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VIA ONLINE PORTAL

City of Los Angeles Department of City Planning
200 North Spring Street, Room 701
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Re: Notice of Appeal of Zoning Administrator's Interpretation of Well "Maintenance" & Zoning Administrator's Memorandum 141

To the City of Los Angeles:

This firm represents the Native Oil Producers and Employees of California ("NOPEC") and, in this matter, the Western States Petroleum Association ("WSPA") (collectively, "Appellants"). Appellants' members conduct oil and gas operations at several locations within the City of Los Angeles, and own mineral rights in fee or lease the mineral rights from royalty owners.

Appellants file this appeal of the City of Los Angeles Department of City Planning's ("City Planning") "Zoning Administrator's Interpretation" ("ZAI") and "Zoning Administrator's Memorandum (ZA Memo) 141" ("ZA Memo 141"), both dated January 17, 2023, on the grounds that adoption of the ZAI violates the California Environmental Quality Act ("CEQA"); the ZA's issuance of the interpretation exceeds the ZA's authority; the ZAI is unlawfully inconsistent with the City's General Plan; the ZAI constitutes a taking without just compensation; the ZAI impairs the vested rights of Appellants' members; the ZAI is preempted by state law; the ZAI is impermissibly vague; and the ZAI is arbitrary, capricious, and constitutes an abuse of discretion.

Additionally, Appellants hereby incorporate the bases for appeals set out by other oil and gas companies and industry organizations in their separate appeals—including but not limited to Warren Resources and E & B Natural Resources Management Corporation, as well as all comment letters filed in opposition to the adoption of Ordinance No. 187709 (the "Oil Ordinance") and the related mitigated negative declaration ENV-2022-4865-MND (the "Oil Ordinance MND"), which are incorporated herein by reference as though set forth in full.

Finally, as a threshold matter, we note that the City's promulgation of the ZAI and ZA Memo 141 immediately after adoption of Ordinance No. 187,709 ("Oil Ordinance") is clear evidence supporting Appellants' CEQA challenge to the Oil Ordinance, as it demonstrates the

City's obvious attempts to piecemeal environmental review in violation of CEQA. The City's decision to issue the ZAI, effectively curtailing Appellants' members' ability to conduct even routine maintenance, while also subjecting them to the illegal amortization period in the Oil Ordinance demonstrates that the City failed to appropriately analyze the totality of the Project's impacts related to the Oil Ordinance, as required by CEQA.

Appellants appeal the ZAI and ZA Memo 141 for the reasons set forth below:

1. Adoption of the ZAI violates the California Environmental Quality Act ("CEQA")

The City's adoption of the ZAI constitutes a violation of CEQA on several grounds. As already noted above, the ZAI adoption is intimately tied to the City's adoption of the Oil Ordinance, and therefore constitutes an improper piecemealing in violation of CEQA. The ZAI asserts that the interpretations are not a "project" subject to CEQA, but then conflictingly argues that the interpretations were evaluated as part of the Initial Study for the Oil Ordinance MND. However, the record of proceedings clearly discloses that the definition of "maintenance" was not yet determined and therefore could not have been evaluated in connection with the Oil Ordinance MND. This omission constitutes unlawful piecemealing under CEQA.

The City's claim that the ZAI is not a "project" under CEQA and is exempt under CEQA Guidelines Section 15378 as an "administrative activity" is likewise demonstrably false. The promulgation of the ZAI does not appropriately fall under either Sections 15378(b)(2) or (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." Clearly, these sections do not apply to the ZAI's restrictions on maintenance activity, and the ZAI is outside the legal scope of activities these exemption cover.

Instead, CEQA explicitly includes in the definition of a "Project" the "enactment and amendment of zoning ordinances" such as the ZAI. CEQA Guidelines Section 15378(a). Therefore, the City's failure to comply with the requirements of CEQA in the adoption of the ZAI is fatal to its enactment.

Furthermore, the City's claim that the ZAI was sufficiently analyzed as part of the Oil Ordinance MND is completely baseless. As a matter of common sense, an environmental document cannot evaluate restrictions that were not even conceptualized at the time that document was certified. Even setting that threshold issue aside, the MND is flawed and insufficient for the reasons set forth in NOPEC and WSPA's CEQA litigation challenging the Ordinance MND's adoption.

Finally, the ZAI and ZA Memo 141 will absolutely impact the availability of mineral resources in the City and the State since the stated goal of the City is to stop oil production

within the City limits. The "loss of availability of a known mineral resource that would be of value to the region and the residents of the state" or the "loss of availability of a locally important mineral resource recovery site" constitutes an adverse environmental impact. CEQA Guidelines, Appendix G, § XII(a), (b); Public Resources Code § 21060.5. CEQA review is needed to analyze the potentially significant environmental effects (both direct and cumulative) to air quality, energy, aesthetics, traffic, odor, and noise as a result of the accelerated rate of abandonment activities as a result of the ZAI and ZA Memo 141, and the increased importation of oil to replace the decreased local production. Thus, even standing alone, the adoption of the ZAI and ZAI Memo 141 have the potential to cause significant environmental effects that require CEQA review, which the City failed to do.

2. The issuance of the interpretation exceeds the ZA's authority

The City's issuance of the ZAI relies on LAMC Section 12.21-A,2. However, this statute is not applicable to the ZAI. Section 12.21-A,2 is intended to be used where the Zoning Administrator may allow proposed "other uses" nearly identical to those listed in LAMC Article 12. However, the definition of "maintenance" promulgated in the ZAI is not similar to "Other Use and Yard Determinations" and instead constitute new land use rules, which the ZA cannot lawfully promulgate. The ZAI effectively amends the City's Zoning Code, which is not permitted without the requisite notice and comment period.

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

3. The ZAI is unlawfully inconsistent with the City's General Plan

Zoning regulations must be consistent with a City's General Plan. Gov. Code, § 65860 (a)(ii). However, the ZAI is inconsistent with the City's General Plan, which allows continued production from oil and gas operations. Contrary to the General Plan, under the ZAI maintenance would only be allowed when required by a health and safety emergency. This would result in the immediate shutting down of oil and gas operations in contravention of the General Plan. The City's conclusory statement that the ZAI is consistent with the General Plan, without support, is insufficient without evidence, which us not present here.

The City's General Plan's Land Use Element states:

> The General Plan encourages the protection of major facilities, such as landfills, solid waste disposal sites, energy facilities, natural gas storage facilities, oil and gas production and processing facilities, military installations, and airports from the encroachment of incompatible uses.

General Plan Land Use Element, Pg. 74. The General Plan also includes Mineral Resources Zones (Figure 9.6) that depicts oil and gas resources. Land Use Policy 7.5 states:

> Ensure land use compatibility in areas adjacent to mineral resources where mineral extraction and production, as well as activities related to the drilling for and production of oil and gas, may occur.

None of these General Plan provisions, though directly related to oil and gas uses, are sufficiently addressed by the City in its analysis of the ZAI or ZA Memo 141.

4. The ZAI constitutes a taking without just compensation

The ZAI effectively eliminates all beneficial use from Appellants' members' property by prohibiting routine maintenance activities that would prolong the useful life of existing oil and gas wells and associated infrastructure. As such, the ZAI constitutes an unlawful taking of property without just compensation in violation of the California Constitution and United States Constitution. In that regard, the Oil Ordinance's 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" activities during that twenty-year time period.

The U.S. and California Constitutions prohibit the taking of private property without just compensation. U.S. Const. amend. V; Cal. Const., Art. 1, § 19. These protections apply to regulatory takings. *Lucas v. S.C. Coastal Council* (1992) 505 U.S. 1003, 1014. Further, "[t]he right to remove oil and gas from the ground is a property right." *Maples v. Kern Cty. Assessment Appeals Bd.* (2002) 103 Cal.App.4th 172, 186. Appellants' members own vested mineral and property rights within the City, and the City's restriction of required maintenance work through the ZAI (as well as the Oil Ordinance) significantly curtails maintenance efforts, which will lead to the abandonment of Appellants' members' wells long before the Oil Ordinance's 20-year amortization period ends.

5. The ZAI impairs the vested rights of Appellants' members

The City's adoption of the ZAI violates Appellants' members' vested rights and due process rights. Under the United States Constitution and the California Constitution, the City may not deprive an individual or entity of their property rights without due process of law. Cal. Const., Art. 1, § 7(a); U.S. Const. amend V, XIV; *College Area Renters & Landlord Ass'n v. City of San Diego* (1996) 43 Cal.App.4th 677, 686. Arbitrary governmental action that infringes on a property owner's rights violates substantive constitutional due process. *Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 541; *Arnel Development Co. v. City of Costa Mesa* (1981) 126 Cal.App.3d 330, 337. In its rushed adoption of the Oil Ordinance and near-immediate follow-on interpretation of what constitutes well maintenance through the ZAI and ZA Memo 141, the City failed to demonstrate that oil and gas production in the City results in any environmental, health,

or safety hazards. Consequently, the City lacks any legitimate interest in terminating oil and gas operations throughout the City.

For example, ZA Memo 141 requires operators to show that maintenance is needed to prevent a threat to public health or safety, even if needed to maintain existing operations. However, when dealing with vested property rights, the City cannot terminate Appellants' members' existing operations without the payment of just compensation or a demonstration that the existing, permitted operations and the associated maintenance constitute a nuisance or threat to health and public safety, which showing the City has not made. Therefore, the ZAI (and the Oil Ordinance) constitutes an unconstitutional taking of property.

6. The ZAI is preempted by state law

The City cannot make or enforce laws in conflict with state general laws. Cal. Const., Art. XI, Sec. 7. The City's Oil Ordinance, the ZAI, and ZA Memo 141 all conflict 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 maintenance activities, rests with CalGEM. Cal. Pub. Res. Code § 3106 *et seq.* Consequently, the City's Oil Ordinance, the ZAI, and ZA Memo 141 are preempted.

Consistent with its strong interest in oil and gas resources and its intent to maximize the "wise development of oil and gas resources," California has adopted numerous statutes and regulations that comprehensively regulate virtually all aspects of oil and gas operations. *See e.g.,* Pub. Res. Code § 3106(d). The state has vested complete authority in CalGEM to "supervise the drilling, operations, maintenance, and abandonment of wells so as to permit owners or operators of wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case." Pub. Res. Code § 3106(b).

Further expressing the explicit policy of the state, section 3106(b) provides:

> To further the elimination of waste by increasing the recovery of underground hydrocarbons, ***it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state*** ... is deemed to allow the lessee or contractor ... to do what a prudent operator using reasonable diligence would do ... including, but not limited to, the injection of air, gas, water, or other fluids into the productive strata, the application of pressure heat or other means for the reduction of viscosity of the hydrocarbons, the supplying of additional motive force, or the creating of enlarged or new channels for the underground movement of hydrocarbons into

> production wells, when these methods or processes employed have been approved by the supervisor.

Id. (emphasis added). Here, the ZAI impacts the rights of Appellants' members to "explore for and remove all hydrocarbons from" their property, as well as to conduct numerous activities directly and exclusively regulated by CalGEM, and thus the ZAI and ZAI Memo 141 are preempted by state law.

7. The ZAI is impermissibly vague

The ZAI is so vague as to be void, and therefore violates Appellants' members' due process rights. An ordinance is void for vagueness if persons of common intelligence must guess as to its meaning and differ as to its applications. *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.

The ZAI's definition of oil well maintenance (which is integral to application of the Oil Ordinance) is dependent on the scope of SCAQMD Rule 1148.2. But the ZAI fails to explain how it interacts with the various provisions of Rule 1148.2 or the effect of the Rule's proposed amendments. As such, the ZAI is improperly vague and ambiguous. Further, the ZAI does not clarify the crucial distinction between "well servicing" and "well maintenance," a key difference under the proposed rules. Thus, it is impermissibly unclear what activities are permitted or prohibited as relates to Appellants' members' property and mineral rights. Therefore, the ZAI fails to provide operators, suppliers, and other individuals involved in oil and gas extraction operations with proper guidance and understanding for how the City will ultimately enforce the ZAI. *Zubaru v. City of Palmdale* (2011) 192 Cal. App. 4th 289, 308 ("An ordinance must be clear, precise, definite and certain in terms, and an ordinance vague to the extent that its precise meaning cannot be ascertained is invalid . . ."); *accord City of Imperial Beach v. Escott* (1981) 115 Cal. App. 134, 139. The ZAI is therefore void.

8. The ZAI is arbitrary, capricious, and constitutes an abuse of discretion

The City's adoption of the ZAI is unlawful, arbitrary and capricious, lacking in evidentiary support and constitute an abuse of discretion, and in violation of the due process clauses of the California and United States Constitutions. In particular, The ZAI lacks any specific evidence supporting the alleged negative health impacts of oil and gas operations.

ZA Memo 141 is also arbitrary and capricious because it provides for an appeal procedure with no timeline for the City to respond to appeals, and therefore if it takes more than one year to receive final, non-appealable approval from the City for a public health or safety emergency, an appealed operation would be "deemed terminated" under the Oil Ordinance in any event.

The ZAI is also an impermissible use of the City's police power. Land use regulations, such as the ZAI or ZA Memo 141, must be "reasonable in object and not arbitrary in operation [in order to] constitute a valid exercise of that power" and reasonably related to the public welfare, which the City fails to demonstrate. *La Mesa v. Tweed & Gambrell Planning Mill* (1956) 146 Cal. App. 2d 762, 768; *Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582. However, the ZAI is unreasonable and not supported by evidence. For example, the City's Oil and Gas Health Report dated July 25, 2019 confirms that at least 1.6 billion barrels of recoverable oil and gas reserves remain beneath the City. The ZAI and ZAI Memo 141 indisputably reduce the ability of producers to extract these resources, yet does nothing to reduce local demand for these resources. This results in a clear and foreseeable increase of imported oil and gas into the City with a corresponding increase in environmental impacts that will harm the welfare of the general public. Yet, the City failed to examine or analyze any of these or myriad other negative impacts from promulgation of the ZAI and ZA Memo 141.

For the reasons stated above, Appellants appeal the ZAI and ZA Memo 141.

Sincerely,

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