than the existing environmental conditions).

3 PXP attempts to distinguish *Woodward Park Homeowners Ass’n v. City of Fresno*, 150  
4 Cal.App.4th 683 (2007) and *City of Carmel-By-The-Sea v. Bd. of Supervisors*, 183 Cal.App.3d  
5 229 (1986), on the grounds that in both cases “respondents attempted to include in the baseline  
6 new development that was contemplated by a zoning plan, but not actually constructed.” PB  
7 22:23-23:2. However, both cases stand for the proposition that when doing an EIR for a zoning  
8 change, the EIR must consider the *existing* physical conditions. *Woodward Park*, 150  
9 Cal.App.4th at 707-10; *City of Carmel*, 183 Cal.App.3d at 246. Indeed, *CBE* cited these cases  
10 with approval in holding that the baseline should normally be the existing physical environmental  
11 conditions at the time CEQA review commences. *CBE*, 2010 WL 890960, at \*4, n.6.

12 The County cites *Fairview Neighbors v. County of Ventura*, 70 Cal.App.4th 238 (1999)  
13 and *Benton v. Bd. of Supervisors*, 226 Cal.App.3d 1467 (1991) for the proposition that because  
14 PXP has a “property right to produce oil and gas resources, those existing rights constitute the  
15 proper baseline.” CB 28:2-4. These cases are distinguishable because in both cases the applicant  
16 had a vested legal right to conduct ongoing operations based on a previously granted permit on  
17 which CEQA review had previously been done. *See CBE*, 2010 WL 890960, at \*8 n.11  
18 (distinguishing *Fairview* and *Benton* on this ground). PXP does not have the vested right to drill  
19 new wells nor has PXP obtained permits to drill the new wells at issue. FEIR-00189; *see also*  
20 FEIR-00035, 00109, 00170; BH002155; BH004023; CB 8:19-21; 9:28-10:1-2. In the absence of  
21 the CSD and its EIR, PXP’s required permit from DOGGR would be subject to discretionary  
22 review. BH003217 (County counsel confirmed this at the October 21, 2008 Board Meeting); *see*  
23 *also* BH007927-00423. The CSD will regulate the expansion and intensification of oil operations  
24 at the Oil Field through the drilling of new wells where wells currently do not exist. Thus, the  
25 existing physical environment does not include these new wells.

26 **B. The County Did Not Properly Conduct the Localized Significance Analysis**

27 For the reasons stated above, the County erroneously included 2006 drilling emissions in  
28 the baseline for determining localized impacts of new drilling emissions. There was absolutely

1 no evidence in the record as to any *localized* impacts specific to the location of new wells drilled  
2 in 2006. Thus the only relevant baseline is the ambient air quality. The RPs admit that a  
3 SCAQMD’s LST methodology requires determining whether new emissions from a project will  
4 result in a *localized* impact. See PB 27:24-25. PXP’s contention that the 2006 drilling emissions  
5 must be included to avoid “double-counting” is entirely erroneous. PB 28. The *regional* ambient  
6 air quality data used in the EIR was derived from SCAQMD monitoring stations which are  
7 located several *miles* from the Oil Field. FEIR-00262. Thus, the 2006 contribution of any  
8 drilling emissions to the regional ambient air quality measured by these remote monitoring  
9 stations are nominal compared to the *localized* impacts from new drilling to residences located as  
10 close as 400 feet from the drill rigs. PXP also wrongly claims that the “main” source of new  
11 emissions is the steam drive plant. PB 29. On-site drilling emissions from PM10 and NOx will  
12 far exceed those of the steam plant and therefore the EIR should have considered the impacts to  
13 residents 121 meters away, not 200 meters away.<sup>17</sup> As each new well will be a new source of  
14 localized emissions impacting nearby residents, the localized impact of those emissions must be  
15 assessed and mitigated under CEQA.

16 C. The Public Health Impact Analysis Was Inadequate

17 The EIR Did Not Consider Past Exposure to Air Toxics. The RPs do not dispute that  
18 the EIR needed to consider impacts from past chronic exposure to air toxics as part of the public  
19 health impact analysis. PB 32:2-23. Instead, without citation to the record, the RPs assert that  
20 because the EIR considered exposure for 70 years, “the 70-year period would necessarily take  
21 into account the past history of the Oil Field.” PB 32:8-9. Both the EIR (FEIR-00340) and the  
22 County’s response to comments on this issue (FEIR-05903), show that the 70-year analysis was  
23 entirely forward-looking and did not consider the cumulative health risk from *past* chronic  
24 exposure to historic operations. Indeed, the County stated that the “scope of the health risk  
25 assessments involve only current operations and the impacts of proposed future operations.”  
26 FEIR-05903, 05728. Thus, the EIR is inadequate. See *Environmental Prot. Info. Ctr. v.*

27 <sup>17</sup> E.g., EIR Table 4.2.9 shows NOx emissions for new drilling will be 348 lbs/day compared to  
28 52.7 for the steam plant. FEIR-00287. PM10 emissions will also exceed that of the steam plant.

1 *California Dep't of Forestry & Fire Prot.*, 44 Cal.4th 459, 524 (2008).

2 **The EIR Did Not Consider the Health Impact From Acute Exposure to Air Toxics.**

3 The RPs do not dispute that the EIR needed to consider acute exposure to air toxics. PB 32:24-  
4 33:9. However, the RPs assert that acute exposure was considered in the Safety and Risk of  
5 Upset/Hazardous Materials and Air Quality sections because a “range of accidental release  
6 scenarios were evaluated for potential exposure to toxic materials, as well as fire and explosion  
7 hazards.” PB 33:1-3, *citing* FEIR-00202-05. The cited portions of the record address the risk of  
8 upset from a sudden release (FEIR-00202-05; 248-252; 269-282) or odors (FEIR-00291-293).  
9 The RPs have cited to no evidence in the record demonstrating that the County considered the  
10 risk to the public’s *health* from acute exposure to air toxics.<sup>18</sup> The EIR is thus inadequate.

11 **There is No Substantial Evidence That the CSD Requires TBACT:** The RPs do not  
12 dispute that the County’s use of a significance factor for cancer of ten in one million requires the  
13 use of best available control technology for toxics (“TBACT”). PB 31:5-19. The RPs do not cite  
14 to any statement in the CSD, or other substantial evidence, that TBACT will be required for all  
15 sources or that the imposed mitigation measures expressly require TBACT. *E.g.*, PB 31:13-15  
16 (the “mitigation measures *constitute* TBACT”) (emphasis added). Finally, the bare statement that  
17 use of SCAQMD’s Rule 1401 is “consistent with health risk threshold throughout California”  
18 (PB 31; FEIR-00335) as a substitute for a significance finding, is not “substantial evidence.”

19 **The EIR Did Not Provide the Input Data to Verify the Health Risk Calculations.**

20 The RPs do not dispute that the County was required to provide the data necessary to verify the  
21 public health risk calculations. PB 33:12-22. The RPs claim that the County provided “4,000  
22 pages setting forth the calculations conducted for the public health risk assessment.” PB 33:13-  
23 14. This misses the point. Culver City specifically requested that the County provide the air  
24 quality dispersion *input* files performed for the air quality and public health risk sections (FEIR-  
25 05752) to determine the accuracy of the air dispersion modeling. BH001884-04883. The old

26 <sup>18</sup> Citing to a response to a comment (which also did not cite to any evidence), the RPs contend  
27 that substantial evidence supports the assumption that the Oil Field produces “sweet crude.” PB  
28 33, fn. 13. As shown in Petitioners’ Opening Brief, the Oil Field has “sour” crude. BH001884-  
02211; BH007927-00272.

1 adage “garbage in, garbage out” is particularly appropriate here. If the public does not know  
2 what data was inputted into the model, there is no meaningful opportunity to assess the veracity  
3 of what comes out. The County’s failure to provide this information renders the EIR inadequate  
4 as an informational document. *See San Franciscans for Reasonable Growth v. City & County of*  
5 *San Francisco*, 193 Cal.App.3d 1544, 1549 (1987); *see also* GUIDELINES § 15147.

6 D. **The Risk of Upset Analysis Was Inadequate**

7 PXP contends that the “existence of the March 2008 spill did not undermine the findings  
8 that the potential for a spill to reach offsite was a significant impact prior to mitigation.” PB  
9 34:19-21. This misses the point. The EIR failed to even consider the cause of the March 2008  
10 spill, which according to the EIR should only occur every 5200 years. FEIR-00252; BH002476,  
11 2478. As an informational document, the FEIR fails because, plainly, the risk calculation had to  
12 be reworked based on the new information. At a minimum, the *frequency* of these type of spill  
13 events should have been reconsidered. GUIDELINES § 15143 (“significant effects should be  
14 discussed with emphasis in proportion to their severity and probability of occurrence”). Because  
15 the County failed to update the risk assessment of the potential causes and frequency of such oil  
16 spills, the EIR failed to serve its function as an informational document. GUIDELINES § 15143;  
17 *Communities for a Better Env’t v. California Res. Agency*, 103 Cal.App.4th 98, 107 (2002).

18 There is also no substantial evidence that the EIR considered the secondary impacts from  
19 requiring berms or walls around above-ground pipelines sufficient to contain 110% of worst case  
20 spill volume. FEIR-00253; *see* BH002481. PXP does not dispute that the secondary impacts  
21 needed to be considered. However, PXP asserts, without citation to the record, that “[t]he  
22 construction of secondary containment for containing a potential oil spill would be considered a  
23 related facility” considered under the Geology impact analysis. PB 35:7-10. There is no  
24 evidence in the record that a berm is a “related facility” the impacts of which were considered in  
25 the EIR. *E.g.*, FEIR-00370. PXP asserts that the implementation plans would result in the 110%  
26 containment requirement being implemented. PB 35:17-36:5. But the specific requirements for  
27 Above Ground Piping Containment only specify that “section E.3.d.iii” be satisfied. BH001976.  
28

1 As noted in Petitioners' Opening Brief, that section omits the requirement for 110% containment  
2 deemed necessary both by the County and the EIR. OB 37:1-12; BH001913, 1976.

3 E. **The Noise Impact Analysis Was Inadequate**

4 The RPs have not cited *any* substantial evidence supporting the EIR's finding that a 5dba  
5 increase in drilling noise is insignificant. The *only* "evidence" the County cites is an ordinance  
6 contained in the EIR's Appendix K (a compendium of oilfield regulations collected throughout  
7 Southern California) from another city that requires well drilling to be shut down if it elevates  
8 sound levels more than 5dBA at the edge of the drill site (in contrast to the 5dBA weighted  
9 average as measured at a neighboring use's property line). Notably, neither the EIR nor the  
10 County's findings reference this ordinance in supporting the significance rationale. *See Los*  
11 *Angeles Unified Sch. Dist. v. City of Los Angeles*, 58 Cal.App.4th 1019, 1028 (*post hoc* reasoning  
12 is improper). Had they done so, the public would have had the opportunity to comment on the  
13 error of such reliance. To suggest that the County can avoid its CEQA obligation to support a  
14 finding of insignificance simply by referring to another city's ordinance - no matter how outdated  
15 or factually irrelevant - is absurd. It would eviscerate CEQA to allow an agency to merely point  
16 to other ordinances, as outdated as they may be, to support an insignificance finding.

17 Just as importantly, there is no evidence that the County considered the cumulative  
18 impacts of a 5dBA increase, particularly in neighborhoods where the ambient noise already  
19 exceeds standards that the County has established as appropriate for residential neighborhoods.  
20 The County noise standards are set to protect "public health, welfare and safety." LACC §  
21 12.080.020. Although the County Code resets the levels to existing ambient noise levels for  
22 purposes of defining a punishable exceedance, this does not change what the County deems  
23 protective for residential neighborhoods. The County's failure to consider the cumulative impacts  
24 regardless of whether existing ambient noise levels are high, low, or exceed levels set by the  
25 County is fatal. The fact that existing ambient noise levels are already high and exceed the  
26 County's residential standards, underscores the County's glaring CEQA violation by failing to  
27 consider cumulative noise impacts. *Gray v. County of Madera*, 167 Cal.App.4th 1099 (2008).

28 Incredibly, the County argues that increased drilling noise is justified because drilling

1 noise is analogous to construction noise due to its transient nature. CB 33:3-11. While analogous  
2 to construction in many ways, drilling noise from the Oil Field will not be the short-term or  
3 temporary noise contemplated by the County Code because one to two new wells will be drilled  
4 every single working day for the next twenty years. FEIR-00035. The CSD only requires  
5 scheduling to avoid “over concentration” of work in any one area during a given year.  
6 BH001937. There is simply **no evidence** that residents in the area will not be subjected to  
7 increased drilling noise on a continuous or at least regular basis for the next 20 years.<sup>19</sup> While the  
8 County Code does allow longer-term construction noise as high as 60dBA during the daytime and  
9 50dBA at night in residential areas, those levels do not increase if ambient noise levels are  
10 already high. BH001884-08974. Thus, a 5dBA increase due to drilling noise would cause noise  
11 levels to *exceed* even the construction noise limits by more than 5dBA in many neighborhoods.

12 F. **The GHG Emissions Impact Analysis Was Inadequate**

13 The EIR plainly states that global climate change is a significant cumulative  
14 environmental impact under CEQA but that it would be “speculative to determine if potential  
15 greenhouse gas emissions associated with the potential development ***would or would not***  
16 contribute considerably to this significant environmental impact.” FEIR-00312. Inexplicably,  
17 and without evidentiary support or explanation, the County reached a ***contrary*** finding that  
18 “future development will have a less than significant impact.” BH002161. Indeed, in explaining  
19 its rationale “supporting” the finding, the County states that “determining whether future  
20 development greenhouse gas emissions would contribute to a significant impact associated with  
21 global climate change...***would be speculative.***” BH002158. While the findings briefly mention  
22 that reducing crude oil imports would result in greenhouse gas emissions reductions, they do not  
23 quantify the reduction nor is there any suggestion or explanation that the County is relying on  
24 such reductions to reduce the Project’s emissions to a level of insignificance -- contrary to the  
25 County’s opposition (CB: 31:3-18). BH002159. Indeed, the EIR itself suggests only that

26 <sup>19</sup> Contrary to the County’s assertion, drilling under the CSD is not exempted from the County’s  
27 noise regulations. Only drilling that is subject to CUPs are exempted. Calling the County’s  
28 perfunctory approval of drilling plans a “permit” is just sophistry. The CSD does not authorize or  
require County permits for drilling.

1 reducing crude oil imports “*could potentially*” reduce GHG emissions by 54,000 to 73,000 tons  
2 of CO2 equivalent emissions per year. FEIR-00311-12 (emphasis added). Even if this possibility  
3 proved true, that would still leave between 89,747 to 108,747 tons of CO2 equivalent emissions  
4 per year -- a staggering amount and well above what could be considered insignificant. *See*  
5 FEIR-00310 (*cf.* SCAQMD proposed significance threshold of 6,500 tons per year). Indeed, the  
6 sheer lack of evidence supporting the County’s finding is exemplified by PXP’s speculation about  
7 Persian Gulf oil operations -- which has absolutely no support in the record. *See* PB 40:16-41:5.

8 Under the County’s rationale, in the absence of any accepted methodology or numeric  
9 threshold, even a million tons or more could be considered insignificant because “too  
10 speculative.” Plainly, the County must endeavor to make a finding which is supported by the  
11 record. PRC § 21168.5; GUIDELINES § 15091(b). There is no support whatsoever for the  
12 County’s finding of no significance. The County relies on *Laurel Heights* as authority for the  
13 proposition that the County can make a finding of *insignificance* when the EIR itself concludes  
14 that it is too speculative to make a finding. CB 29:24-30:8. This reliance is misplaced. In *Laurel*  
15 *Heights*, while the EIR concluded that the cumulative impacts of toxic emissions were too  
16 speculative, the agency “conservatively adopted a worst case approach to this unknown impact.”  
17 6 Cal.4th at 1138. Indeed, it would be contrary to the very purpose of CEQA to allow an agency  
18 to reach a finding of “insignificance” when neither the EIR nor the record supports such a finding.  
19 *See* PRC § 21168.5; GUIDELINES § 15091(b). Finally, contrary to the County’s contention, it  
20 cannot simply ignore the OPR technical advisory urging agencies to determine a threshold of  
21 significance for GHGs. *See* CB 30, fn. 11. The advisory was issued during the public comment  
22 period for the *draft* EIR and the final EIR had not even been prepared. *See* BH002483. It is  
23 disingenuous to assert that the County had no obligation to consider information that became  
24 available first during the comment period.

25 G. **The Environmental Justice Impact Analysis Was Inadequate**

26 Despite the RPs’ assertion that the EIR did not need to analyze environmental justice  
27 impacts (CB 28:17-29:4), having purported to do so, the RPs cannot defend the EIR’s inadequacy  
28

1 after the fact by stating such an analysis was not required. In any event, the EIR was required to  
2 properly consider the potential environmental justice impacts of the Project because several of the  
3 physical impacts may cause environmental justice impacts that render the effects significant. *See*  
4 OB 43:15-20; GUIDELINES § 15131 (physical changes causing social or economic effects may  
5 constitute significant effects on the environment); *Bakersfield Citizens for Local Control v. City*  
6 *of Bakersfield*, 124 Cal.App.4th 1184 (2004); *Christward Ministry v. Superior Court*, 184  
7 Cal.App.3d 180, 197 (1986) (EIR required to study whether physical impacts from waste facility  
8 next to religious center would disturb worship). The following physical impacts may cause  
9 environmental justice impacts that were required to be properly analyzed: air quality; health risk  
10 assessment; risk of upset; noise; vibration; secondary impacts from mitigation measures; and  
11 project alternatives. *See* OB 46:6-11. The failure to fully consider the environmental justice  
12 impacts arising from these physical changes renders the EIR inadequate.

13 **V. THE CSD DOES NOT CONTAIN ALL OF THE REQUIRED MITIGATION**  
14 **MEASURES AND THE IMPLEMENTATION PLAN IS STILL NOT COMPLETE**

15 The CSD does not codify all of the feasible mitigation measures required by the EIR.  
16 PXP incorrectly claims, “[A]ll appropriate mitigation measures have been specifically set forth in  
17 the CSD . . . .” PB 45. As specified in footnote 46 of Petitioners’ Opening Brief, the CSD  
18 omitted numerous mitigation measures called for by the EIR. Neither the County nor PXP  
19 disputes that those mitigation measures are missing from the CSD. Instead, the RPs argue that  
20 any mitigation measures that are missing from the CSD will nonetheless be mandated by the  
21 County’s Implementation Plan. And yet even now, seventeen months after adoption of the CSD,  
22 the County’s Implementation Plan has still not been completed. Despite this circumstance, the  
23 County has been approving a series of mitigation plans from PXP without having the  
24 Implementation Plan in place that should guide the review of such mitigation plans for mitigation  
25 measures that were not included in the CSD itself. RJN, Exh. I.

26 **VI. THE AMENDED CSD SHOULD HAVE BEEN REFERRED BACK TO THE**  
27 **PLANNING COMMISSION**

28 There is no dispute that Supervisor Burke made a series of CSD amendments on October

1 21, 2008. The County argues that because the Planning Commission heard testimony about the  
2 overall number of wells allowed, that was sufficient. CB 48. But until Burke's motion, no one  
3 recommended a 20-year cap on the number of new wells and the CSD the Commission  
4 considered contained no cap. The community testified that an annual limit should be imposed  
5 based on PXP's promotional literature. The County has not pointed to any testimony that even  
6 approaches 600 new wells. There are similar problems with the testimony relied on by the  
7 County to explain away the other amendments. CB 48-49. Finally, the 5-year audit that Burke  
8 removed was supposed to be an independent third party audit which included comprehensive  
9 physical inspections at least once every five years to ensure compliance with all laws and a list of  
10 corrective action items. BH002121-22. This is nothing like the five year review of the CSD, nor  
11 the periodic reviews by County departments, relied upon in the County's Brief. CB 49.

12 **VII. CONCLUSION**

13 For the foregoing reasons, and the reasons stated in the Opening Brief (with the limited  
14 space allowed in a reply brief Petitioners have not been able to carry forward into this brief  
15 separate discussions of many of the valid objections raised in the Opening Brief), the EIR was  
16 improperly certified and the CSD was improperly adopted. The non-injunctive relief prayed for  
17 in the Petitions should therefore be granted. Petitioners respectfully request the Court reserve  
18 jurisdiction to award attorneys' fees to Petitioners pursuant to Code of Civil Procedure § 1021.5.

19 DATED: March 26, 2010

RESPECTFULLY SUBMITTED,  
GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP

20  
21  
22  
23 By: 

DAVID E. CRANSTON  
Attorney for Petitioner CITY OF CULVER  
CITY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: March 25, 2010

CITY OF CULVER CITY

By: *Carol Schwab*  
for CAROL SCHWAB  
Attorneys for Petitioner CITY OF CULVER  
CITY

DATED: March \_\_\_\_, 2010

HARDING LARMORE KUTCHER & KOZAL  
LLP

By: \_\_\_\_\_  
KENNETH L. KUTCHER  
Attorneys for Petitioners COMMUNITY  
HEALTH COUNCILS, INC., NATURAL  
RESOURCES DEFENSE COUNCIL &  
MARK SALKIN

DATED: March \_\_\_\_, 2010

LAW OFFICES OF TODD T. CARDIFF

By: \_\_\_\_\_  
TODD T. CARDIFF  
Attorneys for Petitioner CITIZEN'S  
COALITION FOR A SAFE COMMUNITY

DATED: March \_\_\_\_, 2010

THE CITY PROJECT.

By: \_\_\_\_\_  
ROBERT GARCIA  
ELISE MEERKATZ  
Attorneys for Petitioner CONCERNED  
CITIZENS OF SOUTH CENTRAL LOS  
ANGELES

GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

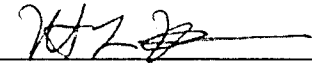
DATED: March \_\_\_\_, 2010

CITY OF CULVER CITY

By: \_\_\_\_\_  
CAROL SCHWAB  
Attorneys for Petitioner CITY OF CULVER  
CITY

DATED: March 26, 2010

HARDING LARMORE KUTCHER & KOZAL  
LLP

By:  \_\_\_\_\_  
KENNETH L. KUTCHER  
Attorneys for Petitioners COMMUNITY  
HEALTH COUNCILS, INC., NATURAL  
RESOURCES DEFENSE COUNCIL &  
MARK SALKIN

DATED: March \_\_\_\_, 2010

LAW OFFICES OF TODD T. CARDIFF

By: \_\_\_\_\_  
TODD T. CARDIFF  
Attorneys for Petitioner CITIZEN'S  
COALITION FOR A SAFE COMMUNITY

DATED: March \_\_\_\_, 2010

THE CITY PROJECT

By: \_\_\_\_\_  
ROBERT GARCIA  
ELISE MEERKATZ  
Attorneys for Petitioner CONCERNED  
CITIZENS OF SOUTH CENTRAL LOS  
ANGELES

GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: March \_\_\_\_, 2010

CITY OF CULVER CITY

By: \_\_\_\_\_  
CAROL SCHWAB  
Attorneys for Petitioner CITY OF CULVER  
CITY


DATED: March \_\_\_\_, 2010

HARDING LARMORE KUTCHER & KOZAL  
LLP

By: \_\_\_\_\_  
KENNETH L. KUTCHER  
Attorneys for Petitioners COMMUNITY  
HEALTH COUNCILS, INC., NATURAL  
RESOURCES DEFENSE COUNCIL &  
MARK SALKIN

DATED: March 26, 2010

LAW OFFICES OF TODD T. CARDIFF

By:   
TODD T. CARDIFF  
Attorneys for Petitioner CITIZEN'S  
COALITION FOR A SAFE COMMUNITY

DATED: March \_\_\_\_, 2010

THE CITY PROJECT

By: \_\_\_\_\_  
ROBERT GARCIA  
ELISE MEERKATZ  
Attorneys for Petitioner CONCERNED  
CITIZENS OF SOUTH CENTRAL LOS  
ANGELES

GREENBERG GLUSKER FIELDS CLAMAN  
& MACTHINGER LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 900674590

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: March \_\_\_\_, 2010

CITY OF CULVER CITY

By: \_\_\_\_\_  
CAROL SCHWAB  
Attorneys for Petitioner CITY OF CULVER  
CITY

DATED: March \_\_\_\_, 2010

HARDING LARMORE KUTCHER & KOZAL  
LLP

By: \_\_\_\_\_  
KENNETH L. KUTCHER  
Attorneys for Petitioners COMMUNITY  
HEALTH COUNCILS, INC., NATURAL  
RESOURCES DEFENSE COUNCIL &  
MARK SALKIN

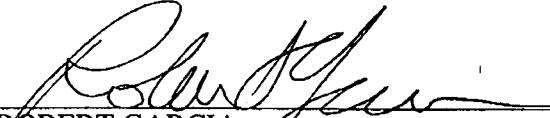
DATED: March \_\_\_\_, 2010

LAW OFFICES OF TODD T. CARDIFF

By: \_\_\_\_\_  
TODD T. CARDIFF  
Attorneys for Petitioner CITIZEN'S  
COALITION FOR A SAFE COMMUNITY

DATED: March 24, 2010

THE CITY PROJECT

By:   
ROBERT GARCIA  
ELISE MEERKATZ  
Attorneys for Petitioner CONCERNED  
CITIZENS OF SOUTH CENTRAL LOS  
ANGELES

GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: March 26, 2010

Respectfully Submitted,

NATURAL RESOURCES DEFENSE  
COUNCIL

By: *Damon K. Nagami*  
DAMON NAGAMI  
Attorneys for Petitioners COMMUNITY  
HEALTH COUNCILS, INC., NATURAL  
RESOURCES DEFENSE COUNCIL &  
MARK SALKIN