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September 8, 2008

VIA E-MAIL & MESSENGER DELIVERY

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

Re: Project No. R2007-00570 (Dr. Fricano)
Baldwin Hills Community Standards District (CSD) and EIR
SCH No. 2007061133
Environmental Case No. RENV2007-00048
Next Hearing Date: August 14, 2008
Our File No. 9065.2

Dear Commissioners:

This letter is written on behalf of the Greater Baldwin Hills Alliance ("GBHA" or "Alliance"). The concerns expressed in the accompanying letter from the law firm of Mitchell Silberberg & Knupp are also incorporated by reference herein.

PURPOSE OF THIS LETTER

1. The Draft CSD (Version 2) is far from ready. We are writing to notify the Planning Commission how far away the County's latest "Version 2" draft of the Community Standards District ("CSD") is from being ready to "approve" and forward to the Board of Supervisors as recommended on page one of the Staff Report. Since we have only been provided a limited opportunity to review this document for a few days, the comments contained herein reflect our preliminary comments and concerns, and we anticipate that these comments will be supplemented with additional comments once we have an adequate opportunity to review this latest version in greater detail.

2. The Alliance requests an allotment of one hour for its presentation. We are also writing to request that the Alliance be granted a block of time consisting of at least one hour to make a presentation to the Commission concerning the deficiencies of the latest draft CSD. Frankly, as the enclosed redline demonstrates, one hour will not be nearly long enough. (When two of us met with the County's representative last month to discuss comparable drafting concerns with Version #1 last month, our

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productive meeting lasted six hours.) This block of time should not be to the detriment of members of the general public who may wish to testify.

3. There are many "big picture" concepts that have not yet been considered in the CSD. We are writing to identify multiple important concepts that have not yet been addressed in the CSD:

A. There should be a legislative cap imposed on the total number of new wells that can be drilled over the next 20 years substantially below 1,065 new wells.

B. There should be an annual limit on the number of new wells that can be drilled without a conditional use permit. Based on PXP's own literature, we suggest an annual threshold of 15 new wells per year.

C. Special findings and conditions should be established to guide the issuance of Director's Review Permits for drilling.

D. There should be a public notification procedure followed for applications for new wells.

E. In order to provide relevant public agencies with sufficient information to protect the health, safety and general welfare of nearby residents, workers, students, healthcare patients and park users, there should be a mechanism in place for conducting periodic community health risk surveys of the neighborhood. These studies would assess the prevalence of health conditions, risk factors and exposures among nearby residents and their possible association with oil field activities. These health risk surveys would be conducted annually and also after potentially significant events (e.g., a major spill, a series of hydrogen sulfide released, etc.). To assure the scientific quality of these surveys, their design and implementation should be supervised by the County Department of Public Health. This study should be funded by PXP and conducted by an independent third party.

F. A target completion date should be identified for the oil field. This target date will help all involved parties plan for the necessary remediation work and eventual conversion of the land to a park as contemplated by the State Legislature.

G. The framework for collecting a County oil production mitigation fee should be created by the County. This fee will supplement the gradual purchase of the land for conversion to parkland. The ordinance should call for a nexus study to be performed that will establish the calculation of this mitigation fee.

H. Incentives should be developed to encourage reasonable efforts to consolidate new wells and perform restoration of priority habitats.

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I. CSD requirements need to be supported by sufficiently onerous enforcement provisions to assure operator compliance.

J. Most of the audits and studies called for by the CSD need to be funded by PXP but conducted by qualified independent third parties retained by the County rather than by PXP. These studies should be done no differently than the County's process for funding EIRs.

K. Members of the public at large should have appeal rights for Director's Permits just as does PXP. We are not aware of any reason why Section 22.56.1750 allows appeals by the applicant but does not discuss appeals by concerned neighbors.

4. The Final EIR has not yet been completed.¹ Neither the Commission nor the public has yet seen the Final Environmental Impact Report ("FEIR"). This is not surprising. The public comment period only closed on August 19, 2008. The Planning Commission is legally prevented from adopting the Motion recommended in the Staff Report until the FEIR is completed, distributed, reviewed by the Planning Commission and general public, and presented for public testimony. Section 602J of the County's *Environmental Document Reporting Procedures and Guidelines* (Nov. 17, 1987) requires:

"An advisory agency shall also review the Final EIR prior to a recommendation on the project."

See also State CEQA Guidelines §§ 15092(a) ("After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project"), 15089(a) ("The lead agency shall prepare a final EIR before approving the project"), 15089(b) ("Lead agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project"), 15090(a)(1) ("Prior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA"), 15090(a)(2) ("Prior to approving a project the lead agency shall certify that the final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project"), 15090(a)(3) ("Prior to approving a project the lead agency shall certify that the final EIR reflects the lead agency's independent judgment and analysis"); emphasis added.²

¹ These comments are made without prejudice to our legal position that the EIR needs to be revised and recirculated before certification in any event.

² In addition, see Pub. Res. Code § 21177(e) ("The section [requiring exhaustion of administrative remedies] does not apply to any alleged grounds for noncompliance

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PREAMBLE

At the risk of further alienating Department of Regional Planning staff, the County should be embarrassed at the lack of quality represented to this point in the latest draft CSD. Quality, care, attention to detail, vetting, editing, refining and polishing have all been sacrificed for one overriding purpose: timing. But timing is not a good enough reason to short circuit more than two years of public discussion, analysis, input and anxiety.

Members of the community have not spent thousands of volunteer hours on these issues without striving for something better. The Commission has not convened four public hearings simply to "go through the motions." We all deserve better. It is time for the County to realize this.

Version 2 is fraught with typos, incomplete sentences, concepts/ideas that are not written in regulatory form, inconsistent use of various terms and definitions, the lack of a distinction between regulations for the initial start up and regulations that will last for the next 20 years, an inexplicable failure to distinguish between Holly Cross Cemetery and the Southern California Edison substation land (which were both included for the sole purpose of prohibiting surface drilling) and the remainder of the District, and so on and so forth. Other changes that were made without any prior discussion with GBHA include the loosening of the geotechnical analysis for grading: the allowable gradient was raised from 1:1 to 2:1 without a site specific geotechnical report. (See CSD Version 2 at p. 22.) The reason for this change is not clear to us, and other geologic factors that should be considered (in addition to the gradient) include soil composition, hydrology, surrounding site conditions, etc.

Unfortunately, these shortcomings interfere with a necessary public discussion and debate over certain important policy issues. (See 3A through 3K above.)

The people in the Department of Regional Planning are talented. Why then is the work product so deficient? There can be only one explanation: time pressure. Is the Commission willing to let time pressure undercut the work that had been put into this CSD? The answer to this question must be "no." The fact that an elected official will be leaving office in November is no reason to short-circuit the environmental and legislative process attendant to the proposed CSD.

with [CEQA] for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law") and *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1200, 22 Cal. Rptr. 3d 203 (2004) ("[E]nvironmental review is not supposed to be segregated from project approval").

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DISCUSSION

1. The Draft CSD (Version 2) Is Far From Ready For Planning Commission Action.

The Alliance has been trying in good faith to work with County staff and PXP concerning the terms and provisions of the CSD. Since its formation, the Alliance has participated in all public proceedings and hearings. The Alliance has met on and off with PXP representatives since April. In June GBHA filed a proposed CSD of its own. In August GBHA representatives met for six hours with the County's EIR consultant in a meeting arranged through County Staff to discuss -- line by line -- concerns with Version 1 of the CSD.

The Alliance has provided the County's EIR consultant with detailed written comments and language for the CSD. For reasons not yet apparent, those comments were ignored in Version 2. Furthermore, the CSD does not accurately contain all of the mitigation measures specified in the Draft EIR.

At great effort (since the County declined GBHA's requests for a Word file containing Version 2), the Alliance has prepared a redlined draft comparison of the comments it previously provided to the County and the latest draft issued by the County. That redline is enclosed. Obviously there are hundreds of unexplained differences in the draft documents.

For the County to refuse to make these changes after having given multiple indications that they would be made, to fail to publicly disclose the requested changes received by County staff from the Planning Commission since the last hearing, to refuse to cooperate with the neighborhood's reasonable request for a Word file, to fail to provide the Planning Commission with the prior edits received from the Alliance, and to withhold from the Alliance any explanation for the County's change of heart smacks of partisanship.

Moreover, the County's new draft contains many deficiencies in brand new language not previously seen by the Alliance. Glaring examples of these new deficiencies are contained in the new "Indemnification" provisions of Version 2. (See CSD Version 2 at p. 62.)

Under these circumstances, the Commission should not allow County Staff to rush the Commission through this important process. If it were to do so, the Commission may never see or review these matters again for 20 years or longer!

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2. The Alliance Requests An Allotment Of At Least One Hour For Its CSD Presentation.

When two representatives of the Alliance met with the County's representative last month to discuss comparable drafting concerns with Version #1 last month, our productive meeting lasted six hours. And now those discussion need to be repeated for the Commission's benefit because the agreed upon changes have not been made. Frankly, as the enclosed redline demonstrates, one hour will not be nearly long enough for the Alliance's presentation.

We respectfully suggest that a public workshop format on this CSD might be more conducive to fruitful discussion with the Commission. I have seen that successfully occur on legislative and policy matters in other jurisdictions.

Unless the necessary time is spent on these matters, the CSD will not be satisfactory to the Alliance.

3. A Number Of "Bigger Picture" Concepts Have Not Yet Been Considered In The CSD.

As referenced above, there are many policy decisions that need to be publicly vetted before this CSD can be forwarded to the Board of Supervisors. The Planning Commission's role should be to weigh in on these important issues.

The Alliance has identified at least twelve such issues:

A. There should be a legislative cap imposed on the total number of new wells that can be drilled over the next 20 years substantially below 1,065 new wells.

B. There should be an annual limit on the number of new wells that can be drilled without a conditional use permit. Based on PXP's own literature, we suggest an annual threshold of 15 new wells per year.

C. Special findings and conditions should be established to guide the issuance of Director's Review Permits for drilling.

D. There should be a public notification procedure followed for applications for new wells.

E. In order to provide relevant public agencies with sufficient information to protect the health, safety and general welfare of nearby residents, workers, students, healthcare patients and park users, there should be a mechanism in place for conducting periodic community health risk surveys of the neighborhood. These studies would assess the prevalence of health conditions, risk factors and exposures among

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nearby residents and their possible association with oil field activities. These health risk surveys would be conducted annually and also after potentially significant events (e.g., a major spill, a series of hydrogen sulfide released, etc.). To assure the scientific quality of these surveys, their design and implementation should be supervised by the County Department of Public Health. This study should be funded by PXP and conducted by an independent third party.

F. A target completion date should be identified for the oil field. This target date will help all involved parties plan for the necessary remediation work and eventual conversion of the land to a park as contemplated by the State Legislature.

G. The framework for collecting a County oil production mitigation fee should be created by the County. This fee will supplement the gradual purchase of the land for conversion to parkland. The ordinance should call for a nexus study to be performed that will establish the calculation of this mitigation fee.

H. Incentives should be developed to encourage reasonable efforts to consolidate new wells and perform restoration of priority habitats.

I. CSD requirements need to be supported by sufficiently onerous enforcement provisions to assure operator compliance.

J. Most of the audits and studies called for by the CSD need to be funded by PXP but conducted by qualified independent third parties retained by the County rather than by PXP. These studies should be done no differently than the County's process for funding EIRs.

K. Members of the public at large should have appeal rights for Director's Permits just as does PXP. We are not aware of any reason why Section 22.56.1750 allows appeals by the applicant but does not discuss appeals by concerned neighbors.

L. No standards or criteria are specified for County review and approval of the numerous plans and studies that are called for in the CSD. And in many instances, Version 2 removes the examples provided for the contents of these plans.

4. The Planning Commission Cannot Act On The CSD Until The Final EIR Has Been Completed, Publicly Disseminated, Reviewed By The Commission, And Recommended For Certification With Necessary Findings.

It is a basic tenet of CEQA that no action may be taken on the proposed project until the Final EIR has been prepared, distributed to the public, reviewed and considered by the Commission, and noticed for hearing and public comment. None of this has yet occurred.

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For these reasons, Section 602J of the County's *Environmental Document Reporting Procedures and Guidelines* (Nov. 17, 1987) requires:

"An advisory agency shall also review the Final EIR prior to a recommendation on the project."

It is inexplicable that County Staff recommends that the Commission adopt the following motion:

"I move that the Regional Planning Commission close the public hearing and approve Project No. R2007-00570, the Baldwin Hills Community Standards District and recommend its adoption to the County of Los Angeles Board of Supervisors." (Staff Report from Dr. Russell J. Fricano, Ph.D., AICP, Supervising Regional Planner, dated September 4, 2008; emphasis added.)

The Staff Report contains no discussion of CEQA, no reference to the Final EIR and no analysis of the requirements of Section 602J of the County's *Environmental Document Reporting Procedures and Guidelines* even though I raised this issue in my letter to the Commission dated July 7, 2008.

Before the Commission can "approve Project No. R2007-00570, the Commission must consider and take action on the Final EIR (which we have not yet seen). Per State CEQA Guidelines Section 15091(a), the Commission is obliged to adopt the following findings:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects as identified in the Final EIR.
- (2) Identify any such changes or alterations that are within the responsibility and jurisdiction of another public agency (e.g., the portable flare for drilling and the new stationary flare for processing are both within the jurisdiction of the South Coast Air Quality Management District) and not the County, and find that such other agency has adopted those changes or can and should adopt such changes.
- (3) Identify and describe any specific economic, legal, social, technological or other considerations that make infeasible any mitigation measures or project alternatives identified in the Final EIR. These findings must "describe the specific reasons for rejecting identified mitigation measures and project alternative." (State CEQA Guidelines § 15091(c).)

