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Regional Planning Commission
County of Los Angeles
320 West Temple Street, Room 1350
Los Angeles, CA 90012

Re: Baldwin Hills Community Standards District

Dear Commissioners:

I am writing to express concern about the Community Standards District ("CSD") ordinance you will be considering on Wednesday.

As you know, over the past few months, dozens of community residents have complained about the exceptionally rushed time-table under which the CSD and related Environmental Impact Report ("EIR") are being considered. They have expressed concern that this hurried approach will not be able to produce an ordinance with adequate protections for people living in the vicinity of the oil field.

As a partial response to these concerns, Mike Bohlke and the Planning Staff crafted a procedure for revising the County's initial draft CSD. In accordance with this plan, representatives of the Greater Baldwin Hills Alliance met with John Peirson, the County's environmental consultant, and discussed a significant number of potential changes to the County's Version 1 of the CSD. Mr. Peirson agreed that a vast majority of the suggested changes were desirable, although he raised concerns about a few points, and as a result, the Alliance prepared a redlined document, which showed how the Alliance's suggestions, as modified in response to the concerns raised by Mr. Peirson, could be incorporated into the CSD. After reviewing the Alliance's revised draft, Mike Bohlke wrote: "Both John Peirson and I are enthusiastic (my word) supporters of most (if not all) of the very well thought out suggestions"

Unfortunately, all of the comments made by the Alliance, were completely ignored by the County Planning Staff when they prepared Version 2 of the CSD, which was released last Thursday, and which you will be considering on Wednesday.

The frustration that has been caused by the County's "bait and switch" tactics is magnified by the fact that a majority of the Alliance's comments are completely non-controversial, being intended to correct a large number of drafting problems and to otherwise

ensure that the proposed ordinance accurately sets forth the intention of the County. A few examples are listed below:

Everyone agrees that the mitigation measures called for by the EIR must be accurately incorporated into the CSD. (In fact, absent an appropriate Statement of Overriding Consideration, the failure to fully incorporate these mitigation measures into the CSD would provide a legal basis for challenging the ordinance.) However, changes designed to accomplish this were ignored.

Everyone agrees that the only reason Holly Cross Cemetery and the Southern California Edison substation were included in the District was to ensure that no oil wells would be drilled on these parcels in the future. However, changes designed to avoid requiring the owners of these parcels to file annual drilling plans and other needless paperwork were ignored.

Everyone agrees that typographical errors, such several cases where the word "The" (with a capital "T") was found in the middle of a sentence, should be corrected, but even these changes were ignored.

The bottom line is that it does not appear that staff even looked at the comments that were submitted by the Alliance, much less considered them.

All of this stands in stark contrast to the reception that County staff has given to PXP. Although the Planning Department staff attended a single meeting about a month ago with John Pierson, Mike Bohlke and representatives of PXP and the Greater Baldwin Hills Alliance, and although it was agreed at the conclusion of this meeting that the group would get together several more times before the final hearing of the Regional Planning Commission, no further meetings have been held, and numerous requests for additional meetings by the Alliance to both PXP and County staff have been rebuffed. Nevertheless, we understand that staff did meet with PXP last week, and it is obvious that numerous changes that were made to Version 2 of the CSD could only have been made at the request of PXP.

Saying that most of the Alliance's recommended changes are non-controversial is not the same as saying they are unimportant. The Greater Baldwin Hills Alliance has been a steadfast supporter of the need for a CSD, and has spent much effort trying to dissuade those who say they will only be satisfied by an immediate and total cessation of all oil operations on the site. However, this supportive position has always been predicated on the County's willingness to adopt an ordinance that will clearly spell out what is required and will provide a significant incentive to comply. The greater the number of ambiguities and inconsistencies, the greater the chance that the ordinance will not provide the protections that are being promised.

Similarly, saying that most of the Alliance's recommended changes are non-controversial is not the same as saying they can be made overnight. More than 100 hours were spent preparing the revised draft of the CSD that incorporated the Alliance's comments, and this was only a rough draft that included a number of "Notes" about points that remained to be resolved. It will

not be possible to prepare an acceptable CSD over the next few days. For example, the following is a list of three important issues that will require careful analysis by the County Counsel's office.

The indemnification and insurance requirements that were added to Version 2 of the CSD were apparently borrowed from an agreement that covered fast food restaurants (as made clear by the language, "without limiting Franchisee's indemnification of County, Operator shall provide and maintain the following programs of insurance"). Unfortunately, the sort of insurance the County needs from a restaurant franchise is not adequate for a large oil field. Among other problems, while a restaurant may only need to carry insurance for so long as it is open for business, the County needs PXP to carry insurance that will remain in effect long after PXP has gone out of business, since that is when the County will be stuck trying to clean up 100 years of environmental degradation. This is not an insurmountable problem, but it is one that cannot be solved by borrowing an insurance clause from the last McDonalds project in the County. It will require some significant time from a member of the County Council's office who is experienced in these matters.

Another new provision that will require participation from the County Council's office is the one calling for a Performance Bond. The clause says it is designed to secure PXP's environmental clean-up obligations, but the bond expires one year after PXP sells its interest in the oil field, with no condition that the bond be replaced by the new Operator.

The CSD is currently drafted in a way that will make it much more difficult to use and understand the ordinance over the coming years. Many of the substantive paragraphs now begin, "Within 90 [or 120, etc.] days of the effective date" While this makes perfect sense today, these introductory clauses will all become superfluous within a year. What is worse, in some cases the draftsman has focused only on the first few months after the ordinance is adopted and ignored the many years that will follow. (Typical examples include Section E.3(b), which requires PXP to install fireproofing on its propane tanks within 90 days after the CSD is adopted, but says nothing about maintaining the insulation in place thereafter, and Section E.5(j) which requires that sound monitoring equipment be installed within 90 days, but does not require it to thereafter be used.) All of the time-limited provisions should be moved to a transition paragraph. This will make it much easier to understand the ordinance several years from now, and more importantly will make it easier to revise the underlying substantive provisions so that they clearly state what ongoing obligations are being imposed.

In addition to the large number of comments that should be non-controversial, there are definitely a few important substantive issues that must be addressed. One critical example is the area of enforcement. As stated earlier, a key concern of the Alliance is that the CSD must provide PXP with a significant incentive to comply with its terms. Absent this, we are all wasting out time. However, the draft proposed by staff includes no penalties for non-compliance. It is true that Section 1.24.020 of the County Code imposes a potential \$1,000 fine for violations, but in a situation where PXP claims it will cost hundreds of thousands of dollars to comply with just a single CSD provision, there is concern that it may be more cost effective for PXP to pay fines than to comply. That would obviously be unacceptable. It is true that the CSD

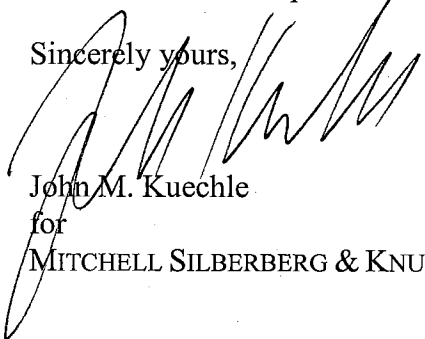
has a provision that talks about "Civil Penalties," but these only apply if PXP fails to comply with a court order or an order of the Director or the Board of Supervisors – not if PXP simply ignores a provision in the CSD. Furthermore, these civil penalties are only available under the CSD "to the extent imposition of such civil penalty is authorized by applicable laws," and no one has pointed out any law that authorizes such penalties in this case. The CSD must include a set of penalties that will be meaningful to PXP, and should provide for an escalation of the amounts if violations occur more frequently than once a year.

Included with this letter is a redlined copy of the County's latest version of the CSD, showing the additional changes that would need to be made to incorporate the comments made by the Alliance (and in large part approved by Messrs. Pierson and Bohlke). As indicated above, this is not a finalized proposal. The redlined draft includes numerous "Notes," some of which explain why a change was made, and others of which raise further issues that must be considered.

It must be noted that neither the County's Version 2 of the CSD, nor the enclosed redlined draft, address any of the additional concerns that will be raised by the still to-be-released revised draft of the EIR. Hundreds of pages of comments were submitted in response to the Draft EIR, and there is no doubt that additional mitigation measures will need to be recommended as a result of these comments. However, neither the public nor the Regional Planning Commission has even seen a working draft of the revised EIR, much less any of the proposed revisions to the CSD.

The County needs to return to the process that was proposed a few weeks ago by Mike Bohlke and the County staff, and prepare an ordinance that will actually achieve the County's goals and fully protect its residents. We therefore encourage the Regional Planning Commission to delay its consideration of this matter and to direct staff to proceed in the manner they approved a few weeks ago - to actually read the comments made by the Alliance (and endorsed by Messrs. Bohlke and Peirson), to hold the promised meetings with the Alliance, to actively involve the County Counsel's office in the drafting process, and to generate an ordinance that the Commission can be proud to endorse and that the community can rally behind.

Sincerely yours,



John M. Kuechle

for

MITCHELL SILBERBERG & KNUPP LLP

JMK/tc

cc: Supervisor Yvonne B. Burke
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

Supervisor Michael D. Antonovich
Mike Bohkle
Senator Mark Ridley-Thomas
Councilman Barnard Parks
Speaker Karen Bass (w/ encl.)
Mayor Scott Malsin
Vice Mayor Gary Silbiger
Councilman Andrew Weissman
Councilman Mehaul O'Leary
Councilman Chris Armenta
Charles Herbertson
Shari Jordan
Dennis Rodriguez
Eric Boyd
Bruce McClendon
Jon Sanabria
Elaine Lemke
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