Justification/Reason Statement

Warren E&P, Inc.; Warren Resources of California, Inc.; and Warren Resources, Inc.; (collectively "Warren")[1] are appealing the Zoning Administrator's Interpretation ZA-2022-8997-ZAI, dated January 17, 2023, related to the definition of "Well Maintenance" ("ZA Interpretation") along with Zoning Administrator Memorandum No. 141 dated January 17, 2023 ("ZA Memorandum No. 141") (collectively, the "ZA Interpretations").

The ZA Interpretations are unlawful and must be rescinded for the reasons described below and for the reasons set out by other oil and gas companies and industry organizations in their separate appeals of the ZA Interpretations, which appeals are incorporated herein by reference as though set forth in full. Warren also incorporates herein by reference as though set forth in full all comment letters filed in opposition to the adoption of Ordinance No. 187709 (the "Ordinance") and the related mitigated negative declaration ENV-2022-4865-MND (the "Ordinance MND"), including those comment letters submitted by Warren and its counsel. Warren reserves the right to provide additional information in support of this appeal.

1. Adoption of the ZA Interpretations Violates CEQA.

The adoption of the ZA Interpretations violates CEQA for many reasons, including those discussed below. The ZA Interpretations assert that neither document is a "project" subject to CEQA, but then further argue they were evaluated as part of the Initial Study for the Ordinance MND adopted by the City on November 22 and December 2, 2022. In reality, the definition of "maintenance" was not yet determined and therefore could not have been—and was not—evaluated in connection with the Ordinance MND. Similarly, there was no process as to a health and safety exception at that time and thus that process also could not—and was not—evaluated at the time the Ordinance MND was approved. As described in our comment letters on the Ordinance MND including the letter submitted to the City on October 17, 2022, the City failed to evaluate all of the activities that encompass the whole of the "Project" to eliminate oil and gas operations in the City. Instead, the City unlawfully deferred evaluation of multiple elements of the overall Project, including the City's interpretation of "maintenance." As we noted in our October 17, 2022 letter and multiple other letters submitted in opposition to adoption of the Ordinance, "[a]gencies cannot allow environmental considerations to become submerged by chopping a large project into many little ones." *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1222 (internal citations omitted). Thus, in now adopting the ZA Interpretations the City has committed unlawful piecemealing and provided proof that Warren's concerns that the MND failed to encompass the whole of the Project were warranted.

The City attempts to now excuse its CEQA performance as to the ZA Interpretations by stating that the actions are not a "project," and are exempt under CEQA Guidelines Section 15378 as an

[1] Warren operates drilling and production sites and holds mineral interests within the City and would be detrimentally affected by the Project. It has a beneficial interest that would be adversely affected by the environmental impacts associated with the Project, and the Project will otherwise have a direct, substantial effect on Warren and its operations. Further, Warren makes these comments on behalf of the public interest, which interest would suffer if the City were not compelled to perform its duties under CEQA.

"administrative activity to assist in the implementation of [the Ordinance]." The City does not specify which of the exemptions it believes applies under Section 15378, but the only sections that describe administrative actions are Sections 15378(b)(2) and (b)(5). Section 15378(b)(2) relates to "continuing" administrative activities and is described as applying to such things as "purchases of supplies," and "personnel-related actions." Section 15378(b)(5) is described as applying to "organization or administrative activities that will not result in a direct or indirect physical change to the environment." Obviously, these sections do not apply as the ZA Interpretations do not involve something like purchasing supplies and will obviously result in a direct or indirect physical change to the environment. More specifically, the ZA Interpretations describe restrictions on maintenance activities that the City claims are necessary to prevent harm to the environment. We know of no agency that has attempted to use this exemption in this manner. Moreover, it is clear that the "unusual circumstances exception" to the exemption would apply.

To the contrary, Section 15378(a) specifically defines a "Project" as including "enactment and amendment of zoning ordinances." The ZA Interpretations are not a separate "administrative activity" but rather a part of the enactment of the Ordinance requiring a complete CEQA review. Again, these actions should have been considered as part of the whole Project of the Ordinance and the separate action now on the ZA Interpretations constitutes evidence of piecemealing of the Project as a whole. To the extent these actions may not be a part of the larger Project, they nonetheless constitute a project under Section 15378(a) necessitating CEQA review.

In the alternative, the City argues that the ZA Interpretations were evaluated in the "Initial Study . . . to support the MND." Notably, the Initial Study is not a final CEQA document, like the MND. Further, it would have been impossible for the City to have evaluated the ZA Interpretations, and for the public to have commented on them, given that they did not exist when the Initial Study was issued and the MND adopted.

Finally, to the extent the City argues that the ZA Interpretations were evaluated as part of the Ordinance MND, there is no evidence to support that unwarranted and conclusory statement and—even if there were such evidence—the MND is deficient for all of the reasons set forth in Warren's comment letters filed in connection with the Ordinance, including that the City is required to prepare an EIR when faced with competing expert opinion and the City failed to analyze the whole of the Project, to adequately describe the existing environmental baselines, to adequately disclose and analyze all impacts, and to accurately consider the impact on the availability of mineral resources.

Accordingly, the City's adoption of the ZA Interpretations was unlawful for multiple reasons under CEQA.

2. In Issuing the ZA Interpretations, the Zoning Administrator Exceeded the Scope of Its Authority.

The City relies on LAMC Section 12.21-A,2 for authority in adopting the ZA Interpretations. However, it is clear from the context of this section that Section 12.21-A,2 is intended to be used where the Zoning Administrator may allow proposed "other uses" that are nearly identical to those uses enumerated in that Article of the LAMC. In particular, the application is to "Other

Use and Yard Determinations." The ZA Interpretations do not allow "other uses" and instead go far beyond that by *prohibiting* certain conduct that the Zoning Administrator deems to be "maintenance". In essence, the ZA Interpretations are rules, not a determination as to the compatibility of uses or an allowance of uses not otherwise specified. And if the Zoning Administrator were actually given the authority to promulgate rules, it would constitute an unlawful delegation of power to the Zoning Administrator.

The ZA Interpretations are effectively an "underground rule," unlawfully adopted without following the procedures required in the LAMC. The ZA Interpretations not only define "maintenance" as it is used in the new LAMC Section 12.23-C.4(a), but also as it is used in former Section 13.01(H). This has the effect of amending the Zoning Code without following the procedures of the LAMC. In this situation, no public notice was provided as to the City's intent to adopt the ZA Interpretations and no draft was provided for public review and comment. Remarkably, given this omission, Warren and any of the other members of the public who were not provided an opportunity to review and comment on the ZA Interpretations in advance, were given just 15 days to appeal.

The City further is estopped to change its past interpretation of the word "maintenance" in old Section 13.01(H), especially through the auspice of an interpretation of Section 12.23C.4(a) under the new Ordinance. Warren and others have relied on the past interpretations of that word in Section 13.01(H), and the City cannot change that course of conduct now through ZA Interpretations that relate to the new Ordinance, which eliminated Section 13.01(H). Put another way, it is improper to provide an interpretation of term in a portion of the LAMC that is no longer in effect.

Additionally, to the extent ZA Memorandum No. 141 includes requirements for seeking a health and safety exception not outlined in the LAMC—including those notification requirements, findings, and appeal procedures noted in Sections 1.6 through 1.8—the Zoning Administrator similarly exceeds its authority by promulgating underground rules outside of the LAMC.

Finally, the ZA Interpretations are preempted by state law and SCAQMD Rules governing the administration of oil and gas activities. The State has exclusive jurisdiction to regulate the drilling, operation, maintenance, and abandonment of oil and gas wells. By prohibiting "maintenance," the Zoning Administrator encroaches on the authority of the State and SCAQMD to regulate maintenance activities.

3. The ZA Interpretations are Inconsistent with the General Plan and Accordingly Unlawful.

The ZA Interpretations are inconsistent with the General Plan, which allows continued production from oil and gas operations. Instead, maintenance would only be allowed when required by a health and safety emergency. Only allowing maintenance in emergency situations would result in the shutting down of oil and gas operations. In our comment letters on the Ordinance and Ordinance MND dated September 19, October 5, October 17, and November 21, 2022 and December 1, 2022, we noted that policies within the General Plan support the continued operations of oil and gas facilities. As we have previously noted, such consistency is required by law. *City of Los Angeles v. State of California* 138 Cal.App.3d 526 (1982). This

consistency is also required for charter cities pursuant to Government Code Section 65860. Because the ZA Interpretations are inconsistent with the General Plan, they are unlawful.

4. The ZA Interpretations Impair Warren's Vested Rights and Reinforce Its Takings Claims.

Warren has performed substantial work and incurred substantial liabilities in good faith reliance upon its vested rights in ZA 20725, the 2006 and 2008 Plan Approvals issued to Warren in connection therewith, and Warren's agreements with the City. Warren's rights in these entitlements are vested and allow it to continue to develop and produce oil, gas, and other hydrocarbon substances. Warren also has fully vested rights to complete the development and production of oil and gas resources within the boundaries of ZA 20725 and the Plan Approvals consistent with its long-established plans and substantial investments in reliance thereon and in reliance on the historical actions of the City. As a result, Warren has fully vested rights to continue its operations.

The ZA Interpretations and definition of maintenance have the effect of confirming that Warren will be unable to undertake certain maintenance activities aimed at prolonging the productive life of its wells. As estimated in multiple of Warren's comment letters on the Ordinance, without the ability to perform maintenance activities as defined in the ZA Interpretations, Warren will be unable to produce from its existing wells after approximately 3 years. The ZA Interpretations therefore impair Warren's vested rights to drill and maintain its wells, and solidify its claims against the City of an unconstitutional taking of Warren's property without just compensation in violation of the California Constitution and United States Constitution. In that regard, a twenty year amortization period is not only unsupported by the evidence but is meaningless if operations are unable to continue due to the prohibition on "maintenance" operations during that time period.

5. The City is Estopped from Enforcing the ZA Interpretations as to Warren.

Also in connection with the Plan Approvals, Warren agreed to consolidate its operations, forego the ability to redrill wells outside that central site, and to instead plug and abandon wells outside that site over time. Accordingly, the Plan Approvals constitute a contractual obligation and give rise to a vested property right for that and other reasons, as discussed above. *See M. J. Brock & Sons, Inc. v. City of Davis* (1983) 401 F.Supp. 354, 361; *Morrison Homes Corp. v. City of Pleasanton* (1976) 58 Cal.App.3d 724. In reliance on, among other things, ZA 20725, the Plan Approvals and its agreements with the City, Warren has invested over $400 million to develop its mineral estate and to convert its operations to 100 percent electric. Warren reasonably, justifiably, and foreseeably relied on its agreement with the City, ZA 20725, and the resulting Plan Approvals when it invested significant resources in the future mineral development of its consolidated site, with the understanding that it would be permitted to continue and complete that development. The Zoning Administrator should therefore be estopped from defining and prohibiting maintenance activities in a way that restricts Warren's ability to continue the productive life of its wells.

6. The ZA Interpretations are Arbitrary and Capricious, Lacking in Evidentiary Support, and an Abuse of Discretion.

The ZA Interpretations are unlawful, arbitrary and capricious, lacking in evidentiary support and constitute an abuse of discretion, all in violation of the due process clauses of the California Constitution and the United States Constitution. In addition to the CEQA violations discussed above, the ZA Interpretations lack evidence indicating that the alleged health impacts stem in any way from Warren's all-electric site. Warren has provided evidence to the contrary from an expert, Yorke Engineering, but the City has specifically chosen to ignore that evidence. (The evidence from Yorke that was submitted with Warren's prior comment letters on the Ordinance and Ordinance MND are incorporated herein in full by reference.) What is more, the ZA Interpretations are lacking in *any* localized evidence supporting the alleged negative health impacts of oil and gas operations generally. ZA Memorandum No. 141 is arbitrary and capricious for the additional reason that it outlines an appeal procedure with no timeline for the City to respond. As a result, if it takes more than one year to receive final, non-appealable approval from the City for a public health or safety emergency, the operations would be "deemed terminated" under the Ordinance in any event.

7. The ZA Interpretations are Impermissibly Vague.

An ordinance is void for vagueness if persons of common intelligence must guess as to its meaning and differ as to its applications. The void-for-vagueness doctrine reflects the principle that a statute violates due process if it either forbids or requires the doing of an act in terms so vague that those subjected to the law cannot understand what is forbidden or required, or if its application may be applied in an arbitrary or discriminatory manner. *Genis v. Bell* (C.D. Cal. July 2, 2013) 2013 U.S. Dist. LEXIS 93353, *14-15; *see also Castro v. Terhune* (9th Cir. 2013) 712 F.3d 1304, 1307.

Here, the ZA Interpretation is impermissibly vague in that it fails to clarify what is considered "well servicing" as opposed to well maintenance. For example, it is not clear whether the list of servicing activities is exhaustive or exemplary and if exemplary, what else is permissible. It is also unclear whether the ZA Interpretation applies to amendments to the SCAQMD rule 1148.5.

Similarly, ZA Memorandum No. 141 is vague in that it provides that it "does not change or alter any vested rights granted in a LAMC Section 13.01 legacy approval." Warren has a vested right to drill new wells and maintain existing wells stemming from ZA 20725, as well as its 2006 and 2008 Plan Approvals. The ZA Memorandum—which provides drilling and maintenance rights *only* with a health and safety exception—therefore seems to be in direct conflict with Warren's legacy approvals and its vested rights. As a result, the ZA Memorandum is impermissibly vague and ambiguous.

8. The ZA Interpretations Unlawfully Interfere with Warren's Contracts.

By eliminating maintenance activities and consequently forcing Warren to cease production in an estimated three years, the ZA Interpretations unlawfully interfere with Warren's contracts with numerous mineral owners (of which the City is aware) and the City thus is liable to Warren for damages for the City's interference with those contracts. For the same reasons, the ZA Interpretations violate the Impairment of Contracts provisions in the California Constitution and the United States Constitution.