
OIL AND GAS DRILLING ORDINANCE RESPONSES TO COMMENTS

The Project is a proposed Oil and Gas Drilling Ordinance (Oil Ordinance, Ordinance or Project) amending Sections 12.03, 12.20, 12.23, 12.24, and 13.01 of the Los Angeles Municipal Code (LAMC) to prohibit new oil and gas extraction and make existing extraction activities a nonconforming use in all zones within the City of Los Angeles (City). Specifically, the Ordinance amends the LAMC to (1) eliminate the provisions of the LAMC that allow for the creation of new “O” Oil Drilling Supplemental Use Districts; (2) end by-right oil and gas extraction in the M3-Heavy Industrial Zones; (3) declare existing oil and gas extraction within the City a nonconforming use to terminate within 20 years; and (4) prohibit new or expanded oil and gas extraction activities (such as the drilling of new wells or the redrilling or deepening of existing wells). The Ordinance permits maintenance of the wells that the Zoning Administrator determines is necessary to protect public health, safety, or the environment. The Ordinance exempts from its requirements wells that are operated by a public utility that is regulated by the California Public Utilities Commission. Twenty years from the effective date of the Ordinance, all nonconforming non-exempt oil and gas extraction uses will terminate.

An Initial Study (IS), Mitigated Negative Declaration (MND) and corresponding Mitigation Monitoring Program (MMP) were prepared for the proposed Project in accordance with the California Environmental Quality Act (CEQA). The circulation period for public review and comment on the IS/MND is from September 15, 2022 to October 17, 2022. This document provides a list of comments received from September 15, 2022 to October 11, 2022, along with responses to the identified comments. None of the comments to date offers any new evidence or any evidence that any fact, analysis, or determination in the Initial Study/Mitigated Negative Declaration (IS/MND) is incorrect. None of the comments make a fair argument, supported by substantial evidence, that the Ordinance may cause a significant impact on the environment. If any additional comments are submitted prior to the close of the October 17, 2022 comment period, those will be responded to in a separate document in the administrative record.

Comments were received from the following organizations and individuals:

Comment No.	Comment Date	Commenter
1	9/20/2022	Alston & Bird
2	9/21/2022	Manatt, Phelps & Phillips, LLP
3	9/21/2022	Western States Petroleum Association
4	9/19/2022	Michael Salman
5	9/21/2022	Michael Salman
6	9/21/2022	Michael Salman
7	9/21/2022	Michael Salman
8	9/21/2022	Michael Salman
9	9/19/2022	Warren Resources
10	9/27/2022	Wayne Freeman

Letter 1: Alston & Bird, September 20, 2022 (6 pages)

ALSTON & BIRD

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September 20, 2022

City Planning Commission
City of Los Angeles
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Re: CPC-2022-4864-CA; CF No. 17-0447 – September 22, 2022 Hearing

Dear City Planning Commission:

We represent E&B Natural Resources and its affiliated entities (collectively “E&B”) regarding the City’s proposed ordinance to amend the Los Angeles Municipal Code “to prohibit new oil and gas drilling activities and make existing extraction a nonconforming use in all zones.” (City Planning Commission, Regular Meeting Agenda, September 22, 2022.) The proposed ordinance would also “phase out all oil drilling activities in the City of Los Angeles by immediately banning new oil and gas extraction and requiring the abandonment of existing wells after an amortization period.” (Id.)

E&B submitted a comment letter as a part of the August 30, 2022, public hearing on this matter to express its opposition to the proposed ordinance. However, the City has not addressed adequately the issues raised in the letter, and appears to be rushing this process forward without fully considering all of the legal implications of adopting this ordinance. The City issued a revised ordinance on September 13, 2022, along with an 893-page staff report, and yet refuses to provide additional opportunity to provide public comment.

We submit these further comments to reinforce E&B’s original objections. As described in this letter, the City has not set forth a legitimate basis for its proposed action. E&B urges the City to take additional time to review these issues and to reconsider the proposed ordinance as it is currently drafted.

1. Approval of the Proposed Ordinance Would Not Be a Legitimate Exercise of the Police Power

While the City is afforded a fair amount of latitude in adopting land use regulations, the City’s police power is not unlimited. The City here fails to demonstrate that the proposed ordinance is reasonably related to the public welfare. See *Associated Home Builders, Inc. v. City of Livermore*,

Alston & Bird LLP

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18 Cal.3d 582 (1976). The City fails to forecast the probable effect of the ordinance, fails to identify the competing interests involved, and fails to justify why the ordinance reflects a reasonable accommodation of competing interests. For example, the ordinance excludes certain uses, but applies to all oil and gas operations across the City without distinguishing among different locations or operations, even though the City acknowledges that some locations are situated in heavy industrial areas. No analysis of the impacts of this ordinance on any specific property has been performed.

1-2

2. The City's Proposed Amortization Period is Arbitrary, Unreasonable and Not Supported by any Evidence

The City's proposed ordinance would impose a 20-year amortization period on oil and gas operations, but the City has failed to provide any evidence or factual support for this chosen 20-year period. "[A]n amortization period is not an absolute or unqualified defense to a takings claim." *Levin Richmond Terminal Corp. v. City of Richmond*, 2020 U.S. Dist. LEXIS 156103, *36-37, emphasis added. Rather, the legislation must provide a "reasonable amortization period commensurate with the investment involved." *Id.*, quoting *Elysium Institute, Inc. v. County of Los Angeles*, 232 Cal. App. 3d 408, 436 (1991). While it is questionable that amortization would apply at all to oil and gas interests (see below), any amortization process requires factual evidence to demonstrate the property owner's reasonable investment backed expectations are satisfied. The City indicates that it is the process of preparing an amortization report, but that is putting the proverbial cart before the horse. The amortization study needs to be prepared before any amortization ordinance is adopted.

1-3

3. The 20-Year Amortization Period is Illusory

The City's proposed ordinance prohibits well maintenance, maintenance that is required to operate the wells. The City claims that it will allow maintenance under certain circumstances, but if any oil and gas operator sought to seek an approval from the City to conduct maintenance based on health and safety purposes, the approval process could extend beyond six months, resulting in "deemed terminated" finding for "discontinued" operations. Thus, by prohibiting maintenance, the City is essentially terminating these uses well before any 20-year period.

1-4

4. City's Proposed Ordinance Would Constitute a Taking of Vested Rights in Violation of the U.S. and California Constitutions

The U.S. and California Constitutions provide that private property shall not be taken without just compensation. U.S. Const. amend. V; Cal. Const., Art. 1, § 19. These constitutional protections apply to regulatory takings. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1014 (1992). "The right to remove oil and gas from the ground is a property right." *Maples v. Kern Cty. Assessment Appeals Bd.*, 103 Cal.App.4th 172, 186 (2002). The City's proposed ordinance serves to affect an unconstitutional taking of E&B's property as an oil and gas operator, along with the property of the landowners and the mineral rights holders.

1-5

E&B has vested property rights to operate in the City but the proposed ordinance ignores these rights, prohibiting maintenance on the wells, and requiring abandonment of these wells within

20 years or perhaps far less. Again, without an amortization study, it is difficult to understand the City's thinking.

5. Amortization Does Not Apply to the Extraction of Mineral Resources

The City fails to evaluate the legal propriety of establishing an amortization period for the extraction of mineral resources and ignores the legal doctrine that would invalidate this proposed ordinance – the diminishing asset doctrine. See *Hansen Bros. Enters. v. Board of Supervisors*, 12 Cal.4th 533 (1996). The California Supreme Court in *Hansen* recognized the “diminishing asset” doctrine and defined the scope of vested rights for mining, quarrying and other extractive uses, recognizing the unique qualities of extractive uses and holding that it includes an expansion of those uses.

As explained in the context of a quarry, the court in *Hansen* stated:

The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed. A mineral extractive operation is susceptible of use and has value only in the place where the resources are found, and once the minerals are extracted it cannot again be used for that purpose. “Quarry property is generally a one-use property. The rock must be quarried at the site where it exists, or not at all. An absolute prohibition, therefore, practically amounts to a taking of the property since it denies the owner the right to engage in the only business for which the land is fitted.”

1-6

Hansen, 12 Cal.4th at 553-54 (and cases cited therein).

Similarly, E&B's vested oil and gas rights are uniquely situated in the City, and the proposed ordinance seeks to terminate the extraction of those resources in the entire City, without the ability to extract them elsewhere. See *Los Angeles v. Gage*, 127 Cal.App.2d 442 (1954). Under the diminishing asset doctrine, E&B is entitled to produce oil and gas resources under its vested rights until the resource is exhausted or otherwise uneconomical to produce -- the continued production of oil and gas resources is the expanded use and is protected under *Hansen*.

6. The Proposed Ordinance is Preempted by State and Federal Law

The California Constitution states: “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const., Art. XI, Sec. 7. Local laws conflict with general law if the local laws duplicate, contradict or enter an area fully occupied by general law. *Morehart v. County of Santa Barbara*, 7 Cal.4th 725 (1994). The court in *Morehart* states:

1-7

The general principles governing state statutory preemption of local land use regulation are well settled. “The Legislature has specified certain minimum standards for local zoning regulations (Gov. Code, § 65850 et seq.)” even though it also “has carefully expressed its intent to retain the maximum degree of local

control (see, e.g., *id.*, § 65800, 65802)." (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89 [2 Cal.Rptr.2d 513, 820 P.2d 1023].) "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations *not in conflict with general laws*." (Cal. Const., art. XI, § 7, italics added.) "'Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters an area fully occupied by general law, either expressly or by legislative implication [citations].'" (*People ex rel. Deukmejian v. County of Mendocino* (1986) 36 Cal.3d 476, 484 [204 Cal.Rptr. 897, 683 P.2d 1150], quoting *Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 807-808 [100 Cal.Rptr. 609, 494 P.2d 681]; accord, *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 [16 Cal.Rptr.2d 215, 844 P.2d 534].)

Morehart, 7 Cal.4th at 747; see also California Attorney General's opinion recognizing preemptive effect of State oil and gas laws, 59 Ops. Cal. Atty. Gen. 461,462 (1976).

Local regulations may also be preempted based on federal law under the Supremacy Clause of the U.S. Constitution. U.S. Const., Art. VI, cl. 2; see also *Ting v. AT&T*, 319 F.3d 1126, 1135 (9th Cir. 2003).

The City's proposed ordinance conflicts with California law regarding the production of oil and gas, including drilling, operations, abandonment and maintenance. The authority to regulate all aspects of oil and gas production, including downhole activities, rests with CalGEM. Cal. Pub. Res. Code §3106(b). The State's oil and gas laws read: "To best meet oil and gas needs in this state, the supervisor shall administer this division so as to encourage the wise development of oil and gas resources." Cal. Pub. Res. Code § 3106(d).

The State laws and associated regulations reflect an intent to occupy the entire area: Cal. Pub. Res. Code §§ 3000-3112 (General Provisions and Administration); Cal. Pub. Res. Code §§ 3130-3132 (Underground Injection Control); Pub. Res. Code §§ 3150-3161 (Well Stimulation); Cal. Publ. Res. Code §§ 3180-3187 (Natural Gas Storage Wells); Cal. Pub. Res. Code §§ 3200-3238 (Regulation of Operations); Cal. Pub. Res. Code §§ 3240-3241 (Abandoned Wells); Cal. Pub. Res. Code §§ 3250-3258 (Hazardous Wells); Cal. Pub. Res. Code §§ 3260-3263 (Acute Orphan Wells); Cal. Pub. Res. Code §§ 3270-3270.6 (Regulation of Production Facilities); Cal. Pub. Res. Code §§3275-3277 (Interstate Cooperation in Oil and Gas Conservation); Cal. Pub. Res. Code §§ 3300-3314 (Unreasonable Waste of Gas); Cal. Pub. Res. Code §§ 3315-3347 (Subsidence); Cal. Publ. Res. Code §§ 3350-3359 (Appeals and Review); Cal. Pub. Res. Code §§ 3400-3433 (Assessment and Collection of Charges); Cal. Pub. Res. Code §§ 3450-3451 (Recommendation of Maximum Efficient Rates of Production); Cal. Pub. Res. Code §§ 3780-3787 (Oil Sumps). The regulations include more detailed requirements for onshore wells (14 Cal. Code Reg. §§1712-1724.10), environmental protections for production facilities, tanks, pipelines (14 Cal. Code Reg. §§ 1750-1779.1), and expressly address well stimulation and seismic activity (14 Cal. Code Reg. §§ 1780-1789).

7. The City's Proposed Ordinance Triggers Other Constitutional Violations (Due Process, Equal Protection, Contractual Relations)/Section 1983

1-7

a. Equal Protection and Due Process

The U.S. and California Constitution's guarantee equal protection of the laws and adequate due process. These rights also apply in the land use context. Cal. Const., Art. 1, § 7(a); U.S. Const. amend V, XIV; *College Area Renters & Landlord Ass'n v. City of San Diego*, 43 Cal.App.4th 677, 686 (1996). Substantive due process addresses improper governmental interference with property rights and irrational actions by government decision-makers. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 541 (2005); *Arnel Development Co. v. City of Costa Mesa*, 126 Cal.App.3d 330, 337 (1981).

In the City's rush to adopt an amortization ordinance, the City has not followed the necessary procedures to demonstrate that oil and gas production in the City results in any environmental, health, or safety hazards. The City has failed to prepare any amortization study to support its purported 20-year amortization period, the proposed ordinance would prohibit maintenance to operate the wells, further curtailing operations, and it is recommending action by the City Council without completing the CEQA process. Furthermore, certain other oil and gas uses in the City are exempt, without sufficient explanation for those exemptions.

b. Impairment of Contractual Relations

1-8

Both the U.S. and California Constitutions prohibit the enactment of laws effecting a "substantial impairment" of contracts, which applies to public contracts as well as contracts between private parties. *Alameda County Sheriff's Assn. v. Alameda County Employees' Retirement Assn.*, 9 Cal.5th 1032, 1074 (2020). E&B has contracts with various private parties, which impose obligations on E&B that continue beyond the date the amortization period expires. The proposed ordinance will impair these contracts by forcing E&B to terminate its operations on or well before the 20-year deadline, which will undermine E&B's reasonable expectations under the contracts.

c. The City's Liability for Damages Under the Civil Rights Act

The federal Civil Rights Act, 42 U.S.C. § 1983 ("Section 1983"), provides a cause of action for damages based on claims arising from violations of federal rights. *Svein v. Melin*, 138 U.S. 1815, 1822 (2018). As discussed at length herein, the proposed Ordinance will significantly impair E&B's constitutional rights, including its right to just compensation, due process rights, and equal protection rights. Accordingly, if the City adopts the proposed ordinance, the City will place itself at significant risk of liability under Section 1983, including for payment of damages suffered as a result of unreasonably phasing out oil and gas production in the City.

8. The City's CEQA Document is Out for Public Comment and City Cannot Make CEQA Findings

The City issued a notice that the Mitigated Negative Declaration is available for public comment and review, with the 30-day comment period closing on October 17, 2022. Until that process is complete, the City Planning Commission would not be able to make the CEQA findings set forth in the recommended action in the staff report. (Staff Report, p. F-6.)

1-9

9. The Proposed Ordinance Illegally Seeks to Eliminate the Dominant Estate of Oil and Gas Rights Across Entire City

The City's proposed ordinance seeks to eliminate all oil and gas production in the entire City. However, oil and gas rights function as a dominant estate, and this dominant estate allows the mineral rights holder to use the surface as reasonably required to access the minerals. *Vaquero Energy, Inc. v. County of Kern*, 42 Cal. App. 5th 312, 319-320 (2019); *Bourdieu v. Seaboard Oil Corp.*, 38 Cal. App. 2d 11, 16-17 (1940); *Wall v. Shell Oil Co.*, 209 Cal.App.2d 504, 511-514 (1962). The City fails to acknowledge and ignores this dominant estate in presenting the proposed ordinance, and provides no basis, much less a legitimate basis, for this action. The proposed ordinance would prevent any mineral rights holder from exercising the dominant estate protected by law. Separate and apart from the fact that the proposed ordinance would constitute a taking of this dominant estate and associated oil and gas rights, the City cannot as a matter of law eliminate the dominant estate from each and every parcel in the entire City.

1-10

10. Constitutes of Breach of Contracts between Oil and Gas Operators and City

E&B has several leases with the City for its oil and gas operations, and this proposed ordinance may serve to effect a breach of those leases.

1-11

For all of these reasons, we urge the City to reject the proposed ordinance and to reconsider its approach to oil and gas operations in the City.

Sincerely,

[ORIGINAL SIGNED]

Nicki Carlsen

LEGAL02/42164721v1

Responses to Letter 1: Alston & Bird, September 20, 2022

Response to Comment 1-1

These introductory paragraphs, which include a description of the proposed Ordinance and assert that the City has not adequately addressed issues raised in the commenter's previous letter dated August 31, 2022 (submitted on September 2, 2022) and that the City has refused to provide additional opportunity for public comment, are noted for the record. These comments do not address the contents or adequacy of the IS/MND. The Staff Recommendation Report submitted to the City Planning Commission (CPC) on September 13, 2022 addressed the verbal comments made at the public hearing as well as addressed the issues that were raised in the commenter's previous letter. **Responses to Comments 1-2 to 1-11** below address specific comments made in both the previously submitted letter dated August 31, 2022 (submitted on September 2, 2022) and the updated letter dated September 20, 2022. The City has not limited the opportunity for public comment on the Ordinance. Beyond the IS/MND comment period, general public comments have and will be welcomed continually until the Ordinance is adopted by City Council.

Response to Comment 1-2

This comment states that the approval of the proposed Ordinance would not be a legitimate exercise of the police power. This does not address the contents or adequacy of the IS/MND. However, a city's police power to limit oil drilling and production to preserve the environment and protect public health is well-established. *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal. 2d 552, 558; see also *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal. App. 4th 534, 555 [measure banning all oil drilling and production to preserve the environment and protect public health is presumptively a justifiable exercise of the City's police power]; *Higgins v. City of Santa Monica* (1964) 62 Cal. 2d 24, 28 [upholding an ordinance prohibiting oil exploration and drilling in the Santa Monica tidelands].

Response to Comment 1-3

This comment states that the City's proposed amortization period is arbitrary, unreasonable and not supported by any evidence. This does not address the contents or adequacy of the IS/MND. The Ordinance would deem all existing oil drilling in the City a nonconforming use. The LAMC states now that once these uses are deemed nonconforming, they have 20 years to cease operations. This amortization period has remained an uncontested part of the City's zoning code for 70 years, since 1952. The

City's Office of Petroleum and Natural Gas Administration and Safety (OPNGAS) has separately received instruction from the City Council to prepare an amortization study based on factual evidence examining when an operator's capital investments in oil drilling activities have been recouped before being required to cease operations.

Response to Comment 1-4

This comment states that the 20-year amortization period is illusory, and that in prohibiting maintenance activities on wells, the City is essentially terminating these uses well before any 20-year period. This comment does not address the contents or adequacy of the IS/MND. The Ordinance responds to City Council's motion from January 2022 to amend the LAMC to phase out oil drilling citywide. Section 12.03 of the LAMC defines a nonconforming use as "[a] use of building or land which does not conform to the regulations of this chapter and which lawfully existed at the time the regulations with which it does not conform became effective." LAMC Section 12.23 C.2(a) states that a nonconforming use may be continued so long as "the use is not expanded or extended in any way either on the same or adjoining land beyond the limits of what was originally permitted." Thus, the ordinance prohibits well maintenance that could expand or extend the life of an oil well, except under limited circumstances related to preventing or responding to a threat to public health, safety, or the environment, as determined by the Zoning Administrator.

Response to Comment 1-5

This comment states that the City's proposed Ordinance would constitute a taking of vested rights in violation of the United States and California Constitutions. This comment does not address the contents or adequacy of the IS/MND. The Ordinance is providing both ample time and careful pathways to address these concerns. The proposed exception responding to threats to public safety is one avenue for operators to carry out necessary work during the nonconforming period. In addition, the 20-year period currently allowed for in the LAMC is meant to be a window of opportunity for operators to exercise their land use operations in this time frame while recouping their capital investments.

Response to Comment 1-6

This comment states that the City fails to evaluate the legal propriety of establishing an amortization period for the extraction of mineral resources and ignores the diminishing asset doctrine. This comment does not address the contents or adequacy of the IS/MND. As mentioned above in **Responses to Comments 1-3 and 1-5**, the Ordinance deems

existing oil drilling in the City a nonconforming use and gives operators 20 years to recoup their capital investments.

No California court has applied the diminishing asset doctrine to oil extraction. *Hansen Bros. Enters. v. Bd. of Supervisors* (1996) 12 Cal. 4th 533, 553, a quarrying and mining case, expressly acknowledged that amortization may be used to lawfully discontinue nonconforming uses. *Id.* at 552.

Response to Comment 1-7

This comment states that the proposed Ordinance is preempted by State and Federal law. This comment does not address the contents or adequacy of the IS/MND. The Legislature has not expressly preempted local regulation of oil and gas activity. State law has also not completely occupied the field of regulation related to the location of oil drilling activities. Public Resources Code Section 3690; 59 Ops. Cal. Atty. Gen. 46, 478 (1976) 478 "[t]he state does not appear to have occupied [the field of well location] to the exclusion of local entities"] Nor does the Ordinance contradict state law as the ordinance would neither mandate anything state law forbids nor prohibit anything state law requires. *City of Riverside v. Inland Empire Patients* (2013) 56 Cal. 4th 729, 743.

Response to Comment 1-8

This comment states that the proposed Ordinance triggers additional constitutional violations, including equal protection and due process, contractual relations, and liability for damages under the Civil Rights Act. This comment does not address the contents or adequacy of the IS/MND.

The commenter has incorrectly stated that the City is adopting an amortization ordinance, and that it has not followed the necessary procedures to demonstrate that oil and gas production in the City results in an environmental, health, or safety hazard. As mentioned in **Response to Comment 1-3** above, the Ordinance is not proposing to amend any portion of the zoning code relating to the already established phase out period for oil drilling uses once they are deemed nonconforming. The City has made the appropriate findings pursuant to City Charter Section 558 and the LAMC Section 12.32 to amend the zoning code, which does not include any requirement to demonstrate that oil and gas production in the City results in an environmental, health, or safety hazard. Completion of an amortization study is not required for the Ordinance, and is part of separate City Council instruction for OPNGAS to complete. Nevertheless, the administrative record is replete with evidence including scientific studies demonstrating that oil extraction activities pose an environmental, health, and/or safety hazard. Further, there has not

been a violation of due process in prohibiting maintenance through the Ordinance or circulating the IS/MND while the Ordinance is heard by advisory bodies such as the CPC and City Council Committees.

As stated in **Response to Comment 1-5** above, the 20-year period currently allowed for in the LAMC is meant to be a window of opportunity for operators to exercise their land use operations in this time frame while recouping their capital investments.

Response to Comment 1-9

This comment states that the CPC would not be able to make the CEQA findings set forth in the recommended action of the staff report because the 30-day circulation period remains open until October 17, 2022. However, CEQA Guidelines, section 15025(c) provides advisory bodies such as CPC the ability to make a recommendation on a project, including the IS/MND, in draft or in final form. As such, State law gives the CPC the authority to consider the Mitigated Negative Declaration prior to the close of the comment period.

Response to Comment 1-10

This comment states that the proposed Ordinance illegally seeks to eliminate the dominant estate of oil and gas rights across the entire City. It does not address the contents or adequacy of the IS/MND. The so-called dominant estate doctrine allows a mineral right holder to use the surface on split-estate land, but this will not be relevant given that the ordinance will prohibit the drilling of new wells if not already operating at the time of the Ordinance's effective date. Mineral owners who have already exercised their rights (contracted with an operator) would be able to access and continue operations until the phase out period is required and completed.

Response to Comment 1-11

This comment indicates that the commenter's client E&B Natural Resources has several leases with the City for its oil and gas operations and this proposed ordinance may serve to effect a breach of those leases. This comment does not address the contents or adequacy of the IS/MND but it is noted. The Ordinance intends to address long-standing health impacts of oil drilling to communities Citywide and its provisions identify a Citywide approach and not a site or project-specific approach.

Letter 2: Western States Petroleum Association, September 21, 2022 (2 pages)



Catherine Reheis-Boyd
President and CEO

September 21, 2022

Los Angeles City Planning Commission
Via email: cpc@lacity.org; lilian.rubio@lacity.org

Re: Opposition to Oil and Gas Drilling Ordinance – Case Number CPC-2022-4864-CA; Council File No. 17-0447

The Western States Petroleum Association (“WSPA”) appreciates this opportunity to provide comments on the proposed ordinance amending Sections 12.03, 12.20, 12.23, 12.24, and 13.01 of the Los Angeles Municipal Code (“Oil Ordinance”) in advance of the City Planning Commission’s September 22, 2022, public meeting. WSPA previously submitted comments regarding the proposed Oil Ordinance to the City Planning Department. WSPA is a trade association that represents energy companies that explore for, produce, refine, transport and market petroleum products, natural gas, and other energy supplies in California and four other western states, including oil and gas producers in the City and County of Los Angeles.

2-1

WSPA remains strongly opposed to the proposed Oil Ordinance, which seeks to: (1) prohibit new oil and gas activities citywide; (2) make existing extraction activities a nonconforming use in all zones; and (3) cease and remove all existing oil operations within a 20-year timeline.

The Oil Ordinance will increase dependence on foreign oil.

WSPA believes it is fundamentally unwise to curtail production in the state while our President is forced to call for other oil-producing nations to increase their production to avoid a global and national energy crisis. California’s oil and gas resources are produced under some of the strictest environmental and public health regulations in the world, and many of California’s refineries were specifically designed to process California crudes in the most environmentally and economically efficient manner possible. Even aside from the energy crisis, banning production in Los Angeles increases both the state’s reliance on foreign oil not subject to such rigorous environmental standards and the amount of imported crude coming through our already crowded ports.

2-2

The Oil Ordinance will have devastating economic impacts.

Currently 152,000 men and women have careers in the oil and gas industry in California and 366,000 people have careers whose jobs depend on the industry. The industry in California contributes \$152 billion every year in economic activity and directly contributes \$21.6 billion in local, state, and federal tax revenue to support schools, roads, public safety, and other vital services.

2-3

The City of Los Angeles Petroleum Administrator’s 2019 report¹ to the Los Angeles City Council indicates that the oil industry contributes \$430 million annually in economic output, and more than \$270 million in gross regional product. The 1,480 direct jobs in the industry collectively bring \$155 million in labor income. These

¹ City of Los Angeles, Department of Public Works, Office of Petroleum and Natural Gas Administration and Safety (OPNGAS), *Oil and Gas Health Report: A Report on Council File 17-0447 Land Use Codes / Oil and Gas Development / Impact on Resident Health and Safety / Code Change Proposals*. July 25, 2019, (p 121).

1,480 jobs mean 1,480 careers, many of which have been the result of years of education and investment in order to support families and communities in the Los Angeles region. The average salaries in the production sector exceed \$160,000 annually.

2-3

The Oil Ordinance amounts to a taking, for which those affected must be justly compensated.

The Oil Ordinance designates existing oil wells and production facilities as nonconforming uses subject to a 20-year amortization period under Section 12.23 of the Municipal Code and eliminates the discretion currently given to the Zoning Administrator under Section 12.23 C.4(b) to allow certain nonconforming wells to continue operating after the prescribed amortization period if such continued operation would be reasonably compatible with the surrounding area. This nonconforming designation and planned phase out of existing facilities will almost certainly result in substantial financial liabilities to the City under the takings clause of the United States Constitution and comparable provisions of the California Constitution. These clauses require payment of just compensation when a government entity takes private property for a public use.

2-4

Under California law, a city may terminate nonconforming uses without compensation if the governing jurisdiction provides a reasonable amortization period "commensurate with the investment involved."² In this case, it is clear that the Municipal Code's 20-year amortization period is neither reasonable nor commensurate with the investment required to develop, construct, and maintain existing wells and production facilities. Amortization periods can adequately compensate for movable property, such as billboards or liquor stores, as owners of those businesses may recoup the entire value of their investment *and* move any remaining inventory to a new location in an appropriate zone. But amortization utterly fails as a substitute for just compensation for vested oil and gas rights, where the extraction of minerals, including an expansion of that use, is recognized and protected under the diminishing asset doctrine.³ In fact, no case has held that amortization can be used when eliminating a diminishing asset use. Because the 20-year amortization period provided for in the County Code is not commensurate with the investment involved in oil production, the Oil Ordinance constitutes a taking.

WSPA hopes that the City Planning Commission seriously considers the issues raised in this letter and the risks associated with approving the proposed Oil Ordinance.

Respectfully,

Catherine Reheis-Boyd
President and CEO

² *Metromedia, Inc. v. City of San Diego*, 26 Cal.3d 848, 882 (1980).

³ *Hansen Bros. Enters. V. Board of Supervisors*, 12 Cal.4th 533 (1996).

Responses to Letter 2: Western States Petroleum Association, September 21, 2022

Response to Comment 2-1

This comment provides a statement of opposition to the proposed Oil Ordinance and indicates that they had previously submitted comments to the Department of City Planning (DCP). The opposition statement is noted. **Responses to Comments 2-2 to 2-4** below address specific comments made in both the previously submitted letter dated September 1, 2022 and the updated letter dated September 21, 2022.

Response to Comment 2-2

This comment states that banning oil production in the City increases both the State's reliance of foreign oil not subject to rigorous environmental standards and the amount of imported crude oil at ports. This comment does not address the contents or adequacy of the IS/MND. Regarding this claim, it is speculative to state that the Ordinance's end to oil and gas production citywide would lead to higher gas prices and further dependence on foreign oil. As discussed in a report by Geografo in October 2017, the citywide cessation of oil production would not have a significant impact on local consumption. For context, the City of Los Angeles produces approximately 2.5 million barrels of crude oil a year, or two percent of the state's total production. As such, the loss of these resources would not be substantial at the State level. Locally, the oil and gas extraction sector accounts for about one-tenth of 1% of the City's gross product. Geografo's report stated that they do not believe that the loss of local oil and gas extraction capacity would have a significant impact on local energy prices.

Response to Comment 2-3

This comment summarizes the number of people that have jobs in the oil and gas industry in the State of California and the economic activity and contributions that the oil industry provides in local, state, and federal tax revenue to support schools, roads, public safety, and vital services. The commenter also claims that the Oil Ordinance will have devastating economic impacts. This comment does not address the contents or adequacy of the IS/MND. However, given the actions taken by the State and our City to move toward a greener economy, including banning sales of new gas-powered cars by 2035, the City is introducing regulations that would phase out oil activities altogether. As the City is phasing out oil and gas extraction, the City and State are also working on policies that are devoted to the new clean economy that would generate new jobs by 2035. In addition, as indicated in the Staff Recommendation Report to the CPC, to mitigate potential job losses, the County of Los Angeles' Board of Supervisors initiated a working group, the

Just Transition Task Force, that involves numerous County, City, and State agency staff. This task force also includes participation from drill site operating companies, unions, and environmental justice advocates to address economic impact concerns, including the effect on industry jobs at operating drill sites.

Response to Comment 2-4

This comment states that the Ordinance amounts to a taking and the 20-year amortization period fails as a substitute for compensation for oil and gas rights. This comment does not address the contents or adequacy of the IS/MND. As stated in **Responses to Comments 1-5 and 1-8** above, the purpose of the 20-year period currently allowed for in the LAMC is to allow operators a period of time to recoup their capital investments in oil drilling activities; it is not to maximize the productivity of a well. The Ordinance provides both ample time and careful pathways to address these concerns. The proposed exception responding to threats to public safety, health, and the environment is one avenue for operators to carry out necessary work during the nonconforming period.

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September 19, 2022

CPC-2022-4864-CA & ENV-2022-4865-MND

To the City Planning Commission,

The proposed oil ordinance from the Planning Department is severely flawed and requires substantial expert revision in order to protect communities and protect the City.

I say based on 8 years of studying the problem, during which time I have been involved in helping to craft a couple of City ordinances on the subject, SCAQMD rule on flaring at oil well sites, a couple of State laws, and I have played a leading role in the closing of the 4th Ave Drill Site in CD10 and in several other ZA cases concerning oil Drill Sites.

The Planning Department's proposed oil ordinance promises a phase out of oil wells in 20 years with no inspections, no enforcement, and no way to make sure any wells ever get plugged. But it is worse than that.

SB 1137, newly signed into law by Governor Newsom, ends the drilling of new wells and redrilling of existing wells and/or other reworking of well casings at all oil wells and all Drill Sites in the City of Los Angeles because all wells in the City fall within the new 3,200 foot "Health Protection Zones" created by SB 1137.

The proposed City ordinance adds nothing to what SB 1137 accomplishes.

SB 1137 will be effective because CalGEM (which is not perfect) does sufficient inspection and enforcement to prevent drilling and rework projects without permits.

The City, on the other hand, actually refuses to do inspections and that has opened the door to rampant oil well projects in the City without required ZA approvals (see CF 21-1025 for information on this).

The promised 20 year phase out is toothless. The proposed ordinance has no provisions to make sure wells are plugged nor that contaminated sites will be remediated.

The set of climate changes bills recently signed into law by the Governor will, together with the Federal Inflation Reduction Act and other factors, accelerate fuel substitution rapidly over the next 20 years. As demand for gasoline and diesel drops precipitously from 2026 to 2045, demand for oil will drop and the small amount of expensive oil produced in LA City will be among the first production to be shut down.

The proposed City ordinance is thus pointless as well as toothless. Worse, if this is passed it will pollute the administrative record and may prevent stronger and quicker action to actually get wells plugged.

3-1

On November 17, 2020, City Attorney staff told a City Council Committee what would be needed to be able to defend an amortization plan to phase out oil wells against expected lawsuits from the oil industry:

- Three key City Attorney staff spoke to the City Council committee on Energy, Climate Change, and Environmental Justice (ECCEJ) on November 17, 2020 in public session about what would be needed to defend a phase out of oil wells by amortization. The public session was recorded and transcribed by the City Clerk.
- Deputy City Attorney Jennifer Tobkin from the Land Use Division took the lead in speaking to the committee. She was backed up by Assistant City Attorney Terry Kaufmann-Macias (head of the Land Use Division) and Assistant City Attorney David Michaelson (head of the Municipal Law Division, which oversees the Land Use Division).
 - The City Clerk's audio recording is here, relevant part starts at 1:59:00 https://lacity.granicus.com/MediaPlayer.php?view_id=103&clip_id=20391
 - The City Clerk's computer generated transcript of the committee meeting is here: https://lacity.granicus.com/TranscriptViewer.php?view_id=46&clip_id=20391. A copy of the key segment from Deputy City Attorney Tobkin is pasted below (all caps in original, key lines highlighted here in red):
 - "THERE IS A LEGAL PATH FORWARD FOR THE CITY TO ADOPT A CAREFULLY CRAFTED ZONING ORDINANCE ESTABLISHING A SETBACK FROM EXISTING OR NEW OIL AND GAS WELLS AND RELATED FACILITIES **WITH A AMORTIZATION PERIOD SUPPORTED BY EXPERT STUDY**. A REQUEST FOR THE DRAFTING OF A ORDINANCE WILL REQUIRE THE CITY PLANNING DEPARTMENT TO RETAIN EXPERTS TO ASSIST IN THE PREPARATION OF AMORTIZATION STUDIES ALONG WITH EXPERTS TO ASSIST IN THE CRAFTING OF THE ACTUAL ORDINANCE. AN ENVIRONMENTAL REVIEW UNDER CEQA WOULD ALSO HAVE TO BE PERFORMED IN CONNECTION WITH ANY ORDINANCE THAT IS PREPARED. **ANY ZONING ORDINANCE ENACTED BY THE CITY WILL LIKELY RESULT IN LITIGATION. OUR OFFICE WILL DEFEND IN COURT A CAREFULLY CRAFTED SETBACK ORDINANCE BY A STRONG ADMINISTRATIVE RECORD WHICH INCLUDES EXPERT AMORTIZATION STUDIES AND PROPER ENVIRONMENTAL REVIEW**. IF THERE ARE ANY QUESTION WE WILL DO OUR BEST TO ANSWER THEM IN THIS OPEN SESSION."

3-2

- **Here are the critical things the City Attorney told City Council:**

- Deputy City Attorney Tobkin told City Council that there would need to be "environmental review under CEQA" and "expert study" of the amortization time period.
- She told City Council that any phase out plan by amortization "will likely result in litigation" from the oil industry.
- She told City Council that the City Attorney would defend "a carefully crafted" ordinance in court with "a strong administrative record which includes expert amortization studies and proper environmental review."

3-2

In fact, the proposed ordinance before you was rushed and carelessly prepared, not "carefully crafted."

It is backed by no amortization studies at all, let alone expert studies.

And it is disconnected from the weak and rushed environmental review (which speaks of parts of the ordinance that do not exist).

The Planning Department's proposed ordinance accomplishes nothing positive. In fact, its impact would be all negative:

- **It uses a 20 year amortization time period without any studies to back it up, despite the City Attorney having told City Council on 11/17/20 that "expert amortization studies" would be needed to be able to defend such a law against expects litigation from the oil industry.**
- **The Staff Report suggests the amortization period could be changed later, when studies are actually produced. But what better evidence of arbitrary decision-making could an oil industry litigant wish for than that?**
- The proposed ordinance actually deletes requirements and mechanisms for discretionary ZA reviews (LAMC 13.01. H and 13.01. I) while still somehow expecting that some projects must reviewed by the ZA.
- The initial version of the proposed ordinance included mass deletion of 13.01.E and 13.01.F, but then Planning rushed to restore those sections after public howls. This is akin to a surgeon cutting organs until astounded onlookers prompt the surgeon to sew them back in. The City Attorney told City Council on 11/17/20 that a "carefully crafted ordinance" would be needed. Instead, this proposal is just massive deletions without thought or care.
- The proposed ordinance prohibits well "maintenance" but does not define it. The Staff Report is hopelessly confused about the term and about State law, conflating "maintenance" and "reworking well casings."
- Staff think that a ZA interpretation of "maintenance" can be issued later, without having any definition in the code. That is another invitation to losing a lawsuit to the oil industry.

3-3

- Worse, staff think that ZA interpretation can maybe then be used by the ZA in making decisions about proposed “maintenance” projects and proposed exceptions to prohibitions, but staff have deleted 13.01.H and 13.01.I that requires and establishes such discretionary reviews!
- **This is not “carefully crafted” legislation! It is slap dash deleting and messing with code on a subject staff does not understand.**

3-3

The proposed MND was completed days before the proposed ordinance was posted on the CPC agenda, and so the draft MND is not informing the ordinance.

- The draft MND and the Staff Report say that the ordinance has provisions that use the State’s “Cortese list” to make sure that contaminated oil well sites get remediated, but there are some big problems with this.
 - **First and most basically, none of this is in the ordinance at all!**
 - Second, the Cortese list is a list of sites that are already site assessment and/or cleanup sites listed by DTSC and the Water Board. Oil wells per se are not on these lists. Only sites that have been referred to DTSC and/or the Water Board by State agencies (including by CalEPA after they receive a complaint from the public) are on the list.
 - Third, the MND and Staff Report suggest that plugged oil wells near some other site (a dry cleaner or gas station, for example) that is on the Cortese list should have to get a Phase I Environmental Assessment, but this is word salad that makes no sense at all:
 - The nearby site on the Cortese list will in most cases have already had a cleanup, and it will have been unrelated to the oil well.
 - There is no prescription for any governmental proceeding in which anyone (the well owner of record, the land owner) must produce a Phase I assessment. So it won’t happen.
 - If it did happen, a Phase I assessment will provide no more information that is already known. It will say this site used to be an oil well, and that unrelated site over there was something else that had a clean-up, and that is about it.
 - Phase I studies do not include any soil or groundwater testing. Phase II studies do include some testing, but the reality is that the quality of testing varies with the commissioner of the study. I have seen this in studies for two former drill sites in LA City (4th Ave Drill Site and Pacific Electric Drill Site).
 - Instead, a serious ordinance would have the City make an automatic complaint/referral to the LA Regional Water Quality Control Board to oversee required testing of soil and groundwater. (The Water Board handles oil well cases, DTSC does not).
- The draft MND has other gaps and errors. Here are a couple of examples:

3-4

○ **It does not consider and mitigate odor problems that are common when wells are being plugged**

- This was a problem at the 4th Ave Drill Site in 2017, where wells were plugged while the adjacent LAUSD elementary school was in sessions, and at the Jefferson Drill Site in 2019.
- Any oil well operation that involves opening the well head to access downhole is liable to have odor and emissions problems

3-5

○ **The MND and the ordinance assumes that wells will be plugged, but real life and more than 100 years of history shows that is fantasy: Orphan wells are a major problem in LA City, the State, and everywhere.**

- Oil companies that do not own the land where their surface operations are located have no ability to monetize that land after plugging wells.
- Instead, they have an incentive to declare bankruptcy to be released from liabilities, and then to leave orphan wells behind.
- The LA Times has run several big articles about this problem in the State and the City.
- In addition, everyone in LA must know about the analogous case of the Exide Battery Recycling Plant, where the company went bankrupt and was released from cleanup of massive lead contamination that will cost the public \$ 1 Billion.
- Plugging oil wells in the City of Los Angeles costs on average approximately \$330,000 each (see Petroleum Administrator Uduak Ntuk's July 2019 report to City Council for CF 17-0447, the motion under which the proposed ordinance is offered.
- There are 1,100 wells that are active or idle but were recently active, and another approximately 900 wells that are now labelled as "idle" by CalGEM but were until 2019 or 2020 they were labelled "buried" because they were abandoned often more than 100 years ago to unknown standards. Most of the 900 are orphans (no owners today) and many are under or adjacent to buildings downtown and out to the Westlake area.
- It is not just the cost of the public paying to plug many if not most of these wells.
- The MND pays not attention to the obvious likelihood that many wells will not be plugged under the ordinance's plan (because it has no plan to make sure wells will be plugged and it is a difficult problem to solve).
- Long-term idle and orphan wells that are not plugged pose ongoing to dangers to groundwater, soil, the atmosphere and to people.

3-6

○ **The MND comes with a pathetic MMRP to be added to a proposed ordinance that includes no inspection and enforcement provisions.**

○ **The lack of inspections and enforcement mechanisms is an overall fatal flaw for both the draft ordinance and the draft MND.**

3-7

This proposed ordinance should be sent back for substantial revision. It is not ready. The CPC should not recommend it to City Council in its current state

-
- The revisions should include not deleting vast sections of code unless and until staff develop the skill to do it surgically.
 - No amortization date should be set before there are solid “expert studies,” and even then amortization is not the best way to quickly phase out wells and get wells plugged.
 - Staff should not mess with existing language in City Code about “maintaining” oil wells, which has never been used since its inception (I have researched the history).
 - Nothing is more important than creating an annual inspection and enforcement program, because without that the exist Code and any future Code is little more than worthless without an enormous struggle by the public.
 - The environmental review needs to address the problem that many if not most wells will not be plugged by the oil companies under existing law or this proposed ordinance. Adding another 1,000 orphan wells would be a significant environmental problem. Sticking one’s head in the sand to pretend it is not overwhelmingly likely is not acceptable.
 - Site remediation needs to be addressed for real by requiring the City to refer/report all closing oil well and drill sites to the Water Board so the Water Board will open site assessment cases.

3-8

Yours,

Michael Salman
Professor Emeritus
History, UCLA

Responses to Letter 3: Michael Salman, September 19, 2022

Response to Comment 3-1

This comment suggests that the Ordinance is flawed and requires substantial expert revision in order to protect communities and protect the City. This comment does not address the contents or adequacy of the IS/MND, however, it has been noted.

This comment states that the proposed Ordinance promises a phase out of oil wells in 20 years without inspections, enforcement, and a way to make sure any wells ever get plugged. This comment does not address the contents or adequacy of the IS/MND. Although this ordinance does not directly regulate the plugging and abandonment of wells, future City policies on abandonment and remediation are anticipated to be developed, however the nature and scope of these policies is currently not known. Well operators would continue to be held to existing regulations and procedures from other local and State agencies and City Departments that enforce these processes. As such, inspections and enforcement would continue to occur to ensure fire, health, life, and environmental safety.

This comment also claims that the Ordinance adds nothing to what Senate Bill (SB) 1137 accomplishes and references Council File No. 21-1025 to indicate that the City refuses to do inspections which has opened the door to rampart oil well projects in the City without required ZA approvals. This comment does not address the contents or adequacy of the IS/MND. Nonetheless, Senate Bill 1137 is a new law which prohibits new wells within a 3,200-foot radius of sensitive uses. The City's Ordinance is more restrictive, going beyond SB 1137's prohibition on new wells within a minimum setback distance, to prohibit new wells and maintenance, drilling, re-drilling, or deepening of existing wells on a citywide basis. Both the City's proposed Ordinance and State law allow for limited exceptions for well activity to occur in instances where it is necessary to prevent or respond to a threat to public health, safety, or the environment. The State law does not conflict with the City's Ordinance in any way because SB 1137 states that it does not prohibit the City from imposing more stringent regulations on oil and gas development.

This comment indicates that the Ordinance does not have provisions to ensure wells are plugged nor that contaminated sites will be remediated. This comment does not address the contents or adequacy of the IS/MND. However, with regard to remediation and abandonment, the Ordinance adds to the nonconforming section of the LAMC, a provision requiring wells to be abandoned in accordance with all applicable regulations. Currently, well abandonment is primarily regulated by the Geologic Energy Management Division within the State Department of Conservation (CalGEM), but separately, the OPNGAS has

been instructed by Council to develop a citywide policy to address plugging, abandonment, and remediation. As mentioned during the Department's presentation at public hearings, based on Council instruction, the scope of our ordinance is narrow and focuses on regulating oil drilling as a land use in the City.

This comment indicates that given the set of climate change bills recently signed into law by the State Governor and the Federal Inflation Reduction Act, the demand for oil will be reduced and the small amount of expensive oil produced in the City will be among the first production to be shut down. Further, the commenter claims that the Ordinance is "pointless" and "toothless" because it could prevent stronger and quicker action to actually get wells plugged. This comment does not address the contents or adequacy of the IS/MND, but are noted. The scope of the Ordinance narrowly focuses on regulating oil drilling as a land use by amending the zoning code, and is part of a larger citywide effort to phase out oil drilling overall.

Response to Comment 3-2

This comment provides a summary of the City Council's Energy, Climate Change, and Environmental Justice committee that was held on November 17, 2020 regarding oil. This comment does not address the contents or adequacy of the IS/MND. The comments made by the City Attorney at this meeting were provided as recommendations at the time that the City Council was reviewing the feasibility of an ordinance establishing a setback from existing or new oil and gas wells and related facilities. The City Attorney indicated that experts should be retained to prepare an amortization study as well as that an environmental review under CEQA would be required with any ordinance that is prepared. Additionally, the City Attorney provided insight that a carefully crafted ordinance with a strong administrative record is important. As such, this comment is noted.

Response to Comment 3-3

Following the summary provided in **Response to Comment 3-2** above, the commenter claims that the City failed to carefully craft the proposed Ordinance and instead rushed and carelessly prepared it. This statement argues that the Ordinance is disconnected from the weak and rushed environment review and not backed by amortization or expert studies. DCP, with the assistance of the City Attorney, crafted an ordinance that responds to the City Council's motion from January 2022 to amend the LAMC to phase out oil drilling citywide. As previously noted, the City's OPNGAS has separately received instruction from the City Council to prepare an amortization study based on factual evidence examining when an operator's capital investments in oil drilling activities have been recouped before being required to cease operations. This is a separate component

from City Council's instruction to DCP to amend zoning provisions related to oil and gas as a land use in the City.

Response to Comment 3-4

This comment refers to a mitigation measure identified in the IS/MND requiring sites identified on the Cortese list to obtain a Phase I Environmental Site Assessment to minimize potential risk of hazardous exposure during the well abandonment process. The purpose of this mitigation measure is to ensure the Ordinance would not exacerbate hazardous conditions during abandonment, not to address remediation.

The Ordinance does not require remediation of soils, nor does the Ordinance require abandonment of any particular wells. Rather, the Ordinance will result in the cessation of oil extraction and one reasonably foreseeable outcome of cessation of oil extraction is abandonment of wells. As discussed on page 69 of the IS/MND:

“many of the oil drilling sites are within M3 zones. M3 zones are heavy industrial zones that allow for uses such as cargo container storage, junk yards and scrap metal processing. These uses are commonly contained on the Cortese List. Due to the limited data available regarding the exact location of oil and gas wells within M3 zones, there is overlap between the wells and other properties on the Cortese List. Nonetheless, it is reasonable to assume many of the wells in M3 zones are also on the Cortese List. In addition to wells in the M3 zone, other wells are also believed to be located on the Cortese List.”

Mitigation Measure MM HAZ-1 requires preparation of a Phase I to determine the potential for contamination at certain well sites and implementation of a remediation plan identified in the Phase I/II as necessary. The City recognizes that certain well sites (i.e., sites known to be located on the Cortese List), may have contaminated soils that may be disturbed during the abandonment process. This measure is included to further protect public health.”

The IS/MND does not indicate that remediation is required as part of the Ordinance. As described in **Responses to Comments 4-1 and 5-1**, the IS/MND includes a mitigation measure to address the scenario in which contaminated soils are disturbed. One scenario under which this could happen is when a site is previously known to be contaminated (i.e., on the Cortese List). The commenter correctly states that known contaminated sites are on the Cortese List, further, the City's GIS analysis indicates that oil wells are also located on sites known to be on the Cortese List. While the IS/MND discussion on page 68 and 69 focuses on M3 zones and other known contaminated sites, impacts on

residential and other sensitive uses are discussed throughout the IS/MND. However, the analysis on pages 68 and 69 is specific to Cortese List sites as that is the threshold for the determination of significance.

Response to Comment 3-5

This comment states that the IS/MND does not consider or mitigate odor problems that are common when wells are being plugged. Well abandonment is a reasonably foreseeable outcome for many of the wells currently operating in the City. As such, the scope of the analysis in the IS/MND covers both (1) the cessation of oil and gas extraction in the City and (2) reasonably foreseeable abandonment activities, including well plugging. Potential odor impacts have been analyzed on page 45 of the IS/MND, which concluded that the Ordinance would not create emissions leading to odors adversely affecting a substantial number of people, and therefore would not cause a significant impact on the environment. This impact would be less than significant.

This comment states that the IS/MND's assumption that wells will be plugged is a "fantasy" and that orphan wells are a major problem in the "City, State, and everywhere." As to the City of Los Angeles, the commenter's argument is not backed by evidence. At the time the IS/MND was prepared, there were 3,247 plugged wells in Los Angeles, representing approximately 62% of the City's 5,273 total oil and gas wells. Of the City's 1,350 idle wells, as of July 2022, 56 (or 4 percent) are orphan wells deemed likely to have no responsible solvent operator.

The City cannot speculate as to what will happen at each individual well site. However, even if wells are left orphaned, studies suggest active wells that would become idle wells would likely generate fewer air quality and greenhouse gas emissions being emitted into the air than an active well, resulting in an environmental benefit. One such study prepared for the California Energy Commission identified an average (mean) methane emission rate of 189.7 grams per hour for active wells compared to 35.6 grams per hour for idle wells.¹ Further, the commenter has presented no evidence that orphaned wells present an environmental harm.

This comment also suggests that both the Ordinance and IS/MND are flawed for not including inspection or enforcement provisions. The scope of the Ordinance is based on City Council's instruction to amend the zoning code to prohibit and phase out oil drilling

¹ Quantifying Methane from California's Plugged and Abandoned Oil and Gas Wells, Final Project Report, California Energy Commission, August 2020, prepared by primary authors: Marc Laurenz Fischer, University of California Davis; Eric D. Lebel and Robert B. Jackson, Stanford University; University of California, Davis, Air Quality Research Center, and Department of Earth System Science.

as an allowed land use in the City. As discussed in the IS/MND, there are many regulatory mechanisms in place, led by agencies such as CalGEM, addressing inspection and enforcement of oil wells (See Section 3.2.1 Regulatory Framework of IS/MND, pages 9 through 14).

Response to Comment 3-6

The comment relates to the possibility of oil operators choosing to leave wells orphaned rather than to complete the abandonment process. The City recognizes that in some cases past oil operators have opted to leave wells rather than complete the abandonment process. As stated on page 14 and 15 of the IS/MND, according to August 2022 data from CalGEM, the City has 26 oil and gas fields that intersect City boundaries and 5,273 oil and gas wells. There are approximately 641 active, 1,350 idle, 35 canceled, and 3,247 plugged wells. Therefore, more than half of the wells in the City have already been plugged.

The City cannot speculate as to what will happen at each individual well site. However, even if wells are left orphaned, studies suggest active wells that would become idle wells would likely generate fewer air quality and greenhouse gas emissions being emitted into the air than an active well, resulting in an environmental benefit. One such study prepared for the California Energy Commission identified an average (mean) methane emission rate of 189.7 grams per hour for active wells compared to 35.6 grams per hour for idle wells.² Further, the commenter has presented no evidence that orphaned wells present an environmental harm.

The CEQA baseline for determining impacts is the existing physical and operational conditions at the time of commencement of the environmental analysis, which includes operating active wells and idle wells that have not been plugged. As well operations cease, wells should be abandoned according to CalGEM standards resulting in a clear environmental benefit. It is possible that some well operators will cease operations and not properly abandon the wells. In those cases, the well may become an orphaned well, requiring the State or another entity to complete the abandonment process. California has received unprecedented new state and federal funding to support plugging and permanently sealing likely orphan wells. Over the next two years, \$100M in state funds will be appropriated for plugging and permanently sealing wells. Additionally, California is eligible to receive \$165 million in federal funding thanks to the federal Bipartisan

² Quantifying Methane from California's Plugged and Abandoned Oil and Gas Wells, Final Project Report, California Energy Commission, August 2020, prepared by primary authors: Marc Laurenz Fischer, University of California Davis; Eric D. Lebel and Robert B. Jackson, Stanford University; University of California, Davis, Air Quality Research Center, and Department of Earth System Science.

Infrastructure Investment and Jobs Act. This new funding will enable California to meaningfully expand efforts to plug and abandon orphan and deserted wells.³

Response to Comment 3-7

The comment relates to the MMP for the ordinance. The MMP provides the timing and enforcement mechanism of the mitigation measures in the IS/MND. For Mitigation Measure HAZ-1, the MMP specifically states the implementing agency is DCP, the enforcement agency is the Los Angeles Fire Department (LAFD), the monitoring phase when oil wells are proposed for abandonment and the actions indicating compliance are preparation of a Phase I Environmental Site Assessment, investigation by the appropriate Regulatory Enforcement Agency (REA) and remediation; further studies and remediation as necessary by qualified contractors. The commenter also states that the Ordinance and IS/MND are flawed for not including enforcement and inspection mechanisms. As discussed in the IS/MND, the scope of the Ordinance is limited to phasing out oil drilling as a land use in the City. There are many regulatory mechanisms in place, led by agencies such as CalGEM, addressing inspection and enforcement of oil wells (See Section 3.2.1 Regulatory Framework of IS/MND, pages 9 through 14).

Response to Comment 3-8

The commenter's statements and input regarding the Oil Ordinance and environmental review are noted. This comment provides a summary of the comments raised and responded to in **Responses to Comments 3-1 to 3-7**.

³ <https://www.conservation.ca.gov/calgem/Pages/Orphan-Well-Screening-Methodology.aspx>

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September 21, 2022

ENV-2022-4865-MND & underlying case CPC-2022-4864-CA

To the City Planning Commission,

The draft MND accompanying the proposed oil ordinance is severely deficient, full of errors, and disconnected from both the proposed ordinance and reality.

4-1

Among many CEQA errors of process and substance, the draft MND (p.68-9) and the Staff Report (p. P5-6) claim the proposed ordinance has provisions regarding site remediation that are not in the proposed ordinance.

The comment period on the draft MND runs until mid-October. The CPC should not act on the underlying case until after Planning has closed the comment period on the MND and decided on revisions.

4-2

Both the draft MND and ordinance are not ready for consideration and should be sent back.

Rushing the environmental review and proposed ordinance cross-contaminate each other.

- The environmental review was commissioned by Planning on 7/26/22 (date of the Notice to Proceed) *just two weeks before Planning publicly released the proposed ordinance on 8/9/22. The draft ordinance had no input from environmental review.*
- *At the 8/30/22 "public hearing" held by Planning, no environmental review materials were available for public examination.*
- The [Draft MND](#) was posted publicly on [Planning's "Public Notices" webpage](#) on 9/15/22. Metadata shows it was created on 9/12/22.
- The Revised September version of the proposed ordinance was posted on the [CPC's agenda](#) on 9/14/22. Metadata shows it was created 9/13/22.
- **The draft MND and the Staff Report both claim the proposed ordinance has provisions regarding site remediation section *that are not there at all.***

4-3

4-1

The environmental review fails at protecting the environment and public safety.

- The draft MND misses multiple significant environmental impacts that can be expected with near certainty, including (but not limited to):
 - **Odor and emission problems while plugging wells were problems not mitigated by the City and other jurisdictions during the plugging of wells at the now closed 4th Ave Drill Site in CD10 and the Jefferson Drill Site in CD8**
 - The draft MND failed to consult recent real world experience in the City already known to Planning and other City offices.
 - Draft MND ignores difference between an individual well on one lot in an M3 Zone VERSUS Drill Sites like the Banning Site in Wilmington (220 wells in M2/RD3), West Pico in 90035 (57 wells, surrounding R Zone), and Packard in 90019 (~60 wells, surrounding R Zone).

4-4

- Draft's assumption about availability of rigs & crew to plug multiple wells at a time is wildly incorrect. This would take years. Prolonged impact.
- Emissions, toxic dust, and other impacts during site demolition were not mitigated by the City and other jurisdictions at the now closed 4th Ave Drill Site where demolition occurred while an LAUSD elementary school was in session next door
 - the draft study failed to consult recent real world experience in the City already known in the ZA and other City offices, and ignores prolonged impact on R Zones from demo of Drill Sites.
- The draft MND fails to consider the problem of oil companies going bankrupt and leaving behind hundreds of wells without plugging them. The draft MND and Staff Report and proposed ordinance just assume the oil companies will plug their own wells as they close up business.
 - Such orphan wells are already a monster problem, known to the Planning Department and other City offices. See investigative journalism published by the LA Times in spring 2020: "[The Toxic Legacy of Old Oil Wells: California's Multibillion-Dollar Problem](#)" and "[Deserted Oil Wells Haunt Los Angeles with Toxic Fumes and Enormous Cleanup Costs.](#)"
 - The phenomenon of polluting companies going bankrupt to escape liability for clean-up costs is well, as in the [Exide Battery Recycling Plant case](#). Exide's bankruptcy left the public with a \$1 Billion clean-up.
 - The owner of the Banning Site in Wilmington (220 wells, M2/RD3 Zone) exited Chapter bankruptcy circa 2018. Banning is their only operation.
 - Many wells & drill sites are on leased land (e.g., AllenCo); no incentive/force to plug wells, only liability to be discharged in bankruptcy.
 - Oil wells in LA City cost on average \$330,000 to plug: [Uduak Ntuk's July 2019 report to City Council](#). The cost has risen. Multiply by 1,000 wells.
 - *Deserted and orphan wells degrade and pose increasing danger to groundwater, soil, the atmosphere, and the public. These are known significant impacts that the draft MND ignores with a gloss of wishful thinking contrary to real world experience.*

4-4

4-5

A separate submission will show that the MND's proposal for site remediation is ineffective word salad. A separate submission will copy the 7/26/22 "Notice to Proceed."

Yours,

Michael Salman
Professor Emeritus
History, UCLA

Responses to Letter 4: Michael Salman 2, September 21, 2022

Response to Comment 4-1

The commenter refers to the analysis on pages 68 and 69 of the IS/MND. The discussion on pages 68 and 69 of the IS/MND relate to the potential for the project to result in significant impacts related to the accidental release of hazardous materials, in particular where oil wells are located sites that are known to be previously contaminated and therefore on the Cortese List.

The Ordinance requires the cessation of oil extraction and one reasonably foreseeable outcome of cessation of oil extraction is abandonment of wells. As discussed on page 69 of the IS/MND:

“many of the oil drilling sites are within M3 zones. M3 zones are heavy industrial zones that allow for uses such as cargo container storage, junk yards and scrap metal processing. These uses are commonly contained on the Cortese List. Due to the limited data available regarding the exact location of oil and gas wells within M3 zones, there is overlap between the wells and other properties on the Cortese List. Nonetheless, it is reasonable to assume many of the wells in M3 zones are also on the Cortese List. In addition to wells in the M3 zone, other wells are also believed to be located on the Cortese List.”

Mitigation Measure MM HAZ-1 requires preparation of a Phase I to determine the potential for contamination at certain well sites and implementation of a remediation plan identified in the Phase I/II as necessary. The City recognizes that certain well sites (i.e., sites known to be located on the Cortese List), may have contaminated soils that may be disturbed during the abandonment process. This measure is included to further protect public health.”

The comment suggests the assumption in the IS/MND regarding availability of rigs is incorrect. Reasonable assumptions have been made regarding the availability of rigs to complete the abandonment of wells. Determining the availability of particular rigs or workers to complete the work is speculative, as there is no clear timeline for the cessation of oil extraction, other than over a 20-year period.

Response to Comment 4-2

The comment states the City should wait until the comment period on the IS/MND concludes before having the CPC consider the ordinance and that the IS/MND should be revised.

CEQA Guidelines, section 15025(c) states that an advisory body that is required to make a recommendation on a project shall also review and consider the Negative Declaration in draft or final form. In this case, the IS/MND is not final as it is still under public review. As such, it is in draft form. Nevertheless, the CPC appropriately considered the draft IS/MND when making its recommendation on the project. The IS/MND has adequately analyzed the potential environmental impacts associated with the adoption of implementation of the Ordinance and is supported by substantial evidence including technical studies for air quality, greenhouse gas emissions and noise.

Response to Comment 4-3

The comment opines that the preparation of the IS/MND was rushed and references various dates in an effort to support this comment.

The preparation of the IS/MND is consistent with the time frames set forth in CEQA. (See Public Resources Code, section 21100.2(a)(1)(B).) Furthermore, the IS/MND adequately analyzes the potential environmental impacts associated with the adoption and implementation of the proposed ordinance. Accordingly, the City disagrees with the commenter's assertions that the preparation of the IS/MND was "rushed" such that it fails to adequately analyze the environmental impacts of the Project.

Response to Comment 4-4

The commenter suggests the IS/MND failed to analyze certain environmental effects. Potential odor impacts are analyzed on page 45 of the IS/MND, which concluded that the Ordinance would not create emissions leading to odors adversely affecting a substantial number of people. Specifically, page 45 of the IS/MND states:

"During abandonment activities, the two primary sources of potential odors are fugitive well emissions and diesel exhaust from equipment and trucks. As abandonment activities are anticipated to last approximately 10 work days, these emission sources and associated odors would be temporary and intermittent, and affecting only those receptors located in proximity to the wells. In addition, abandonment activities would be subject to SCAQMD Rule 402 (Nuisance) and California Code of Regulations, Title 13, sections 2449(d)(3) and 2485, which

minimizes the idling time of construction equipment either by shutting it off when not in use or by reducing the time of idling to no more than five minutes. These regulations would serve to minimize temporary and intermittent odors. As oil and gas operations cease, existing oil and gas well emissions leading to odors would no longer occur, and long-term odors would be decreased compared to existing conditions. Therefore, the Ordinance would not create other emissions leading to odors adversely affecting a substantial number of people, and this impact is less than significant.”

The Ordinance’s potential impacts on air quality were analyzed in the IS/MND, and concluded on page 41 of the IS/MND that the Ordinance would not result in a cumulatively considerable net increase of any criteria air pollutant for which the region is in nonattainment and this impact is less than significant.

Regarding the difference between individual wells and well sites, the IS/MND evaluated impacts at the program level. Due to the large number of active and idle wells within the City, which amounted to 1,991 at the time the IS/MND was prepared and circulated, and the fact that it is currently unknown when the active wells will discontinue operation during the 20 year amortization period and when wells will be abandoned it is not feasible to analyze site specific environmental impacts at every well. Furthermore, with regard to environmental impacts associated with well abandonment, the IS/MND’s analysis was purposely conservative with the time periods required for abandonment and the equipment and truck trips required so as to capture the reasonably foreseeable impacts associated with abandonment of wells. The IS/MND appropriately analyzed potential impacts at the program level utilizing substantiated and conservative assumptions to present worst-case impacts. Page 32 of the IS/MND states:

“While this environmental document appropriately presents a program level analysis, specific assumptions were made regarding the methods for well abandonment based on case studies, and other information made available to the City regarding the well abandonment process. As such, this analysis represents a good faith effort by the City to analyze the reasonably foreseeable environmental impacts resulting from the adoption and implementation of the proposed Ordinance. Detailed assumptions are provided in the Air Quality and Greenhouse Gas Technical Report and the Noise and Vibration Technical Report which are included as appendices to this Initial Study.”

Page 29 of the IS/MND recognizes the fact that it cannot be reasonably predicted when well abandonment will occur at any particular well, therefore, such analysis would be speculative:

“Currently it is unknown as to how many oil wells will permanently cease operations prior to the 20 year expiration date. This is because the time period that each of the City’s approximately 1,991 active and idle wells will permanently cease extraction and undergo abandonment depends on a number of individual factors. For example, once the Ordinance becomes effective, some operators may choose to conclude operations immediately, others. may continue to operate until the end of the 20-year amortization period. However, once a well permanently ceases operation, there is a financial and economic incentive for the oil well operator to complete the abandonment process to reduce the costs of maintaining the well site. Therefore, because there is no reasonable way to accurately predict the timeline for cessation and abandonment at the individual level, this analysis instead assumes all oil drilling will cease 20 years from the effective date of the Ordinance as required. Abandonment of individual wells may occur at any time during the 20-year timeframe, and potentially beyond the 20-year timeframe.”

Further, page 30 of the IS/MND recognizes differences among wells, which states,

“The process of well abandonment will be determined on a case-by-case basis under the regulatory supervision of CalGEM and the LAFD and will depend on individual site conditions such as type and depth of well. However, for the purposes of this environmental analysis, several generalized assumptions have been made based upon standard industry practice, existing regulations governing well abandonment, and case studies. While plugging and abandonment varies by well, there is a consistent set of procedures that are followed.”

Response to Comment 4-5

The comment relates to the possibility of oil operators choosing to leave wells orphaned rather than to complete the abandonment process. See **Responses to Comment 3-5 and 3-6**.

The City cannot speculate as to what will happen at each individual well site. However, even if wells are left orphaned, studies suggest active wells that would become idle wells would likely generate fewer air quality and greenhouse gas emissions being emitted into the air than an active well, resulting in an environmental benefit. One such study prepared for the California Energy Commission identified an average (mean) methane emission rate of 189.7 grams per hour for active wells compared to 35.6 grams per hour for idle

wells.⁴ Further, the commenter has presented no evidence that orphaned wells present an environmental harm.

⁴ Quantifying Methane from California's Plugged and Abandoned Oil and Gas Wells, Final Project Report, California Energy Commission, August 2020, prepared by primary authors: Marc Laurenz Fischer, University of California Davis; Eric D. Lebel and Robert B. Jackson, Stanford University; University of California, Davis, Air Quality Research Center, and Department of Earth System Science.

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September 21, 2022

ENV-2022-4865-MND & underlying case CPC-2022-4864-CA

To the City Planning Commission,

The draft MND and the Staff Report claim that the proposed ordinance contains provisions about site remediation. But, no such provisions are in the proposed ordinance and the MND's proposal for site remediation is ineffective word salad. That is the subject of this submission.

The draft MND fails to propose a realistic and effective way to ensure site remediation but instead proposes a word salad of irrelevant and ineffective jargon that will do nothing.

5-1

- The draft MND (see p. 68-9) and the Staff Report (p. P5-6) say that the proposed ordinance has provisions that use the State's "Cortese list" to make sure that contaminated oil well sites get remediated, but there are some big problems with this.
 - *First, none of this is in the proposed ordinance at all! Search the proposed ordinance for the words "Cortese" and any other terms about site remediation.*
 - Second, the Cortese list is a list of sites that are already site assessment and/or cleanup sites listed by the State's Department of Toxic Substances Control (DTSC) and the State's Water Board (with regional branches). Oil wells per se are not on these lists. Only sites that have been referred to DTSC and/or the Water Board by State agencies (including by CalEPA after they receive a complaint from the public) are on the list. *I know this from making the complaints that initiated Water Board cleanup cases for the closed 4th Ave Drill Site (CD10) and for the current cleanup of the pipeline leak at the West Pico Drill Site (CD5), and the ZA's office knows this, too. The MND drafters did not look.*
 - The draft MND (p. 68-9) defines problem wells as only those in M3 Industrial Zones, as if the Drill Sites with a total of several hundred wells in residential zones don't exist or matter. And then the draft MND gets all kinds of facts wrong. It says:

5-2

"As described in the Project Description, many of the oil drilling sites are within M3 zones. M3 zones are heavy industrial zones that allow for uses such as cargo container storage, junk yards and scrap metal processing. These uses are commonly contained on the Cortese List. Due to the limited data available regarding the exact location of oil and gas wells within M3 zones, there is overlap between the wells and other properties on the Cortese List. Nonetheless, it is reasonable to assume many of the wells in M3 zones are also on the Cortese List. In addition to wells in the M3 zone, other wells are also believed to be located on the Cortese List."

- Virtually 100% of all active and recently idled wells are easily located via CalGEM's data systems, WellFinder and WellSTAR. Drafters of the MND did not bother to look.
- Nor do they seem to have visited wells and drill sites.
- It is NOT reasonable to assume any oil wells in any zones are on the Cortese list, because - simple fact here - very few oil wells are on the

Cortese list. Only wells that have been referred to a State agency for site assessment and clean-up would be on the Cortese list.

- Just because one site, say a junk yard or a dry cleaner, is on the Cortese list does not mean that any neighboring sites are on it, too.
- The focus on only the M3 Industrial Zone ignores the majority of active and recently idle oil wells that are in or next to RESIDENTIAL zones (like West Pico, the Banning Drill Site in Wilmington, etc).
- Third, the MND and Staff Report suggest that plugged oil wells within 500 feet of some other site on the Cortese list should have to get a Phase I Environmental Assessment, but this is word salad that makes no sense at all:
 - The nearby site on the Cortese list will in most cases have already had a cleanup, and it will have been unrelated to the oil well.
 - There is no prescription for any governmental proceeding in which anyone must produce a Phase I assessment. So it won't happen.
 - If it did happen, a Phase I assessment will provide no more information that is already known. It will say this site used to be an oil well.
 - Phase I studies do not include any soil or groundwater testing. Phase II studies do include some testing, but the reality is that the quality of testing varies with the commissioner of the study. I have seen this in studies for two former drill sites in LA City (4th Ave and Pacific Electric Drill Site).
 - Instead, a serious environmental review and proposed ordinance would have the City make an automatic complaint/referral to the LA Regional Water Quality Control Board to require testing of soil and groundwater AND it would require that oil companies do this before release of bonds.
 - Bonding levels in City unchanged since 1945, need to be raised. .
 - Further, a serious environmental review and draft ordinance would prohibit redevelopment until cleared by the Water Board.
 - And, prior to clean-up there needs to be a safeguard to make sure that site demolition is mitigated and monitored by all relevant agencies (the draft MND just assumes this happens, but the 4th Ave Drill Site case shows it does not).

5-2

5-3

The draft MND and the proposed ordinance provide no inspection and enforcement mechanisms, even though Planning knows that is a gaping hole in the City's administration of oil wells and drill sites.

- *Without inspections and enforcement, the draft MND and proposed ordinance are just invitations to disaster. Why rush into a 20 year phase-out ordinance that would be ineffective and saddle the City with problems for decades after that? Why not take the time to do it right, so that wells get plugged, the public get protected, and sites get cleaned up? Plus it can be done quicker, without losing a lawsuit for setting an amortization date without any studies to substantiate it.*

5-4

Yours,

Michael Salman
Professor Emeritus
History, UCLA

Responses to Letter 5: Michael Salman 2, September 21, 2022

Response to Comment 5-1

As stated above in **Response to Comment 4-1**, the commenter misinterprets the Ordinance. The Ordinance does not require soils remediation of, nor does it require well abandonment. Rather, the Ordinance will result in the cessation of oil extraction and one reasonably foreseeable outcome of cessation of oil extraction is abandonment of wells. Where oil wells are located on previously contaminated sites (i.e., Cortese List) it is possible that abandonment activities could result in the disturbance of contaminated soil, thereby exacerbating risk from hazardous materials. Mitigation Measure HAZ-1 is specifically included to address this potential impact.

Response to Comment 5-2

The commenter does not accurately describe the IS/MND. The IS/MND does not indicate that remediation is required as part of the Ordinance. As described in **Responses to Comments 4-1 and 5-1**, the IS/MND includes a mitigation measure to address the scenario in which contaminated soils are disturbed. One scenario under which this could happen is when a site is previously known to be contaminated (i.e., on the Cortese List). The commenter correctly states that known contaminated sites are on the Cortese List, further, the City's GIS analysis indicates that oil wells are also located on sites known to be on the Cortese List. While the IS/MND discussion on page 68 and 69 focuses on M3 zones and other known contaminated sites, impacts on residential and other sensitive uses are discussed throughout the IS/MND. However, the analysis on pages 68 and 69 is specific to Cortese List sites as that is the threshold for the determination of significance.

Response to Comment 5-3

The commenter expresses an opinion regarding the mitigation measure in the IS/MND. As stated in **Responses to Comments 4-1, 5-1 and 5-2**, the intent of Mitigation Measure HAZ-1 is to ensure a process that addresses potential risk from disturbance of soils due to well abandonment activities where contamination is known to exist. Mitigation Measure HAZ-1 appropriately states the circumstances under which mitigation is necessary and provides a process to be undertaken including preparation of a Phase I/II, testing and remediation if necessary. The commenter expresses an opinion that the mitigation measure will not happen, however, preparation of a Phase I is a common mitigation measure and Phase I/II's are frequently prepared for projects. Furthermore, the proposed ordinance does not require or even address the remediation and "clean up" of

the well sites for purposes of redevelopment of the site. That is the subject of a separate Council Motion from the one that directed DCP to prepare and present the proposed ordinance.

Response to Comment 5-4

The commenter states the IS/MND does not provide an enforcement mechanism. The City has limited oversight of oil wells. The LAFD does have oversight of portions of the well abandonment process and would be the responsible entity for implementing Mitigation Measure HAZ-1.

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September 21, 2022

ENV-2022-4865-MND & underlying case CPC-2022-4864-CA

To the City Planning Commission,

Please see (below) the Planning Department's 7/26/22 "Notice to Proceed." The Initial Study for the environmental review began just 2 weeks before Planning unveiled the proposed ordinance. No materials were available at the time of the 8/30/22 "public hearing." The draft MND was rushed and released only when the agenda for the CPC's own hearing on the underlying case was published. The comment period on the draft MND does not close until mid-October.

6-1

CPC should not take action on the proposed ordinance until after Planning has closed the comment period on the draft MND and processed related revisions to the environmental review and the proposed ordinance.

6-2

Yours,

Michael Salman
Professor Emeritus
History, UCLA

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July 26, 2022

Ms. Jessica Kirchner Flores, AICP
Impact Sciences, Inc.
811 W. 7th Street, Suite 200
Los Angeles, CA 90017

Dear Ms. Kirchner Flores:

**NOTICE TO PROCEED TO PREPARE CEQA TECHNICAL ANALYSES FOR A
CITYWIDE OIL AND GAS DRILLING ORDINANCE**

The City of Los Angeles Department of City Planning (LACP) would like to congratulate you for being selected to prepare CEQA technical analyses for a citywide oil and gas drilling ordinance. Work is to commence immediately and should be completed under the terms of your existing City of Los Angeles Contract Number 134775, the bid letter dated June 22, 2022, and your bid response dated July 13, 2022, for a total project cost not-to-exceed \$83,910.

The contract Scope of Services for the above project includes the following tasks and cost breakdown:

Notice to Proceed – CEQA Technical Analyses - Citywide Oil and Gas Drilling Ordinance
Impact Sciences, Inc.
Page 2

TASK NO.	TASK NAME	BUDGET	DELIVERABLE
1	Coordination and Project Management		
1.1	Attend Kick-off and coordination meetings with City or other agency staff, as well as City Planning Commission and City Council meetings	\$12,620.00	Meeting agendas and meeting minutes
1.2	Develop a timeline for deliverables	\$4,340.00	Outlines, schedules, trackers, and/or other task keeping and project management aids
Total Task 1			\$16,960.00
2	Research and Define Scope of Analysis		
2.1	Analyze whether technical analysis prepared by other jurisdictions is relevant to the environmental analysis	\$3,580.00	Written analysis, recommendation, and conclusions which will be used to inform the overall scope of analysis
2.2	Confirm project description and scope of analysis	\$4,570.00	Written confirmation/summary of project description and scope of analysis
2.3	Identify technical analysis to be performed and documentation to be prepared (e.g., technical memoranda or studies, modeling tools and calculations)	\$2,500.00	Written confirmation/summary of recommendations to City staff and technical analysis to be prepared
2.4	Assist City staff with research, including, but not limited to, case law and best practices	\$2,020.00	Oral and/or written summary research prepared for City to support City staff's preparation of the CEQA clearance
Total Task 2			\$12,670.00
3	Analyze Project Impacts		
3.1	Prepare technical analysis of air quality, greenhouse gas emissions, and noise impacts. (Note that air quality and greenhouse gas analyses should quantify the reductions in air quality and greenhouse gas emissions of existing conditions compared to air quality and greenhouse gas emissions associated with the well decommissioning process)	\$46,130.00	Administrative drafts, revisions, and final draft of technical analyses; informational materials and exhibits
Total Task 3			\$46,130.00
4	Supplemental Analysis and Response to Comments		
4.1	Provide supplemental analysis as needed in response to comments received on the Ordinance's CEQA clearance	\$8,160.00	Documentation of supplemental analyses and responses to comments, as needed
Total Task 4			\$8,160.00
TOTAL PROJECT COSTS			\$83,910.00

Responses to Letter 6: Michael Salman 3, September 21, 2022

Response to Comment 6-1

While referencing the Department's Notice to Proceed, the commenter suggests that the City began the environmental review two weeks before the release of the initial draft Ordinance dated August 2022, and therefore, claims the City rushed the preparation of the IS/MND. The IS/MND analysis was thorough and did not begin two weeks before the release of the initial draft Ordinance dated August 2022. The Notice to Proceed that was provided to the commenter indicates the Department securing a consultant to prepare supplemental technical reports that the City determined to need after conducting preliminary research and work related to the environmental review. The commenter is correct when indicating that the comment period for the proposed IS/MND does not close until mid-October. The City published the proposed IS/MND on September 15, 2022. It has always been the intent of the Department to make all documentation readily available for public input and therefore, has made it clear, both in writing and verbally at public hearings, that the publication period remains open for public review and comment until October 17, 2022. The preparation of the Initial Study is consistent with the time frames set forth in CEQA. (See Public Resources Code, section 21100.2(a)(1)(B).)

Response to Comment 6-2

The commenter states that CPC should not take action on the proposed ordinance until after the Department has closed the comment period on the draft IS/MND and processed related revisions to the environmental review and the proposed ordinance. The commenter is referred to **Response to Comment 1-9**.



Green Hill Towers
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Addison, Texas 75001
Office: (214) 393-9688

September 19, 2022

VIA EMAIL: CPC@LACITY.ORG

Los Angeles City Planning Commission
200 N. Spring Street, Room 525
Los Angeles, CA 90012

Re: Agenda Item #11 - CPC-2022-4864-CA; Council File No. 17-0447
Warren Comment Letter Opposing Ordinance Amendment and Approval of MND

Dear President Millman and Honorable Commissioners:

This letter provides comments on behalf of Warren E&P, Inc.; Warren Resources of California, Inc.; Warren Resources, Inc.; Warren Management Corp.; and Warren Operating LLC (collectively "Warren") opposing the ordinance amending Sections 12.03, 12.20, 12.23, 12.24, and 13.01 of the Los Angeles Municipal Code (LAMC) to prohibit new oil and gas drilling activities and make existing extraction a nonconforming use in all zones (the "Ordinance Amendment"). While the comment period is still pending for the associated proposed Mitigated Negative Declaration ENV-2022-4865-MND ("MND"), the Commission is being asked to recommend the City Council approve the same and thus, Warren also objects to that action, especially since the Commission does not have the benefit of all comments on that proposed action since they are not due until October 17, 2022. In addition to the comments in this letter, Warren incorporates the comments of other industry organizations and companies that were submitted in connection with the August 30, 2022 Planning Staff Meeting in opposition to the Ordinance Amendment (as attached to the Staff Recommendation Report) and any additional comments that are submitted by other industry organizations and companies in connection with the upcoming September 22, 2022 Planning Commission Meeting.

7-1

The Ordinance Amendment Effects an Unconstitutional Taking for Which Just Compensation Must Be Paid & Deprives Warren of Its Vested Rights

At the outset, please understand that the Ordinance Amendment, if adopted in its current form, will put Warren out of business in approximately three years, depriving Warren—and the royalty owners that it serves—of their real property rights. These rights are currently valued in excess of \$675MM and the U.S. and California Constitutions require the City to compensate Warren and its mineral owners for these losses. The Ordinance Amendment, however, unlawfully makes no provision for such compensation.

7-2

The Ordinance Amendment will result in cessation of Warren's existing production in approximately three years because it prohibits Warren from engaging in the customary operations necessary to maintain production from its existing wells. Warren's only operations and its only mineral rights are located within the City of Los Angeles and new wells are prohibited. As a result, the Ordinance Amendment would unquestionably put Warren out of business after three years, leaving its employees

jobless, their families without necessary financial support and its royalty owners without income that they have relied on for decades.

To date, Warren has invested over \$400MM to develop its mineral estate in the City of Los Angeles through three well cellars at a consolidated drilling facility (the "Site"). The current LAMC allows for these operations as a *permitted right*. Warren's investment of over \$400MM was incurred not merely for its existing production at the Site but also for additional operations on existing wells within the three well cellars, so that production can be maintained over the projected life of the wells, and for the drilling of new wells in the same three cellars. The Ordinance Amendment will affect a zoning change that deprives Warren of engaging in its business at the Site and its business as a whole, subjecting the City's action to heightened scrutiny under the independent judgment standard. (See e.g., *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525.)

Warren and its royalty owners will be deprived of their reasonable investment-backed expectations and of the right to develop the remaining reserves, which are presently valued in excess of \$675MM. The Ordinance Amendment thus will result in a taking of Warren's and its royalty owner's real property rights under the U.S. and California Constitutions, thereby subjecting the City to damages for this lost value—a significant liability for the taxpayers of the City of Los Angeles. (See e.g., *Penn Cent. Transp. Co. v. New York City* (1978) 438 U.S. 104; *Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 533, 553-554 (holding that "absolute prohibition [on mining] . . . practically amounts to a taking of the property").)

7-2

Even though it holds mineral rights in other residential areas of the City, Warren limited its operations to the Site and to the three well cellars at the City's specific request. Also at the City's specific request, Warren agreed to give up its right to redrill 560 wells located outside the Site and agreed to a phased process of plugging and abandoning wells in the nearby area in return for the City agreeing that Warren could drill 540 wells at the Site with up to 5 well cellars.¹² To date, Warren has plugged and abandoned 41 wells in the surrounding area and has plans to plug and abandon more wells as its business continues to operate in the City.

¹ Zoning Case ZA 20725-0 (PA1) dated July 20, 2006 and Zoning Case ZA 20725-0 (PA2) dated October 2, 2008 (the "Approvals"), copies of which are not attached hereto due to the 10-page limit for this submission but can be found in the Planning Department records.

² Warren was not required under the LAMC relating to the Approvals to give up the redrill rights to 560 wells and conduct the plugging and abandonment of 56 wells in the residential areas outside the Site within a certain time period. Neither were these measures related to the mitigation of environmental impacts. Accordingly, there was no essential nexus and rough proportionality as would be required if the Approvals were interpreted solely as permits under *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Accordingly, the Approvals constituted a contractual obligation and give rise to a vested property right for that and other reasons. (See *M. J. Brock & Sons, Inc. v. City of Davis*, 401 F.Supp. 354, 361 (1983); *Morrison Homes Corp. v. City of Pleasanton*, 58 Cal.App.3d 724 (1976).) The Ordinance Amendment thus would improperly deny Warren a vested property right in violation of due process of law.

If the Ordinance Amendment is adopted, Warren will not be allowed to complete its project under the terms agreed upon by the City since no new wells will be allowed (221 wells have been drilled to date) and existing production cannot be maintained. Warren, however, has a legally protected and vested property right to utilize the Site for these additional operations. (See e.g., *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal. 3d 785, 791.)

The *Avco* rule provides that when a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon an entitlement issued by an agency, the party acquires a vested right to complete the construction of the project. This is particularly true for Warren in that not only did Warren obtain all necessary approvals from the City, but it also gave up its rights to redrill 560 wells in the Wilmington neighborhood outside the Site. Accordingly, Warren must be allowed to complete its project.

Warren's situation is similar to that presented in the case *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1530. In that case, as in Warren's, the owner had an underlying right to use the property as a tavern. The owner subsequently obtained a conditional use permit to expand the business. When that permit expired, the City argued that the owner's rights had expired. However, the *Goat Hill Tavern* court held that "once [an approval] has been properly issued the power of a municipality to revoke it is limited . . . Where [an approval] has been properly obtained and in reliance thereon the [grantee] has incurred material expense, he acquires a vested property right to the protection of which he is entitled." (*Goat Hill Tavern*, 6 Cal.App.4th at 1530.)

Similar to *Goat Hill Tavern*, where the tavern owner had an underlying nonconforming use right, Warren also has a right to use the Site as an oil and gas well drilling site by virtue of the City's February 25, 1972 approval of a drilling and production site within the Nonurbanized Oil Drilling District No. 5 in the R4 and M2-1-O zones and by virtue of the Approvals. The *Goat Hill Tavern* court cited to multiple cases in which an agency action would ultimately force the company out of business, which as discussed above is what will happen here with Warren. (*Id.* at 1528-1529.) The court also emphasized that "interference with the right to continue an established business is far more serious than when an agency denies a request for a permit in the first instance." (*Id.* at 1529.) Once a permittee has acquired such a vested right it may be revoked only if the permittee "fails to comply with *reasonable* terms or conditions *expressed* in the permit granted." (*Id.* at 1530 (emphasis added).) Here, the Ordinance Amendment completely revokes Warren's vested rights despite its compliance with terms and conditions expressed in the 1972 approval of the "O" drilling district and in the Approvals, and thus Warren will be deprived of its vested real property rights.

That the City's actions will extinguish Warren's business is readily ascertainable in that Warren must either continuously drill and maintain its wells, or go out of business. The California Supreme Court recognized in *Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 533 that unlike other uses that operate within an existing structure or boundary, the use of land for mining and, in this instance, oil and gas drilling, anticipates the need to continuously expand the reach of the extraction activity. Warren must drill new wells and redrill and maintain old wells on the Site to maintain its current business. As stated by the California Supreme Court in *Hansen Brothers*, "this is not the usual case of a business conducted within buildings, nor is the land held merely as a site or location whereon the enterprise can be conducted indefinitely with existing facilities. . . the land itself is a material

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resource. It constitutes a diminishing asset.” *Id.* at 553-554. Accordingly, “the ordinary concept of use must yield to the realities of the business in question and nature of its operations.” *Id.* Given Warren’s substantial economic investment, Warren’s drilling rights are a vested property right and if the City chooses to terminate these rights, Warren would be entitled to compensation under the California and United States constitutions.

7-2

Consideration of the Amended Ordinance Now Violates the City’s Own Procedural Requirements Such that It Would Be Unlawful to Adopt the Recommended Findings

The relevant City procedures for consideration of the Amended Ordinance are set out at Los Angeles Charter and Administrative Code (“LACAC”) Sections 556 and 558. These requirements are further described in the Staff Recommendation Report at the Proposed Findings 1-3 at ps. F-1 to F-6, which Findings the Planning Commission must adopt to recommend adoption of the Amended Ordinance to the City Council.

LACAC Section 558(b)(2) describes the procedures for amending an ordinance. It provides that “[a]fter initiation, the proposed ordinance . . . shall be referred to the City Planning Commission for its report and recommendation regarding the relation of the proposed ordinance . . . to the General Plan and, in the case of proposed zoning regulations, whether adoption of the proposed ordinance . . . will be in conformity with public necessity, convenience, general welfare and good zoning practice.”

7-3

LACAC Section 556 provides that: “when approving any matter listed in Section 558, the City Planning Commission and the Council shall make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan.”

The Planning Commission’s action is not a mere suggestion, but acts to set out how the City Council must proceed in potentially acting on the Ordinance Amendment and the MND. For example, if the Planning Commission recommends approval of the Ordinance Amendment and the MND, the City Council may approve it under a simple majority vote, while if the Planning Commission has recommended against the Ordinance Amendment and the MND, the City Council can only approve the change by a two-thirds vote. (LACAC § 558(b)(3).) Accordingly, the Planning Commission’s action on the Amended Ordinance must be in compliance with applicable laws and meet the standards of Sections 556 and 558 of the LACAC.

The Planning Commission Cannot Lawfully Take Action Until It Completes its Review under CEQA

The Planning Commission may not vote to recommend the Amended Ordinance until the City completes the CEQA process. In this situation, the proposed MND was only just circulated to the public on September 15, 2022—four days ago—in conjunction with the issuance of the Staff Recommendation Report. The City states that the public comment period will extend through October 17, 2022, as is required by CEQA. Accordingly, the City has not yet received all comments from the public on the proposed MND and indeed, it would be a denial of due process and violation of CEQA to expect comments in such a short period of time.

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Yet at the same time the Planning Commission is being asked to recommend that the City Council find that “after consideration of the whole of the administrative record, including the Mitigated Negative Declaration . . . and all comments received, with the imposition of mitigation measures, there is no substantial evidence that the project will have a significant effect on the environment.” (Staff Recommendation Report at p. 1-2, and at p. A-8 (emphasis added).)

The Planning Commission is also being asked to adopt Proposed Finding 3, which states that the City has prepared an MND for the project and that “[i]n consideration of the whole administrative record and all comments received regarding the MND . . . the City Planning Commission shall recommend the City Council to adopt the MND.” (Staff Recommendation Report, Proposed Finding 3 at p. F-6.)

Proposed Finding 2 also clearly requires the completion of the CEQA review. Proposed Finding 2, which the Planning Commission must make pursuant to LACAC Section 556 provides that “[i]n accordance with City Charter Section 558 (b)(2), the proposed ordinance will be in conformance with public necessity, convenience, general welfare, and good zoning practice by advancing the basic core zoning to project citizens’ health, safety, and welfare.” Impacts to the public’s general welfare including its health and safety, however, are evaluated through the CEQA review, which process has not been completed and the comment period is still pending.

Accordingly, pursuant to LACAC Sections 556 and 558 and Proposed Finding 2 and 3, the Planning Commission must complete the CEQA process, including completion of the public comment period, prior to taking action to recommend adoption of the MND and adoption of the Amended Ordinance by the City Council.

Even without these explicit requirements, the proposed action would violate CEQA. Amendments to ordinances are clearly a project under CEQA. The completion of the CEQA process, including the required comment period and the consideration of these comments, is necessary as to two fundamental purposes of CEQA, informed decision making *by the agency* and informed public participation. The case law is clear that the failure to satisfy these requirements is prejudicial error. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.)

The California Supreme Court has explicitly rejected what the Planning Commission is being asked to do—take an action prior to the completion of CEQA review. In particular, in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 388, 394 the Supreme Court stated that:

A fundamental purpose of [a CEQA document] is to provide decision makers with information they can use in deciding whether to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If post approval environmental review were allowed, [CEQA documents] would likely become nothing more than post hoc rationalizations to support action already taken. We have expressly condemned this.

Accordingly, under not only its own requirements under CACAC Sections 556 and 558 and under the language proposed in the recommended actions and Proposed Findings, but also under basic CEQA law,

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7-4

the Planning Commission cannot act on the recommendation until the CEQA process is complete. Otherwise, the Planning Commission will deprive the public of the right to participate in the process and prevent itself from engaging in informed decision making.

7-4

**A Brief Review of the MND Indicates That the City Must
Prepare an EIR for the Proposed Project**

A brief review of the MND (it was only published four days ago) indicates that the Planning Department has understated the impacts that will result from this project. It is clear that, ultimately, the City will be required to prepare an EIR.

The MND's analysis of greenhouse gas emissions ("GHGs") is clearly deficient because it only analyzes the direct impacts related to curtailing oil and gas production in the City. It does not analyze any indirect impacts related to the termination of oil and gas production, which it is required to do under CEQA. (CEQA Guidelines Section 15064(d).) For example, the MND does not discuss that the termination of oil and gas extraction and production activities will result in additional imports of oil to the State and region, and that importation will result in additional GHGs through, for example, additional tanker emissions.

The MND also is required to discuss the consistency of the Ordinance Amendment with City land use policies. As they did with the Proposed Findings, the MND fails to address multiple policies that support the extraction and production of oil within the City (as discussed above).

7-5

Further, the MND glosses over the impacts to mineral resources in determining that the impacts related to the Ordinance Amendment are insignificant. As described above, the MND omits critical information from the General Plan related to the encouragement of extraction to reduce dependency on oil imports. The MND's remarks that the City "does not consider petroleum to be a mineral resource of local importance" is thus not supported by the City's own General Plan. Moreover, the CEQA Guidelines require the City to evaluate "the loss of availability of a known mineral resource that would be of value to the region and the residents of the state" not just the City. Accordingly, the analysis is flawed in that it addresses only impacts to the City, not the State as a whole.

The MND's conclusion that oil produced in the area "represents a small amount of the available Statewide resource" is also contradicted by readily available public information. For example, a report by the US Geological Service dated February 2013 describes the Los Angeles Basin, which is partly encompassed by the City, as containing "one of the highest concentrations of crude oil in the world. Sixty-eight oil fields have been named . . . including 10 accumulations that each contain more than 1 billion barrels of oil. One of these, the Wilmington-Belmont, is the fourth largest oil field in the United States." (USGS Fact Sheet 2012-3120.) Accordingly, based on this expert evidence it is undeniable, that the proposed ordinance will have a significant impact on the availability of mineral resources. Based on this information alone, the City is required to develop an EIR. CEQA requires that where there is substantial evidence supporting a fair argument that the project could have a significant non-mitigable effect the City must prepare an EIR. (CEQA Guidelines Section 15064(f)(1).) Even where there is "disagreement among expert opinion supported by the facts over the significance of an effect on

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the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”
(CEQA Guidelines Section 15064(g).)

7-5

The City’s General Plan Review For Conformity is Incomplete and Thus Unlawful

At noted above, CACAC Section 556 provides that the Planning Commission must find that proposed ordinance is in conformity with the General Plan. Such consistency is required by law. (*See e.g., City of Los Angeles v. State of California* (1982) 138 Cal.App.3d 526, 532.) This consistency is also required for charter cities pursuant to Government Code Section 65860. As discussed below, the **Ordinance Amendment is not consistent with the City’s General Plan.**

The Staff Recommendation Report at Proposed Finding 1 leaves out critical elements in the General Plan in concluding that the Ordinance Amendment is in conformance with the purposes and intent of the General Plan. For example, in discussing the Conservation Element of the General Plan, Proposed Finding 1 sets out three policies. These policies generally describe a need for encouraging energy conservation, supporting the ban on offshore drilling and protecting neighborhoods from potential accidents and subsidence associated with drilling and production.

7-6

However, listed directly above these policies, and not stated in Finding 1, is the “Objective” that these policies support. In particular, the objective is to: “conserve petroleum resources and *enable appropriate, environmentally sensitive extraction . . . so as to protect the petroleum resources for the use of future generations and to reduce the city’s dependency on imported petroleum and petroleum products.*” (Emphasis added.) Accordingly, these policies may only be read in the context of allowing continued extraction. The fact that the Amended Ordinance would *ban extraction* rather than *enable extraction* clearly means that it is inconsistent with the General Plan.

Similarly, in the Health Wellness and Equity Element to the General Plan, Finding 3 indicates that Policy 5.4 is to protect communities’ health from noxious activities (which Finding 3 states includes, for example, oil and gas extraction). However, not included in the Staff Recommendation Report is that: “[t]his policy calls for the City to work with operators to ensure that they have the required permits in place, increase its regulatory role and encourage conditions of approval that mitigate land use inconsistencies and conflicts.” As a result, this section also assumes the continuance of extractions activities within the City.

Similarly, a brief review of the Land Use Element – Wilmington Harbor City Community Plan likewise indicates that the Amended Ordinance is inconsistent with the Wilmington Harbor City Community Plan. For example, Policies 3-5.1 and 3-5.3 clearly contemplate the continuance of extraction activities. Policy 3-5.4 provides for the consolidation of oil extraction operations to increase compatibility between oil activities and other land uses. Accordingly, nothing in these policies is consistent with a total ban on oil production like that proposed in the Ordinance Amendment. Finding 1 also does not discuss Objective 3-5, which the policies are drafted to support and which provides that the objective of the policies is “[t]o ensure the public health, safety and welfare *while providing for reasonable utilization* of the area’s oil and gas resources.” (Emphasis added.) The Staff Recommendation Report also fails to note Policy 3-4.6, which encourages the *consolidation* of oil extraction activities rather than its *elimination*.

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Accordingly, not only is the Ordinance Amendment inconsistent with the General Plan and thus unlawful, but the Staff Recommendation Report omits critical information necessary for Planning Commission and public review of the Ordinance Amendment.

7-6

The Ordinance Amendment is Unconstitutionally Vague and Ambiguous

The Ordinance Amendment provides that “[no] existing well . . . shall be “*maintained*, drilled, re-drilled, or deepened, except to prevent or respond to a threat to public health, safety, or the environment, as determined by the Zoning Administrator.” (Emphasis added.) The Ordinance Amendment, however, provides no definition of the word “maintained” and it is thus unconstitutionally vague and ambiguous and violates the due process clause of the U.S. Constitution. The Staff Recommendation Report acknowledges that this is a problem and defers to a “Zoning Administrator’s Interpretation” that has not yet been published as to what this term means. (Staff Recommendation Report, P.3 (“Separately from this Ordinance, DCP’s Office of Zoning Administration is preparing a Zoning Administrator’s Interpretation on the types of oil-related activities that constitute maintenance . . . Once final, this guidance would immediately apply to all oil drilling activities. It would further clarify the types of maintenance activities prohibited under the Ordinance, with limited exceptions to prevent or respond to threats to public health, safety, or the environment.”))

7-7

Due process requires fair notice and an opportunity to be heard. In turn, the most basic due process concepts require that legally enforceable ordinances be defined with sufficient clarity such that those subjected to the laws understand what is permitted and what is prohibited, and such that the laws are not susceptible to arbitrary or discriminatory enforcement. (*Genis v. Bell* (C.D. Cal. July 2, 2013) 2013 U.S. Dist. LEXIS 93353, *14-15; see also *Castro v. Terhune*, 712 F.3d 1304, 1307 (9th Cir. 2013).) Here, the failure to unambiguously explain what is meant by the word “maintained” in the Ordinance Amendment itself would mean that Warren and others similarly situated would not know when, if at all, it is violating the Ordinance Amendment. As written without any definition, Warren is deprived of advance notice and opportunity to object to the meaning of the term “maintained” since it is left to later interpretation by the Zoning Administrator.

The 20-Year Amortization Period in the Ordinance Amendment is Unlawful

The Ordinance Amendment unlawfully imposes a 20-year amortization period for existing operations without any factual evidence to support that 20 years is a “reasonable amortization period commensurate with the investment involved,” as required by law. (*Metromedia, Inc. v. San Diego* (1980) 26 Cal.3d 848, 882.) The City Council directed the Planning Department to commission a study to be performed as to an appropriate amortization period and that work has not yet even commenced, let alone been completed. It thus is premature and unlawful for the Planning Commission to proceed with taking action on an amortization period when there is no study—and no evidence—to support such a period for Warren or other operators within the City.

7-8

Moreover, there is no law in California to support the use of amortization periods to eliminate a diminishing asset like mineral rights. While amortization may be appropriate under certain factual situations involving movable property like billboards or liquor stores, since those uses can be moved to other locations, the development of mineral rights is immovable and, as discussed above, protected

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under the diminishing asset doctrine. There is no way to equitably amortize Warren's real property rights and its investments therein other than to allow Warren to produce until the commercially recoverable resources are depleted.

7-8

**There is No Evidence to Support that Warren's Operations
Result in Negative Health Effects**

Warren not only complies with California's stringent environmental regulations, but it also agreed with the City to use electric sources for its operations except for two combustion sources which produce minimal emissions and are not a significant impact for the City. The Staff Recommendation Report contains no specific evidence as to Warren's operations or its emissions and also ignores the City's prior report that failed to support any negative health impacts from oil and gas operations within the City.

In 2019, the City of Los Angeles Office of Petroleum and Natural Gas Administration and Safety conducted an exhaustive review of government reports and studies and concluded that:

There is a lack of empirical evidence correlating oil and gas operations within the City of Los Angeles to widespread negative health impacts. The lack of evidence of public health impacts from oil and natural gas operations has been demonstrated locally in multiple studies by the Los Angeles County Department of Public Health, the Los Angeles County Oil & Gas Strike Team, the South Coast Air Quality Management District and the comprehensive Kern County Environmental Impact Report and Health Risk Assessment.

The City's position now is contrary to that prior report and not supported by the evidence. Warren's equipment and operations do not emit significant quantities of air pollutants and do not pose a significant health risk to the community residents or the public. Warren participates in annual emissions reporting to the SCAQMD, which includes mandatory reporting of air pollutants regulated by the Clean Air Act. Warren facility's actual emissions are low and based on these reported emissions the facility has never been required to obtain a federal operating air permit as it remains below major source thresholds for all pollutants. Further, low emissions of regulated pollutants is evidenced by the fact that Warren does not participate in the SCAQMD's RECLAIM program for large sources of oxides of nitrogen (NOx) and sulfur (SOx). Lastly, as a minor stationary source located in a heavily industrialized area of Wilmington, Warren has not permitted or installed new equipment or modified existing equipment in over 6 years.

7-9

In addition to regulated pollutants, Warren has consistently reported low emissions of air contaminants. The facility routinely reports a detailed air toxics emissions inventory to the SCAQMD yet has never been required by the SCAQMD to prepare a Health Risk Assessment (HRA) because of low emissions. For example, Warren's reported emission of air pollutants and associated health risk impacts are on par with that of neighborhood gas station that operates fuel dispensing equipment, storage tanks, and vehicular traffic from customers and mobile tankers.

Warren is in compliance with all regional, state, and federal rules and regulations and has obtained the appropriate air quality permits for all operating equipment. Restricting maintenance, testing, and repair

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of the existing equipment would not represent an emission reduction or result in any improved air quality for the area or the region.

Furthermore, and in violation of the Equal Protection Clause as applied through the Fourteenth Amendment to the U.S. Constitution, the City is unlawfully discriminating against one industry by prohibiting its operations within the City without taking similar actions against other industries or uses that provide similar or even more emissions than the oil and gas industry.

7-9

No Action Should Be Taken on the Ordinance Amendment and the MND

Warren respectfully requests that the Planning Commission do everything within its power to avoid what will prove to be an expensive mistake and we urge you *not* to take action on Agenda Item No. 11. The Ordinance Amendment will not result in the professed health benefits from shutting down Warren's operations and, instead, will subject the City to significant liability.

It is even premature for the Planning Commission to consider the draft MND and the Ordinance Amendment at this time. Indeed, the comment period has just begun to run on the draft MND so the rush to take action should heed to the Commission's obligations to comply with the law and the City's ordinances.

7-10

Please understand that if the Planning Commission recommends approval, Warren will take all actions required to protect its rights, including seeking recovery from the City of in excess of \$675MM in damages for putting Warren out of business, along with recovery of Warren's legal expenses under Code of Civil Procedure Sections 1021.5 and 1036. The City will be forced to incur substantial legal fees for its own counsel and ultimately Warren's counsel too, all the while losing significant revenue from property taxes on future oil and gas operations without any change in health impacts from closing Warren's doors. Warren reserves all of its rights to pursue every available remedy if the Planning Commission proceeds to recommend approval of the Ordinance Amendment and the draft MND to the City Council.

Sincerely,

WARREN RESOURCES, INC.



James A. Watt
President and Chief Executive Officer

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Responses to Letter 7: Warren Resources, September 19, 2022

Response to Comment 7-1

The comment states that the CPC is being asked to make a recommendation on the proposed IS/MND prior to the close of the 30-day comment period and therefore will not have the benefit of reviewing all of the comments received during the 30-day comment period prior to making a recommendation on the IS/MND.

As stated in **Response to Comment 7-4**, the CEQA Guidelines anticipated and addressed this scenario. CEQA Guidelines, Section 15025(c) states that an advisory body that is required to make a recommendation on a project shall also review and consider the Negative Declaration in draft or final form. In this case, the IS/MND is not final as it is still under public review. As such, it is in draft form. Nevertheless, the CPC appropriately considered the draft IS/MND when making its recommendation on the project.

Response to Comment 7-2

This comment suggests that the Ordinance will result in cessation of Warren's existing production in approximately three years because it prohibits Warren from engaging in the customary operations necessary to maintain production from its existing wells. This comment does not address the contents or adequacy of the IS/MND.

As stated in **Responses to Comments 1-3 and 1-5**, the Ordinance deems existing oil drilling in the City a nonconforming use and gives operators 20 years to recoup their capital investments.

As stated in **Response to Comment 1-4**, The Ordinance responds to City Council's motion from January 2022 to amend the LAMC to phase out oil drilling citywide. Section 12.03 of the LAMC, defines a nonconforming use as "[a] use of building or land which does not conform to the regulations of this chapter and which lawfully existed at the time the regulations with which it does not conform became effective." LAMC Section 12.23 C.2(a) states that a nonconforming use may be continued so long as "the use is not expanded or extended in any way either on the same or adjoining land beyond the limits of what was originally permitted." Thus, the ordinance prohibits well maintenance that could expand or extend the life of an oil well, except under limited circumstances related to preventing or responding to a threat to public health, safety, or the environment, as determined by the Zoning Administrator.

The entitlement that Warren references on pages 2 and 3 of the letter (ZA-1972-20725-PA1 dated July 6, 2006) does not allow for the drilling of any new wells because it expired on August 5, 2018. Warren does not have vested rights to drill any additional wells at the Banning/Wilmington Drill Site.

No California court has applied the diminishing asset doctrine to oil extraction. *Hansen Bros. Enters. v. Bd. of Supervisors* (1996) 12 Cal. 4th 533, 553, a quarrying and mining case, expressly acknowledged that amortization may be used to lawfully discontinue nonconforming uses. *Id.* at 552.

Response to Comment 7-3

The commenter states the City is violating City Charter Sections 556 and 558 by having the CPC consider the IS/MND and ordinance prior to the completion of the comment period for the IS/MND.

The commenter is incorrect. The City has complied with the substantive and procedural requirements set forth in Charter Sections 556 and 558 as well as the substantive and procedural requirements of LAMC Section 12.32, which was adopted to implement the requirements of Charter Sections 556 and 558. The CPC is not a decision maker for the ordinance but a recommending body. (LAMC Section 12.32 C.2). The fact that the CPC must make findings to support its recommendation does not make it a decision making body. Furthermore, any finding that is required is legislative in nature, not quasi-judicial. Such findings are invalid only when they are entirely lacking in evidential support. In this case, there is more than sufficient evidence to support these legislative findings.

Response to Comment 7-4

The comment claims that the CPC's consideration of the IS/MND prior to the close of the public comment period violated City Charter Section 556 and CEQA.

The commenter is incorrect. The CPC is not a decision maker for the ordinance but a recommending body. (LAMC 12.32 C.2). Neither Charter Section 556 and 558 require the CPC to wait until close of the public comment period on the IS/MND. Charter Section 558 confirms the CPC is a recommending body with regard to ordinances and Charter Section 556 makes reference to Charter Section 558. Furthermore, any finding that is required is legislative in nature, not quasi-judicial. Such findings are invalid only when they are entirely lacking in evidential support. In this case, there is more than sufficient evidence to support these legislative findings.

CEQA Guidelines, Section 15025(c) states, "Where an advisory body such as a planning commission is required to make a recommendation on a project to the decision-making body, the advisory body shall also review and consider the EIR or Negative Declaration in draft or final form." In this case, the CPC reviewed the IS/MND in draft form and based upon the contents of these documents recommended approval. Nothing in CEQA or the CEQA Guidelines requires that advisory bodies must wait until the conclusion of CEQA required public comment periods to conclude before making recommendations on the CEQA clearance. In fact, CEQA Guidelines, section 15025(c) contemplates such recommendations may be made prior to the completion of the CEQA process.

County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 946, to which the commenter makes reference, does not support Commenter's position. This case does not address an advisory agency making a recommendation based upon its consideration of a draft CEQA clearance prior to the close of the public comment period. The case is focused on what information is available to the decision maker at the time it considers the CEQA clearance. In this case, the decision maker is the City Council. The public comment period on the IS/MND will close several weeks before the City Council considers the ordinance and the IS/MND.

Finally, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 388, 394, to which the commenter also makes reference, also does not support the commenter's position. The quoted text pertains to when the decision maker evaluates a CEQA clearance in relation to the decision maker's approval of a project. The text Commenter quotes pertains to the Supreme Court's discussion of under what circumstances a lead agency must analyze the environmental effects of future potential phases of a project analyzed in an Environmental Clearance. It does not discuss whether an advisory agency may consider and make a recommendation on a draft of an CEQA clearance prior to the close of a CEQA required public comment period.

Response to Comment 7-5

The Commentor claims the IS/MND's analysis of greenhouse gas impacts is inadequate as it fails to account for the claimed increase in importation of oil to make up for the loss of oil production resulting from the implementation of the proposed ordinance.

The Commenter is incorrect as the City was not required to account for a claimed increase in the importation of oil as that assertion is not based upon any facts but amounts to speculation. The Ordinance provides for a 20-year amortization period during which current wells may continue to extract oil. Therefore, oil extraction will not stop immediately with the implementation of the proposed ordinance. Furthermore, as set forth in the IS/MND (pages 77,79, and 80) and the Staff Report to the CPC publicly released on September 13, 2022 (page P-8), the City of Los Angeles as well as the State and the Nation are aggressively transitioning away from reliance on petroleum as a source of fuel. As such, by the end of the amortization period it is reasonable to conclude that the demand for petroleum for fuel will have decreased significantly. As such, there is no basis to conclude the ceasing of extraction activities over the next 20 years will require an increase in the importation of oil.

The Commenter claims the IS/MND's analysis of consistency with various land use policies is inadequate. This is incorrect. Table 4 and 5 on pages 23-28, in the IS/MND analyzes the Ordinance's consistency with numerous General Plan goals, policies and objectives. The City is given great deference in its determinations related to consistency with its own General Plan. *Save Our Peninsula Comm. v. County of Monterey* (2001) 87 Cal.App.4th 99, 142. The deference extends to its determinations as to which policies are applicable to any given project. *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817. Therefore, the IS/MND's analysis of land use policies complies with the requirements of CEQA.

The commenter states the CEQA Guidelines require the IS/MND to analyze whether the project will result in the availability of a locally important mineral resource recover site and that the Ordinance's finding that the City does not consider oil to be a mineral resource of local importance is not supported by the City's General Plan. In response, the City refers the commenter to the IS/MND at pages 79-80 where the IS/MND analyzes the potential for the ordinance to result in the loss of oil extraction sites. This analysis explains that since the adoption of the Conservation Element of the General Plan in 2001, in subsequent updates to other elements of the General Plan, the City has shifted to addressing the health, safety and environmental effects associated with oil extraction and focused on limiting oil extraction within the City. As such, the IS/MND has adequately analyzed the potential loss of oil extraction sites and has provided substantial evidence to support the determination that oil is not a mineral resource of local importance.

The commenter states the IS/MND glosses over important information regarding oil as a mineral resource and states the IS/MND's discussion of the annual extraction of oil from wells within the City fails to acknowledge the fact that the Los Angeles Oil Basin continues to contain a great deal on unextracted oil. In response, the IS/MND's analysis (IS/MND at page 80) is accurate as it reflects the existing environmental setting related to oil extraction, not a speculative level of potential oil extraction. As such, the City's conclusion that based upon the current extraction rate, the oil extracted from wells within the City represents approximately 2 percent of total oil extraction in the state is relevant to the analysis of the ordinance's effect on total oil extraction within the state. Furthermore, the Los Angeles basin extends outside of the City's boundaries and other jurisdictions will continue to permit oil extraction from the basin.

Response to Comment 7-6

The commenter cites to several plans and specific policies and states these policies support the continuation of oil drilling. A conflict between a project and an applicable plan is not necessarily a significant impact under CEQA unless the inconsistency will result in an adverse physical change to the environment that is a "significant environmental effect" as defined by CEQA Guidelines, section 15382. An inconsistency between a proposed project and an applicable plan is a legal determination that may or may not indicate the likelihood of a physical environmental impact. In some cases, an inconsistency may be evidence that an underlying physical impact is significant and adverse. For example, if a proposed project affected agricultural land, one standard for determining whether the impacts were significant would be to determine whether the project violated a plan or policy protecting agricultural land; the environmental impact, however, would be the physical conversion of agricultural land to non-agricultural uses. Similarly, an excerpt

from Section 12.34 of the legal practice guide, Practice under the California Environmental Quality Act by the Continuing Education of the Bar, illustrates the point:

“...if a project affects a river corridor, one standard for determining whether the impact is significant might be whether the project violates plan policies protecting the corridor; the environmental impact, however, is the physical impact on the river corridor.”

Under State Planning and Zoning law (Gov’t Code §§ 65000, et seq.) strict conformity with all aspects of a plan is not required. Generally, plans reflect a range of competing interests and agencies are given great deference to determine consistency with their own plans. A proposed project should be considered consistent with a general plan or elements of a general plan if it furthers one or more policies and does not obstruct other policies. Generally, given that land use plans reflect a range of competing interests, a project should be compatible with a plan’s overall goals and objectives but need not be in perfect conformity with every plan policy.

The commenter points to specific policies around oil extraction in current plans. While the policies cited contemplate continued extraction, each iteration of plans within the City has included a greater recognition of the health effects of oil extraction on resident’s health and the need for more oversight. The commenter cites the Wilmington Harbor policies which are from the 1999 plan. The Wilmington Plan is in the process of being updated. The Draft Plan, available on the city’s website, includes as a guiding principle of the plan: reduce the footprint of the oil and gas industry, prioritizing residential neighborhoods. In fact, the draft plan includes numerous policies within the Environmental Justice Chapter (Chapter 3, EJ Goal 10, policies EJ 10.1 to 10.5 and EJ Goal 11, policies 11.1 to 11.8). All of these policies seek to reduce or eliminate oil drilling in the Harbor Community Plan Area. These policies further support the City’s assertion within the IS/MND that the City has moved away from oil as an important resource in the City and the Ordinance is not in conflict with existing policies but is the natural progression of a movement away from oil extraction.

Response to Comment 7-7

This comment states that the Ordinance is unconstitutionally vague. This does not address the contents or adequacy of the IS/MND. The draft Ordinance states that no existing well shall be maintained, drilled, re-drilled, or deepened, except to prevent or respond to a threat to public health, safety, or the environment as determined by the Zoning Administrator. The language mirrors language contained in the current version of LAMC Section 13.01, which states that no well may be drilled, deepened, or maintained

without approval of the Zoning Administrator, language that has existed in the City's Code for over half a century.

As stated in the Staff Report to CPC, DCP anticipates issuing a Zoning Administrator Interpretation (ZAI) to specify what activity the Department will consider to be maintenance.

Section 12.21-A,2 of the Code provides, in pertinent part, as follows:

“2. Other Use and Yard Determinations by the Zoning Administrator. (Amended by Ord. No. 177,103, Eff. 12/18/05.) The Zoning Administrator shall have authority to determine other uses, in addition to those specifically listed in this article, which may be permitted in each of the various zones, when in his or her judgment, the other uses are similar to and no more objectionable to the public welfare than those listed.

The Zoning Administrator shall also have authority to interpret zoning regulations when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation.”

If the Commentator disagrees with the ZAI, the ZAI is appealable under the City's Code. The section continues,

“Anyone aggrieved by the Zoning Administrator's determination may file an appeal within 15 days from the issuance of the written decision.

The City Planning Commission shall hear appeals on Zoning Administrator Interpretations where there is no site-specific issue. The Area Planning Commission shall hear appeals on site specific Zoning Administrator Interpretations.”

Response to Comment 7-8

This comment states that the City's proposed amortization period is unlawful. This does not address the contents or adequacy of the IS/MND. The Ordinance deems existing oil drilling in the City a nonconforming use and gives operators 20 years to recoup their capital investments. As stated in **Response to Comments 1-3, 1-4, 1-5, and 7-2**, this amortization period is a reasonable period of time to phase out operations.

Response to Comment 7-9

This comment states that there is no evidence that commenter's wells are causing any public health, safety, or environmental impacts. This does not address the contents or adequacy of the IS/MND. The ordinance reflects evidence that oil extraction activities result in cumulative public health, safety, and environmental impacts. Multiple studies in the record support this conclusion, notwithstanding a cherry-picked comment noting a lack of studies from the City in the Petroleum Administrator's 2019 report. See, e.g., CalGEM Public Health Rulemaking - Scientific Advisory Panel Responses to Questions;⁵ and Staff Recommendation Report to the City Planning Commission dated September 2022.⁶

Response to Comment 7-10

This comment states that if the City moves forward with the adoption of the ordinance, the Commenter will sue and seek damages in excess of 675 million dollars. This does not address the contents or adequacy of the IS/MND. The City acknowledges that comment as a threat of future litigation.

⁵ https://www.conservation.ca.gov/calgem/Documents/public-health/Public%20Health%20Panel%20Responses_FINAL%20ADA.pdf

⁶ https://planning.lacity.org/plndoc/Staff_Reports/2022/09-13-2022/CPC_2022_4864.pdf