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**VIA ELECTRONIC MAIL**

Craig Chalfant  
City of Long Beach  
333 West Ocean Blvd.  
Long Beach, CA 90802

**Re: Los Cerritos Oil Consolidation and Wetlands Restoration Project  
Agenda Items 19 and 20 – January 23, 2018**

Dear Mr. Chalfant:

At the City Council hearing of January 16, 2018, the City Council received correspondence from the Coast Law Group submitted on behalf of the Long Beach Citizens for Fair Development opposing the proposed Los Cerritos Oil Consolidation and Wetlands Restoration Project (Project). Several points were raised in that letter regarding the adequacy of the City's environmental analysis. We are counsel to Beach Oil Minerals, the project applicant, and would like to respond to those comments and request that this letter be made a part of the record prior to the second reading of the ordinances that are on the January 23, 2018, Council agenda for the Project.

The letter begins with a discussion of the Project's current and proposed oil production potential, and cites an 8000% increase over existing production. The letter does not accurately state the existing oil production figures and thus its comparison reflects that same inaccuracy. The current maximum existing potential production from the existing 53 wells on the Project site is 10,000 barrels per day, not 2,500 barrels per day. In an effort to reduce the impacts (air quality, greenhouse gas emissions, etc.) of the existing operations before the new oil production equipment and technology is constructed and begins operation, the Project proponents have voluntarily agreed to reduce its production capacity by 75% from 10,000 barrels per day to 2,500 barrels per day upon the issuance of building permits. (Draft EIR at pages 3.2-27 and 3.6-16.) Thus, the Project's potential production of 24,000 barrels per day represents a little more than a two-fold increase, not the ten-fold or 8,000% increase referenced in the letter.

The letter also cites the Project's participation in the State's cap and trade program as a means of mitigating its greenhouse gas impacts. Because the Project includes an energy production component, it is required to participate in the State's cap and trade program. Mitigation of greenhouse gas impacts through the cap and trade program was recently upheld by the California courts in a decision involving an oil refinery. (See *Association of Irrigated*

*Residents (AIR) v. Kern County Board of Sups.* (2017) 17 Cal.App.5<sup>th</sup> 708.) The court in that case found that consistent with CEQA Guidelines Section 15064.4, the State's cap and trade program constitutes "regulations or requirements adopted to implement a statewide ... plan for the reduction or mitigation of greenhouse gas emissions" and was properly considered by Kern County as a means to mitigate the project's greenhouse gas impacts. The situation is analogous here.

The letter's third paragraph outlines concerns on the EIR's lack of analysis regarding oil consumption. Although the letter acknowledges that the EIR addresses the Project's greenhouse gas emissions, it asks whether the impacts of society's consumption of fossil fuels has been analyzed. There is an existing demand for fossil fuels resulting from our use of cars, airplanes, trains, and other modes of transportation as well as energy production that rely on fossil fuels. Although the State is emphasizing the need to shift to alternative energy (solar, wind, electric vehicles, etc.), until that has occurred, there will still be a demand for fossil fuels unrelated to the Project which will exist with or without the Project, and is not an impact of the proposed Project. Oil produced by the Project will replace the need for importing oil from areas further away from Southern California refineries and thus will have an indirect effect of reducing impacts associated with oil production and consumption. Moreover, the oil produced by the Project is low carbon and results in less carbon emissions than other oil produced elsewhere. In the *AIR* case cited above, the court also addressed whether Kern County's EIR should address society's demand for fossil fuels, and concluded: "[T]he modification of the refinery is designed to accommodate long-term growth in California's population and economic activity that expresses itself in increased demand for petroleum products. This increased demand will exist whether or not the project is approved. Therefore, an inquiry into significance that is based on compliance with a program that sets limits and requirements for California's petroleum refining industry as a whole [the cap and trade program] is a rational approach to regulating that industry's contribution to global climate change." (*AIR v. Kern County Board of Sups.* at 743.)

The letter also questions the Project's land exchange with the Los Cerritos Wetlands Authority (LCWA). First, this is a decision that rests with the Board of the LCWA, not the City and therefore is not germane to the Council's consideration of the actions before it. Second, before any land exchange occurs, an appraisal will be completed by the LCWA to ensure that the value of the land exchanged is of equal value and does not result in a gift of public funds. The Option Agreement that was approved by the LCWA also sets forth the terms of the land exchange and the understandings of the parties with respect to wetlands restoration, and that the Project proposes to create a wetlands mitigation bank and restore the wetlands on the northern portion of the Synergy Oil Field Site. The parties understand that oil production activities on the southern portion of the Synergy Oil Field Site will continue for the next 40 years, and thus would not be available for wetlands creation and restoration under the cessation of oil production on that portion of the site. The Project also includes an amendment to the City's current zoning document, the Southeast Area Development and Improvement Plan (SEADIP), the recently-adopted Southeast Area Specific Plan (SEASP). As noted in the letter, the proposed land use designation under SEASP would be consistent with the long-term land uses for the Synergy Oil

Field Site, but since the SEASP has not yet been certified by the California Coastal Commission, the EIR analyzes its consistency with SEADIP, the existing zoning.

Finally, the letter on page 2 discusses the characterization of habitat on the Pumpkin Patch site and the difference between the conclusion reached by the City based upon its analysis of the biological technical report prepared for the site, and the memorandum provided by the Coastal Commission ecologist. The comment is correct that there is a difference of opinion, but as CEQA acknowledges, there are many instances in which experts may disagree, and the lead agency has the discretion to select the expert opinion on which it will base its conclusions and decisions. (CEQA Guidelines Section 15151, 14 Cal. Code of Regs. § 15151.) The fact that the opinions of both experts were clearly set forth in the City's Final EIR allowed for full and complete disclosure of the information. The City's decision was based upon substantial evidence in the record. Moreover, the City has delegated its Coastal Act permitting authority over the Pumpkin Patch site to the Coastal Commission, and understands that the Coastal Commission may decide differently. The fact that a responsible agency may have a different opinion than the lead agency does not render the EIR inadequate.

Thank you for your consideration of these comments.

Very truly yours,

Manatt, Phelps & Phillips, LLP



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