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December 2, 2021

Los Angeles City Council  
c/o Office of the City Clerk  
City Hall, Room 395  
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”) APPEAL OF CASE NO. ENV-2020-1328-CE, FOR PROPERTY LOCATED AT 9101 WEST PICO BOULEVARD; CF 21-1025**

The Project involves a Plan Approval to review the effectiveness and Applicant’s compliance with conditions imposed in Case Nos. BZA-2000-1697 and ZA-17683(PAD) for the existing 0.706 acre West Pico Oil Drill Site (The Project or Plan Approval). The Project does not involve the approval of new wells or conversion of existing wells. There is no request for modification of any existing conditions of approval and no proposed expansion of the use. The review is required by Paragraph 4.b of the June 2001 Settlement Agreement in the case of *Neighbors For A Safe Environment v. City of Los Angeles*, Los Angeles Superior Court Case No. BC240760 (2001 Settlement Agreement), and is conducted pursuant to Section 12.24-M of the Los Angeles Municipal Code (LAMC) and Condition No. 78 in Case Nos. BZA 2000-1697 and ZA 17683(PAD). The conditions of approval being reviewed were agreed upon by all the parties to the court case involving the modernization of a portion the oil drilling site.

On June 2, 2021, the Zoning Administrator issued a determination after the conclusion of the required review of conditions of approval in conjunction with the Plan Approval Case No. ZA-1989-17683-PA2. The Zoning Administrator determined, under Environmental Case No. ENV-2020-1328-CE, that the Project (review and reporting on compliance with conditions) is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15301 (Class 1) and Section 15321 (Class 21), and that there is no substantial evidence demonstrating that an exception to these categorical exemptions, pursuant to Section 15300.2, applies.

The Zoning Administrator's June 2, 2021 Determination was appealed to the West Los Angeles Area Planning Commission (WLAAPC) by aggrieved parties. On August 18, 2021, the WLAAPC conducted a public hearing to consider the appeals under Case No. ZA-1989-17683-PA2-1A. The WLAAPC granted the appeals in part and denied the appeals in part with a 3-0 vote. The Letter of Determination of the WLAAPC was issued on August 26, 2021. Pursuant to LAMC Section 12.24-I.6(b), the WLAAPC’s action is not further appealable.

Hence, on September 10, 2021, a CEQA appeal was filed by an aggrieved party (Neighbors for a Safe Environment, represented by Amy Minter, Chatten-Brown, Carstens & Minter LLP; hereinafter “Appellant”) to the City Council (Case No. ENV-2020-1328-CE-1A). The appeal in its entirety is located within Council File 21-1025. Below is a summary of the appeal points followed by staff response to each point.

### **APPEAL ANALYSIS**

**Appeal Point 1:** *“Reliance on Categorical Exemption to CEQA is Improper.” “The ZA Determination improperly relies on Class 1 and 21 categorical exemptions to avoid environmental review under CEQA.”*

Staff Response: The Project is for the Plan Approval review of the effectiveness and Applicant’s compliance with conditions imposed in Case Nos. BZA-2000-1697 and ZA-17683(PAD) for the existing 0.706 acre West Pico Oil Drill Site, a review required under the 2001 Settlement Agreement. As stated in Public Resources Code § 21065, a “project” as defined for CEQA review, must be “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Under this definition, it would be reasonable for the City to determine that the Project, a review of compliance with and effectiveness of the conditions imposed under a previous entitlement, is not a project for purposes of CEQA, due to the lack of direct or indirect physical change in the environment. As identified, the City does not have discretion in this Plan Approval to approve or disapprove the drilling of new wells or the conversion of wells existing. Those rights are vested under the prior approvals for this Drill Site, including Case Nos. BZA-2000-1697 and ZA-17683(PAD) and older cases described therein. The City only has the right to review existing conditions in this action, not the allowed uses.

However, the City took a conservative approach and treated the Plan Approval as a Project as a project for purposes of CEQA. The City then determined the Project fits within the Class 1 and Class 21 categorical exemptions. The City based this determination on substantial evidence, which it included in a detailed justification in the Zoning Administrator’s and WLAAPC’s Determinations. Substantial evidence was not submitted to support that any exceptions to either of these exemptions applied or that the evidence the City relied upon was not credible. As stated above, the Project involves a Plan Approval to review the effectiveness and applicant’s compliance with conditions imposed in Case Nos. BZA-2000-1697 and ZA-17683(PAD) for the existing 0.706 acre West Pico Oil Drill Site. No approval of activities or proposed expansion of the use was sought.

**Appeal Point 2:** *“The APC Determination Would Legitimize Illegal Oil Drilling and Create De Facto By-right Oil Drilling.” “The Plan Approval relies on a Class 1 categorical exemption, which is a class of exemption for continuing operations with no expansion of existing use. By relying on this class of exemption, the Plan Approval attempts to legitimize years of illegal well drilling, redrilling and conversion, failing to recognize this is an expansion of use beyond what was approved by the ZA in 2000 in the last new project approval.”*

Staff Response: The Project is for the Plan Approval review of the effectiveness and Applicant’s compliance with conditions imposed in Case Nos. BZA-2000-1697 and ZA-17683(PAD) for the existing 0.706 acre West Pico Oil Drill Site required under 2001 Settlement Agreement. Under this Plan Approval process, the City does not have discretion to approve the drilling of new wells, or conversion of existing wells. CEQA Guidelines Section 15301 provides that a “Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of

existing... facilities... involving negligible or no expansion of use.” The Zoning Administrator issued its Determination in response to the Applicant submitting documentation for Plan Approval review, as required by the 2001 Settlement Agreement. Applicant did not propose or request any expansion of the previously permitted use in its application. As such, the limit of the City’s discretion extended only to reviewing the existing conditions.

The Class 1 exemption issued for this review was not, as the Appellant suggests, to legalize illegal actions; rather, the Class 1 exemption clarifies that the Zoning Administrator’s action does not authorize or expand the scope of the existing oil drilling operations. The City included substantial evidence to support its determination that its review and reporting on the conditions of approval is exempt from CEQA pursuant to CEQA Guidelines, Section 15301 (Class 1). Appellant has not presented substantial evidence to support that an exception to the Class 1 exemption applies or that the evidence the City relied upon to make its determination is not credible. As a result, the City’s decision to use the Class 1 exemption is proper.

The Appellant fails to understand the process to establish CEQA baselines (or existing conditions) when unpermitted activities have occurred on a site. CEQA Guidelines Section 15125 provides that in general “the lead agency should describe physical environmental conditions as they exist at the time...environmental analysis is commenced.” “This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” In *Fat v. County of Sacramento* (2002), 97 Cal.App.4th 1270, 1280, the court (citing *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1434) held that in general the preparation of a CEQA document “is not the appropriate forum for determining the nature and consequences of the prior conduct of a project applicant.” CEQA review should be based on baseline conditions on the date of application as the City is not required to turn back the clock. In this instance, Case Nos. ZA-1989-17683-PA2 and ENV-2020-1328-CE were filed on February 28, 2020 to simply review and report on compliance or non-compliance with conditions of approval established by case Nos. BZA-2000-1697 and ZA-17683(PAD).

**Appeal Point 3:** *“[T]o the extent this Plan Approval reviewed any of the illegal drilling, redrilling, and converting of wells that has been conducted at the site since 2000, the City is prohibited from relying on a categorical exemption by its own CEQA guidelines in ZA Memo 133.”*

Staff Response: As stated above, the Project is for Plan Approval review of the effectiveness and Applicant’s compliance with conditions imposed in Case Nos. BZA-2000-1697 and ZA-17683(PAD) for the existing 0.706 acre West Pico Oil Drill Site. CEQA only applies to discretionary projects. CEQA Guidelines section 15387 defines discretion as “an exercise of judgement or deliberation” to decide “to approve or disapprove of a particular activity, as distinguished from situations there has been conformity with applicable statutes, ordinances, regulations, or other fixed standards.” While the Plan Approval to modify the conditions is discretionary, the City has no discretion to allow the drilling of new wells or the conversion of existing wells as part of this application. Moreover, the Plan Approval is not giving an approval on operations. This is not a situation where the City is renewing a permit allowing uses. The City’s review is narrowly limited to a review of conditions. Additionally, as discussed above, the proposed Plan Approval is making minor modifications to the conditions. The actual Project has limited potential effects. Those potential effects were considered in preparing the CEQA analysis and determining the Project was exempt. The Project’s scope is limited to the City’s review of the Applicant’s compliance with the applicable conditions of approval and the effectiveness of those conditions, it does not include the approval of any drilling, redrilling, or converting of wells. Therefore, the City’s discretion, if any, is limited to the scope of the Project as defined. The Appellant fails to understand the scope of the Project at issue in this case and, as a result, misconstrues the City’s ability to rely on a

categorical exemption and the applicability of Zoning Administrator Memorandum No. 133 (ZA Memo 133 or ZA Memo).

Appellant's argument that ZA Memo 133 prohibits the City from relying on a categorical exemption to avoid full Zoning Administrator and environmental review under CEQA is misplaced. ZA Memo 133 is a policy memorandum establishing a revised set of standardized procedures for the acceptance and processing of applications for oil drilling *discretionary* actions, pursuant to Municipal Code Section 13.01-H. Said code section reads in pertinent part, "[any] person desiring to drill, deepen or maintain an oil well...shall file an application in the Department of City Planning on a form provided by the Department, requesting a determination of the conditions under which the operations may be conducted," (LAMC Section 13.01-H). This Plan Approval application is governed by the Plan Approval process required under LAMC 12.24M and Case Nos. BZA-2000-1697 and ZA-17683(PAD) does not involve any discretionary actions and does not involve a request by the operator to "drill, deepen, or maintain an oil well." As a result, ZA Memo 133 is not applicable.

**Appeal Point 4:** *"A Class 21 Categorical Exemption Does Not Apply Because the West Pico Drill Site Remains Noncompliant and the Review Required by the Settlement Agreement and Condition 78 Goes Beyond Mere Enforcement."*

Staff Response: CEQA Guidelines Section 15321 provides a Class 21 exemption consists of actions by regulatory agencies to "enforce or revoke the lease, permit, license, certificate, or entitlement for use issued, adopted or prescribed by the regulatory agency or enforcement of a law, the general rule, standard, or objective administered or adopted by the regulatory agency." This regulatory action would not result in drilling or redrilling of any oil wells. The Project is a review of the effectiveness and Applicant's compliance with previously imposed conditions of approval. The City relied on substantial evidence to support its determination that the review is exempt from CEQA pursuant to CEQA Guideline Section 15321 (Class 21). Appellant has not presented substantial evidence to show that an exception to the exemption applies. Therefore, the Project qualifies for the Class 21 exemption and its use is appropriate.

The 2001 Settlement Agreement LAMC 12.24-M, and the Planning cases (BZA-2000-1697 or ZA-17683) provide for a regulatory process by which compliance with and effectiveness of conditions can be evaluated and modified where necessary. This process does not require the City to perform a de novo environmental review on the scope of the oil drilling operation. Through this Plan Approval review and other City regulatory compliance, the City is meeting its obligations pursuant to Condition No. 78 BZA-2000-1697 and Paragraph 4.b of the June 2001 Settlement agreement.

**Appeal Point 5:** *"Exceptions to Categorical Exemption Require Environmental Review."*

**Appeal Point 5a:** *"Unusual Circumstances That May Result in a Significant Impact Prevent Reliance on a Categorical Exemption."*

*"The ongoing legal violations on the site discussed above are unusual circumstances and those unusual circumstances have led to and will continue to lead to adverse air quality, odor, noise and other impacts on the surrounding community. This prevents reliance on a categorical exemption. Additionally, the location of an oil drilling site adjacent to a residential community is an unusual circumstance." "That unusual circumstance has led to the finding in the ZA Determination that current conditions are inadequate 'to preserve the health, safety and general welfare of the nearby residential neighborhood.'"*

**Appeal Point 5b:** *“Cumulative Impacts Prevent Reliance on a Categorical Exemption.”*

*“[T]he cumulative impact of allowing illegal drilling activities on this site and, by precedent, on drill sites throughout the City, without enforcement actions or corrective measures, results in potentially significant adverse impacts Citywide.”*

Staff Response: The City’s determination that the Project is categorically exempt under CEQA Guidelines Sections 15301 (Class 1) and 15321 (Class 21) is based on substantial evidence that supports that the Project fits within the applicable categorical exemption and findings that demonstrate that none of the exceptions identified in the CEQA Guidelines apply. As such, the burden is on the challenging party to provide substantial evidence to show that one of the exceptions applies to take the review out of the exempt category. Appellant has not met its burden as it has not provided or pointed to evidence in the record that constitutes substantial evidence to support a conclusion that any of the exceptions apply.

5a Response: Appellant argues that ongoing legal violations on the Site constitute unusual circumstances and those unusual circumstances have led to and will continue to lead to adverse air quality, noise, odor, and other impacts to the neighboring community. Appellant also argues that an oil drilling site adjacent to a residential community is an unusual circumstance. CEQA Guideline Section 15300.2(c) provides that an agency may not find a project is exempt if there is a “reasonable possibility” that it will have a significant effect on the environment “due to unusual circumstances.” In evaluating whether this exception applies, we consider whether the circumstance is in fact unusual. Minor violations of conditions of approval are common and do not in it of itself constitute unusual circumstances. Additionally, as of April 2021, there are 704 active oil wells located within the City of Los Angeles, 601 active oil wells are in within 500 feet of commercially or residentially zoned property and are similarly situated. Therefore, the location of the Project Site itself is not unusual. Furthermore, the Project does not approve or authorize drilling, redrilling, expansion, or conversion of any wells. Rather, it evaluates the effectiveness of the conditions and Applicant’s compliance with the conditions imposed 20 years ago under a prior approval. Under this specific Plan Approval process, the City lacks discretion to authorize drilling, redrilling, expansion, or conversion of any wells. Appellant’s argument, speculation, unsubstantiated opinion, or narrative do not constitute substantial evidence that the unusual circumstances exception applies.

The Appellant fails to understand the scope of the Project, as defined by CEQA, at issue in this case and the concept of baseline conditions. The Project at issue here is a Plan Approval to review the effectiveness and Applicant’s compliance with previously agreed upon and imposed conditions in the prior approvals per the 2001 Settlement Agreement. A review and reporting on previously agreed upon conditions is neither unusual nor would it change the physical environment in a way that could result in a cumulative impact. Further, there will be no change in baseline conditions at the site as a result of this action; thus, no impact will occur much less anything constituting an unusual circumstance or cumulative impact.

The conditions of approval being reviewed and reported upon, as part of this Plan Approval were analyzed in part under CEQA when they became effective; such analysis was conducted in an Environmental Impact Report (EIR) for the modernization of the drill site, certified in 2000 (EIR 98-0149 PA [SCH #98091043]). Said EIR reviewed the then proposed modernization project, the existing oil operations on the site, and all relevant environmental concerns related to the operation of a drill site.

5b Response: Appellant also argues that “the cumulative impact of allowing illegal oil drilling activities, and by precedent, on drill sites throughout the City...results in potentially significant adverse impacts Citywide.” CEQA Guideline section 15300.2(b) provides that a categorical

exemption is not applicable “when the cumulative impact of successive projects of the same type in the same place, overtime is significant.” Here, Appellant fails to identify any actual environmental impact much less provide evidence to support that an impact is cumulative. Appellant’s mere argument, speculation, unsubstantiated opinion, or narrative do not constitute substantial evidence that the cumulative impact exception applies.

**Appeal Point 6:** *“The City Cannot Rely on a Categorical Exemption When Mitigation Measures Are Required.”*

*“Categorical exemptions cannot be relied upon for projects such as this one where mitigation measures and new conditions are required.”*

*“By definition, a project does not qualify for a categorical exemption unless the agency has determined environmental impacts cannot occur and mitigation measures are unnecessary.”*

*“The APC Determination includes several new conditions intended to mitigate ongoing impacts arising at the West Pico Drill Site. These conditions include installation of fence-line monitoring and updated emergency signage. While NASE has been requesting emissions monitoring, the specifics of a monitoring program must be assessed through the environmental review process to ensure its efficacy.”*

*“The APC Determination also includes a mitigation condition that is not only improper due to reliance on a categorical exemption, but also is improperly deferred mitigation. A condition was included requiring submission of a new Plan Approval application from the West Pico Drill Site operator to start a new case, and they required that the application must request a City inspection program. Post approval review and mitigation is improper under CEQA.”*

*“Analysis is required to determine the type of monitor, pollutants to be monitored, placement of the monitors, the reporting of recorded data to the City, and the establishment of a certain deadline for installation.”*

Staff Response: The conditions of approval imposed in Case Nos. BZA-2000-1697 and ZA-17683(PAD) for the existing 0.706 acre West Pico Oil Drill Site and being evaluated as part of the Plan Approval, constitute conditions and not mitigation measures. The Project does not include a specific review of the mitigation measures from the EIR (EIR 98-0149 PA [SCH #98091043]), but rather the conditions of approval imposed by the Planning cases identified. While some of these conditions were derived from mitigation measures included in the original EIR certified with the West Pico Drill Site modernization project approval in 2000, these were adopted as and therefore became conditions of approval under the BZA-2000-1697 and ZA-17683(PAD) planning cases and for purposes of the Plan Approval process. The Project is for the review and reporting of these conditions of approval. As part of this process, the City is to evaluate the effectiveness of the conditions and add or modify those conditions where appropriate. During this evaluation, WLAAPC added three additional conditions. In *Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.App.5th 261, 267-268, the court rejected the appellant’s argument the conditions the planning commission placed on the project to ensure pedestrian safety and prevent possible disruption in traffic during construction were mitigation measures. The court concluded the record did not demonstrate that the board “was imposing the additional conditions in order to mitigate the project’s significant environmental effects as opposed to taking precautions to address the ordinarily anticipated inconvenience and danger that arises when significant construction activity occurs in a congested urban environment.” The court determined that the board had approved the categorical exemption without qualification. As a result, the court ruled that the board placed conditions on the project pursuant to its authority under the conditional use approval process and not out of concern that the project would have a significant environmental effect under CEQA. Similarly, here, the additional conditions added qualify as conditions of approval and not mitigation measures.

CEQA includes the adoption of Mitigation Measures where a Project will have a potentially significant impact on the environment. CEQA Guidelines Section 15370 defines “mitigation” as “a) avoiding an impact altogether by not taking a certain action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; (e) compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements. The three conditions the WLAAPC added were conditions of approval added pursuant to WLAAPC’s authority under the plan review process after evaluating the effectiveness of the existing conditions of approval and Applicant’s compliance with those conditions. The conditions added include 1) a requirement to correct outstanding conditions, 2) a fence line emissions monitoring system, and 3) the installation of signage with emergency contact information. The purpose of these conditions is to require Applicant to come into compliance with all existing conditions as determined under the review of Applicant’s compliance with those conditions as well as to impose additional conditions determined to provide an added layer of protection while evaluating the efficacy of the existing conditions. The conditions are not Mitigation Measures as they are not designed to avoid an action, minimize an impact, rectify an impact, reduce, or eliminate an impact, or compensate for an impact from the Project. Rather, the conditions added are conditions of approval designed to improve the efficacy of the existing conditions and ensure Applicant’s compliance, not mitigate any identified significant impact. The Plan Approval entitlement is not further appealable and is not being considered by the City Council.

As described above, the City has provided substantial evidence to support its determination that the review and reporting on conditions of approval is exempt from CEQA pursuant to CEQA Guidelines, Section 15301 (Class 1) and Section 15321 (Class 21). And, Appellant has not presented substantial evidence to support that the evidence the City relied on was not credible or that an exception to these exemptions applies. Furthermore, the language of the exemption examples is instructive to evaluating whether an exemption should apply. Here, Section 15301 (f) provides the Class 1 exemption applies to the “addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment.” Additionally, a feature built into the design or operation of a project that will reduce or avoid an environmental impact that might otherwise occur is not a mitigation measure that would preclude a categorical exemption. In [\*Walters v City of Redondo Beach \(2016\) 1 CA5th 809, 824\*](#), the court held that a condition of approval requiring compliance with local noise standards was not a mitigation measure defeating the use of a categorical exemption, when the city found the project would meet those standards and imposed the condition of approval to ensure that it would do so. As applied to this Project, the Class 1 exemption is appropriate because the WLAAPC added conditions of approval, specifically, the fence line monitoring and emergency contact signage, as a device that will ensure health and safety protection, not to mitigate any significant impact. Further, the installation of the fence line monitoring equipment and emergency contact signage will not have a detrimental effect on the environment and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies. The exact, “*type of monitor, pollutants to be monitored, placement of the monitors, the reporting of recorded data to the City, and the establishment of a certain deadline for installation,*” does not have an impact on the environment, but would nonetheless be covered by a Class 1 categorical exemption.

**Appeal Point 7:** *“The Violation of Conditions and Mitigation Measures at the West Pico Drill Site is a Continuing CEQA Violation.”*

*“CEQA requires that mitigation measures ‘be fully enforceable through permit conditions, agreements, or other legally-binding instruments.’”*

*“Conditions of approval were adopted for the West Pico Drill Site as part of the 2000 ZA Determination, which were also included in the mitigation, monitoring and reporting plan for the site. These conditions limit the West Pico Drill Site to the wells actually existing at the time of the approval (Condition 72). There are ongoing CEQA violations at the West Pico Drill Site due to the illegal well drilling and conversions that took place in violation of the conditions of approval and the illegal installation of microturbines, which violates the prohibition on generating electricity on site or anywhere in the 70-acre oil drilling district U-131 (Condition 49).”*

*“There have also been violations and continuing violations of Conditions 46, 47, 53, 57, 61 and 78 due to the documented odor impacts, improper waste disposal, noncompliance with fire safety requirements, noncompliance with State-required blowout preventer tests before commencing downhole work, South Coast Air Quality Management District’s leak and emissions violations, and lack of timely conditions review.”*

*“Odor complaints have been persistent since the drill site opened in 1965 and have been pronounced since about 2016. On October 10, 2019, CD5 Council Member Paul Koretz provided recorded testimony about the West Pico Drill Site to the City Council’s Committee on Energy, Climate Change, and Environmental Justice.”*

Staff Response: The Project is for the Plan Approval review of the effectiveness and Applicant’s compliance with conditions imposed in Case Nos. BZA-2000-1697 and ZA-17683(PAD) for the existing 0.706 acre West Pico Oil Drill Site required under the 2001 Settlement Agreement. Under the Plan Approval process, the City does have discretion to approve the drilling of new wells, or the conversion of existing wells. The Project does not require review of mitigation measures from the adopted EIR (EIR 98-0149 PA [SCH #98091043]), but instead reviewing the conditions of approval adopted as part of the entitlement process. The mitigation measures adopted as conditions of approval during the original entitlement process were reviewed. This Project is not a legally appropriate time for an Appellant to raise concerns with an EIR and Mitigation Measures from 2000 for which any appeal period and statute of limitations have well passed. The Project at issue here is focused on a review of compliance with conditions of approval based on the baseline conditions at the site at the time of application. The Zoning Administrator’s Determination laid out the current status of compliance with the conditions of approval for the Site as required by the Plan Approval. The Zoning Administrator determined that Applicant had violated conditions of approval 36, 39, 49, and 72. These violations were minor and included either installing a monitoring system or submitting reports or documents that Applicant had in its possession but failed to submit to the appropriate entities. During the processing of the Plan Approval, Applicant was able to come into compliance with Condition 36 and was able to show that the Drill Site is in compliance with Condition 49. Given that Applicant had complied with the vast majority of conditions and immediate next steps were laid out to come into compliance with the remaining conditions, the Zoning Administrator found that Applicant substantially complied with the conditions of approval. Appellant claims that Applicant remains in violation of Conditions 46, 47, 53, 57, 61 and 78. However, both the Zoning Administrator and WLAAPC reviewed these conditions and found that Applicant was in compliance. With respect to leaking or emissions, WLAAPC found that although Applicant had complied with the related condition, the efficacy of conditions related emissions was uncertain and, therefore, imposed a new fence line monitoring condition to improve the efficacy of the conditions. The Plan Approval entitlement and determinations of the Zoning Administrator and WLAAPC are not further appealable and are not being considered by the City Council.

**Appeal Point 8:** *“Due to the ZA’s Predetermination to Rely Upon a Categorical Exemption for This Plan Approval, the ZA and APC Have Improperly Segmented Review.”*

*“[T]he APC Determination improperly piecemeals environmental review for the West Pico Drill Site by requiring a separate and new plan approval process, which is presumably to address the impacts and violations identified during this Plan Approval, although the APC Determination does not specify the reason for the separate review.”*

*“The specifics of the action being reviewed should determine the proper level of environmental review. By inverting this requirement, the Plan Approval has improperly segmented review of these illegal actions to a subsequent process.”*

Staff Response: The Appellant fails to understand the scope of the Project at issue in this case. The Project involves a Plan Approval to review the effectiveness and applicant’s compliance with conditions imposed in Case Nos. BZA-2000-1697 and ZA-17683(PAD) for the existing 0.706 acre West Pico Oil Drill Site. Under the Plan Approval process, the City does not have discretion to approve the drilling of new wells or the conversion of existing wells. The ZA and WLAAPC were tasked with reviewing conditions of approval imposed on the West Pico Oil Drill Site by the initial decision maker, appealed, and litigated before being agreed upon by all the parties of the above-mentioned lawsuit. The conditions of approval were reviewed previously and determined to be acceptable in 2016 (no appeals were filed at that time). The Applicant did not request modifications of any existing condition of approval and did not propose or request any expansion of the approved use. The current review is required by Paragraph 4.b of the 2001 Settlement Agreement and is conducted pursuant to LAMC Section 12.24-M and Condition No. 78 in Case Nos. BZA 2000-1697 and ZA 17683(PAD). The Production Facility Site was not part of the modernization project that was the subject of the original 2000 EIR or included in the 2001 Settlement Agreement. As a result, the Plan Approval process required under Paragraph 4b of the 2001 Settlement Agreement does not apply to the Production Facility Site and the Site is not part of the whole of the Project. Furthermore, reviewing compliance and efficacy of conditions of approval placed on the West Pico Drill Site will not have any impact on the neighboring Production Facility Site.

**Appeal Point 9:** *“Misrepresentations of Facts Made at APC Hearing Taint the APC Determination.”*

*“At the August 18, 2021 APC hearing on NASE’s appeal, significant misinformation was provided to the Commission by the ZA, most of which was presented after the close of the public testimony. In a post-hearing letter to the APC, NASE provided a detailed description of these errors along with clear documentation contained within the case file for the West Pico Drill Site.”*

Staff Response: This appeal point is related to the Plan Approval entitlement, not the CEQA review for this Project. The Plan Approval entitlement is not further appealable and is not being considered by the City Council.

On August 18, 2021, the WLAAPC held a hearing and voted on this case. On August 27, 2021, the Appellant sent a letter to the WLAAPC requesting a reconsideration of this case citing the same information raised in this appeal point. At the subsequent WLAAPC meeting on September 1, 2021, the WLAAPC discussed the letter and no motion to reconsider this case was made by the Commission.

**RECOMMENDATION**

Upon careful consideration of the Appellant's points, the Appellant failed to meet its burden to show that the evidence the City relied upon to make its determination that the project was categorically exempt was not credible or that substantial evidence supported that an exception to the exemptions applied. Appellant failed to show that either the Zoning Administrator or the West Los Angeles Area Planning Commission erred in its actions relative to the applying the applicable categorical exemptions as the environmental clearance for the Project. Argument, speculation, unsubstantiated opinion, or narrative does not constitute substantial evidence. Therefore, based on the above, in consideration of the CEQA appeal for the Project located at 9101 West Pico Boulevard, the Department of City Planning recommends that the PLUM Committee recommend the City Council deny the appeal and determine, based on the whole of the administrative record, the Project is exempt from CEQA pursuant to CEQA Guidelines, Section 15301 (Class 1) and Section 15321 (Class 21), and there is no substantial evidence demonstrating that an exception to either categorical exemptions, pursuant to CEQA Guidelines, Section 15300.2 applies.

Sincerely,

VINCENT P. BERTONI, AICP  
Director of Planning



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Theodore L. Irving, AICP  
Associate Zoning Administrator

VPB:TLI:MS:ds