Communication from Public

Name:	Warren Resources, Inc.
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Council File No:	17-0447-S2
Comments for Public Posting:	Dear City Council, Planning Commission and Planning Director: Please see the attached written comments on Proposed Mitigated Negative Declaration, ENV-2022-4865-MND Regarding Proposed Amendments to the City's Oil and Gas Ordinance. We appreciate your time and review. Sincerely, Warren Resources, Inc.

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200 North Spring Street, Room 701
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Re: *Comments on Proposed Mitigated Negative Declaration, ENV-2022-4865-MND Regarding Proposed Amendments to the City's Oil and Gas Ordinance*

Dear City Council, Planning Commission and Planning Director:

This firm represents Warren E&P, Inc.; Warren Resources of California, Inc.; Warren Resources, Inc.; Warren Management Corp.; and Warren Operating LLC (collectively "Warren").[1] On behalf of Warren, we are providing these comments on the draft mitigated negative declaration described as ENV-2022-4865-MND (MND), prepared by the City of Los Angeles ("City") for consideration of a draft ordinance to amend sections of the Oil and Gas Drilling Ordinance ("Proposed Ordinance" or "Project").

The City may not lawfully adopt the MND because of numerous deficiencies in the document. As described below, the City failed to analyze the whole of the project in that it states that future parts of the project will be drafted and considered at a future date.

The MND also is deficient in that there is substantial evidence that the Project may have a significant effect on the environment and accordingly an environmental impact report (EIR) must be

[1] Warren operates drilling and production sites within the City and would be detrimentally affected by the Project. It has a beneficial interest that would be adversely affected by the environmental impacts associated with the Project, and the Project will otherwise have a direct, substantial effect on Warren and its operations. Further, Warren makes these comments on behalf of the public interest, which interest would suffer if the City were not compelled to perform its duties under CEQA.

prepared by the City to evaluate the Project. We further note that the City has failed to proceed in a manner required by law, in part, because it has failed to comply with CEQA's analysis and information disclosure requirements, therefore preventing significant information from being presented to the City decision makers and the public, which failure constitutes a prejudicial abuse of discretion.

A. The MND Fails to Evaluate the Whole of the Project By Providing That Future, Foreseeable Actions, Including Plugging, Abandonment, Remediation, Proper Amortization and the Meaning of "Maintenance," All Will Be Reviewed and Adopted at a Later Date.

CEQA requires the consideration, analysis and disclosure of all potentially significant environmental impacts of a proposed "project." CEQA Guidelines [Cal. Code Regs., titl. 14, § 15000 et seq.], § 15060. "Project" is defined as the ***entire*** activity before the agency, the "***whole of the action***, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." CEQA Guidelines, § 15378 (emphasis added). "Accordingly, CEQA forbids piecemeal review of the significant environmental impacts of a project. Agencies cannot allow environmental considerations to become submerged by chopping a large project into many little ones." *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1222 (internal citations omitted).

As the City blatantly concedes, the entire activity before the City is the phasing-out of oil operations within its City limits, but the MND illegally only analyzes a portion of that project:

- "There are many other follow up actions that the City will undertake to ensure the safe phase-out of oil operations citywide and to address the issues that have been raised regarding oil. In addition to this proposed Ordinance, OPNGAS has been tasked with preparing an amortization study to examine the length of time needed for operators their capital investments in oil drilling operations to determine whether individual oil drilling operations must be terminated sooner than the 20 years currently prescribed in the LAMC. City Council has also instructed OPNGAS, in collaboration with DCP and the Los Angeles Fire Department (LAFD), to develop policies for the timely abandonment and remediation of existing well sites." Staff Report, A-2 to A-3.

- "Although the Ordinance does not directly regulate remediation outside of [one] mitigation measure, it represents the first step taken by the City to advance an effort to safely phase out oil and gas extraction by prohibiting and making it a nonconforming use. It is an urgent catalyst to a larger citywide effort to phase out oil drilling in Los Angeles, focused narrowly on prohibiting this incompatible land use sooner rather than later. DCP recognizes that a cleanup and remediation policy needs to be addressed on a citywide basis." Staff Report, P-6.

The City also admits that further ordinance amendments are reasonably foreseeable as a result of the initial "project":

- "Once a well ceases operations, it is **reasonably foreseeable** that the process of abandonment should occur." Staff Report, A-3 (emphasis added).

- "In addition to this proposed Ordinance, City Council has also instructed OPNGAS to develop policies for the timely abandonment and remediation of existing well sites within three to five years of sites ceasing active oil production, with the intention of ensuring oil companies bear the responsibility for abandonment and remediation. . . .While the adoption of the Ordinance [Amendment] would accomplish a significant milestone in initiating the phase-out period, DCP will continue to consult with OPNGAS to conduct the necessary research on site cleanup and remediation policies, leaving open the possibility of future regulatory changes to the Zoning Code, if appropriate." Staff Report, P-6.

- "OPNGAS has been tasked with preparing an amortization study to determine how long existing operators need to recoup their costs and to determine whether individual wells can shut down sooner than 20 years. If the results of the amortization study find that individual wells can recoup their investments sooner, then the Code would be amended to reflect those timeframes." Staff Report, A-3.

- "In order to evaluate whether or not this 20-year period is the appropriate time frame, the Mayor and City Council, as part of CF 17-0447, directed OPNGAS to prepare an amortization study to determine whether this existing amortization period should be amended. The City is in the process of securing a consultant to prepare the study. Depending on the results of this study, future code amendments may require some or all wells to shut down sooner, in instances when the operator may recoup their capital investments prior to the 20-year amortization period currently embedded in the Zoning Code." Staff Report, P-2.

The City further acknowledges that the Proposed Ordinance fails to include a necessary definition for the term "maintenance." Rather than provide the definition now to avoid piecemealing, the City leaves that also for another day under the guise of regulatory guidance:

- "Separately from this Ordinance, DCP's Office of Zoning Administration is preparing a Zoning Administrator's Interpretation on the types of oil-related activities that constitute maintenance. The definition of maintenance is being addressed separately from the Ordinance because of the present need to clarify that maintenance activities, including acidization, are within the oversight of the Zoning Administrator. Once final, this guidance would immediately apply to all oil drilling activities. It would further clarify the types of maintenance activities prohibited under the Ordinance, with limited exceptions to prevent or respond to threats to public health, safety, or the environment." Staff Report, P-3.

Similarly, the City leaves for future determination and analysis the environmental impacts of the future condition of the former oil sites, including how those compare to the current oil operations:

- Given the varied timeline of individual well abandonment and the fact the Ordinance does not establish any regulations related to well site remediation or redevelopment (except where mitigation measures are required . . .), it would be speculative to contemplate when site remediation would occur after the wells are abandoned and the types of redevelopment and future land uses that may occur on former drill sites. What might get built and at what intensity or scale is not possible to identify or analyze at this time . . . The analysis does not examine impacts from remediation and/or future development. MND, pp. 31-32.

In *Laurel Heights Improvement Association v. Regents of University of Cal.* (1988) 47 Cal.3d 376, 396, the Supreme Court established the following test for illegal piecemealing: "We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." Applying this test, the City unquestionably is committing illegal piecemealing in its draft MND by expressly omitting—and leaving for further ordinances and regulatory decisions—the reasonably foreseeable consequences of the Proposed Ordinance and the changes to scope and nature thereof, including the environmental effects.

Under the first prong of *Laurel Heights*, and as set out in the quotes from the Staff Report and MND above, the City concedes that a "reasonably foreseeable consequence" of the Proposed Ordinance is more ordinance amendments as to plugging, abandonment and remediation; amortization; and future use of former oil sites. Indeed, the City even uses the word "reasonably foreseeable" in describing the abandonment work that will follow cessation of operations. Staff Report A-3. Similarly, the City admits that it needs a definition of "maintenance" and thus the missing definition obviously is "reasonably foreseeable consequence" of the initial "project" and certainly serves no independent purpose. Even though a reasonable consequence of phasing-out oil operations in the City is that the property will be put to another use or otherwise suffer urban decay, the MND further fails to analyze these environmental effects, as discussed in more detail below in the next section of this letter. Simply put, the City knows that it is preparing an environmental document that has not fully disclosed and analyzed the "reasonably foreseeable" scope of the true, intended project, or the "whole" of the action to phase-out oil operations.

Regarding the second prong of the *Laurel Heights* test, it is clear that the City intends to, and is going to, further revise the City ordinances in ways that would, unequivocally, "change the scope or nature of the initial project or its environmental effects." 47 Cal.3d at 396. The ordinance changes and regulatory guidance that the City acknowledges will be forthcoming will further serve to phase-out oil operations. The City blatantly admits that the Proposed Ordinance is the first step in the project and changes will be coming on plugging, abandonment and remediation, amortization, what activities fall within the term "maintenance" and the future use of the former oil sites. The City's

intent is clear—it wants to phase-out oil operations as quickly as it can, and more changes will be coming to make that happen. The City cannot avoid the obvious consequence of its intention, namely, that there will be a change in the scope or nature of the initial "project" to make that happen. The City expressly concedes this point in the Staff Report and MND, as noted above, thereby confirming that the second prong of the *Laurel Heights* test is met.

As discussed herein, there also will be changes in the environmental effects of the City's plan to develop procedures and timing for plugging, abandoning and remediation operations, shortening the amortization periods and thereby impacting mineral resources. These future phases serve no independent purpose or utility and by leaving them for another day, the MND drastically understates individual impacts related to the Project. For example, the MND fails to analyze impacts related to plugging and abandonment activities occurring on an accelerated schedule due to the yet undrafted plugging and abandonment requirements and because an amortization schedule, now set at 20 years but which the City acknowledges will likely be shorter, will cause oil and gas operators to plug and abandon wells, including multiple wells at the same time, in order to meet the City requirements. The MND also does not analyze the impacts of remediation operations, which will include removal of concrete pads and other infrastructure, all of which serve no independent utility aside from phasing out oil activities in the City. The second prong of the *Laurel Heights* test is also met for these additional reasons, and the City's illegal piecemealing is undeniable.

Given the above, the City can make no cogent argument that adoption of the Proposed Ordinance is not "a necessary first step to approval" of the later ordinances and regulatory guidance that the City concedes will be forthcoming to phase-out oil operations within the City limits. See *City of Carmel-by-the-Sea v. Bd. of Supers.* (1986) 183 Cal.App.3d 229, 244; see also *Banning Ranch*, *supra*, 211 Cal.App.4th at 1223 ("there may be improper piecemealing when the purpose of the reviewed project is to be the first step toward" some future action). Questions of project scope and piecemealing are not subject to the substantial evidence standard, but instead are analyzed as a question of law by a reviewing court. *Tuolumne Cnty. Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223-24; *Black Property Owners Assoc. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 984 ("Whether a particular activity constitutes a project in the first instance is a question of law."). Here, the City illegally, improperly, and knowingly limited the scope of the project analyzed in the MND by omitting analysis and environmental review of the changes that it intends to incorporate and acknowledges will be forthcoming.

B. Multiple Individual Impact Sections Also Are Deficient Because They Fail to Define an Adequate Baseline; Fail, by the MND's Own Admission, to Adequately Analyze Potential Impacts; and Fail to Analyze, or Properly Analyze, Impacts as Described in The City's Own Thresholds of Significance. Accordingly, the City Failed to Proceed in a Manner Required by Law, and Its Review is Not Supported by Substantial Evidence.

The City can approve the MND only if it finds no substantial evidence that the Project will have a significant effect on the environment. CEQA Guidelines, § 15074(b). CEQA requires that where

there is substantial evidence supporting a fair argument that the Project could have a significant non-mitigable effect, the City must prepare an EIR. CEQA Guidelines, § 15064(f)(1). Even where there is "disagreement among expert opinion supported by the facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR." CEQA Guidelines, § 15064(g).

Moreover, CEQA requires that a lead agency proceed in a manner required by law when preparing a CEQA document. As detailed below, the MND misstates or omits analysis required by CEQA, including analysis required under the CEQA thresholds of significance, including, but not limited to, any analysis of indirect impacts resulting from the Project. As stated by the California Supreme Court, "[n]oncompliance with substantive requirements of CEQA or noncompliance with information disclosure provisions which precludes relevant information from being presented to the public agency . . . may constitute prejudicial abuse of discretion." *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515 (emphasis omitted).

1. The MND's Analysis of Impacts to Mineral Resources is Legally Inadequate and It Describes a Standard Inconsistent with the City's Own Thresholds of Significance.

It is undeniable that the Proposed Ordinance will impact the availability of mineral resources in the City and the State since the upfront and stated goal of the City is to stop oil production within the City limits, with the Proposed Ordinance being the first step in that process. "Mineral resources" are an environmental factor pursuant to CEQA, and the "loss of availability of a known mineral resource that would be a 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 even expressly defines the "environment" to include "the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, *minerals*, flora, fauna, noise, or objects of historic or aesthetic significance." (Emphasis added.)

Here, the Proposed Ordinance *will* result in an increased loss of availability of mineral resources within the City that are of value to the region as acknowledged by the City's own land use policies and General Plan (see further discussion below and in the Land Use section of this letter). Further, the MND ignores the fact that the County of Los Angeles has enacted an ordinance similarly phasing out oil production in the unincorporated portions of the County, thereby further exacerbating the loss of availability of mineral resources of value to the region.

The Proposed Ordinance also *will* result in the loss of availability of known mineral resources that are of value to the State. The State has acknowledged the importance of protecting the oil and gas mineral resources located within its boundaries. "[T]o best meet oil and gas needs in this state, the [CalGEM] supervisor shall administer this division so as *to encourage the wise development of oil and gas resources*." Pub. Res. Code § 3106(d) (emphasis added). In particular, CalGEM shall supervise the "drilling, operation, maintenance, and abandonment of

wells so as to permit the owners or operators of the 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." *Id*. § 3106(b) (emphasis added). Since the Proposed Ordinance seeks to stop recovery of underground hydrocarbon mineral resources rather that encourage their wise development and increase their ultimate recovery, it impacts the loss of availability of mineral resources that are of value to the State and the City is required to analyze the environmental impacts of the loss of availability those resources.

The MND's analysis of impacts to mineral resources is fundamentally flawed in that while the thresholds of significance require an analysis of whether the Project will result in the loss of *availability* of a mineral resource, the MND instead focuses on how much the implementation of the Project would impact current, existing *production* in the City. For example, the MND states that "annual cumulative oil production in the City was two percent of the available Statewide resource" and that "[t]his represents a small amount of the available Statewide resource." MND at 80. Accordingly, the MND concludes that "termination of oil and gas extraction would not represent the loss of a mineral resource of value to the region and the residents of the State." *Id.*

Again, the CEQA Guidelines require an analysis not of the loss of production, but of the loss of availability, of the known mineral resource. The City's own Oil and Gas Health Report dated July 25, 2019, which is incorporated herein by reference, confirms that *1.6 billion barrels* of recoverable oil and gas reserves remain beneath the City:

> Even after more than century of prolific production, the US Geological Survey estimates 1.6 billion barrels of recoverable oil remain in place beneath the City, *rivaling the reserves in the Middle Eastern countries, like Saudi Arabia, Iraq, and Kuwait 14,000 miles away*.[2]

Here, the MND itself even states that "[t]he Los Angeles geological basin has one of the highest concentrations of crude oil per acre in the world." MND at 20. Similarly, as noted in Warren's comment letter dated September 19, 2022, to the Planning Commission, which letter is incorporated herein by reference, Warren noted that a report by the US Geological Service dated February 2013 describes the Los Angeles Basin, which is partly encompassed by the City, as containing "one of the highest concentrations of crude oil in the world. Sixty-eight oil fields have been named . . . including 10 accumulations that each contain more than 1 billion barrels of oil. One of these, the Wilmington-Belmont, is the fourth largest oil field in the United States." USGS Fact Sheet 2012-3120, which is incorporated herein by reference.[3] Accordingly, based on this expert evidence alone it is undeniable that the Proposed Ordinance will have a significant impact on the availability of mineral resources and an EIR is thus required.

[2] https://clkrep.lacity.org/onlinedocs/2017/17-0447_rpt_BPW_07-29-2019.pdf at page 19.
[3] https://pubs.usgs.gov/fs/2012/3120/fs2012-3120.pdf.

Moreover, and as described in the Land Use section below, the MND cherry picks policies in support of its position that "petroleum is no longer considered an important mineral resource at the local level." MND at 80. This statement is contradicted by General Plan policies that the MND neglects to discuss, which provide that petroleum is an important local resource. For example, in discussing the Conservation Element of the General Plan, Proposed Finding 1 of the Planning Commission report describes three policies. These policies generally describe a need for encouraging energy conservation, supporting the ban on offshore drilling and protecting neighborhoods from potential accidents and subsidence associated with drilling and production.

However, listed directly above these policies, and not stated in the MND, is that the objective of these policies and the General Plan is to: "conserve petroleum resources and *enable appropriate, environmentally sensitive extraction."* City General Plan, Conservation Element at II-64 (emphasis added). The fact that the Proposed Ordinance would *ban extraction* rather than *enable extraction* clearly means that it is inconsistent with the General Plan and demonstrates that the City has already concluded that mineral resources are of value to the region and the residents of the State, and the same has been delineated in the General Plan and other land use plans. Indeed, one need only look at the practical realities of current life in the City of Los Angeles, including, among other things, the use of gasoline-powered vehicles, to see that oil still is an important resource to the region.

Again, the MND fails to conduct this part of the analysis under the required standard. It is unquestionable that an ordinance that terminates all oil and gas production in the City would result in the loss of availability of that resource, which importance has been described in State statutes and numerous documents, including the City's own General Plan and other land use plans.

2. The MND's Air Quality Analysis is Deeply Flawed and Inadequate Under the Law.

Expert opinion as described in the attached Air Study provided by Yorke Engineering, Inc. ("Yorke"), a copy of which is included as Attachment A and incorporated herein in full by reference, describes multiple deficiencies in the MND's analysis. For example, the MND includes a gross misstatement of the emissions related to equipment used for plugging and abandonment of wells, thus drastically understating emissions. Another example is the complete lack of any analysis of the health-related impacts related to the release of toxic air contaminants associated with equipment used for plugging and abandonment operations. Yorke notes, among other things, two critical mistakes made in the MND with regard to calculating criteria pollutants.

First, the MND lists equipment used for plugging and abandonment in order to calculate these emissions. However, the MND does not disclose the specifications for all the equipment used when analyzing the emissions, and no sources are cited for the horsepower and load factors used for the calculation of the equipment for abandonment operations. The MND drastically understates the horsepower ratings for the workover rig engine, calculating this as 33 bhp when the normal range for this type of equipment is 450 bhp to 1,000 bhp. The South Coast Air Quality Management District

(SCAQMD) provides that this type of equipment would have approximately 540 bhp and yet the MND uses 33 bhp. The MND also does not describe the necessary mud pump engine that is used in these types of operations. Accordingly, Yorke calculates that criteria emissions related to plugging and abandonment operations are approximately 6.1 times that described in the MND.

Second, the MND provides that up to 19 abandonments could be performed without exceeding the threshold for NOx. Applying proper calculations, under the Regional Significance Thresholds, only three concurrent abandonments could take place without exceeding the NOx threshold. Further, when using the SCAQAMD Localized Significance Threshold as stated in the MND, only one abandonment can be performed at any one time. As noted in Yorke's report, in order to remain under the significance threshold *solely as to Warren's operations* which includes 200+ wells, it would take ten years of continuous well abandonment work. Even if this were possible, which is unlikely given that well abandonment will likely be compressed in time either because operators seek to produce up to the end of the 20-year period or because the amortization period is shortened by the City following its study, this does not even take into account the approximately 2,000 other wells described in the MND as being located within the City that will need to be abandoned.[4]

The MND suffers from another major flaw in that it does not analyze health risk impacts, as required by CEQA, related to plugging and abandonment operations. It is unclear why the MND fails to do this as no explanation is provided. This is particularly concerning as to diesel particulate matter (DPM), which is associated with equipment used for plugging and abandonment operations. As noted in the Yorke report, DPM is "not easily dissipated" as described in the MND. Moreover, as it is a recognized carcinogen, the drastic increase in DPM emissions must be analyzed in terms of a health risk assessment. Yet the MND omits to do this in its entirety. Using the MND's own estimate of 0.19 lb./day alone exceeds the maximum significant cancer risk of 10 in a million while also exceeding the significance criteria related to acute and chronic health hazards. Using the correct power ratings of a workover rig and the inclusion of a mud pump engine, as described in the Yorke report, would result in an emission rate of 1.16 lb./day, which exceeds the maximum cancer risk of 10 in a million while passing the acute health hazard and all but one chronic health hazard. Thus, the cancer risk is 262 times higher than the level that is considered significant. Again, an EIR and much more detailed health risk assessments are needed to properly assess the Project's health risks.

The Yorke report notes that "health risks from DPM produced from the combustion of diesel fuel in the workover rig and other associated engines <u>are not addressed at all</u>." In *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521 (2018), the California Supreme Court noted that the lead agency must make a reasonable effort to discuss the "general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce." In that case, unlike here, the lead agency had provided a general discussion of the adverse health impacts related to pollutants, but this discussion did not connect this analysis to the actual levels of pollutant emitted

[4] The failure to consider a compressed schedule also fatally undermines the MND's light and traffic sections in that both of these sections fail to consider a compressed abandonment schedule.

by the project. *Id.* at 522. Accordingly, the California Supreme Court found the EIR deficient both in that substantial evidence did not support the agency's conclusions and because the absence of relevant information was prejudicial.

Accordingly, the MND Air Quality Analysis section fails in its entirety to meet the minimum requirements of CEQA.

3. The MND's GHG Impacts Analysis is Inadequate Because It Understates the Resulting Emissions from Plugging and Abandonment Operations and Fails, in Its Entirety to Analyze Indirect Impacts That May Result from the Project.

The MND is deficient in that it fails to evaluate direct and indirect impacts related to GHG. This failure stems in part from the points already described in the Air Quality Analysis. For example, the MND describes the difficulty of doing an extensive analysis on the impacts and simply describes an analysis to "illustrate the potential scope" of the emissions. As with the Air Quality Analysis, the MND drastically understates emissions related to plugging and abandonment because of the failure to describe the proper bhp of the drill rig and the failure to include certain necessary equipment in the analysis.

As discussed further below, the MND must discuss the Projects' indirect impacts. CEQA Guidelines, §15064(d). This extends to GHG impacts, which the thresholds of significance acknowledge. The most obvious failure is the potential GHG emissions related to the use of the property after the oil production operations have ceased following the amortization period. This is a fairly easy analysis to undertake as is described in the Yorke report, which analyzes Warren's emissions as compared to a fast-food restaurant with a drive-thru among other uses. Yet the MND declines to make any type of analysis and instead states that such an analysis is too difficult even when a similar report done by Yorke was conducted over a couple of weeks.

The GHG Section also fails because of its apparent assumption that a decrease in production will necessarily result in a decrease in consumption of things like gasoline. The Yorke report points out a basic failure that the GHG Section fails to consider in that Warren transports its oil by pipeline to the local refinery where the oil is processed. The Project curtails oil production but in no way will reduce the amount of oil processed at the area refineries. Accordingly, a similar amount of oil will be trucked in from other sources or imported through the nearby port facilities. The MND fails to consider basic sources of information provided by the California Energy Commission ("CEC"), which references below are incorporated herein by reference. For example, there are multiple refineries located in the area, including some of the largest by production amounts in the State, and nothing in the Proposed Ordinance will reduce the amount of oil processed at these refineries.[5] The oil processed at these facilities will simply come from other, more distant, sources. The CEC information further indicates that foreign oil imports have

[5] https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/californias-oil-refineries

generally increased as production in California has decreased, and describes the amount of foreign oil processed at California refineries.[6] The CEC information is in no way speculative but is a reasonably foreseeable consequence of the Project. This situation is similar to that presented in *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, where the court held that an EIR was required when an ordinance passed restricting the disposal of sewage sludge because it failed to describe the reasonably foreseeable indirect impacts of the restriction, including the need for an alternate disposal site and things like increased hauling.

The GHG Section also fails to describe the impacts related to conflicts with other applicable plans or regulations, such as the Cap-And-Trade Program. Under this program and others, oil and gas production is strictly regulated to reduce GHG emissions. These are some of the most stringent restrictions in the world. The effect of the Project will be to shift production to other areas, including outside the State and overseas, which areas are not subject to these restrictions. Again, information on where these imports are likely to come from are listed in detail at the California Energy Commission website. For example, the CEC describes that as of 2021, Ecuador, Saudi Arabia and Iraq were responsible for more than 66% of California's imports.[7] Thus, production GHG emissions will increase at those sources, as will the emissions related to the transportation of oil to California, leading to increased emissions as the Ports since there are no intrastate pipelines transporting oil to the State. As discussed in a Los Angeles Times article that was published today (and is incorporated herein by reference), GHG and other air emissions already have increased significantly at these Ports.[8] They will further increase with importation of more oil to the region, yet the MND contains no discussion of these reasonably foreseeable indirect impacts. GHG emissions are unique under CEQA in that, unlike other impacts, the effects of GHG emissions are not localized. A metric ton of GHG emissions emitted in Saudi Arabia has the same effect as a metric ton of GHG emitted in California. Yet the MND fails to make any attempt to calculate the effect of shifting production and how this will impact California's various plans to reduce GHG impacts.

For all these reasons, the GHG Section is deficient and does not meet the requirements of CEQA. It is clear that for such a complicated issue, particularly where indirect impacts are key, an EIR must be prepared.

[6] https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/foreign-sources-crude-oil-imports/2020-0.
[7] https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/foreign-sources-crude-oil-imports.
[8] https://www.latimes.com/environment/story/2022-10-17/ports-blame-covid-19-for-spike-in-harmful-emissions.

4. The MND's Land Use and Planning Analysis is Deficient Because It Omits City General Plan and Community Plan Elements That Support the Production of Oil and Gas.

Pursuant to Government Code section 65860, a city zoning ordinance must be consistent with the city's general plan. The MND is required to address this consistency, and to show that "the various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan." Gov't Code § 65860(a)(2); *see e.g., City of Los Angeles v. State of California* (1982) 138 Cal.App.3d 526, 532. As discussed below, the MND is deficient in that it fails to address the many policies of both the City General Plan and the various Community Plans that support the extraction and production of oil within the City. More importantly, the Proposed Ordinance is in fact not consistent with the various City plans.

The MND concludes that there is a less than significant "environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect." MND at 76. In drawing this conclusion, the MND asserts that it reviewed eight total City plans, including the Conservation Element of the General Plan, the Health Wellness and Equity Element to the General Plan, and the Wilmington-Harbor City Community Plan. MND at 76-77. It points to Table 4 as setting forth the "City Policies Supporting the Oil and Gas Ordinance," including certain land use policies, and concludes that the Ordinance is consistent and does not conflict with the policies identified in Table 4. However, Table 4 only lists four land use policies in support of the Ordinance—including one from the West Adams-Baldwin Hills-Leimert Community Plan and two from the Wilmington-Harbor City Community Plan—and fails to address the numerous City land use policies that support the continued extraction, maintenance, and production of oil and gas.

As an initial matter, the Proposed Ordinance will have an impact City-wide, there are wells in various locations all over the City, and the General Plan contains 35 community plans; yet the MND only lists land use policies from the West Adams-Baldwin Hills-Leimert Community Plan and the Wilmington-Harbor City Community Plan. Moreover, the policies cited contemplate continued oil and gas operations—as do many policies not included in the MND—and are therefore in conflict with a ban on such activities.

By way of just one example, a review of the Wilmington-Harbor City Community Plan reveals that the continued extraction of oil is clearly contemplated in the plan. Policy 3-4.6 supports "the consolidation of surface oil extraction operations, the landscaping or improvement of existing oil wells, and elimination of inactive and/or unneeded wells . . . increase compatibility between oil operations and other land uses . . . ." Further, Policy 3-5.1: "Regulate oil extraction activities and facilities in such a manner to enhance their compatibility with the surrounding community." Policy 3-5.2: ". . . require that existing and new oil well sites observe attractively landscaped and well maintained front yard setbacks . . . ." And Policy 3-5.4—which is cited in Table 4—provides for the consolidation of oil extraction operations to increase compatibility between oil activities and other land uses. All of these policies follow Objective 3-5 "[t]o ensure the public health, safety and welfare *while providing for reasonable utilization* of the area's oil and gas resources." (Emphasis

added.) Accordingly, nothing in these policies is consistent with a total ban on oil production like that proposed in the Proposed Ordinance.

The MND also focuses on broad policies supporting discretionary review of *changes to* oil extraction sites, *reduction* of oil production, and general community health, without recognizing that those policies necessarily require the continuance of oil and gas operations. MND at 77. For example, the MND cites to Policy 5.4 of the Health Wellness and Equity Element of the General Plan, to protect communities' health from noxious activities, but fails to discuss that the same Element further provides that "[t]his policy calls for the City to work with operators to ensure that they have the required permits in place, increase its regulatory role and encourage conditions of approval that mitigate land use inconsistencies and conflicts." As a result, this section clearly assumes the continuance of extractions activities within the City.

Similarly, and as discussed above, the Conservation Element of the General Plan provides the Objective to "conserve petroleum resources and *enable appropriate, environmentally sensitive extraction* . . . so as to protect the petroleum resources for the use of future generations and to reduce the city's dependency on imported petroleum and petroleum products." City General Plan, Conservation Element at II-64 (emphasis added). This may only be read in the context of allowing continued extraction. The fact that the Proposed Ordinance would *ban extraction* rather than *enable extraction* clearly means that it is inconsistent with the General Plan. Not only is the Proposed Ordinance inconsistent with the General Plan and Community Plans and thus unlawful, but the MND omits or otherwise fails to consider critical information necessary for the City and public review of the Proposed Ordinance.

5. The MND's Noise Analysis is Legally Deficient Because It Understates Noise and Vibrations Related to Plugging and Abandonment Operations and It Does Not Describe an Enforceable Mitigation Measure for an Impact the MND Concedes is Potentially Significant.

The noise analysis in the MND is defective for multiple reasons. As with other sections in the MND, it fails to describe the baseline (here ambient noise) against which noise levels must be measured. In applying significance thresholds, the lead agency must consider both the absolute noise level associated with a project as well as the increase in the level of noise that will result from a project. *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 887, 893.

As noted elsewhere in this letter, the analysis is flawed in that it assumes all well abandonment and plugging operations at a well site would be done sequentially (one by one) and intermittently. The effect of the City's past ordinances is that multiple wells exist on consolidated drill sites. For example, at Warren's Wilmington site, there are in excess of 200 wells on a 9.22-arce site. Well plugging and abandonment schedules will likely be condensed toward the end of the amortization period with multiple wells being plugged and abandoned at the same site at the same time. However, the noise analysis assumes only that "each well abandonment would last approximately two weeks . . . and on-site equipment would include one

workover rig, one cement pump truck, one welder, and one tractor/loader/backhoe." MND at 82. The MND must analyze the noise impacts of operating multiple pieces of equipment involved in plugging and abandoning of multiple wells at the same time.[9] This is particularly true given that the MND has already concluded that a significant impact will result.[10]

The mitigation measure described as MM NOI-1 is also defective in that it fails to take into account multiple, simultaneous plugging and abandonment operations. Moreover, there is no discussion as to how the requirement would be implemented. Under CEQA, mitigation measures must be enforceable to be considered effective, yet the MND contains no information as to how the measure will be implemented or what will be required of operators. CEQA Guidelines, §15126.4(a)(2).[11]

Moreover, the MND further states that noise reduction would occur using best practices, including by scheduling abandonment activities to avoid operating several pieces of equipment simultaneously (as feasible), which causes high noise levels. MND at 84. The MND also concedes that the LAMC noise limitation does "not apply where compliance is technically infeasible." MND at 83. Accordingly, the noise analysis describes further mitigation without requiring an actual mitigation measure, and essentially concedes that it may not be feasible to avoid operating several pieces of equipment at the same time, which by the MND's admission will result in "high noise levels" and that the LAMC noise limitation "may not apply where it is technically infeasible."

The same problems in assuming low-levels of well plugging and abandonment operations also cause the MND to understate the vibration or ground borne noise levels. The analysis fails to take into account the compressed plugging and abandonment will have to occur in order to meet the City's amortization requirements. Accordingly, the MND fails to meet the basic requirements of CEQA.

6. The MND is Legally Deficient Because It Fails to Examine Any Cumulative Impacts Associated with the Project and Fails to Discuss Reasonably Foreseeable Indirect Impacts.

The MND also is legally deficient because it fails to describe any cumulative impacts associated with the Project, despite the fact that this is required under the Thresholds of Significance and CEQA. This flawed analysis may stem from the fact that the MND assumes that all impacts will be less than those associated with existing oil production operations. As noted throughout this letter, this is simply not true in that the MND only provides conclusory comments that existing operations

[9] The MND Transportation Section similarly fails to describe traffic impacts related to abandonment and fails to describe the potential hazards resulting from increased oil transportation to the refineries by truck.
[10] As noted in the comments on Air Quality Impacts, the MND also omits from its equipment list a mud truck and vastly understates the engine bhp of the workover rig.
[11] The mitigation measure described in the Hazards Section suffers from a similar flaw.

are worse and because the MND drastically understates impacts associated with plugging and abandonment operations. The MND's cumulative impacts analysis consists of four sentences. MND at 100. It includes the statement that "the impacts associated with individual well abandonments have been found to be less than significant." However, direct project-related impacts may be less than significant and still be cumulatively considerable. Yet there is no discussion of the effect of similar recently-enacted restrictions on oil operations such as SB 1137 and the new ordinance adopted by the County of Los Angeles, both of which will result in increased well abandonments. CEQA, however, does not restrict the required cumulative impacts analysis to similar projects but requires an analysis of other past, current, and probable future projects (including those unrelated to oil production restrictions). The MND remarkably contains no discussion of *any* other projects. The courts have found unlawful the conclusory approach used in the MND. The discussion must be more than a conclusion "devoid of any reasoned analysis." *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397, 411 (1979). Accordingly, the MND fails to meet the minimum standards of CEQA for cumulative impacts analysis.

Similarly, the MND also fails to discuss reasonably foreseeable indirect impacts. This requirement extends to the adoption of lead agency ordinances that result in changes to land use patterns. For example, in *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, the court held that an EIR was required when an ordinance was passed restricting the disposal of sewage sludge. The EIR was necessary to analyze an alternate disposal site and things like increased hauling.

Here, the MND is almost completely devoid of any basic analysis of indirect impacts. The MND uses the term "indirect" or "indirectly" approximately 22 times, and the vast majority of these mentions are related to a description of the CEQA thresholds, with the other mentions contained in conclusory statements that there are no indirect impacts. There is not even any discussion as to how the abandoned well sites may be used. For example, in Warren's situation the production site is located in a heavily-industrialized area next to the Port of Los Angeles. Yet there is no discussion as to the potential impacts that may result from the development of the sites as they are abandoned. Basic information, such as the zoning for the consolidated well sites, is not even included in the MND even though this information is readily available. Indirect effects include secondary effects. CEQA Guidelines, § 15358. If a direct change in the physical environment will cause another change in the environment, the secondary effect must be evaluated as an indirect effect of the project. CEQA Guidelines, § 15064(d). The impact analysis must also consider the potential for growth-inducing impacts. CEQA Guidelines, § 15358(a). Yet the MND fails to do this in its entirety.

The MND also fails to analyze the cumulative impacts from increased GHG and other air emissions at the nearby Ports. These emissions can be quantified, and have already increased significantly, as noted in a Los Angeles Times Article that was published today and which is incorporated herein by

reference.[12] Nonetheless, the MND contains no discussion of the cumulative impacts from increased importation of oil to the State through those Ports, even though it is reasonably foreseeable that such activity will occur. Accordingly, the MND is deficient as matter of law.

7. The MND is Flawed Because It Consistently Fails to Describe, or Describes Inaccurately, the Existing Baseline.

A CEQA document must describe the physical environmental conditions in the vicinity of a proposed project as they exist at that time, which environmental setting will normally constitute the baseline physical conditions by which a lead agency will determine whether a project may have a significant impact on the environment. Without a comparison of existing baseline physical conditions to the conditions expected to be produced by a project, an initial study or environmental impact report (EIR) will not inform decision makers and the public of the project's significant environmental impacts, as CEQA mandates. *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* (2013) 215 Cal.App.4th 1013, 1047-1048.

The MND fails to meet this requirement in that it fails to describe, or describes inaccurately, the existing setting. For example, the MND describes an existing setting of oil and gas production, which the City analyzed in a report, and which indicates that "the report . . . shows that activities related to oil and gas operations have been associated with many potential negative health and safety impacts, especially when they occur in close proximity to sensitive uses." MND at 22.

It is on this basis that the City indicates it is going forward with the Proposed Ordinance and on this basis that the MND in multiple sections describes an erroneous, harmful existing setting based on oil and gas wells.

The statement in the MND is false and the CalGEM report referenced is based on areas outside of the City and, in most instances, even outside California.[13] California has conducted relevant studies, including under SB4, but the MND fails to acknowledge or use those studies. In fact, in 2019, the City of Los Angeles Office of Petroleum and Natural Gas Administration and Safety conducted an exhaustive review of government reports and studies and concluded that:

> There is a lack of empirical evidence correlating oil and gas operations within the City of Los Angeles to widespread negative health impacts. The lack of evidence of public health impacts from oil and natural gas operations has been demonstrated locally in multiple studies by the Los Angeles County Department of Public Health, the Los Angeles County Oil & Gas Strike Team,

[12] https://www.latimes.com/environment/story/2022-10-17/ports-blame-covid-19-for-spike-in-harmful-emissions.

[13] The report relies on data from Pennsylvania, Colorado, Oklahoma and Texas relating to unconventional drilling, which is different from the drilling conducted in the City. Moreover, the report ignores numerous studies of California operations and Health Risk Assessments relating thereto, and it does not appear that the report has even been finalized. It is thus improper to rely on this report in support of the MND.

> the South Coast Air Quality Management District and the comprehensive Kern County Environmental Impact Report and Health Risk Assessment.[14]

Accordingly, the MND proceeds in all of its analysis with a fundamentally flawed assumption as to the existing setting.

Moreover, multiple sections of the MND essentially state that it is too difficult to quantify the existing setting. For example, the Air Quality Section provides that "there remains substantial uncertainty in the emissions factors and calculation methodologies." MND at 42. In part, the MND states that this difficulty is due to the need for a "rigorous bottom-up approach [which] requires expert knowledge to apply and relies on detailed data which may be difficult and costly." *Id.* The MND thus declines to make such an assessment (apparently because it is too costly), but nevertheless concludes it has made a good faith effort "for illustrative purposes." *Id.* This is all despite the fact that oil production operations routinely report their emissions to the SCAQMD. The MND then makes the breathtaking statement that "the degree to which air quality emissions may be avoided under the Ordinance is not the basis for the impact determination." *Id.* This is exactly contrary to the purpose of CEQA in that the MND must determine the impacts related to the proposed Project. It is the delta between the existing setting and the emissions projected if the Project is adopted that goes to the very basis of CEQA, either because impacts would be decreased or increased significantly. Further, by failing to describe the existing setting, the MND fails to inform the public of the Project's impacts. The Air Quality Section goes on to state that "because the Ordinance would reduce long-term air quality emissions compared to existing emissions associated with oil and gas extraction . . . the Ordinance would not result in [a cumulative impact]." It is simply impossible to make such a conclusory assertion without quantifying the existing emissions.

It is evident that the City rushed to push forward the MND for consideration and thereby created an inaccurate and legally deficient document. This is acutely evident in its conclusory statements about the harm related to oil and gas operations in the City rather than providing any accurate quantitative analysis of these emissions. It is simply assumed that these emissions are harmful and drastically affecting local residents. Yet Warren's emissions are so low that they compare favorably to a fast-food restaurant with a drive-thru, a supermarket and fast-food restaurant (with no drive-thru) or a 200-unit low rise apartment complex. In fact, Warren's emissions of PM, a TAC, are drastically lower than these other uses. Yorke Report at 3. Warren's emissions are also drastically lower than those defined as requiring a major source permit and lower than those requiring offsets. Yorke Report at 2.

A similar non-substantive approach is also described in the MND's Greenhouse Gas Emissions Section. The language in this section is similar to that contained in the Air Quality Section in that

[14] https://clkrep.lacity.org/onlinedocs/2017/17-0447_rpt_BPW_07-29-2019.pdf at page 145. This review is incorporated herein by reference.

the MND punts on any accurate analysis as to existing emissions and instead includes estimates for "illustrative purposes." MND at 61.

As described above, the Noise Section is similarly lacking in any kind of quantification of the Project baseline for such things as ambient sound conditions.

Accordingly, the MND is fundamentally flawed and does not comply with the basic legal requirements of CEQA, thereby depriving the public and City decision makers of relevant information needed for informed deliberation and consideration.

C. The MND is Also Deficient Because It Fails to Consider the Potential for Urban Decay, Which Requires an EIR.

"A lead agency must address the issue of urban decay in an EIR when a fair argument can be made that the proposed project will adversely affect the physical environment." *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 188. Although economic and social impacts of a proposed project typically fall outside of CEQA review, where those impacts could foreseeably result in an indirect environmental impact or physical change, such as urban decay, the lead agency must do an EIR to assess that impact. Moreover, the agency must adopt enforceable mitigation measures and a monitoring program to ensure those measures are enforced. "*The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded [ ].*" *Id. citing Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-61 (emphasis in original).

Here—in part as a result of its piecemealing of the plugging, abandonment, remediation, and redevelopment requirements—the City has failed to consider the impact that hundreds of abandoned wells will have on the City's economy and eventually on its physical presence. It is reasonably foreseeable that the economic impact of banning drilling and driving the oil and gas industry out of the City will lead to abandoned sites, deterioration, and urban decay. Moreover, as it stands now, the Proposed Ordinance does not require any specific plugging, abandonment, and remediation work to be done. This means that not only does the MND fail to consider the environmental impacts of that plugging, abandonment and remediation work as discussed above, but nothing actually requires that work to be done in the first place. As drafted, it is therefore reasonably foreseeable that the Proposed Ordinance will result in hundreds, or perhaps thousands, of idle and abandoned wells throughout the City, resulting in inevitable urban decay and deterioration that is wholly unmitigated by the MND.

In other words, the City's attempts to address plugging, abandonment, and remediation work in a future ordinance or otherwise is not sufficient under CEQA because it is either (1) an admission that the City is improperly piecemealing, or (2) an improper, vague, and unenforceable attempt at future mitigation of a reasonably foreseeable indirect impact. *See Cal. Clean Energy Committee*, 225 Cal.App.4th at 196 (mitigation measures that did not commit agency to any enforceable "*actual*

mitigation" or "concrete, measurable actions" to ameliorate the expected urban decay caused by the project are insufficient).

D. Conclusion.

For all the foregoing reasons, Warren urges the City to prepare an EIR and to do so on the whole of the project, not just this first phase of it. If the City fails to do so, it will be in violation of the law and subject to legal action for, among other things, failing to comply with CEQA. As described above, the MND is also deficient in that it does not describe a baseline and drastically understates both direct and indirect impacts related to the Project, particularly as to mineral resources and air quality impacts.[15]

Very truly yours,

DAY CARTER & MURPHY LLP

Thomas A. Henry

TAH:tl
Attachments

[15] Warren incorporates by reference its previous letter to the Planning Commission dated September 19, 2022, a copy of which is included as Attachment B. Warren also incorporates any written or oral comments made to the City in opposition to the City's adoption of the Project and the associated MND.

ATTACHMENT A

Yorke
ENGINEERING, LLC
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October 17, 2022

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Subject: Planning Commission Comment on LA City Ordinance

Dear Ms. Hunckler:

The equipment and operations at Warren E&P (Warren) do not emit significant quantities of air pollutants and do not pose a significant health risk to community residents or the public. Warren participates in annual emissions reporting to the South Coast Air Quality Management District (SCAQMD), which includes the mandatory reporting of air pollutants regulated by the Clean Air Act. Due to the low levels of facility emissions, Warren has never been required to obtain a federal operating air permit (Title V permit). Warren's reported emissions from 2021 are shown in Table 1 and are compared to the major source threshold are shown in Figure 1 below. All reported pollutants are less than 15% of the threshold.

Table 1: Warren Criteria Pollutant Emissions

	VOC/ROG	NOx	SOx	CO	PM
Warren E&P	2718	930	50.0	764	48.0

Further, Warren's low emissions of regulated pollutants exempt them from participation in the SCAQMD's RECLAIM program for large sources of oxides of nitrogen (NO_x) and sulfur oxides (SO_x). In addition, Warren has not been required to purchase emission offsets. The thresholds for offsets are lower than for major source permitting and are set by the SCAQMD. The purpose of offsets is to mitigate any emissions increase from a facility that would impact the local ambient air quality. Figure 2 shows the levels of Warren's emissions in comparison to the offset thresholds for the SCAQMD.

Figure 1: Major Source Threshold Comparison

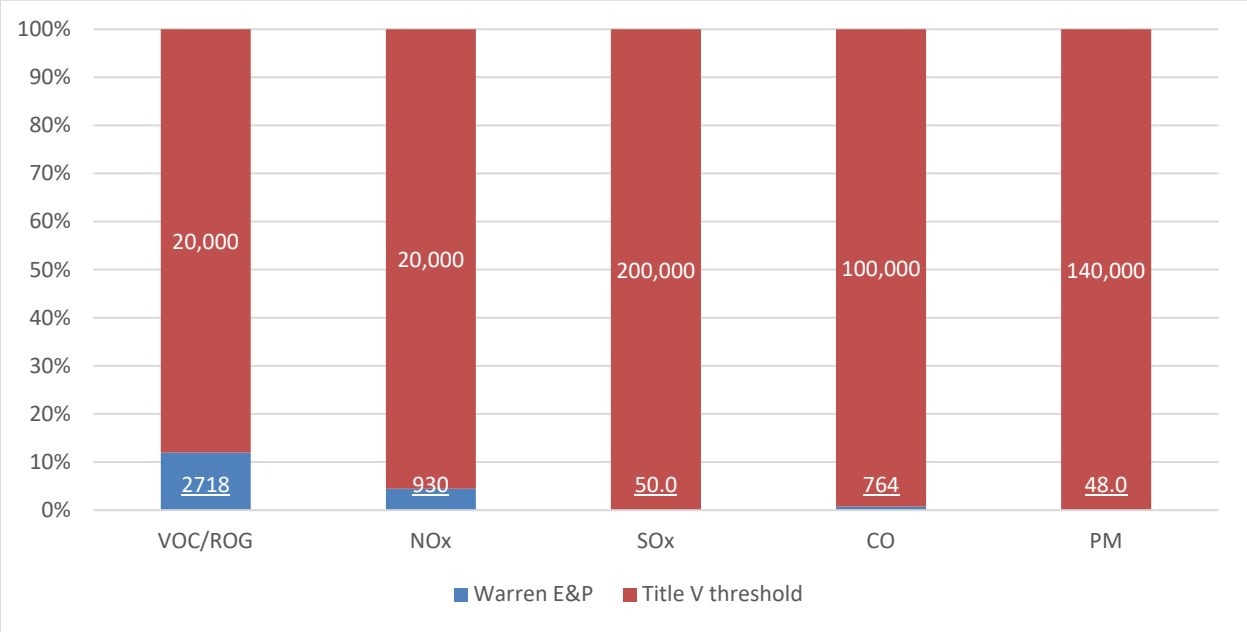
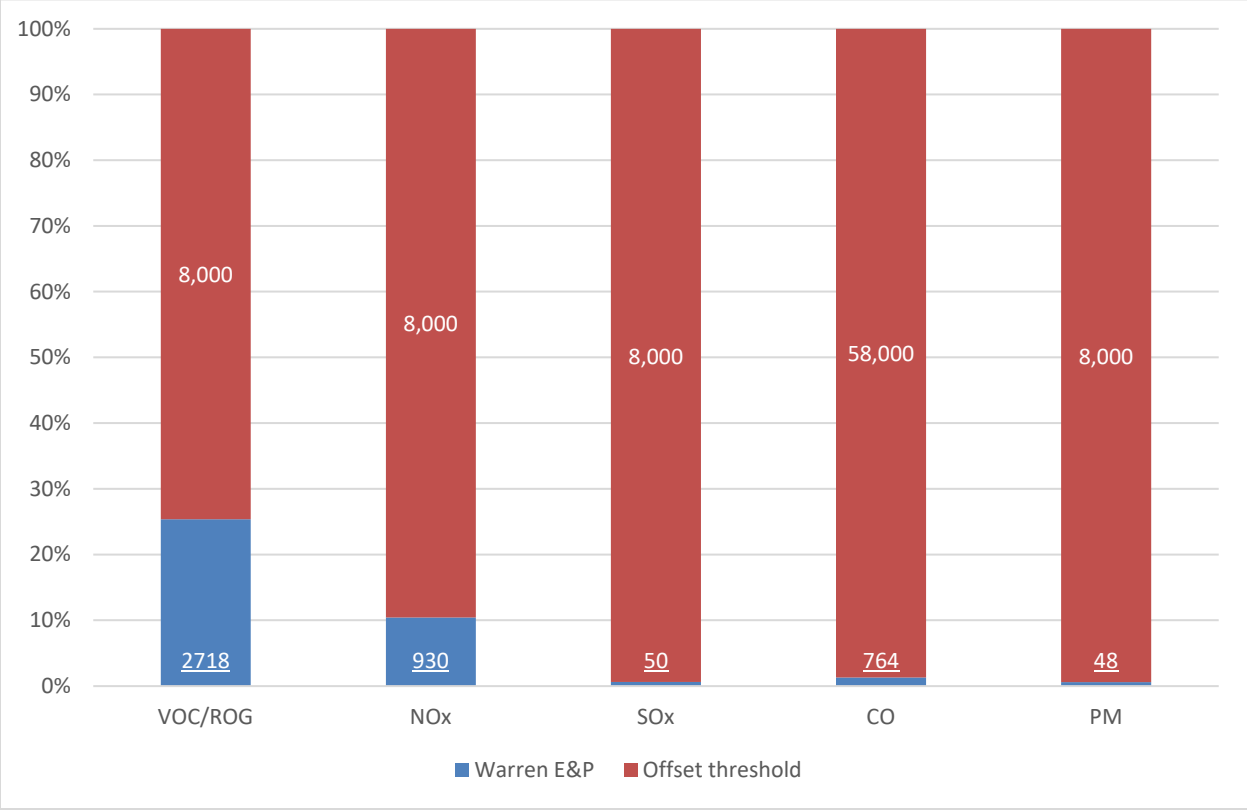


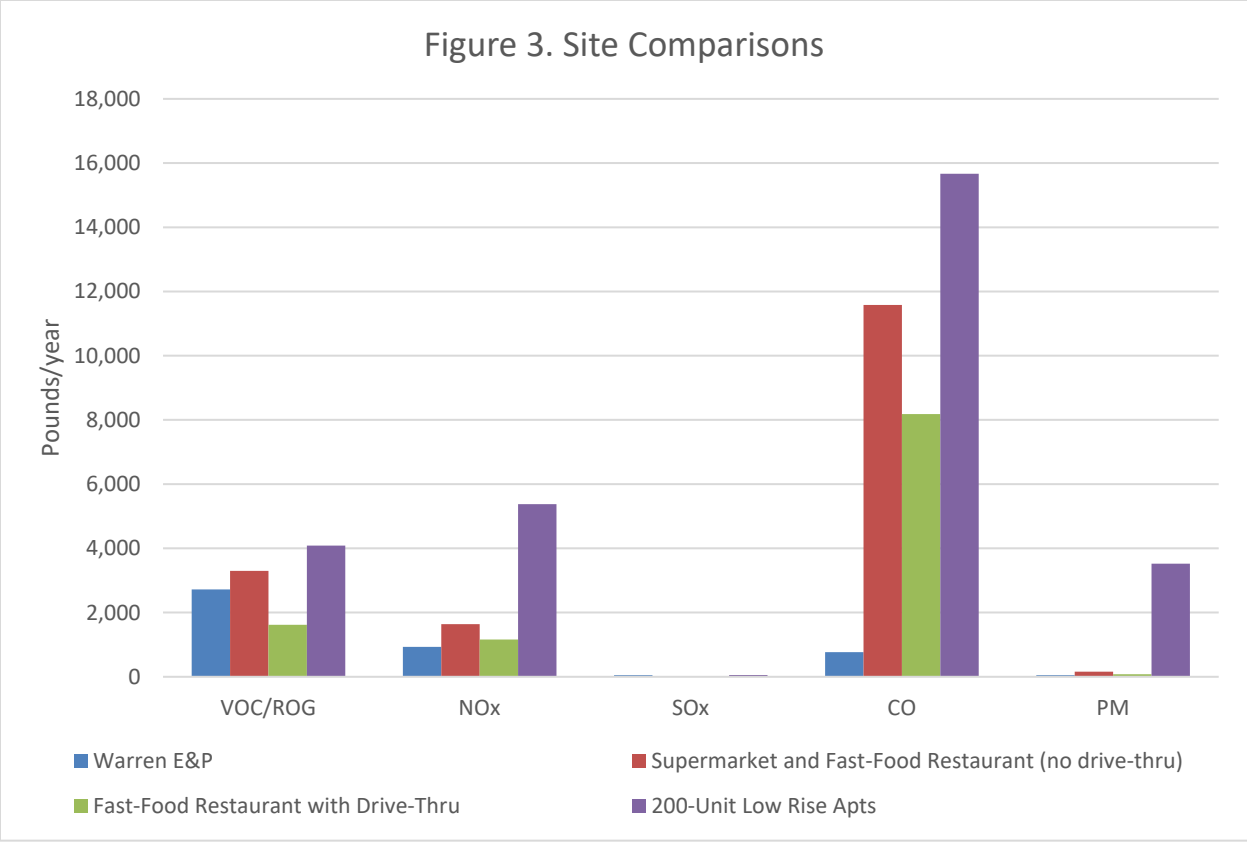
Figure 2: Emission Offset Limit Comparison



As a minor stationary source located in a heavily industrialized area of Wilmington, Warren has not permitted or installed new equipment or modified existing equipment in over six years. In addition, emissions are comparable to other types of business commonly found around Warren. Calculations of expected annual operational emissions from a supermarket and fast-food restaurant without a drive-thru, a fast-food restaurant with a drive-thru, and a 200-unit low-rise apartment complex performed using CalEEMod[1] are shown compared with the annual emissions from Warren as reported in 2021 (Figure 3). The emissions associated with the other types of businesses come from natural gas combustion used for heating and hot water, fuel-powered landscaping equipment, paints and coatings for regular building maintenance, and household products used by residents and cleaning staff.

Warren's emissions of NO_x and CO, two criteria pollutants associated with combustion sources, are lower than all other comparable sites. Its volatile organic compound (VOC) emissions are on the same order of magnitude as the other types of business. VOCs from Warren include any fugitive emissions associated with wells, as well as VOCs from combustion sources.

Figure 3: Site Comparisons



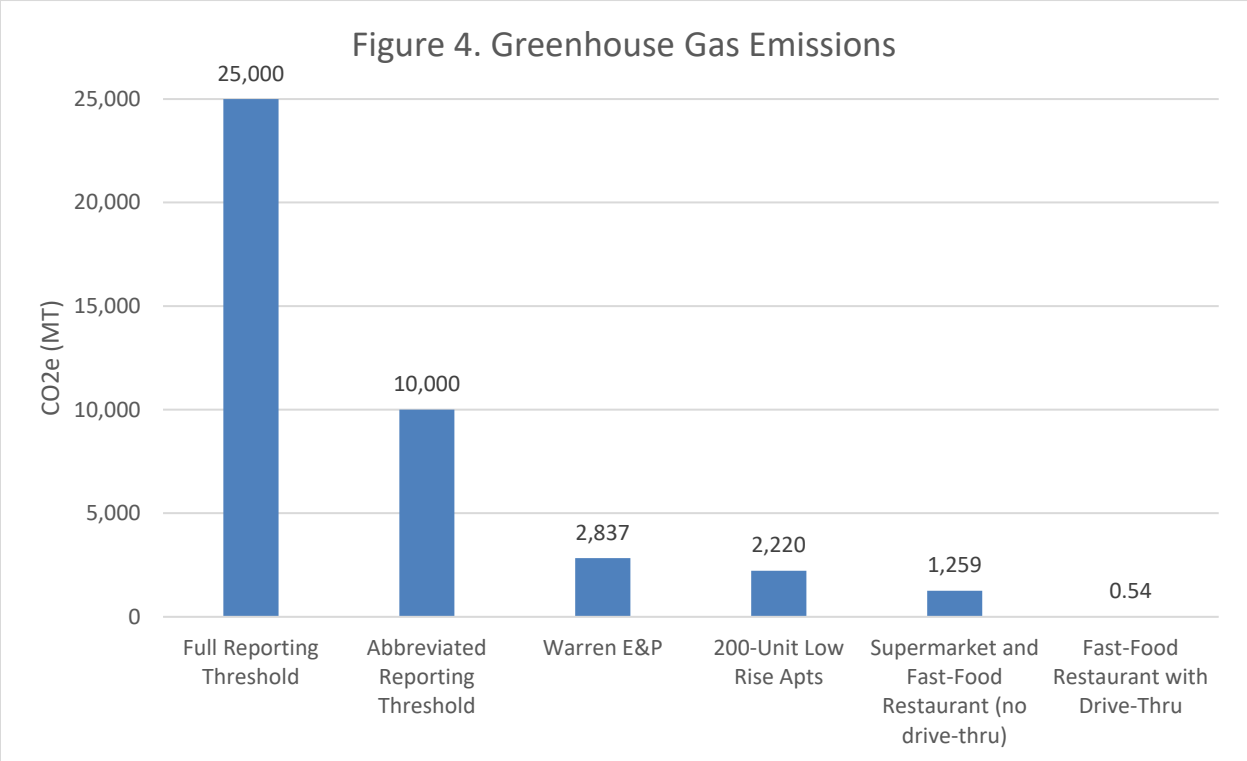
[1] The California Emissions Estimator Model (CalEEMod) is a statewide land use emissions computer model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify potential criteria pollutant and greenhouse gas (GHG) emissions associated with both construction and operations from a variety of land use projects.

GREENHOUSE GAS EMISSIONS

Greenhouse gas (GHG) emissions contribute to global warming, and the contribution from Warren comes from the combustion of natural gas, which produces CO_2, as well as from fugitive methane emissions associated with the wells and drilling components. Warren's emissions are well below the thresholds for mandatory reporting to CARB and the U.S. EPA, as shown in Figure 4. In addition, when compared to other types of land use that might be put in place should the facility be fully decommissioned, such as low-rise apartment housing, the associated annual greenhouse gas emissions would be on the same order of magnitude.

Warren's production currently travels by pipeline to a nearby refinery for processing. If production ceases at the facility, crude will need to be transported into the area by some other means, likely by truck which would increase GHG emissions. The Draft Ordinance's Mitigated Negative Declaration does not address GHG associated with fuel transportation, only reduction in worker commutes and fugitive emissions. Additional analysis should be done in order to accurately quantify the GHG emissions.

Figure 4: Greenhouse Gas Emissions



TOXIC AIR CONTAMINANTS

In addition to regulated pollutants, Warren has consistently reported low emissions of toxic air contaminants. The facility routinely reports a detailed air toxics emissions inventory to the SCAQMD, and yet has never been required by the SCAQMD to prepare a Health Risk Assessment (HRA) because of low emissions. Combustion emissions from Warren operations are comparable to those shown above based on motor vehicle operations at supermarkets, fast-food restaurants, and 200-unit low rise apartments. Fugitive emissions that are associated with Warren operations

have been most recently reported as low emissions that contribute to a low health risk. For example, annual benzene emissions for 2021 are estimated as approximately 6.24 pounds and are well below any cancer risk significance threshold based on a 100 meter or greater distance. This low health risk estimate is consistent with the SCAQMD's determination in all prior reporting years that a facility-wide health risk assessment is not required.

COMPARISON OF ABANDONMENT POLICY IN DRAFT ORDINANCE VERSUS CALGEM REGULATIONS

The Draft Ordinance states that petroleum is not a mineral resource. This is contrary to the primary regulatory responsibility given to the California Department of Conservation's Geologic Energy Management Division (CalGEM) which provides protection to public health, safety, and the environment while overseeing the state's oil, natural gas, and geothermal industries. This basic goal of CalGEM is given to the agency by state law as follows:

> *"[T]o best meet oil and gas needs in this state, the [CalGEM] supervisor shall administer this division so as to encourage the wise development of oil and gas resources." Pub. Res. Code § 3106(d). In particular, CalGEM shall supervise the "drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the 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." Id. § 3106(b).*

CalGEM's regulations have been instituted over decades of governmental studies, legislative action, public participation, and industry input to form and implement regulations that govern every aspect of oil and gas production. CalGEM's regulatory structure with full jurisdiction over the oil and gas industry is extensive and rigorous, in terms of permitting requirements, testing requirements, operational requirements and abandonment procedures.

One major difference between the Draft Ordinance's and CalGEM's defined applicability for when a well becomes idle is as follows:

- The Draft Ordinance states that if a well's operation is discontinued or idled for a continuous period of six months, such use shall be deemed terminated. Thus, the well is designated as permanently idle and from that point on, the timeline toward abandonment starts. In current practice, however, the operation of a well can be ceased for over six months due to supply chain delays in getting the appropriate parts for repair or maintenance just to continue normal operations. The ordinance does not consider such typical scenarios and makes those wells, that were idle only due to waiting for repair or maintenance, as permanently idled and on a timeline to abandonment.
- CalGEM Regulations define a well as idle if it has been inactive for at least two years with no production of oil and gas. CalGEM's Idle Well Management regulations deal with all long-term idle wells, defined as being over eight years idle. For these wells, there are strict requirements for periodic testing including fluid level testing, casing pressure testing and mechanical integrity testing. For all long-term idle wells, these strict requirements help assure well integrity during the period prior to plugging and abandonment. If the operator intends to return the well to production or injection, it may do so only after approval from

CalGEM and passing various operational and integrity tests. Continuous production or injection for six months after approval is required to return the well to active status.

The Draft Ordinance makes oil and gas production and injection a non-conforming use that must be eliminated, requiring all operations and oil production to cease within 20 years. The Draft Ordinance expects that many operators will choose to abandon their wells earlier in that timeline consistent with "all applicable local state and federal laws, regulations, rules and standards." The process of dealing with long-term idle wells and abandonment procedures are already greatly detailed in CalGEM's compilation of Statutes and Regulations, which include workable timelines for abandonment.

Companies with long-term idle wells are required to plug and abandon at least 4% to 6% of their long-term idle wells each year. The Draft Ordinance provides no correlation to CalGEM's regulations or statutes, and conflicts with some of the definitions, the primary one being the definition of "idle" as being over six months of no production or injection, whereas CalGEM defines "idle" as being over two years of no production or injection. The Draft Ordinance does not allow a return to production after becoming idle, while CalGEM does provide a process of returning to an active status after being idle.

In 2019, CalGEM revised its idle well regulations to create far more stringent test requirements that better protect public safety and the environment from potential threats posed by idle wells. Tests that must be performed include casing pressure tests, mechanical integrity tests, fluid level tests, and clean-out tags. Many of the current problems with long-term idle wells and also plugged and abandoned wells, which were previously plugged and abandoned under less stringent regulations, are addressed by the revised Idle Well Management regulations.

If all wells must essentially cease operations as a non-conforming use within twenty years, not only will it have great direct effects on the industry, but also on the probable glut of abandonment work that will result at the end of this 20-year period.

The Draft Ordinance prohibits certain types of maintenance and re-work on wells, as it interprets this as encouraging production of oil. In practice, maintenance and re-work is required to at least maintain stable viability of the resources, which is the goal of both CalGEM and the operators. Maintenance also serves to reduce the potential for a leak or spill or other adverse event that could impact the local community or the surrounding environment. The Draft Ordinance does not clearly define what activities constitute prohibited maintenance, which would cause varying interpretations by operators and agencies.

DEFICIENCIES IN THE DRAFT ORDINANCE'S MITIGATED NEGATIVE DECLARATION (MND)

The MND and its supporting Air Quality and GHG Technical Report is inadequate for several reasons. First, the MND significantly underestimates the potential impacts for following an intensive and accelerated abandonment program, including not only the quantity of emissions that could exceed significance thresholds for criteria pollutants and GHG, but also for toxic air contaminants (TAC) that may have acute, chronic, and carcinogenic health effects. In addition, the Draft Ordinance's MND does not include an assessment of human health for its proposed mandated abandonment program on either a per-well basis or on the full inventory of city wells to be abandoned. It only presents criteria and GHG emissions for one well abandonment at a time,

without a health risk assessment. Using references to several studies, the Draft Ordinance's MND cites area-wide emissions for fugitive components and wellheads, but only for criteria and GHG emissions. Toxic air contaminants are not quantitatively discussed or determined.

When determining whether a threshold for a criteria pollutant, a toxic pollutant such as DPM, or GHG is being exceeded, the analyses should use the most representative equipment ratings and assumptions for the equipment to be used during abandonment activities. The Draft Ordinance's MND used averages for many of their input values. If significance thresholds are exceeded after correction and refinement of the MND's technical report, to pass the Ordinance when a significance level is exceeded, the City Council will have to approve an Overriding Consideration that the Potentially Significant Impacts posed by abandonment activities exceed those from fugitive emissions from oil fields' wells and well cellars.

In addition, the Draft Ordinance's MND does not disclose the specifications for all the equipment used when analyzing abandonment emissions per well. There are no sources cited for the horsepower or load factors used in the CalEEMod calculations for the equipment items assumed for abandonment activities.

Most importantly, an incorrect horsepower rating for the main equipment item, the workover rig engine, used during abandonment activities is used in the CalEEMod analysis. The MND's technical report shows that 33 bhp was used for the workover rig engine's power rating, whereas the normal range for a self-propelled mobile tractor-based workover rig is 450 bhp to 1,000 bhp. From other available Environmental Impact Reports prepared by the South Coast Air Quality Management District (SCAQMD), a standard rig used for operations that would include abandonment, well maintenance, and drilling, is approximately 540 bhp[2i]. Therefore, the workover rig emissions are roughly sixteen times the emissions calculated by CalEEMod in the MND. In addition, per research on typical equipment on-hand during abandonment activities, a mud pump engine is included. Adding a typical mud pump engine, which has a similar sized engine to the workover rig engine, produces a roughly six-fold increase in the emissions of criteria, toxic and GHG pollutants during abandonment activities.

COMPARISON OF ABANDONMENT EMISSIONS IN THE DRAFT ORDINANCE'S MND VERSUS THE MND REVISED TO CORRECT INFORMATION

Attachment 1 includes tables presenting the emissions of criteria emissions, DPM emissions (a toxic air contaminant), and GHG are shown in the attachments. The tables use most of the assumptions used in the Draft Ordinance's MND, including a schedule of five working days over a period of two weeks for a typical abandonment event; the offroad equipment necessary for abandonment including a workover rig engine, cement pump engine, welding engine and one tractor/loader/backhoe engine; and worker trips in both normal light-duty and heavy-duty vehicles to and from the jobsite. All the data and assumptions were input to CalEEMod originally for presentation in the Draft Ordinance's MND.

[2] South Coast Air Quality Management District, Final Environmental Impact Report for: Breitburn Santa Fe Springs Blocks400/700 Upgrade Project, August 2015. State Clearinghouse No.: 2014121014. Appendix B - Air Quality and Greenhouse Gases Technical Report; Table B-16

The revisions to these calculations determined by CalEEMod include only the correction of the power rating of the workover rig engine from 33 bhp to 540 bhp, and the inclusion of one mud pump engine, also an offroad equipment item with a power rating of 540 bhp. There were no changes to the time of usage or load factor of each equipment item included in the original MND's CalEEMod analysis. The calculated increase in emissions from the original MND to the revised MND is due solely to the correct power rating and the inclusion of one mud pump engine, by prorating the combined bhp-hr for all abandonment offroad equipment. The emissions of each criteria pollutant, including PM_{10}, increased by 6.11 times. Yorke assumes that all the PM_{10} is DPM. Since the only combustion sources contributing particulate emissions during abandonment are diesel-powered, this assumption is sound.

Each criteria pollutant's emissions therefore are increased by 6.11 times. Although the significance thresholds for both the Regional Significance Thresholds and the SCAQMD Localized Significance Thresholds are not exceeded for any single abandonment event, the number of abandonment events that can be performed concurrently at the facility are decreased substantially.

The Draft Ordinance's MND determined that when comparing the number of concurrent abandonments to the Regional Significance Thresholds, up to nineteen abandonments could be performed without exceeding the threshold for NO_x, the criteria pollutant that approached its threshold the closest. The revised MND analysis, using the correct power rating of the workover rig engine and including the mud pump engine, causes the number of allowable concurrent abandonments to drop from nineteen to three abandonments.

When comparing the allowable concurrent abandonments to the SCAQMD Localized Significance Threshold stated in the Draft Ordinance's MND, only one abandonment can be performed at any one time when using the correct power ratings and equipment, compared to nine abandonments in the Draft Ordinance's MND.

From a review of CalGEM's Wellstar database of active and idle production and injection/water disposal wells, Warren E&P currently has 165 active wells and 79 idle wells at its WTU facility at 625 E. Anaheim Street in Wilmington. Prorating the number of abandonments that can be performed concurrently during one-year yields 26 wells per year that can be abandoned without exceeding the SCAQMD Localized Significance Threshold stated in the Draft Ordinance's MND. Therefore, it would take almost ten years of continuous abandonment activity for Warren E&P to abandon its existing idle wells and the remaining active wells once the Draft Ordinance's amortization period dictates those active wells must also be abandoned. As there are multiple oil and gas production companies that will be required to meet the same thresholds and abandonment requirements as Warren E&P. Warren E&P is just one facility; the emissions of criteria, toxic and GHG pollutants will be replicated many times over from similar oil and gas production companies that also have wells throughout the City. Community residents may experience significant health risks that will be produced by an accelerated abandonment program, especially for those community residents living in close proximity to the abandonment locations. Health risks determined from many abandonments will be cumulative and will show a far greater area-wide impact than an assessment that only focuses on a per-well emissions basis.

SCAQMD TIER 2 SCREENING-LEVEL HEALTH RISK ASSESSMENT FOR DPM EMISSIONS

The MND states that DPM emissions from abandonment activities are short-term and are easily dissipated in the environment. In fact, since DPM is classified as a TAC, it is more likely to pose a health risk to the community than alleged health risks due to fugitive emissions from oil and gas production well heads and well cellars. Combustion emissions of DPM will be more concentrated at all abandonment locations. The workover rig and associated offroad combustion equipment are large point sources at specific locations, rather than area sources such as fugitive emission from smaller non-combustion sources spread throughout the oil field.

The MND also includes a comment that the long-term health risks from the abandonment of each well are insignificant. However, this this does not account for the cumulative impact of the health risks for the abandonment of all wells. As DPM is recognized as a carcinogen which also poses chronic health impacts to the respiratory system, the omission of a Health Risk Assessment (HRA) to assess DPM in the MND is a deficiency that needs to be addressed.

The SCAQMD has defined CEQA health risk thresholds for long-term and short-term health impacts. The health risks associated with DPM are the long-term cancer risk, cancer burden risk, and chronic health hazard (CHH) index to the respiratory system; DPM does not have a listed health risk impact for short-term acute health hazard risks. The SCAQMD CEQA thresholds for these health risks are the cancer risk of 10 in a million and the CHH index of 1 (CEQA does not define a threshold of significance for cancer burden).

Yorke Engineering has prepared a Tier 2 screening-level HRA for DPM emissions based on SCAQMD procedures from both the existing MND, with its incorrect lower rating of 33 bhp for the workover rig engine, and a corrected rating of 540 bhp for the workover rig engine. As shown in the attachment presenting the HRA outputs, both scenarios fail and are shown to be Potentially Significant Impacts to human health due to the emissions of DPM. Therefore, the daily DPM emissions from one abandonment event, and thus increased cancer risk due to abandonment activities necessary to comply with the Draft Ordinance's abandonment requirements, may in fact outweigh any perceived reduction of risk from fugitive emissions from oil and gas production wells.

Attachment 2 presents the results of Yorke's screening HRA for DPM emissions, which again were not analyzed in the Draft Ordinance's MND. The results show that the DPM emission rate of 0.19 lb/day as cited in the Draft Ordinance's MND exceeds the maximum cancer risk of 10 in a million, while falling below the limit of 1 for the CHH index. The cancer risk at 0.19 lb/day of DPM emissions produces a calculated cancer risk that is 42.9 times higher than the threshold level that would not result in a significant impact. At the very least, a more detailed HRA in accordance with the SCAQMD CEQA guidelines would be required to prove that a Potentially Significant Impact would not result. A summary of the screening health risk results for the existing MND is shown below.

Table 1: Screening HRA Results – Existing MND

Risk Parameter	Risk Level	Threshold	Threshold Exceeded?
Cancer Risk (in one million)	429	10	Yes
Chronic Health Hazard Index (HIC)	0.25	1	No

Notes:

1. Cancer risk based on 2-year exposure.
2. Thresholds are based on SCAQMD CEQA Air Quality Guidelines.

Attachment 3 presents a screening HRA prepared by Yorke for DPM emissions calculated from the revised data that was included in the MND, where the correct power rating of the workover rig was used in addition to the inclusion of a mud pump engine. The revised MND shows that the DPM emission rate of 1.16 lb/day exceeds the maximum cancer risk of 10 in a million and the CHH index of 1. The cancer risk at 1.16 lb/day of DPM emissions produces a calculated cancer risk that is 262 times higher than a level that would not be a significant impact. Again, further detailed HRAs including those using more advanced computer modeling of weather and health factors would be required to a prove that a Potentially Significant Impact would not result. A summary of the screening health risk results for the revised MND are shown below.

Table 2: Screening HRA Results – Existing MND

Risk Parameter	Risk Level	Threshold	Threshold Exceeded?
Cancer Risk (in one million)	2,619	10	Yes
Chronic Health Hazard Index (HIC)	1.53	1	Yes

Notes:

1. Cancer risk based on 2-year exposure.
2. Thresholds are based on SCAQMD CEQA Air Quality Guidelines.

Although cancer burden does not have an SCAQMD CEQA threshold of significant impact, cancer burden does have a threshold of 0.5 under the SCAQMD air toxics reporting program as well as their permitting program for public notification requirements. For both scenarios presented above, cancer burden health risks were estimated to be significantly higher than 0.5. Based on the cancer risk and the distance to receptors in the MND, the cancer burden health risk would be well above the air toxics reporting and public notification threshold.

CONCLUSIONS

Warren complies with all regional, state, and federal rules and regulations and has obtained the appropriate air quality permits for all operating equipment. Restricting maintenance, testing, and repair of the existing equipment would not represent an emission reduction or result in any improved air quality for the area or the region.

The Draft Ordinance's MND had several notable deficiencies including the use of incorrect data when calculating emissions of criteria, toxic and GHG emissions. It also tended to minimize impacts that will result from a significant increase in accelerated abandonment operations compared to those abandonment operations that are systematically scheduled and regulated by CalGEM. Also, certain pollutants that are toxic and carcinogenic, such as DPM and other combustion TACs, will be produced in much larger quantities, and will not be controlled solely by using regulations that limit engine idling to five minutes as suggested in the Draft Ordinance's Initial Study. Elapsed time for active equipment operation for abandonment activities will be far greater than idling time, as idling only occurs during standby status or equipment downtime.

Perhaps the largest deficiency in the Draft Ordinance's MND is the absence of any calculated health risks associated with the drastically increased emissions of DPM from abandonment activities due to the Draft Ordinance itself. When comparing the perceived health risks of fugitive emissions, which are generally emitted as an area source and do not involve any combustion of fuels such as diesel, to the increased emissions of DPM, the resulting real health risks from DPM produced from the combustion of diesel fuel in the workover rig and other associated engines are not addressed at all. Further studies should be completed on the real and expected impacts of increased DPM emissions on human health and the environment, especially in those areas where most abandonment activities will occur.

In general, Warren's emissions are low and do not exceed thresholds that would qualify the facility as a major source requiring a federal facility operating permit, or that would require acquisition of emission offsets. Due to its low emissions, Warren has not had to submit a full health risk assessment to the SCAQMD.

Warren is part of an oil and gas production industry that per the 2022 Draft SCAQMD Air Quality Management Plan (AQMP) produces less than 1 percent of the total emissions of criteria pollutants, including ROG, VOC, NOx and PM10, in the South Coast Air Basin.[3] The oil and gas industry is not listed as a top-ten significant source of pollution-emitting categories in the Draft AQMP, while off-road equipment is listed as the second-largest emitting category in the Draft AQMP. The addition of off-road equipment emissions from an accelerated abandonment program would only produce more such emissions in community areas that already see a large percentage of emissions from industrial activities. For example, the Ports of Long Beach and Los Angeles recently issued a report of emissions from port operations, showing annual emissions increases from 2020 to 2021 for DPM (up to 56%) and NOx (up to 54%)[4]. The accelerated phase-out of oil and gas production in the Los Angeles area would increase importation of oil from foreign nations, thus producing increased transportation emissions of DPM and NOx due to oil transport by tanker ships.

[3] South Coast Air Quality Management District, Draft Air Quality Management Plan – 2022, Chapter 3 – Base Year and Future Emissions.

[4] Los Angeles Times, 10/17/2022, "Ports Blame Covid-19 for Surge in Harmful Emissions," https://www.latimes.com/environment/story/2022-10-17/ports-blame-covid-19-for-spike-in-harmful-emissions

In conclusion, Warren E&P finds that the Draft Ordinance's MND is deficient since it does not fully discuss the environmental effects of the increased emissions from off-road equipment in an accelerated abandonment program. The resulting health impacts from DPM emissions exceed the thresholds for carcinogenic and long-term chronic respiratory health risks. The MND failed to fully address immediate health risks for receptors for abandonment activities, since there was no health risk screening at all for DPM emissions in the Air Quality discussions of the Initial Study and the MND itself.

Should you have any questions or concerns, please contact me at (949) 426-4943.

Sincerely,

Don Barkley
Senior Engineer II
Yorke Engineering, LLC
DBarkley@YorkeEngr.com

Enclosures:

1. Attachment 1 – Emissions from Abandonment Activities / Existing MND
2. Attachment 2 – Emissions from Abandonment Activities / Revised MND
3. Attachment 3 – Health Risk Screening of Abandonment Activities / Existing MND
4. Attachment 3 – Health Risk Screening of Abandonment Activities / Revised MND

ATTACHMENT 1 – EMISSIONS FROM ABANDONMENT ACTIVITIES / EXISTING MND

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Abandonment Emissions Comparison - Proposed MND vs. Revised Proposed MND

Schedule		
Days per Week	5	5
Number of Weeks	2	2
Total Days per Abandonment	10	10

Construction Equipment Emissions - Abandonment Per Well	MND for Proposed City Ordinance										
	Quantity	Power, Bhp	Hours per Day	Bhp-hr	ROG - lb/day	NOx - lb/day	CO - lb/day	SOx - lb/day	PM10, lb/day	DPM, lb/day	GHG CO2e, MT/yr
Off-Road Equipment											
Workover Rig	1	33	8	264							
Cement Pump Engine	1	367	1	367							
Welding Engine	1	84	6	504	0.51	4.69	5.79	0.01	0.19	0.19	3.88
Tractor / Backhoe / Loader	1	84	6	504							
Mud Pump Engine	0	0	0	0							
				1,639							

Construction Vehicle Emissions - Abandonment Per Well	Vehicle Category	Vehicle Trips	Miles per Trip	ROG - lb/day	NOx - lb/day	CO - lb/day	SOx - lb/day	PM10, lb/day	DPM, lb/day	GHG CO2e, MT/yr
Worker Pick-Up Trucks	LDA, LDT1, LDT2	20	18.5	0.09	0.10	1.51	0.00	0.02	0.02	1.25
Vendor Truck	HHDT	6	10.2	0.01	0.31	0.14	0.01	0.02	0.02	1.05
Hauling Truck	HHDT	0	20	0.00	0.00	0.00	0.00	0.00	0.00	0.00
On-Site Truck	HHDT	0	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00
				0.61	5.10	7.44	0.02	0.23	0.23	6.18

Regional Significance Threshold	75	100	550	150	150	NA	NA
Exceeds Regional Significance Threshold?	No	No	No	No	No	No	No
SCAQMD Localized Significance Threshold (@ 25m)	NA	46	231	NA	4	4	NA
Exceeds SCAQMD Localized Significance Threshold?	NA	No	No	NA	No	No	No
Number of Abandonments Per Day Before Exceed Regional Significance Threshold	19						
Number of Abandonments Per Day Before Exceed SCAQMD Localized Significance	9						

ATTACHMENT 2 – EMISSIONS FROM ABANDONMENT ACTIVITIES / REVISED MND

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Abandonment Emissions Comparison - Proposed MND vs. Revised Proposed MND

Schedule		
Days per Week	5	5
Number of Weeks	2	2
Total Days per Abandonment	10	10

Construction Equipment Emissions - Abandonment Per Well	Revised MND to Correct Rig Bhp and Add Mud Pump Engine										
	Quantity	Power, Bhp	Hours per Day	Bhp-hr	ROG - lb/day	NOx - lb/day	CO - lb/day	SOx - lb/day	PM10, lb/day	DPM, lb/day	GHG CO2e, MT/yr
Off-Road Equipment											
Workover Rig	1	540	8	4,320							
Cement Pump Engine	1	367	1	367							
Welding Engine	1	84	6	504	3.12	28.66	35.38	0.06	1.16	1.16	23.71
Tractor / Backhoe / Loader	1	84	6	504							
Mud Pump Engine	1	540	8	4,320							
				10,015							

Construction Vehicle Emissions - Abandonment Per Well	Vehicle Category	Vehicle Trips	Miles per Trip	ROG - lb/day	NOx - lb/day	CO - lb/day	SOx - lb/day	PM10, lb/day	DPM, lb/day	GHG CO2e, MT/yr
Worker Pick-Up Trucks	LDA, LDT1, LDT2	20	18.5	0.09	0.10	1.51	0.00	0.02	0.02	1.25
Vendor Truck	HHDT	6	10.2	0.01	0.31	0.14	0.01	0.02	0.02	1.05
Hauling Truck	HHDT	0	20	0.00	0.00	0.00	0.00	0.00	0.00	0.00
On-Site Truck	HHDT	0	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00
				3.22	29.07	37.03	0.07	1.20	1.20	26.01

Regional Significance Threshold	75	100	550	150	150	NA	NA
Exceeds Regional Significance Threshold?	No	No	No	No	No	No	No
SCAQMD Localized Significance Threshold (@ 25m)	NA	46	231	NA	4	4	NA
Exceeds SCAQMD Localized Significance Threshold?	NA	No	No	NA	No	No	No
Number of Abandonments Per Day Before Exceed Regional Significance Threshold	3						
Number of Abandonments Per Day Before Exceed SCAQMD Localized Significance	1						

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Possible Duration for Number of Warrant E&P Wells to be Abandoned	
Idle Wells to Abandon per CalGEM Database on Wellstar	79
Active Wells to Abandon per CalGEM Database on Wellstar	165
TOTAL WELLS TO ABANDON	**244**
Weeks to Abandon One Well as one Abandonment Event	2
Wells that can be Abandoned in Two Weeks without Exceeding Regional Significance Threshold	3
Wells to Abandon Continuously in One Year without Exceeding Regional Significance Threshold	**78**
Wells that can be Abandoned in Two Weeks without Exceeding SCAQMD Localized Significance Threshold	1
Wells to Abandon Continuously in One Year without Exceeding SCAQMD Localized Significance Threshold	**26**

ATTACHMENT 3 – HEALTH RISK SCREENING OF ABANDONMENT ACTIVITIES / EXISTING MND

EMISSIONS ARE ENTERED ON THE EMISSIONS WORKSHEET OR ON ONE OF EQUIPMENT WORKSHEETS

INPUT PARAMETERS ENTERED ON THE EMISSIONS SHEET ARE USED FOR TIERS 1 AND TIER 2 ANALYSES

TIER 2 SCREENING RISK ASSESSMENT REPORT

(Procedure Version 8.1 & Package N, September 1, 2017) - Risk Tool V1.105

A/N: N/A **Fac:** Warren - Original **Application deemed complete date:** 10/12/2022

1. Stack Data

Equipment Type: Other

Combustion Eff: 0.0

No T-BACT

Operation Schedule: 8 hrs/day; 7 days/week; 52 weeks/year

Stack Height: 14 ft

Distance to Residential: 25 m

Distance to Commercial: 25 m

Meteorological Station: Long Beach Airport

2. Tier 2 Data

Dispersion Factors tables	Point Source
For Chronic X/Q	Table 6
For Acute X/Q max	Table 6.4

Dilution Factors

Receptor	X/Q ($\mu g/m^3$)/(tons/yr)	X/Qmax ($\mu g/m^3$)/(lbs/hr)
Residential	36.19	676.64
Commercial - Worker	36.19	676.64

Intake and Adjustment Factors

	Residential	Worker
Year of Exposure	2	
Combined Exposure Factor (CEF) - Table 4	311.35	4.47
Worker Adjustment Factor (WAF) - Table 5	1	3.00

A/N: N/A Application deemed complete date: 10/12/22

3. Rule 1401 Compound Data

Compound	R1 - Uncontrolled (lbs/hr)	R2 - Controlled (lbs/hr)	CP $(mg/kg\text{-}day)^{-1}$	MP MICR Resident	MP MICR Worker	MP Chronic Resident	MP Chronic Worker	REL Chronic ($\mu g/m^3$)	REL 8-hr Chronic ($\mu g/m^3$)	REL Acute ($\mu g/m^3$)	MWAF
Particulate Emissions from Diesel-Fueled En	2.38E-02	2.38E-02	1.10E+00	1.00	1.00	1.00	1.00	5.00E+00			1

4. Emission Calculations

Compound	R1 (lbs/hr)	R2 (lbs/hr)	R1 (lbs/day)	R2 (lbs/day)	R2 (lbs/yr)	R2 (tons/yr)
Particulate Emissions from Diesel-Fueled En	2.38E-02	2.38E-02	1.90E-01	1.90E-01	6.92E+01	3.46E-02
Total	**2.38E-02**	**2.38E-02**	**1.90E-01**	**1.90E-01**	**6.92E+01**	**3.46E-02**

TIER 2 RESULTS **A/N:** N/A **Application deemed complete date:** 10/12/22

5a. MICR

MICR Resident = CP (mg/(kg-day))^-1 * Q (ton/yr) * (X/Q) Resident * CEF Resident * MP Resident * 1e-6 * MWAF

MICR Worker = CP (mg/(kg-day))^-1 * Q (ton/yr) * (X/Q) Worker * CEF Worker* MP Worker* WAF Worker* 1e-6 * MWAF

Compound	Residential	Commercial
Particulate Emissions from Diesel-Fueled En	4.29E-04	1.85E-05
Total	**4.29E-04**	**1.85E-05**
	FAIL	**FAIL**

5b. Is Cancer Burden Calculation Needed (MICR >1E-6)?	**YES**
New X/Q at which $MICR_{70yr}$ is one-in-a-million [(µg/m³)/(tons/yr)]:	3.43E-02
New Distance, interpolated from X/Q table using New X/Q (meter):	857.15
Zone Impact Area (km²):	2.31E+00
Zone of Impact Population (7000 person/km²):	1.62E+04
Cancer Burden:	**1.71E+01**
Cancer Burden is more than 0.5	**FAIL**

6. Hazard Index Summary **A/N:** N/A **Application deemed complete date:** 10/12/22

HIA = [Q(lb/hr) * (X/Q)max * MWAF]/ Acute REL
HIC = [Q(ton/yr) * (X/Q) * MP * MWAF] / Chronic REL
HIC 8-hr= [Q(ton/yr) * (X/Q) * WAF * MWAF] / 8-hr Chronic REL

Target Organs	Acute	Chronic	8-hr Chronic	Acute Pass/Fail	Chronic Pass/Fail	8-hr Chronic Pass/Fail
Alimentary system (liver) - AL				Pass	Pass	Pass
Bones and teeth - BN				Pass	Pass	Pass
Cardiovascular system - CV				Pass	Pass	Pass
Developmental - DEV				Pass	Pass	Pass
Endocrine system - END				Pass	Pass	Pass
Eye				Pass	Pass	Pass
Hematopoietic system - HEM				Pass	Pass	Pass
Immune system - IMM				Pass	Pass	Pass
Kidney - KID				Pass	Pass	Pass
Nervous system - NS				Pass	Pass	Pass
Reproductive system - REP				Pass	Pass	Pass
Respiratory system - RESP		2.50E-01		Pass	Pass	Pass
Skin				Pass	Pass	Pass

6a. Hazard Index Acute - Resident

HIA = [Q(lb/hr) * (X/Q)max resident * MWAF] / Acute REL

	HIA - Residential									
Compound	AL	CV	DEV	EYE	HEM	IMM	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled En										
Total										

6a. Hazard Index Acute - Worker **A/N:** N/A **Application deemed complete date:** 10/12/22

HIA = [Q(lb/hr) * (X/Q)max Worker * MWAF] / Acute REL

	HIA - Commercial									
Compound	AL	CV	DEV	EYE	HEM	IMM	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled Eng										
Total										

A/N: N/A **Application deemed complete date:** 10/12/22

6b. Hazard Index Chronic - Resident

HIC = [Q(ton/yr) * (X/Q) Resident * MP Chronic Resident * MWAF] / Chronic REL

	HIC - Residential												
Compound	AL	BN	CV	DEV	END	EYE	HEM	IMM	KID	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled En												2.50E-01	
Total												2.50E-01	

6b. Hazard Index Chronic - Worker

HIC = [Q(ton/yr) * (X/Q) * MP Chronic Worker * MWAF] / Chronic REL

	HIC - Commercial												
Compound	AL	BN	CV	DEV	END	EYE	HEM	IMM	KID	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled En												2.50E-01	
Total												2.50E-01	

6c. 8-hour Hazard Index Chronic - Resident **A/N:** N/A **Application deemed complete date:** 10/12/22

HIC 8-hr = [Q(ton/yr) * (X/Q) Resident * WAF Resident * MWAF] / 8-hr Chronic REI

	HIC - Residential												
Compound	AL	BN	CV	DEV	END	EYE	HEM	IMM	KID	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled En													
Total													

6c. 8-hour Hazard Index Chronic - Worker

HIC 8-hr = [Q(ton/yr) * (X/Q) Worker * WAF Worker * MWAF] / 8-hr Chronic REI

	HIC - Commercial												
Compound	AL	BN	CV	DEV	END	EYE	HEM	IMM	KID	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled En													
Total													

ATTACHMENT 4 – HEALTH RISK SCREENING OF ABANDONMENT ACTIVITIES / REVISED MND

EMISSIONS ARE ENTERED ON THE EMISSIONS WORKSHEET OR ON ONE OF EQUIPMENT WORKSHEETS

INPUT PARAMETERS ENTERED ON THE EMISSIONS SHEET ARE USED FOR TIERS 1 AND TIER 2 ANALYSES

TIER 2 SCREENING RISK ASSESSMENT REPORT

(Procedure Version 8.1 & Package N, September 1, 2017) - Risk Tool V1.105

A/N: N/A **Fac:** Warren - Revised **Application deemed complete date:** 10/12/2022

1. Stack Data

Equipment Type: Other

Combustion Eff: 0.0

No T-BACT

Operation Schedule: 8 hrs/day; 7 days/week; 52 weeks/year

Stack Height: 14 ft

Distance to Residential: 25 m

Distance to Commercial: 25 m

Meteorological Station: Long Beach Airport

2. Tier 2 Data

Dispersion Factors tables	Point Source
For Chronic X/Q	Table 6
For Acute X/Q max	Table 6.4

Dilution Factors

Receptor	X/Q (µg/m³)/(tons/yr)	X/Qmax (µg/m³)/(lbs/hr)
Residential	36.19	676.64
Commercial - Worker	36.19	676.64

Intake and Adjustment Factors

	Residential	Worker
Year of Exposure	2	
Combined Exposure Factor (CEF) - Table 4	311.35	4.47
Worker Adjustment Factor (WAF) - Table 5	1	3.00

A/N: N/A **Application deemed complete date:** 10/12/22

3. Rule 1401 Compound Data

Compound	R1 - Uncontrolled (lbs/hr)	R2 - Controlled (lbs/hr)	CP $(mg/kg\text{-}day)^{-1}$	MP MICR Resident	MP MICR Worker	MP Chronic Resident	MP Chronic Worker	REL Chronic ($\mu g/m^3$)	REL 8-hr Chronic ($\mu g/m^3$)	REL Acute ($\mu g/m^3$)	MWAF
Particulate Emissions from Diesel-Fueled En	1.45E-01	1.45E-01	1.10E+00	1.00	1.00	1.00	1.00	5.00E+00			1

A/N: N/A **Application deemed complete date:** 10/12/22

4. Emission Calculations

Compound	R1 (lbs/hr)	R2 (lbs/hr)	R1 (lbs/day)	R2 (lbs/day)	R2 (lbs/yr)	R2 (tons/yr)
Particulate Emissions from Diesel-Fueled En	1.45E-01	1.45E-01	1.16E+00	1.16E+00	4.23E+02	2.11E-01
Total	**1.45E-01**	**1.45E-01**	**1.16E+00**	**1.16E+00**	**4.23E+02**	**2.11E-01**

TIER 2 RESULTS

A/N: N/A **Application deemed complete date:** 10/12/22

5a. MICR

MICR Resident = CP (mg/(kg-day))^-1 * Q (ton/yr) * (X/Q) Resident * CEF Resident * MP Resident * 1e-6 * MWAF

MICR Worker = CP (mg/(kg-day))^-1 * Q (ton/yr) * (X/Q) Worker * CEF Worker* MP Worker* WAF Worker* 1e-6 * MWAF

Compound	Residential	Commercial
Particulate Emissions from Diesel-Fueled En	2.62E-03	1.13E-04
Total	**2.62E-03**	**1.13E-04**
	FAIL	**FAIL**

5b. Is Cancer Burden Calculation Needed (MICR >1E-6)?	**YES**
New X/Q at which $MICR_{70yr}$ is one-in-a-million [(µg/m³)/(tons/yr)]:	5.61E-03
New Distance, interpolated from X/Q table using New X/Q (meter):	280.55
Zone Impact Area (km²):	2.47E-01
Zone of Impact Population (7000 person/km²):	1.73E+03
Cancer Burden:	**1.12E+01**
Cancer Burden is more than 0.5	**FAIL**

6. Hazard Index Summary **A/N:** N/A **Application deemed complete date:** 10/12/22

HIA = [Q(lb/hr) * (X/Q)max * MWAF]/ Acute REL

HIC = [Q(ton/yr) * (X/Q) * MP * MWAF] / Chronic REL

HIC 8-hr= [Q(ton/yr) * (X/Q) * WAF * MWAF] / 8-hr Chronic REL

Target Organs	Acute	Chronic	8-hr Chronic	Acute Pass/Fail	Chronic Pass/Fail	8-hr Chronic Pass/Fail
Alimentary system (liver) - AL				Pass	Pass	Pass
Bones and teeth - BN				Pass	Pass	Pass
Cardiovascular system - CV				Pass	Pass	Pass
Developmental - DEV				Pass	Pass	Pass
Endocrine system - END				Pass	Pass	Pass
Eye				Pass	Pass	Pass
Hematopoietic system - HEM				Pass	Pass	Pass
Immune system - IMM				Pass	Pass	Pass
Kidney - KID				Pass	Pass	Pass
Nervous system - NS				Pass	Pass	Pass
Reproductive system - REP				Pass	Pass	Pass
Respiratory system - RESP		1.53E+00		Pass	**Fail**	Pass
Skin				Pass	Pass	Pass

6a. Hazard Index Acute - Resident

HIA = [Q(lb/hr) * (X/Q)max resident * MWAF] / Acute REL

	HIA - Residential									
Compound	AL	CV	DEV	EYE	HEM	IMM	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled En										
Total										

6a. Hazard Index Acute - Worker **A/N:** N/A **Application deemed complete date:** 10/12/22

HIA = [Q(lb/hr) * (X/Q)max Worker * MWAF] / Acute REL

	HIA - Commercial									
Compound	AL	CV	DEV	EYE	HEM	IMM	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled Eng										
Total										

A/N: N/A **Application deemed complete date:** 10/12/22

6b. Hazard Index Chronic - Resident

HIC = [Q(ton/yr) * (X/Q) Resident * MP Chronic Resident * MWAF] / Chronic REL

	HIC - Residential												
Compound	AL	BN	CV	DEV	END	EYE	HEM	IMM	KID	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled En												1.53E+00	
Total												**1.53E+00**	

A/N: N/A **Application deemed complete date:** 10/12/22

6b. Hazard Index Chronic - Worker

HIC = [Q(ton/yr) * (X/Q) * MP Chronic Worker * MWAF] / Chronic REL

	HIC - Commercial												
Compound	AL	BN	CV	DEV	END	EYE	HEM	IMM	KID	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled En												1.53E+00	
Total												**1.53E+00**	

6c. 8-hour Hazard Index Chronic - Resident **A/N:** N/A **Application deemed complete date:** 10/12/22

HIC 8-hr = [Q(ton/yr) * (X/Q) Resident * WAF Resident * MWAF] / 8-hr Chronic REI

	HIC - Residential												
Compound	AL	BN	CV	DEV	END	EYE	HEM	IMM	KID	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled En													
Total													

A/N: N/A **Application deemed complete date:** 10/12/22

6c. 8-hour Hazard Index Chronic - Worker

HIC 8-hr = [Q(ton/yr) * (X/Q) Worker * WAF Worker * MWAF] / 8-hr Chronic REI

	HIC - Commercial												
Compound	AL	BN	CV	DEV	END	EYE	HEM	IMM	KID	NS	REP	RESP	SKIN
Particulate Emissions from Diesel-Fueled En													
Total													

ATTACHMENT B

Warren RESOURCES

Green Hill Towers
14131 Midway Rd., Suite 500
Addison, Texas 75001
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September 19, 2022

VIA EMAIL: CPC@LACITY.ORG

Los Angeles City Planning Commission
200 N. Spring Street, Room 525
Los Angeles, CA 90012

Re: **Agenda Item #11 - CPC-2022-4864-CA; Council File No. 17-0447**
Warren Comment Letter Opposing Ordinance Amendment and Approval of MND

Dear President Millman and Honorable Commissioners:

This letter provides comments on behalf of Warren E&P, Inc.; Warren Resources of California, Inc.; Warren Resources, Inc.; Warren Management Corp.; and Warren Operating LLC (collectively "Warren") opposing the ordinance amending Sections 12.03, 12.20, 12.23, 12.24, and 13.01 of the Los Angeles Municipal Code (LAMC) to prohibit new oil and gas drilling activities and make existing extraction a noncomforming use in all zones (the "Ordinance Amendment"). While the comment period is still pending for the associated proposed Mitigated Negative Declaration ENV-2022-4865-MND ("MND"), the Commission is being asked to recommend the City Council approve the same and thus, Warren also objects to that action, especially since the Commission does not have the benefit of all comments on that proposed action since they are not due until October 17, 2022. In addition to the comments in this letter, Warren incorporates the comments of other industry organizations and companies that were submitted in connection with the August 30, 2022 Planning Staff Meeting in opposition to the Ordinance Amendment (as attached to the Staff Recommendation Report) and any additional comments that are submitted by other industry organizations and companies in connection with the upcoming September 22, 2022 Planning Commission Meeting.

The Ordinance Amendment Effects an Unconstitutional Taking for Which Just Compensation Must Be Paid & Deprives Warren of Its Vested Rights

At the outset, please understand that the Ordinance Amendment, if adopted in its current form, will put Warren out of business in approximately three years, depriving Warren—and the royalty owners that it serves—of their real property rights. These rights are currently valued in excess of $675MM and the U.S. and California Constitutions require the City to compensate Warren and its mineral owners for these losses. The Ordinance Amendment, however, unlawfully makes no provision for such compensation.

The Ordinance Amendment will result in cessation of Warren's existing production in approximately three years because it prohibits Warren from engaging in the customary operations necessary to maintain production from its existing wells. Warren's only operations and its only mineral rights are located within the City of Los Angeles and new wells are prohibited. As a result, the Ordinance Amendment would unquestionably put Warren out of business after three years, leaving its employees

jobless, their families without necessary financial support and its royalty owners without income that they have relied on for decades.

To date, Warren has invested over $400MM to develop its mineral estate in the City of Los Angeles through three well cellars at a consolidated drilling facility (the "Site"). The current LAMC allows for these operations as a *permitted right*. Warren's investment of over $400MM was incurred not merely for its existing production at the Site but also for additional operations on existing wells within the three well cellars, so that production can be maintained over the projected life of the wells, and for the drilling of new wells in the same three cellars. The Ordinance Amendment will affect a zoning change that deprives Warren of engaging in its business at the Site and its business as a whole, subjecting the City's action to heightened scrutiny under the independent judgment standard. (*See e.g., Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525.)

Warren and its royalty owners will be deprived of their reasonable investment-backed expectations and of the right to develop the remaining reserves, which are presently valued in excess of $675MM. The Ordinance Amendment thus will result in a taking of Warren's and its royalty owner's real property rights under the U.S. and California Constitutions, thereby subjecting the City to damages for this lost value—a significant liability for the taxpayers of the City of Los Angeles. (*See e.g., Penn Cent. Transp. Co. v New York City* (1978) 438 U.S. 104; *Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 533, 553-554 (holding that "absolute prohibition [on mining] . . . practically amounts to a taking of the property").)

Even though it holds mineral rights in other residential areas of the City, Warren limited its operations to the Site and to the three well cellars at the City's specific request. Also at the City's specific request, Warren agreed to give up its right to redrill 560 wells located outside the Site and agreed to a phased process of plugging and abandoning wells in the nearby area in return for the City agreeing that Warren could drill 540 wells at the Site with up to 5 well cellars.[1][2] To date, Warren has plugged and abandoned 41 wells in the surrounding area and has plans to plug and abandon more wells as its business continues to operate in the City.

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[1] Zoning Case ZA 20725-0 (PA1) dated July 20, 2006 and Zoning Case ZA 20725-0 (PA2) dated October 2, 2008 (the "Approvals"), copies of which are not attached hereto due to the 10-page limit for this submission but can be found in the Planning Department records.

[2] Warren was not required under the LAMC relating to the Approvals to give up the redrill rights to 560 wells and conduct the plugging and abandonment of 56 wells in the residential areas outside the Site within a certain time period. Neither were these measures related to the mitigation of environmental impacts. Accordingly, there was no essential nexus and rough proportionality as would be required if the Approvals were interpreted solely as permits under *Nollan v. California Coastal Comm'n,* 483 U.S. 825 (1987) and *Dolan v. City of Tigard,* 512 U.S. 374 (1994). Accordingly, the Approvals constituted a contractual obligation and give rise to a vested property right for that and other reasons. (*See M. J. Brock & Sons, Inc. v. City of Davis,* 401 F.Supp. 354, 361 (1983); *Morrison Homes Corp. v. City of Pleasanton.* 58 Cal.App.3d 724 (1976).) The Ordinance Amendment thus would improperly deny Warren a vested property right in violation of due process of law.

If the Ordinance Amendment is adopted, Warren will not be allowed to complete its project under the terms agreed upon by the City since no new wells will be allowed (221 wells have been drilled to date) and existing production cannot be maintained. Warren, however, has a legally protected and vested property right to utilize the Site for these additional operations. (*See e.g., Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal. 3d 785, 791.)

The *Avco* rule provides that when a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon an entitlement issued by an agency, the party acquires a vested right to complete the construction of the project. This is particularly true for Warren in that not only did Warren obtain all necessary approvals from the City, but it also gave up its rights to redrill 560 wells in the Wilmington neighborhood outside the Site. Accordingly, Warren must be allowed to complete its project.

Warren's situation is similar to that presented in the case *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1530. In that case, as in Warren's, the owner had an underlying right to use the property as a tavern. The owner subsequently obtained a conditional use permit to expand the business. When that permit expired, the City argued that the owner's rights had expired. However, the *Goat Hill Tavern* court held that "once [an approval] has been properly issued the power of a municipality to revoke it is limited . . . Where [an approval] has been properly obtained and in reliance thereon the [grantee] has incurred material expense, he acquires a vested property right to the protection of which he is entitled." (*Goat Hill Tavern*, 6 Cal.App.4th at 1530.)

Similar to *Goat Hill Tavern,* where the tavern owner had an underlying nonconforming use right, Warren also has a right to use the Site as an oil and gas well drilling site by virtue of the City's February 25, 1972 approval of a drilling and production site within the Nonurbanized Oil Drilling District No. 5 in the R4 and M2-1-O zones and by virtue of the Approvals. The *Goat Hill Tavern* court cited to multiple cases in which an agency action would ultimately force the company out of business, which as discussed above is what will happen here with Warren. (*Id.* at 1528-1529.) The court also emphasized that "interference with the right to continue an established business is far more serious than when an agency denies a request for a permit in the first instance." (*Id.* at 1529.) Once a permittee has acquired such a vested right it may be revoked only if the permittee "fails to comply with *reasonable* terms or conditions *expressed* in the permit granted." (*Id.* at 1530 (emphasis added).) Here, the Ordinance Amendment completely revokes Warren's vested rights despite its compliance with terms and conditions expressed in the 1972 approval of the "O" drilling district and in the Approvals, and thus Warren will be deprived of its vested real property rights.

That the City's actions will extinguish Warren's business is readily ascertainable in that Warren must either continuously drill and maintain its wells, or go out of business. The California Supreme Court recognized in *Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 533 that unlike other uses that operate within an existing structure or boundary, the use of land for mining and, in this instance, oil and gas drilling, anticipates the need to continuously expand the reach of the extraction activity. Warren must drill new wells and redrill and maintain old wells on the Site to maintain its current business. As stated by the California Supreme Court in *Hansen Brothers,* "this is not the usual case of a business conducted within buildings, nor is the land held merely as a site or location whereon the enterprise can be conducted indefinitely with existing facilities. . . the land itself is a material

resource. It constitutes a diminishing asset." *Id.* at 553-554. Accordingly, "the ordinary concept of use must yield to the realities of the business in question and nature of its operations." *Id.* Given Warren's substantial economic investment, Warren's drilling rights are a vested property right and if the City chooses to terminate these rights, Warren would be entitled to compensation under the California and United States constitutions.

Consideration of the Amended Ordinance Now Violates the City's Own Procedural Requirements Such that It Would Be Unlawful to Adopt the Recommended Findings

The relevant City procedures for consideration of the Amended Ordinance are set out at Los Angeles Charter and Administrative Code ("LACAC") Sections 556 and 558. These requirements are further described in the Staff Recommendation Report at the Proposed Findings 1-3 at ps. F-1 to F-6, which Findings the Planning Commission must adopt to recommend adoption of the Amended Ordinance to the City Council.

LACAC Section 558(b)(2) describes the procedures for amending an ordinance. It provides that "[a]fter initiation, the proposed ordinance . . . shall be referred to the City Planning Commission for its report and recommendation regarding the relation of the proposed ordinance . . . to the General Plan and, in the case of proposed zoning regulations, whether adoption of the proposed ordinance . . . will be in conformity with public necessity, convenience, general welfare and good zoning practice."

LACAC Section 556 provides that: "when approving any matter listed in Section 558, the City Planning Commission and the Council shall make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan."

The Planning Commission's action is not a mere suggestion, but acts to set out how the City Council must proceed in potentially acting on the Ordinance Amendment and the MND. For example, if the Planning Commission recommends approval of the Ordinance Amendment and the MND, the City Council may approve it under a simple majority vote, while if the Planning Commission has recommended against the Ordinance Amendment and the MND, the City Council can only approve the change by a two-thirds vote. (LACAC § 558(b)(3).) Accordingly, the Planning Commission's action on the Amended Ordinance must be in compliance with applicable laws and meet the standards of Sections 556 and 558 of the LACAC.

The Planning Commission Cannot Lawfully Take Action Until It Completes its Review under CEQA

The Planning Commission may not vote to recommend the Amended Ordinance until the City completes the CEQA process. In this situation, the proposed MND was only just circulated to the public on September 15, 2022—four days ago—in conjunction with the issuance of the Staff Recommendation Report. The City states that the public comment period will extend through October 17, 2022, as is required by CEQA. Accordingly, the City has not yet received all comments from the public on the proposed MND and indeed, it would be a denial of due process and violation of CEQA to expect comments in such a short period of time.

Yet at the same time the Planning Commission is being asked to recommend that the City Council find that "after consideration of the whole of the administrative record, including the Mitigated Negative Declaration . . . *and all comments received*, with the imposition of mitigation measures, there is no substantial evidence that the project will have a significant effect on the environment." (Staff Recommendation Report at p. 1-2, and at p. A-8 (emphasis added).)

The Planning Commission is also being asked to adopt Proposed Finding 3, which states that the City has prepared an MND for the project and that "[i]n consideration of the whole administrative record *and all comments received regarding the MND* . . . the City Planning Commission shall recommend the City Council to adopt the MND." (Staff Recommendation Report, Proposed Finding 3 at p. F-6.)

Proposed Finding 2 also clearly requires the completion of the CEQA review. Proposed Finding 2, which the Planning Commission must make pursuant to LACAC Section 556 provides that "[i]n accordance with City Charter Section 558 (b)(2), the proposed ordinance will be in conformance with public necessity, convenience, general welfare, and good zoning practice by advancing the basic core zoning to project citizens' health, safety, and welfare." Impacts to the public's general welfare including its health and safety, however, are evaluated through the CEQA review, which process has not been completed and the comment period is still pending.

Accordingly, pursuant to LACAC Sections 556 and 558 and Proposed Finding 2 and 3, the Planning Commission must complete the CEQA process, including completion of the public comment period, prior to taking action to recommend adoption of the MND and adoption of the Amended Ordinance by the City Council.

Even without these explicit requirements, the proposed action would violate CEQA. Amendments to ordinances are clearly a project under CEQA. The completion of the CEQA process, including the required comment period and the consideration of these comments, is necessary as to two fundamental purposes of CEQA, informed decision making *by the agency* and informed public participation. The case law is clear that the failure to satisfy these requirements is prejudicial error. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.)

The California Supreme Court has explicitly rejected what the Planning Commission is being asked to do—take an action prior to the completion of CEQA review. In particular, in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 388, 394 the Supreme Court stated that:

> A fundamental purpose of [a CEQA document] is to provide decision makers with information they can use in deciding whether to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If post approval environmental review were allowed, [CEQA documents] would likely become nothing more than post hoc rationalizations to support action already taken. We have expressly condemned this.

Accordingly, under not only its own requirements under CACAC Sections 556 and 558 and under the language proposed in the recommended actions and Proposed Findings, but also under basic CEQA law,

the Planning Commission cannot act on the recommendation until the CEQA process is complete. Otherwise, the Planning Commission will deprive the public of the right to participate in the process and prevent itself from engaging in informed decision making.

A Brief Review of the MND Indicates That the City Must Prepare an EIR for the Proposed Project

A brief review of the MND (it was only published four days ago) indicates that the Planning Department has understated the impacts that will result from this project. It is clear that, ultimately, the City will be required to prepare an EIR.

The MND's analysis of greenhouse gas emissions ("GHGs") is clearly deficient because it only analyzes the direct impacts related to curtailing oil and gas production in the City. It does not analyze any indirect impacts related to the termination of oil and gas production, which it is required to do under CEQA. (CEQA Guidelines Section 15064(d).) For example, the MND does not discuss that the termination of oil and gas extraction and production activities will result in additional imports of oil to the State and region, and that importation will result in additional GHGs through, for example, additional tanker emissions.

The MND also is required to discuss the consistency of the Ordinance Amendment with City land use policies. As they did with the Proposed Findings, the MND fails to address multiple policies that support the extraction and production of oil within the City (as discussed above).

Further, the MND glosses over the impacts to mineral resources in determining that the impacts related to the Ordinance Amendment are insignificant. As described above, the MND omits critical information from the General Plan related to the encouragement of extraction to reduce dependency on oil imports. The MND's remarks that the City "does not consider petroleum to be a mineral resource of local importance" is thus not supported by the City's own General Plan. Moreover, the CEQA Guidelines require the City to evaluate "the loss of availability of a known mineral resource that would be of value to the region and the residents of the state" not just the City. Accordingly, the analysis is flawed in that it addresses only impacts to the City, not the State as a whole.

The MND's conclusion that oil produced in the area "represents a small amount of the available Statewide resource" is also contradicted by readily available public information. For example, a report by the US Geological Service dated February 2013 describes the Los Angeles Basin, which is partly encompassed by the City, as containing "one of the highest concentrations of crude oil in the world. Sixty-eight oil fields have been named . . . including 10 accumulations that each contain more than 1 billion barrels of oil. One of these, the Wilmington-Belmont, is the fourth largest oil field in the United States." (USGS Fact Sheet 2012-3120.) Accordingly, based on this expert evidence it is undeniable, that the proposed ordinance will have a significant impact on the availability of mineral resources. Based on this information alone, the City is required to develop an EIR. CEQA requires that where there is substantial evidence supporting a fair argument that the project could have a significant non-mitigable effect the City must prepare an EIR. (CEQA Guidelines Section 15064(f)(1).) Even where there is "disagreement among expert opinion supported by the facts over the significance of an effect on

the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR." (CEQA Guidelines Section 15064(g).)

The City's General Plan Review For Conformity is Incomplete and Thus Unlawful

At noted above, CACAC Section 556 provides that the Planning Commission must find that proposed ordinance is in conformity with the General Plan. Such consistency is required by law. (*See e.g., City of Los Angeles v. State of California* (1982) 138 Cal.App.3d 526, 532.) This consistency is also required for charter cities pursuant to Government Code Section 65860. As discussed below, the ***Ordinance Amendment is not consistent with the City's General Plan.***

The Staff Recommendation Report at Proposed Finding 1 leaves out critical elements in the General Plan in concluding that the Ordinance Amendment is in conformance with the purposes and intent of the General Plan. For example, in discussing the Conservation Element of the General Plan, Proposed Finding 1 sets out three policies. These policies generally describe a need for encouraging energy conservation, supporting the ban on offshore drilling and protecting neighborhoods from potential accidents and subsidence associated with drilling and production.

However, listed directly above these policies, and not stated in Finding 1, is the "Objective" that these policies support. In particular, the objective is to: "conserve petroleum resources and *enable appropriate, environmentally sensitive extraction* . . . so as to protect the petroleum resources for the use of future generations and to reduce the city's dependency on imported petroleum and petroleum products." (Emphasis added.) Accordingly, these policies may only be read in the context of allowing continued extraction. The fact that the Amended Ordinance would *ban extraction* rather than *enable extraction* clearly means that it is inconsistent with the General Plan.

Similarly, in the Health Wellness and Equity Element to the General Plan, Finding 3 indicates that Policy 5.4 is to protect communities' health from noxious activities (which Finding 3 states includes, for example, oil and gas extraction). However, not included in the Staff Recommendation Report is that: "[t]his policy calls for the City to work with operators to ensure that they have the required permits in place, increase its regulatory role and encourage conditions of approval that mitigate land use inconsistencies and conflicts." As a result, this section also assumes the continuance of extractions activities within the City.

Similarly, a brief review of the Land Use Element – Wilmington Harbor City Community Plan likewise indicates that the Amended Ordinance is inconsistent with the Wilmington Harbor City Community Plan. For example, Policies 3-5.1 and 3.5.3 clearly contemplate the continuance of extraction activities. Policy 3-5.4 provides for the consolidation of oil extraction operations to increase compatibility between oil activities and other land uses. Accordingly, nothing in these policies is consistent with a total ban on oil production like that proposed in the Ordinance Amendment. Finding 1 also does not discuss Objective 3-5, which the policies are drafted to support and which provides that the objective of the policies is "[t]o ensure the public health, safety and welfare *while providing for reasonable utilization* of the area's oil and gas resources." (Emphasis added.) The Staff Recommendation Report also fails to note Policy 3-4.6, which encourages the *consolidation* of oil extraction activities rather than its *elimination.*

Accordingly, not only is the Ordinance Amendment inconsistent with the General Plan and thus unlawful, but the Staff Recommendation Report omits critical information necessary for Planning Commission and public review of the Ordinance Amendment.

The Ordinance Amendment is Unconstitutionally Vague and Ambiguous

The Ordinance Amendment provides that "[no] existing well . . . shall be "*maintained*, drilled, re-drilled, or deepened, except to prevent or respond to a threat to public health, safety, or the environment, as determined by the Zoning Administrator." (Emphasis added.) The Ordinance Amendment, however, provides no definition of the word "maintained" and it is thus unconstitutionally vague and ambiguous and violates the due process clause of the U.S. Constitution. The Staff Recommendation Report acknowledges that this is a problem and defers to a "Zoning Administrator's Interpretation" that has not yet been published as to what this term means. (Staff Recommendation Report, P.3 ("Separately from this Ordinance, DCP's Office of Zoning Administration is preparing a Zoning Administrator's Interpretation on the types of oil-related activities that constitute maintenance . . . Once final, this guidance would immediately apply to all oil drilling activities. It would further clarify the types of maintenance activities prohibited under the Ordinance, with limited exceptions to prevent or respond to threats to public health, safety, or the environment.")

Due process requires fair notice and an opportunity to be heard. In turn, the most basic due process concepts require that legally enforceable ordinances be defined with sufficient clarity such that those subjected to the laws understand what is permitted and what is prohibited, and such that the laws are not susceptible to arbitrary or discriminatory enforcement. (*Genis v. Bell (C.D. Cal. July 2, 2013) 2013 U.S. Dist. LEXIS 93353,* *14-15; *see also Castro v. Terhune*, 712 F.3d 1304, 1307 (9th Cir. 2013).) Here, the failure to unambiguously explain what is meant by the word "maintained" in the Ordinance Amendment itself would mean that Warren and others similarly situated would not know when, if at all, it is violating the Ordinance Amendment. As written without any definition, Warren is deprived of advance notice and opportunity to object to the meaning of the term "maintained" since it is left to later interpretation by the Zoning Administrator.

The 20-Year Amortization Period in the Ordinance Amendment is Unlawful

The Ordinance Amendment unlawfully imposes a 20-year amortization period for existing operations without any factual evidence to support that 20 years is a "reasonable amortization period commensurate with the investment involved," as required by law. (*Metromedia, Inc. v. San Diego* (1980) 26 Cal.3d 848, 882.) The City Council directed the Planning Department to commission a study to be performed as to an appropriate amortization period and that work has not yet even commenced, let alone been completed. It thus is premature and unlawful for the Planning Commission to proceed with taking action on an amortization period when there is no study—and no evidence—to support such a period for Warren or other operators within the City.

Moreover, there is no law in California to support the use of amortization periods to eliminate a diminishing asset like mineral rights. While amortization may be appropriate under certain factual situations involving movable property like billboards or liquor stores, since those uses can be moved to other locations, the development of mineral rights is immovable and, as discussed above, protected

under the diminishing asset doctrine. There is no way to equitably amortize Warren's real property rights and its investments therein other than to allow Warren to produce until the commercially recoverable resources are depleted.

There is No Evidence to Support that Warren's Operations Result in Negative Health Effects

Warren not only complies with California's stringent environmental regulations, but it also agreed with the City to use electric sources for its operations except for two combustion sources which produce minimal emissions and are not a significant impact for the City. The Staff Recommendation Report contains no specific evidence as to Warren's operations or its emissions and also ignores the City's prior report that failed to support any negative health impacts from oil and gas operations within the City.

In 2019, the City of Los Angeles Office of Petroleum and Natural Gas Administration and Safety conducted an exhaustive review of government reports and studies and concluded that:

> There is a lack of empirical evidence correlating oil and gas operations within the City of Los Angeles to widespread negative health impacts. The lack of evidence of public health impacts from oil and natural gas operations has been demonstrated locally in multiple studies by the Los Angeles County Department of Public Health, the Los Angeles County Oil & Gas Strike Team, the South Coast Air Quality Management District and the comprehensive Kern County Environmental Impact Report and Health Risk Assessment.

The City's position now is contrary to that prior report and not supported by the evidence. Warren's equipment and operations do not emit significant quantities of air pollutants and do not pose a significant health risk to the community residents or the public. Warren participates in annual emissions reporting to the SCAQMD, which includes mandatory reporting of air pollutants regulated by the Clean Air Act. Warren facility's actual emissions are low and based on these reported emissions the facility has never been required to obtain a federal operating air permit as it remains below major source thresholds for all pollutants. Further, low emissions of regulated pollutants is evidenced by the fact that Warren does not participate in the SCAQMD's RECLAIM program for large sources of oxides of nitrogen (NOx) and sulfur (SOx). Lastly, as a minor stationary source located in a heavily industrialized area of Wilmington, Warren has not permitted or installed new equipment or modified existing equipment in over 6 years.

In addition to regulated pollutants, Warren has consistently reported low emissions of air contaminants. The facility routinely reports a detailed air toxics emissions inventory to the SCAQMD yet has never been required by the SCAQMD to prepare a Health Risk Assessment (HRA) because of low emissions. For example, Warren's reported emission of air pollutants and associated health risk impacts are on par with that of neighborhood gas station that operates fuel dispensing equipment, storage tanks, and vehicular traffic from customers and mobile tankers.

Warren is in compliance with all regional, state, and federal rules and regulations and has obtained the appropriate air quality permits for all operating equipment. Restricting maintenance, testing, and repair

of the existing equipment would not represent an emission reduction or result in any improved air quality for the area or the region.

Furthermore, and in violation of the Equal Protection Clause as applied through the Fourteenth Amendment to the U.S. Constitution, the City is unlawfully discriminating against one industry by prohibiting its operations within the City without taking similar actions against other industries or uses that provide similar or even more emissions than the oil and gas industry.

No Action Should Be Taken on the Ordinance Amendment and the MND

Warren respectfully requests that the Planning Commission do everything within its power to avoid what will prove to be an expensive mistake and we urge you ***not*** to take action on Agenda Item No. 11. The Ordinance Amendment will not result in the professed health benefits from shutting down Warren's operations and, instead, will subject the City to significant liability.

It is even premature for the Planning Commission to consider the draft MND and the Ordinance Amendment at this time. Indeed, the comment period has just began to run on the draft MND so the rush to take action should heed to the Commission's obligations to comply with the law and the City's ordinances.

Please understand that if the Planning Commission recommends approval, Warren will take all actions required to protect its rights, including seeking recovery from the City of in excess of $675MM in damages for putting Warren out of business, along with recovery of Warren's legal expenses under Code of Civil Procedure Sections 1021.5 and 1036. The City will be forced to incur substantial legal fees for its own counsel and ultimately Warren's counsel too, all the while losing significant revenue from property taxes on future oil and gas operations without any change in health impacts from closing Warren's doors. Warren reserves all of its rights to pursue every available remedy if the Planning Commission proceeds to recommend approval of the Ordinance Amendment and the draft MND to the City Council.

Sincerely,

WARREN RESOURCES, INC.

James A. Watt
President and Chief Executive Officer