muster or be prohibited? Who at the City would decide whether a particular application of acid was exempted?

The definition of "well stimulation treatment" is even more unclear and vague. This definition takes leave of the definition of the exact same term found in SB 4, and introduces a great deal of technical language to define what is and is not a well stimulation treatment. The definition passes responsibility to DOGGR to decide whether a particular technique "does not enhance oil and gas production or recovery by increasing the permeability of the formation" and therefore qualifies as a well stimulation treatment. Requiring a DOGGR determination is an entirely unworkable system in the context of a local operator seeking an exemption from the City to perform routine work on an existing well. The definition also creates a presumption that any treatment that involves placing acid in a well "and that uses a volume of fluid equal to or greater than the Acid Volume Threshold (as defined by DOGGR)" is a well stimulation treatment. Without further guidance from DOGGR, this presumption would be very difficult to overcome, and operators very well may not be able to use any routine well cleanout methods that involve application of acids.

Implementing the ban on "well stimulation treatment" as it is written would, in effect, result in the complete shutdown of all existing oil and gas wells in the City. This is so despite the Proposed Ban's "savings clause," which purports to exempt those with "reasonable investment backed expectation established through investment made before the effective date" of the Proposed Ban from its effects. As explained below, this "savings clause" is illusory and will not protect operators from a taking.

Since the Proposed Ban would deprive current and potential future operators of all economic value of their property, the Initiative would effect a regulatory taking and subject the City to the risk of substantial damages. (See, e.g., *Chandis Securities v. City of Dana Point*, 52 Cal.App.4th 475, 484 (1996) (where a land use initiative constitutes a taking, the local jurisdiction will be required "to pay compensation to plaintiffs").)

III. THE PROPOSED BAN'S PURPORTED "SAVINGS CLAUSE" DOES NOT SHIELD THE CITY FROM LIABILITY

The purported savings clause included in the Proposed Ban does not move the constitutionality needle. The Proposed Ban's savings clause reads:

> "However, to the extent that any permittee demonstrates to the Petroleum Administrator, that (1) well stimulation, other than hydraulic fracturing, is necessary to recover the owner/operator's reasonable investment backed expectation established through investment made before the effective date of this ordinance; and (2) that such well stimulation will not create a nuisance due to an adverse impact on persons or property within the City, then the Petroleum Administrator may authorize such well stimulation treatment pursuant to a permit issued pursuant to this ordinance." (Proposed Oil Code Update, section 9536.)

Any protections offered by this purported savings clause are undermined in at least two ways.

First, any protection is illusory, at best, as the exception is subject to the discretion of the Petroleum Administrator not once but twice. To grant an exemption, the Petroleum Administrator must find (a) that the owner/operator had a "reasonable investment backed expectation" established prior to the ordinance's effective date, and (b) that the proposed treatment would not create a "nuisance." This provision leaves enormous, if not unfettered, discretion in the hands of the Petroleum Administrator – an official not equipped to evaluate a takings claim from a legal standpoint – and offers no guidance or set criteria as to how to evaluate such a claim.

Second, the Proposed Ban does not provide any definition of its key terms: "reasonable investment backed expectation" and "nuisance." Will the Petroleum Administrator follow any set of principles in interpreting these terms? Or will he/she simply rule on exemption claims on a case-by-case basis? In any event, these provisions at most would transform a facial takings challenge into an as-applied one, without alleviating these constitutional concerns.

The U.S. Supreme Court has made clear that public entities are liable for damages caused by regulatory takings, even temporary takings, from the moment the regulation causing the taking goes into effect, and public entities must pay property owners for the value of the property use during the period of deprivation. (See *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304, 319 (1987) ("The value of a leasehold interest in property for a period of years may be substantial, and the burden on the property owner in extinguishing such an interest for a period of years may be great indeed…Where this burden results from governmental action that amounted to a taking, the Just Compensation Clause of the Fifth Amendment requires that the government pay the landowner for the value of the use of the land during this period. [*Cf. United States v. Causby*, 328 U.S. 256, 261 (1946) ("It is the owner's loss, not the taker's gain, which is the measure of the value of the property taken")].)

While there has been no determination of the full extent of damages in the City that would result from the regulatory taking effected by enactment of the Proposed Ban, those damages could be enormous, and the City would be liable for the costs of defending any and all challenges to the Proposed Ban. If the Proposed Ban goes into effect, the City would be required to compensate producers and mineral rights holders for these losses, with damages accruing the moment the Proposed Ban goes into effect. The purported exemptions contained in the Proposed Ban to protect the interests of owners of "reasonable investment backed expectations" are highly suspect, as explained in this letter, and even immediate implementation of these purported exemptions would not save the City from financial exposure.

IV. THE PROPOSED BAN IS NOT EXEMPT FROM CEQA

The Planning Commission Staff Report concludes that the Proposed Ban is categorically exempt from CEQA as a regulatory action to protect the environment under Section 15308 of the CEQA Guidelines. Section 15308 exempts only "actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or

protection of the environment where the regulatory process involves procedures for protection of the environment." (CEQA Guidelines, § 15308.)

The Staff Report presents no evidence that the Proposed Ban is necessary to protect the environment. In fact, the Staff Report fails to identify the existence of any pending applications for any oil and gas projects involving hydraulic fracturing, acidizing, or well stimulation treatments, and it fails to identify any existing or past application of those techniques within the City. The Staff Report lists a litany of alleged negative impacts of these techniques (Staff Report, pp. 3-4), but provides no evidence that these techniques are causing or contributing to any of those impacts in the City. Instead, the Staff Report simply concludes, without support, that the Proposed Ban "strengthens environmental standards related to the prohibited uses, and thereby advances the protection of environmental resources within the City of Carson." (Id. at p. 4.)

Section 15308's exemption for regulatory acts is narrow and cannot be stretched to include the Proposed Ban. A municipality cannot "circumvent CEQA merely by characterizing its ordinances as environmentally friendly and therefore exempt" under the exemption. (*Save the Plastic Bag Coalition v. County of Marin* (2013) 218 Cal.App.4th 209, 219-220.) Rather, a municipality claiming that a project need not undergo CEQA review because it is a regulatory action intended to protect the environment must first marshal substantial evidence establishing that the project falls within the exempt category of projects. (See *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 115.)

In *Dunn-Edwards Corp. v. Superior Court* (1992) 9 Cal.App.4th 644 (disapproved on other grounds by *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559), for example, the court rejected an air district's argument that regulations imposing emission standards for volatile organic compounds contained in architectural coatings were categorically exempt under CEQA Guidelines Sections 15307 and 15308 because the regulations were more stringent and "cannot be said to have created an adverse change." (*Id.* at 657.) The court held the agency's conclusion that the regulations would not result in a net increase in emissions was not supported by any evidence on the record and was therefore "predicated on lack of the very information which would be provided by an EIR." (*Id.* at 658.)

Here, there is no evidence, much less substantial evidence, to support a determination that the Proposed Ban falls within the narrow exemption under Section 15308. The Staff Report merely concludes, without further explanation, that the exemption applies. This is not enough. The City cannot simply assert, without any support, that the Proposed Ban is categorically exempt from CEQA under Section 15308. (*Save the Plastic Bag Coalition*, 218 Cal.App.4th at 219-220.) Because the City has no evidence to support its conclusion that the Proposed Ban is exempt from CEQA, the City has not met its burden of establishing that the Proposed Ban falls within Section 15308's exemption for regulatory actions to protect the environment. Therefore, the Proposed Ban must undergo CEQA review.

manatt
manatt | phelps | phillips

Tom Mullier
Manatt, Phelps & Phillips, LLP
Direct Dial: (310) 312-4171
E-mail: TMullier@manatt.com

March 23, 2015

41509-033

BY EMAIL
ssoltani@awattorneys.com

Sunny Soltani, Esq.
Aleshsire & Wynder
2361 Rosecrans Avenue Suite 475
El Segundo, CA 90245

Re: Proposed Carson Restrictions on Oil Production

Dear Ms. Soltani:

At the Carson Planning Commission hearing on February 24, 2015, you advised the Commission that an ordinance effectively banning oil production in the City of Carson would not constitute an unconstitutional taking because the legislation under consideration does not unduly limit the rights of the surface owners.

As I noted in my comments at the hearing, on behalf of certain subsurface mineral rights owners, that position is not correct. Where, as here, the subsurface mineral rights are owned separately from the surface lands, a taking of all that my clients own—the subsurface mineral rights—***would*** constitute a compensable unconstitutional taking. If these rights are overregulated, the City will be liable for a taking of the mineral owners' valuable property rights.

In fact, the classic case in this area is exactly on point. In *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), Pennsylvania Coal deeded the surface rights but retained the right to remove subsurface coal from the property in question. The state adopted the Kohler Act, which prohibited coal mining in such a way as to cause subsidence to occupied structures. The Supreme Court found the Kohler Act exceeded the State's police power and overregulated Pennsylvania Coal's property interest by "abolish[ing] what is recognized in Pennsylvania as an estate in land—a very valuable estate." (*Pennsylvania Coal*, 260 U.S. at 414.) The Court wrote:

> "The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. . . . We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." (*Pennsylvania Coal*, 260 U.S. at 415-416.)

Pennsylvania Coal involved the situation where the property owner's *sole* property interest was in the subsurface.

This critically distinguishes the quite different situation where an owner owns the *entire* fee interest—including both the surface estate and the subsurface mineral estate—and tries to segment its property by focusing only on the latter. In that situation, the law will look to "the property as a whole" in analyzing whether there has been a taking by overregulation—*i.e.*, whether the regulation goes "too far" in depriving the property owner of what it actually owns. For example, in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, Penn Central was the fee owner of a city block on which the Grand Central Terminal, an 8-story building, was located. The City declared the Terminal a landmark, and denied Penn Central's plan to build a 55-story building atop it. Penn Central sued on the theory that the City had taken its air rights above the Terminal. Because Penn Central owned the entire property and other adjoining properties to which the air rights could be transferred, the Supreme Court denied Penn Central's attempt to divide its single parcel into segments; the focus is on the extent of the interference with rights "in the parcel as a whole." (*Penn Central*, 438 U.S. at 130).

Penn Central did not deal with the situation where a property owner owns *less than the fee* and the regulation damages the owner's *entire* property interest. The Supreme Court made this clear in the careful language it used in a subsequent case, *Andrus v. Allard*, 444 U.S. 51 (1979). In *Andrus*, the Court upheld Congress' right to limit the sale of bird artifacts that had been lawfully obtained before passage of the legislation under review. The owner tried to segment its property interests and focus solely on a "taking" of its right to profit from the sale of its property. This was improper under *Penn Central*, as the Supreme Court explained:

> "At least *where an owner possesses a full 'bundle' of property rights*, the destruction of one 'strand' of the bundle is not a taking because the aggregate must be viewed in its entirety." (*Andrus*, 444 U.S. at 65-66, emphasis added.)

The Court then added a citation as follows: "Compare *Penn Central* . . . with *Pennsylvania Coal*." (*Andrus*, 444 U.S. at 65-66.) This demonstrates that the Court recognized the distinction between factual scenarios in which an owner was trying to artificially limit its holdings by "segmenting" out but one of its interest (as in *Penn Central*), on the one hand, from the scenario where an owner was alleging that its *entire* property interest was being taken (as in *Pennsylvania Coal*). The Supreme Court has reiterated the conditional statement in *Andrus* on several occasions. *See, e.g. Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 497 (1987); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 327 (2002).

The distinction between *Pennsylvania Coal* and *Penn Central* recognized in the regulatory takings area is the same as that recognized in direct condemnation. The government must pay for the owner's *particular* property interest that it takes, even where the owner owns less than the fee. *See, e.g, United States v. Virginia Elec. & Power Co.*, 365 U.S. 624, 633 (1961) ("The guiding principle of just compensation is reimbursement to the owner *for the property interest taken.*") (emphasis added); *People ex rel. Dept. of Public Works v. Lynbar*, 253 Cal. App. 2d 870 (1967) ("[T]he property must be valued as the condemnor finds it, including without limitation thereby, the state of its title. . . .").

State courts applying *Penn Central* have recognized that the nature of the property owner's particular interest is critical to analysis of the regulatory takings issue. For example, in *Western Energy Company v. Genie Land Company*, 227 Mont. 74 (1987), the Supreme Court of Montana was reviewing a claim by a lessee of coal interests that a statute requiring consent of the surface owner to mine was unconstitutional. Reviewing the Supreme Court's decisions in *Pennsylvania Coal, Penn Central,* and *Andrus*, the Court honed in on the "full bundle" issue:

> "At issue in this case is *destruction of Western's entire bundle of rights in the minerals beneath the surface owned by Genie*." (*Western Energy*, 227 Mont. At 81, emphasis added.)

Another similar case is *Machipongo Land and Coal Company, Inc. v. Commonwealth of Pennsylvania*, 569 Pa. 3 (2002). Certain lands were designated as "unsuitable for mining" and the owners of the mineral rights sought compensation for a taking. In analyzing the owners' claims for a *per se* taking of all use under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), the Court found a distinction between the claims of those owners who owned *only* the mining rights, and those owners who owned *both* the mining rights and the surface rights. The latter (owners of the fee simple) could not, under *Penn Central*, segment their fee simple interest to focus only on the subsurface mining rights. But the fact that the former group owned only the mining interests "would appear to distinguish them" from the fee simple owners. (*Machipongo*, 569 Pa. at 35.) *See also, State ex rel. Shelly Materials, Inc. v. Clark County Board of Commissioners*, 115 Ohio St. 3d 337, 344 (Oh. 2007) (mineral estate may be considered the relevant parcel for regulatory takings analysis if it was purchased separately); *Whitney Benefits, Inc. v. United States*, 926 F. 2d 1169, 1172 (Fed. Cir. 1991) (affirming $60.2 million judgment for taking where "the only property here involved is the right to surface mine a particular deposit of coal.").

Thus, where an owner's property interest is limited to the subsurface mineral rights, a regulatory takings claim must assess whether *those* property interests have been taken. As the Supreme Court has recognized, property ownership has various dimensions. It is limited *horizontally* by the amount of acres owned – *e.g.*, by the metes and bounds of the interest. It may be limited

vertically by the particular property interest owned – *e.g.*, air rights or surface rights or subsurface rights. And it may be limited *temporally* by the length of the estate – *e.g.*, a leasehold for a stated period of time. *Tahoe-Sierra*, 535 U.S. at 331-332. When a claimant pursues a regulatory takings claim, the court always considers the dimensions of the owner's holdings. There may be issues as to whether all or just a part of the holdings should be placed in the denominator; but the question is never whether *somebody else's* property should be added to the denominator. In short, a regulatory takings claim is always limited by the *amount* of property that the claimant owns. The vertical dimension is treated in the same manner as the horizontal: where the owner's interest is limited to just part of the vertical dimension, its regulatory takings claim must be assessed based on that ownership interest — not by adding *someone else's* property to the denominator.

Here, the mineral owners own only the subsurface oil and gas rights in the properties in question. If the City destroys or damages that property interest, it will owe compensation to the mineral owners, regardless of whether the surface interests owned by somebody else still retain some economically beneficial use. The City needs to recognize this before it adopts any legislation that would damage the limited property interests owned by the mineral owners.

Sincerely,

Tom Muller

cc: James D. Flynn
John W. Hawkinson
Edward G. Burg, Esq.
Michael M. Berger, Esq.
Craig A. Moyer, Esq.

314191003.2

ALESHIRE & WYNDER LLP

Shannon L. Chaffin
schaffin@awattorneys.com
(559) 445-1580
Fax (559) 486-1568

2125 Kern Street, Suite 307
Fresno, CA 93721
P (559) 445.1580
F (888) 519.9160

ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

AWATTORNEYS.COM

April 6, 2015

VIA ELECTRONIC MAIL

Benjamin J. Hanelin
Latham & Watkins, LLP
355 South Grand Avenue
Los Angeles, California 90071-1560
Benjamin.Hanelin@lw.com

Re: Carson Oil Code Update: Proposed Zone Text Amendment 20-15 (Hydraulic Fracturing Prohibition)

Dear Mr. Hanelin:

Thank you for your input provided by correspondence on behalf of Californians for Energy Independence in connection with proposed Zone Text Amendment 20-15 (Ordinance). The purpose of this response is to address and provide clarification to the issues you raised.

I. Proposed Ordinance Does Not Prohibit Common Oil Extraction Methods

As a preliminary matter, the proposed Ordinance does not prohibit common oil extraction methods, nor would it result in "a complete shutdown of all existing oil and gas wells in the City." Oil and gas uses – including new operations - can continue to operate a variety of routine matters that have been traditionally associated with extraction of hydrocarbons.[1] Even if Zone Text Amendment 19-15 and the proposed Ordinance are both adopted, legally existing oil and gas uses may continue. If these uses are non-conforming, they would be subject to regulations and ordinances governing non-conforming uses, much in the same manner as other legally nonconforming uses may continue that do not involve petroleum uses.

As there is apparently misunderstanding regarding this issue, we will be recommending modifications to the proposed Ordinances to make this even more explicit.

///

[1] These include routine well cleanout work; routine well maintenance; routine treatment for the purpose of removal of formation damage due to drilling; bottom hole pressure surveys; routine activities that do not affect the integrity of the well or the formation; the removal of scale or precipitate from the perforations, casing, or tubing; a gravel pack treatment that does not exceed the formation fracture gradient; or a treatment that involves emplacing acid in a well and that uses a volume of fluid that is less than the Acid Volume Threshold for the operation and is below the formation fracture gradient. Steam flooding, cyclical steaming, certain types of workovers and other traditional operations are also not precluded.

II. Proposed Ordinance Is Not Preempted By State Law

The proposed Ordinance is not preempted by State law. Under California law, local government regulations that conflict with State general law are preempted.[2] The preemption may be express or by implication.[3]

State law is devoid of any express preemption regarding a city's ability to regulate zoning and land uses with regard to oil and gas. The law is also devoid of any express preemption regarding hydraulic fracturing and related items.

Next, preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations or when the statutory scheme recognizes local regulations.[4] Likewise, when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume that such regulation is not preempted by state statute unless there is a clear indication of preemptive intent from the Legislature.[5] Local entities may make further regulations on phases of the matter not covered by the state legislation in furtherance of the purpose of the state law, provided such local regulations are not in themselves unreasonable. In such cases it is said that there is no conflict.[6] A city has broad discretion in determining what is reasonable in endeavoring to protect public health, safety, morals, and general welfare of the community.[7] The Legislature has specified certain minimum standards for local zoning regulations but has carefully expressed its intent to retain the maximum degree of local control.[8]

State statutes and regulations do not implicitly preempt the City from adopting zoning and land use regulations related to oil and gas drilling. In at least one provision in the State's oil and gas laws the State Legislature stated:

> This chapter *shall not be deemed a preemption* by the state of any existing right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including, but not limited to, zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment and inspection.[9]

---

[2] Cal. Const., art. XI, § 7.

[3] *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885 [218 Cal.Rptr. 303].

[4] *Candid Enterprise v. Grossmont Union, supra,* 39 Cal.3d 878, 888 [218 Cal.Rptr. 303].

[5] *Big Creek Lumber Co. v. County. of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 [136 P.3d 821], as modified (Aug. 30, 2006).

[6] *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 541 [86 Cal.Rptr. 673].

[7] *Carlin v. City of Palm Springs* (1971) 14 Cal.App.3d 706, 711 [92 Cal.Rptr. 535].

[8] *IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89 [2 Cal.Rptr.2d 513], see also Gov. Code, §§ 65800, 65802 and 65850 *et seq.*

[9] Pub. Resources Code, § 3690 (emphasis added).

Note, the statute recognizes a city is restricted to adopting laws and regulations limited to just "where" these oil production activities may occur, but also includes the conduct "how," operations must take place. This includes "how" loud, "how" safe, "how" the use may operate during certain periods of time, "how" oil production activities must be abandoned, etc.[10]

Likewise, California cities and counties have been validly regulating oil and gas operations since the early 1900's.[11] Early regulations included zoning ordinances restricting oil drilling and production to certain zones, etc.[12] They also included limitations, safeguards, and controls on how oil and gas operations could be conducted.[13] As early as 1925, the California Supreme Court held that local governments have "the unquestioned right to regulate the business of operating oil wells within [their] limits, and to prohibit their operation within delineated areas and districts, if reason appears for so doing."[14]

Today, local regulation of oil and gas operations is widespread.[15] Local government routinely zone oil and gas uses.[16] Some have also codified detailed processes for permitting and overseeing such operations and regulate matters such as well spacing and location, grading, piping, fire prevention and control equipment, signage and liability insurance.[17] Jurisdictions have also adopted zoning regulations specific to fracking.[18]

As a final consideration, the Ordinance is being considered concurrently with Zone Text Amendment 19-15, a comprehensive update of the City's Oil and Gas Code. If that Code and this proposed Ordinance are both adopted, the Ordinance would subject to Section 9504, which includes a mechanism to prevent inadvertent preemption as the law evolves. That section provides that in all cases where there is conflict with state laws or regulations, "such state laws or

---

[10] *See id.*

[11] See, e.g., *Pac. Palisades Ass'n v. City of Huntington Beach* (1925) 196 Cal. 211. For a general discussion, see also Minner & Broderick, *Local Control of Oil and Gas Operations: Getting a Handle on Fracking and Cyclic Steaming Through Land Use Prohibitions, Moratoria, Discretionary Permits, and Citizen Initiatives* (2014) 23 Envt'l Law News 2.

[12] See, e.g., *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 557-58; *Trans-Oceanic Oil Corp. v. City of Santa Barbara* (1948) 85 Cal.App.2d 776, 780; *Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24, 27.

[13] See, e.g., *Friel v. County of Los Angeles* (1959) 172 Cal.App.2d 142, 145; *Wood v. City Planning Comm'n of San Buenaventura* (1955) 130 Cal.App.2d 356, 361.

[14] *Pac. Palisades Ass'n v. City of Huntington Beach, supra,* 196 Cal. 211, 217.

[15] The following is a sample of counties that regulate or restrict land uses involving oil and gas drilling in some form: Butte County, Colusa County, Glenn County, Humboldt County, Imperial County, Kern County, Kings County, Los Angeles County, Marin County, Merced County, San Diego County, San Joaquin County, San Louis Obispo County, Santa Cruz County, Solano County, Sonoma County, Stanislaus County, Sutter County, Tehama County, Venture County, and Yolo County. Numerous municipalities in California have similar regulations.

[16] See, e.g., County of Glenn County Codes, §§ 15.440.020, 15.450.060 (2014) (oil and gas wells allowed in industrial zone and allowed with conditional use permit in timberland preserve zone).

[17] See, e.g., San Benito County Code of Ordinances, Ch. 19.21 (2014) ("Oil and Gas Wells").

[18] See, e.g., Santa Barbara County Code of Ordinances (County Land Use & Development Code), §§ 35.52.040, 35.52.050 (2014).

regulations shall prevail over any contradictory provisions, or contradictory prohibitions or requirements, made pursuant to this ordinance."

Under these circumstances there is no express or implied preemption posed by the proposed Ordinance.

III. Proposed Ordinance Does Not Give Rise To A Compensable Taking

The proposed Ordinance does not give rise to a compensable taking under either a facial challenge or an as-applied challenge.

A. No facial taking

Facial claims assert that the action took the property even without an inquiry into its circumstances because under any conceivable scenario there was a taking. Facial regulatory takings challenges are disfavored due to the highly factual nature of the court's inquiry in each case.[19] A facial claim does not appear to be asserted by your correspondence, nor does the proposed Ordinance give rise to a facial taking.

B. No as-applied taking

As to as-applied challenges, there are two subtypes. The first subtype is a "per se" taking, where the regulation deprives the property owner of 100% of the total economic value of the property.[20] The second subtype type of as-applied regulatory taking can occur where the property value is severely diminished as analyzed under a three-prong test set forth in *Penn Central Transportation Company v. City of New York* (1978) 438 U.S. 104.

i. No "per se" taking

Here, there is no "per se" taking as proposed Ordinances do not deprive the property owner of 100% of the total economic value of the property for a variety of reasons. As noted above, common oil extraction methods can continue to be used to extract petroleum. Legally existing oil and gas uses may continue as nonconforming uses even if both the proposed Ordinance and Zone Text Amendment 19-15 are adopted. Landowners are not prohibited from other uses of the property recognized by the zoning ordinance. The proposed Ordinance also recognizes and provides a specific exception for those extraordinary circumstances where such a "per se" taking may occur. Regardless, the proposed Ordinance serves to address nuisances associated by oil and gas operations – which is an exception to a claim of compensable "per se" regulatory taking.[21]

---

[19] *See Hodel v. Virginia Surface Min. and Reclamation Ass'n, Inc.* (1981) 452 U.S. 264, 294-295 ; *see also Keystone Bituminous Coal Ass'n v. DeBenedictis* (1987) 480 U.S. 470, 495-96.)

[20] *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003.)

[21] *Lucas v. South Carolina, supra,* 505 U.S. 1003, 1029-1030.

ii. No taking for diminution of value under *Penn Central*

There is also not a compensable taking under a "diminution of value" theory.

The Supreme Court has established a three-prong diminution in value test 1) the character of the governmental regulation; (2) the economic impact of the regulation on the claimant; and (3) the regulation's interference with distinct, and reasonable, investment-backed expectations.[22] California courts may reject a takings claim based on any one of the three factors.[23]

Generally, regulatory takings claims based on the "diminution of value" theory rarely succeed. The California Supreme Court has noted that, "Even a significant diminution in value is insufficient to establish a confiscatory taking."[24] Mere diminution in property value, short of a complete reduction of all value, cannot by itself establish a taking.[25]

A taking has not occurred even when one of the rights in a property owner's "bundle" of rights is "destroyed" because this does not prohibit all economic benefit.[26] If a property owner retains certain rights, like the rights to possess or devise, then there is no taking.[27] The Supreme Court's takings jurisprudence requires that total takings be judged "by the property as a whole" and not just a portion of the total rights associated with the property.[28] The Court reaffirmed the vertical parcel-as-a-whole concept in *Keystone Bituminous Coal* with regard to a plaintiff who owned both a surface and mineral estate – despite state-law recognition of mineral estates as a separate property interest.[29] As a result, when owners of a severed coal estate without surface rights claimed a ban affected a total taking, the Supreme Court of Pennsylvania relied upon U.S. Supreme Court precedent to reject the claim and held the relevant parcel at issue "cannot be vertically segmented and must be defined to include both the surface and mineral rights."[30]

Here, the mineral rights cannot be separated from the other rights of the "parcel as a whole." Even assuming for the sake of argument there was a complete destruction of access to all mineral rights, there would still not be a compensable taking because the aggregate must be viewed in light of the entire parcel. Landowners with rights in the "property as a whole" are not prohibited from other uses recognized by the zoning ordinance. In fact, even if just the mineral rights were considered, the proposed Ordinance would not result in a compensable destruction of

---

[22] *Penn Central Transportation Company v. City of New York* (1978) 438 U.S. 104, 124-125; *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 617.

[23] *Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1277.

[24] *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1026.

[25] *See Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust* (1993) 508 U.S. 602, 645.

[26] *Andrus v. Allard* (1979) 444 U.S. 51, 65-66.

[27] *Ibid.*

[28] *Penn Central v. City of New York, supra,* 438 U.S. 104, 130-131; *see Tahoe-Sierra Pres. Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 331.

[29] *Keystone Bituminous Coal Ass'n v. DeBenedictis* (1987) 480 U.S. 470, see also *Machipongo Land & Coal Co., Inc. v. Commonwealth* (Pa. 2002) 799 A.2d 751.

[30] *Machipongo Land v. Commonwealth, supra,* 799 A.2d 751, 766 .

the mineral right. The proposed Ordinance still enables an owner of a mineral estate to engage in conventional oil and gas extraction. The regulations also contain language to preclude an inadvertent taking. Simply stated, there is no reasonable basis for concluding the proposed Ordinance will result in any sort of a compensable taking.

C. "Savings Clause" not "Illusory" or Ambiguous

The correspondence also raises concerns that the "savings clause" is "illusory," and certain terms such as "reasonable investment backed expectation" and "nuisance" are ambiguous. No legal authority was provided regarding these issues.

The proposed Ordinance provides an exception under circumstances where 1) an owner/operator can establish a reasonable investment backed expectation before the effective date of the Ordinance; and 2) such well stimulation would not create a nuisance due to an adverse impact on persons or property within the City. Definitions for "reasonable investment backed expectation" and "nuisance" are not required in the proposed Ordinance, as the learned justices of the United States Supreme Court, etc., have already established parameters for these terms in a "takings" context.[31] As such, the exception in the proposed Ordinance is neither vague or illusory on its face.

IV. Ordinance Complies With CEQA

Finally, the correspondence raises concerns whether the proposed Ordinance is "necessary" to protect the environment, and whether the "Staff Report" is sufficient to provide substantial evidence in support of the proposed Ordinance.

No authority is cited for the novel premise a local agency is precluded from adopting regulations to protect the environment until it becomes "necessary" due to a pending application. Nor is there any legal authority for the premise that there must be a past record of well stimulation techniques within the City that have resulted in harm to the environment. Instead, CEQA Guidelines section 15308 only requires the protections act to "assure the maintenance, restoration, enhancement of the environment…"

There is also no authority to support the assumption that substantial evidence in support of the finding of a Categorical Exemption must only appear in the Staff Report. Instead, substantial evidence also include all facts, reasonable assumptions predicated upon facts, and expert opinion supported by the facts.[32] In other words, evidence may be found in light of the whole record.

---

[31] See, e.g., *Penn Central v. City of New York, supra,* 438 U.S. 104; *Palazzolo v. Rhode Island, supra,* 533 U.S. 606, 617; and *Lucas v. South Carolina, supra,* 505 U.S. 1003, 1029-1030.

[32] CEQA Guidelines Section 15384.

Here, the record includes not only the Planning Commission Staff Report itself, but all the documents, studies, records, etc., included and referenced in the Staff Report, as well as power point presentations, public testimony, etc., provided during the Planning Commission hearing. Additionally, all public documents, comments and testimony provided in connection with the City's discussions of petroleum operations on March 18, 2014, April 15, 2014, April 29, 2014, and May 20, 2014 are also part of the record and may constitute "substantial evidence." Finally, additional evidence may continue to be added to the record at the continued hearing of the Planning Commission and at the City Council hearing.

Once the record as a whole is considered, there is substantial evidence to support a finding of Categorical Exemption under CEQA Guidelines section 15308.

V. Conclusion

We thank you for this opportunity to address your client's concerns and look forward to any additional input you may have on this topic.

Very truly yours,

ALESHIRE & WYNDER, LLP

Shannon L. Chaffin
Attorney

SLC/rkk

ALESHIRE & WYNDER LLP
ATTORNEYS AT LAW

ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

Shannon L. Chaffin
schaffin@awattorneys.com
(559) 445-1580
Fax (559) 486-1568

2125 Kern Street, Suite 307
Fresno, CA 93721
P (559) 445.1580
F (888) 519.9160

AWATTORNEYS.COM

April 6, 2015

VIA ELECTRONIC MAIL

Tom Muller
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
E-Mail: TMuller@manatt.com

Re: Proposed Zone Text Amendments 19-15 and 20-15 re Petroleum Operations

Dear Mr. Muller:

Thank you for your input provided by correspondence dated February 23, 2015, on behalf of The Carson Companies (TCC) in connection with proposed Zone Text Amendments 19-15 and 20-15 (Ordinances). The purpose of this response is to address and provide clarification to the issues you raised.

I. Proposed Ordinances Do Not Prohibit Legal Uses Already Operating

As a preliminary matter, the proposed Ordinances do not prohibit legally operating oil and gas uses already in existence. As a result, legally existing oil and gas uses may continue, subject to regulations and ordinances governing non-conforming uses, much in the same manner as other legally nonconforming uses may continue that do not involve petroleum uses.

What this means is legally operating oil and gas uses already in existence can continue to do a variety of routine matters to continue petroleum operations.[1] As there is apparently some misunderstanding regarding this issue, we will be recommending modifications to the proposed Ordinances to make this even more explicit.

That having been said, certain types of new development, expansion, change in intensity of use, modification or similar changes proposed in the nature of the existing oil and gas uses or site would be subject to the Municipal Code in effect at the time of the proposed change. For example, if the proposed Ordinances are adopted, an existing oil and gas use would be subject to the new requirements if the operation sought to expand the number of wells on a site, or if it

[1] These include routine well cleanout work; routine well maintenance; routine treatment for the purpose of removal of formation damage due to drilling; bottom hole pressure surveys; routine activities that do not affect the integrity of the well or the formation; the removal of scale or precipitate from the perforations, casing, or tubing; a gravel pack treatment that does not exceed the formation fracture gradient; or a treatment that involves emplacing acid in a well and that uses a volume of fluid that is less than the Acid Volume Threshold for the operation and is below the formation fracture gradient. Steam flooding, cyclical steaming, certain types of workovers and other traditional operations are also not precluded.

sought to commence hydraulic fracturing operations. Applying the Municipal Code standard in effect at the time of the proposed change of use is consistent with its application to other types of legally nonconforming uses within the City of Carson that do not involve oil and gas uses.

II. Proposed Ordinances Do Not Give Rise To A Compensable Taking

The proposed Ordinances do not give rise to a compensable taking under either a facial challenge or an as-applied challenge.

A. No facial taking

Facial claims assert that the action took the property even without an inquiry into its circumstances because under any conceivable scenario there was a taking. Facial regulatory takings challenges are disfavored due to the highly factual nature of the court's inquiry in each case.[2] A facial claim does not appear to be asserted by your correspondence, nor do the proposed Ordinances give rise to a facial taking.

B. No as-applied taking

As to as-applied challenges, there are two subtypes. The first subtype is a "per se" taking, where the regulation deprives the property owner of 100% of the total economic value of the property.[3] The second subtype type of as-applied regulatory taking can occur where the property value is severely diminished as analyzed under a three-prong test set forth in *Penn Central Transportation Company v. City of New York* (1978) 438 U.S. 104.

i. No "per se" taking

Here, there is no "per se" taking as proposed Ordinances do not deprive the property owner of 100% of the total economic value of the property for a variety of reasons. As noted above, legally existing oil and gas uses may continue as nonconforming uses even if the proposed Ordinances are adopted. Landowners are not prohibited from other uses of the property recognized by the zoning ordinance. The proposed Ordinances also recognize and provide exceptions for those extraordinary circumstances where such a "per se" taking may occur. Regardless, the proposed Ordinances serve to address nuisances associated by oil and gas operations – which is an exception to a claim of compensable "per se" regulatory taking.[4]

ii. No taking for diminution of value under *Penn Central*

There is also not a compensable taking under a "diminution of value" theory.

---

[2] *See Hodel v. Virginia Surface Min. and Reclamation Ass'n, Inc.* (1981) 452 U.S. 264, 294-295 ; *see also Keystone Bituminous Coal Ass'n v. DeBenedictis* (1987) 480 U.S. 470, 495-96.)

[3] *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003.

[4] *Lucas v. South Carolina, supra,* 505 U.S. 1003, 1029-1030.

The Supreme Court has established a three-prong diminution in value test 1) the character of the governmental regulation; (2) the economic impact of the regulation on the claimant; and (3) the regulation's interference with distinct, and reasonable, investment-backed expectations.[5] California courts may reject a takings claim based on any one of the three factors.[6]

Generally, regulatory takings claims based on the "diminution of value" theory rarely succeed. The California Supreme Court has noted that, "Even a significant diminution in value is insufficient to establish a confiscatory taking."[7] Mere diminution in property value, short of a complete reduction of all value, cannot by itself establish a taking.[8]

A taking has not occurred even when one of the rights in a property owner's "bundle" of rights is "destroyed" because this does not prohibit all economic benefit.[9] If a property owner retains certain rights, like the rights to possess or devise, then there is no taking.[10] The Supreme Court's takings jurisprudence requires that total takings be judged "by the property as a whole" and not just a portion of the total rights associated with the property.[11] The Court reaffirmed the vertical parcel-as-a-whole concept in *Keystone Bituminous Coal* with regard to a plaintiff who owned both a surface and mineral estate – despite state-law recognition of mineral estates as a separate property interest.[12] As a result, when owners of a severed coal estate without surface rights claimed a ban affected a total taking, the Supreme Court of Pennsylvania relied upon U.S. Supreme Court precedent to reject the claim and held the relevant parcel at issue "cannot be vertically segmented and must be defined to include both the surface and mineral rights."[13]

Here, the mineral rights cannot be separated from the other rights of the "parcel as a whole." Even assuming for the sake of argument there was a complete destruction of access to all mineral rights, there would still not be a compensable taking because the aggregate must be viewed in light of the entire parcel. Landowners with rights in the "property as a whole" are not prohibited from other uses recognized by the zoning ordinance. In fact, the proposed Ordinances would not result in a compensable destruction of even just the mineral rights. Both proposed Ordinances, including the restriction on hydraulic fracturing, still enable an owner of a mineral estate to engage in conventional oil and gas extraction. The regulations also contain a built-in safety mechanism to preclude an inadvertent taking. Simply stated, there is no reasonable basis for concluding the proposed Ordinances will result in any sort of a compensable taking.

---

[5] See *Penn Central Transportation Company v. City of New York* (1978) 438 U.S. 104, 124-125, *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 617.

[6] *Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1277.

[7] *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1026.

[8] *See Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust* (1993) 508 U.S. 602, 645.

[9] *Andrus v. Allard* (1979) 444 U.S. 51, 65-66.

[10] *Ibid.*

[11] *Penn Central v. City of New York, supra,* 438 U.S. 104, 130-131; *see Tahoe-Sierra Pres. Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 331.

[12] *Keystone Bituminous Coal Ass'n v. DeBenedictis* (1987) 480 U.S. 470, see also *Machipongo Land & Coal Co., Inc. v. Commonwealth* (Pa. 2002) 799 A.2d 751.

[13] *Machipongo Land Co. v. Commonwealth, supra,* 799 A.2d 751, 766.

III. Proposed Ordinances Are Not Preempted By State Law

The proposed Ordinances are also not preempted by State law. Under California law, local government regulations that conflict with State general law are preempted.[14] The preemption may be express or by implication.[15]

State law is devoid of any express preemption regarding a city's ability to regulate zoning and land uses with regard to oil and gas. The law is also devoid of any express preemption regarding hydraulic fracturing and related items.

Next, preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations or when the statutory scheme recognizes local regulations.[16] Likewise, when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume that such regulation is not preempted by state statute unless there is a clear indication of preemptive intent from the Legislature.[17] Local entities may make further regulations on phases of the matter not covered by the state legislation in furtherance of the purpose of the state law, provided such local regulations are not in themselves unreasonable. In such cases it is said that there is no conflict.[18] A city has broad discretion in determining what is reasonable in endeavoring to protect public health, safety, morals, and general welfare of the community.[19] The Legislature has specified certain minimum standards for local zoning regulations but has carefully expressed its intent to retain the maximum degree of local control.[20]

Here, state statutes and regulations do not implicitly preempt the City from adopting zoning and land use regulations related to oil and gas drilling. In at least one provision in the State's oil and gas laws the State Legislature stated:

> This chapter *shall not be deemed a preemption* by the state of any existing right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including, but not limited to, zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment and inspection.[21]

---

[14] Cal. Const., art. XI, § 7.

[15] *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885 [218 Cal.Rptr. 303].

[16] *Candid Enterprises v. Grossmont Union, supra,* 39 Cal.3d 878, 888 [218 Cal.Rptr. 303].

[17] *Big Creek Lumber Co. v. Cnty. of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 [136 P.3d 821], as modified (Aug. 30, 2006).

[18] *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 541 [86 Cal.Rptr. 673].

[19] *Carlin v. City of Palm Springs* (1971) 14 Cal.App.3d 706, 711 [92 Cal.Rptr. 535].

[20] *IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89 [2 Cal.Rptr.2d 513], see also Gov. Code §§ 65800, 65802 and 65850 *et seq.*

[21] Pub. Resources Code, § 3690 (emphasis added).

Likewise, California cities and counties have been validly regulating oil and gas operations since the early 1900's.[22] Early regulations included zoning ordinances restricting oil drilling and production to certain zones, etc.[23] They also included limitations, safeguards, and controls on how oil and gas operations could be conducted.[24] As early as 1925, the California Supreme Court held that local governments have "the unquestioned right to regulate the business of operating oil wells within [their] limits, and to prohibit their operation within delineated areas and districts, if reason appears for so doing."[25]

Today, local regulation of oil and gas operations is widespread.[26] Local government routinely zone oil and gas uses.[27] Some have also codified detailed processes for permitting and overseeing such operations and regulate matters such as well spacing and location, grading, piping, fire prevent and control equipment, signage and liability insurance.[28] Jurisdictions have also adopted zoning regulations specific to fracking.[29]

As a final consideration, proposed Section 9504 provides a mechanism to prevent inadvertent preemption as the law evolves. That section provides that in all cases where there is conflict with state laws or regulations, "such state laws or regulations shall prevail over any contradictory provisions, or contradictory prohibitions or requirements, made pursuant to this ordinance."

Under these circumstances there is no express or implied preemption .

//

---

[22] See, e.g., *Pac. Palisades Ass'n v. City of Huntington Beach* (1925) 196 Cal. 211. For a general discussion, see also Minner & Broderick, *Local Control of Oil and Gas Operations: Getting a Handle on Fracking and Cyclic Steaming Through Land Use Prohibitions, Moratoria, Discretionary Permits, and Citizen Initiatives* (2014) 23 Envt'l Law News 2.

[23] See, e.g., *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 557-58; *Trans-Oceanic Oil Corp. v. City of Santa Barbara* (1948) 85 Cal.App.2d 776, 780; *Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24, 27.

[24] See, e.g., *Friel v. County of Los Angeles* (1959) 172 Cal.App.2d 142, 145; *Wood v. City Planning Comm'n of San Buenaventura* (1955) 130 Cal.App.2d 356, 361.

[25] *Pac. Palisades Ass'n v. City of Huntington Beach, supra,* 196 Cal. 211, 217.

[26] The following is a sample of counties that regulate or restrict land uses involving oil and gas drilling in some form: Butte County, Colusa County, Glenn County, Humboldt County, Imperial County, Kern County, Kings County, Los Angeles County, Marin County, Merced County, San Diego County, San Joaquin County, San Louis Obispo County, Santa Cruz County, Solano County, Sonoma County, Stanislaus County, Sutter County, Tehama County, Venture County, and Yolo County. Numerous municipalities in California have similar regulations.

[27] See, e.g., County of Glenn County Codes, §§ 15.440.020, 15.450.060 (2014) (oil and gas wells allowed in industrial zone and allowed with conditional use permit in timberland preserve zone).

[28] See, e.g., San Benito County Code of Ordinances, Ch. 19.21 (2014) ("Oil and Gas Wells").

[29] See, e.g., Santa Barbara County Code of Ordinances (County Land Use & Development Code), §§ 35.52.040, 35.52.050 (2014).

IV. Conclusion

The Ordinances would neither result in a prohibition of existing lawful uses, a taking of property, nor be preempted by State law.

We thank you for this opportunity to address your client's concerns and look forward to any additional input you may have on this topic.

Very truly yours,

ALESHIRE & WYNDER, LLP

Shannon L. Chaffin
Attorney

SLC/rkk

ALESHIRE & WYNDER LLP
ATTORNEYS AT LAW

Shannon L. Chaffin
schaffin@awattorneys.com
(559) 445-1580
Fax (559) 486-1568

2125 Kern Street, Suite 307
Fresno, CA 93721
P (559) 445.1580
F (888) 519.9160

ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

AWATTORNEYS.COM

April 6, 2015

VIA ELECTRONIC MAIL

Tom Muller
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
E-Mail: TMuller@manatt.com

Re: Proposed Zone Text Amendments 19-15 and 20-15 re Petroleum Operations

Dear Mr. Muller:

Thank you for your additional input provided by correspondence dated March 23, 2015 in connection with proposed Zone Text Amendments 19-15 and 20-15 (Ordinances). The purpose of this response is to address and provide clarification to the issues you raised.

I. Proposed Ordinances Do Not Ban Oil and Gas Production in Carson

There appears to be an underlying assumption that adoption of the proposed Ordinances would effectively ban oil production in the City of Carson. This is simply not the case.

The proposed Ordinance does not prohibit common oil extraction methods, nor would it "effectively ban[] oil production in the City of Carson." As explained in greater detail in response to your correspondence of February 23, 2015, the proposed Ordinances do not prohibit legally operating oil and gas uses already in existence. Oil and gas uses can continue to operate a variety of routine matters that have been traditionally associated with extraction of hydrocarbons.[1] Even if the proposed Ordinances are both adopted, legally existing oil and gas uses may continue. If these uses are non-conforming, they would be subject to regulations and ordinances governing non-conforming uses, much in the same manner as other legally nonconforming uses may continue that do not involve petroleum uses.

Likewise, new development of oil and gas sites within designated zoned districts would continue to be able to engage in traditional operations including steam flooding, cyclical

[1] These include routine well cleanout work; routine well maintenance; routine treatment for the purpose of removal of formation damage due to drilling; bottom hole pressure surveys; routine activities that do not affect the integrity of the well or the formation; the removal of scale or precipitate from the perforations, casing, or tubing; a gravel pack treatment that does not exceed the formation fracture gradient; or a treatment that involves emplacing acid in a well and that uses a volume of fluid that is less than the Acid Volume Threshold for the operation and is below the formation fracture gradient. Steam flooding, cyclical steaming, certain types of workovers and other traditional operations are also not precluded.

steaming, and certain types of workovers. In other words, the proposed Ordinances regulate oil and gas operations, but do not "effectively ban[] oil production in the City of Carson."

In this regard, California cities and counties have been validly regulating oil and gas operations since the early 1900's.[2] Early regulations included zoning ordinances restricting oil drilling and production to certain zones, etc.[3] They also included limitations, safeguards, and controls on how oil and gas operations could be conducted.[4]

II. Proposed Ordinances Do Not Give Rise To A Compensable Taking

As discussed in greater detail in response to your correspondence of February 23, 2015, the proposed Ordinances do not give rise to a compensable taking.

Assuming for the sake of argument the "parcel as a whole" analysis only applies when there is an entire fee interest, there is still not a compensable taking as there has not been a regulatory taking of the entire subsurface mineral estate. As noted above, the proposed Ordinances do not ban all oil or gas operations in Carson. Even if the "bundle" of property rights could be artificially constricted to just subsurface mineral estates, there is still no taking when one or a portion of the rights in this "bundle" of rights is removed because this does not prohibit all economic benefit.[5]

Both proposed Ordinances, including the restriction on hydraulic fracturing, still enable an owner of a mineral estate to engage in conventional oil and gas extraction within the City. The Ordinances also contain language to preclude an inadvertent taking. Finally, the nature of the Ordinances is to address nuisances and threats to public health, safety, welfare and environmental impacts.

California courts have long rejected claims by property and mineral rights owners that zoning ordinances prohibiting oil and gas drilling effect a taking of private property.[6] Under these conditions there is no reasonable basis for concluding the proposed Ordinances will result in any sort of a compensable taking.

---

[2] See, e.g., *Pac. Palisades Ass'n v. City of Huntington Beach* (1925) 196 Cal. 211. For a general discussion, see also Minner & Broderick, *Local Control of Oil and Gas Operations: Getting a Handle on Fracking and Cyclic Steaming Through Land Use Prohibitions, Moratoria, Discretionary Permits, and Citizen Initiatives* (2014) 23 Envt'l Law News 2.

[3] See, e.g., *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 557-58; *Trans-Oceanic Oil Corp. v. City of Santa Barbara* (1948) 85 Cal.App.2d 776, 780; *Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24, 27.

[4] See, e.g., *Friel v. County of Los Angeles* (1959) 172 Cal.App.2d 142, 145; *Wood v. City Planning Comm'n of San Buenaventura* (1955) 130 Cal.App.2d 356, 361.

[5] *Andrus v. Allard* (1979) 444 U.S. 51, 65-66.

[6] *Friel v. County of Los Angeles, supra,* 172 Cal.App.2d 142, 148; *Beverly Oil Co. v. City of Los Angeles, supra,* 40 Cal.2d 552, 559.

IV. Conclusion

We thank you for this opportunity to address your client's concerns and look forward to any additional input you may have on this topic.

Very truly yours,

ALESHIRE & WYNDER, LLP

Shannon L. Chaffin
Attorney

SLC/rkk

ALESHIRE & WYNDER LLP
ATTORNEYS AT LAW

ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

Shannon L. Chaffin
schaffin@awattorneys.com
(559) 445-1580
Fax (559) 486-1568

2125 Kern Street, Suite 307
Fresno, CA 93721
P (559) 445.1580
F (888) 519.9160

AWATTORNEYS.COM

April 6, 2015

VIA ELECTRONIC MAIL

Benjamin J. Hanelin
Latham & Watkins, LLP
355 South Grand Avenue
Los Angeles, California 90071-1560
Benjamin.Hanelin@lw.com

Re: Carson Oil Code Update: Proposed Zone Text Amendment 19-15 (Comprehensive Update of the City's Oil and Gas Ordinances)

Dear Mr. Hanelin:

Thank you for your input provided by correspondence on behalf of Californians for Energy Independence in connection with proposed Zone Text Amendment 19-15 (Ordinance). The purpose of this response is to address and provide clarification to the issues you raised.

I. Proposed Ordinance Is Not Preempted By State Law

The proposed Ordinance is not preempted by State law. Under California law, local government regulations that conflict with State general law are preempted.[1] The preemption may be express or by implication.[2]

State law is devoid of any express preemption regarding a city's ability to regulate zoning and land uses with regard to oil and gas. The law is also devoid of any express preemption regarding hydraulic fracturing and related items.

Next, preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations or when the statutory scheme recognizes local regulations.[3] Likewise, when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume that such regulation is not preempted by state statute unless there is a clear indication of preemptive intent from the Legislature.[4] Local entities may make further regulations on phases of the matter not covered by the state legislation in furtherance of the purpose of the state law, provided such local regulations are not in themselves unreasonable. In

[1] Cal. Const., art. XI, § 7.

[2] *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885 [218 Cal.Rptr. 303].

[3] *Candid Enterprises v. Grossmont Union, supra,* 39 Cal.3d 878, 888 [218 Cal.Rptr. 303].

[4] *Big Creek Lumber Co. v. County. of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 [136 P.3d 821], as modified (Aug. 30, 2006).

such cases it is said that there is no conflict.[5] A city has broad discretion in determining what is reasonable in endeavoring to protect public health, safety, morals, and general welfare of the community.[6] The Legislature has specified certain minimum standards for local zoning regulations but has carefully expressed its intent to retain the maximum degree of local control.[7]

Here, state statutes and regulations do not implicitly preempt the City from adopting zoning and land use regulations related to oil and gas drilling. In at least one provision in the State's oil and gas laws the State Legislature stated:

> This chapter *shall not be deemed a preemption* by the state of any existing right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including, but not limited to, zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment and inspection.[8]

Likewise, California cities and counties have been validly regulating oil and gas operations since the early 1900's.[9] Early regulations included zoning ordinances restricting oil drilling and production to certain zones, etc.[10] They also included limitations, safeguards, and controls on how oil and gas operations could be conducted.[11] As early as 1925, the California Supreme Court held that local governments have "the unquestioned right to regulate the business of operating oil wells within [their] limits, and to prohibit their operation within delineated areas and districts, if reason appears for so doing."[12]

Today, local regulation of oil and gas operations is widespread.[13] Local government routinely zone oil and gas uses.[14] Some have also codified detailed processes for permitting and

---

[5] *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 541 [86 Cal.Rptr. 673].

[6] *Carlin v. City of Palm Springs* (1971) 14 Cal.App.3d 706, 711 [92 Cal.Rptr. 535].

[7] *IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89 [2 Cal.Rptr.2d 513], see also Gov. Code §§ 65800, 65802 and 65850 *et seq.*

[8] Pub. Resources Code § 3690 (emphasis added).

[9] See, e.g., *Pac. Palisades Ass'n v. City of Huntington Beach* (1925) 196 Cal. 211. For a general discussion, see also Minner & Broderick, *Local Control of Oil and Gas Operations: Getting a Handle on Fracking and Cyclic Steaming Through Land Use Prohibitions, Moratoria, Discretionary Permits, and Citizen Initiatives* (2014) 23 Envt'l Law News 2.

[10] See, e.g., *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 557-58; *Trans-Oceanic Oil Corp. v. City of Santa Barbara* (1948) 85 Cal.App.2d 776, 780; *Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24, 27.

[11] See, e.g., *Friel v. County of Los Angeles* (1959) 172 Cal.App.2d 142, 145; *Wood v. City Planning Comm'n of San Buenaventura* (1955) 130 Cal.App.2d 356, 361.

[12] *Pac. Palisades Ass'n v. City of Huntington Beach, supra*, 196 Cal. 211, 217.

[13] The following is a sample of counties that regulate or restrict land uses involving oil and gas drilling in some form: Butte County, Colusa County, Glenn County, Humboldt County, Imperial County, Kern County, Kings County, Los Angeles County, Marin County, Merced County, San Diego County, San Joaquin County, San Louis Obispo County, Santa Cruz County, Solano County, Sonoma County, Stanislaus County, Sutter County, Tehama County, Venture County, and Yolo County. Numerous municipalities in California have similar regulations.

[14] See, e.g., County of Glenn County Codes, §§ 15.440.020, 15.450.060 (2014) (oil and gas wells allowed in industrial zone and allowed with conditional use permit in timberland preserve zone).

overseeing such operations and regulate matters such as well spacing and location, grading, piping, fire prevention and control equipment, signage and liability insurance.[15] Jurisdictions have also adopted zoning regulations specific to fracking.[16]

As a final consideration, proposed Section 9504 provides a mechanism to prevent inadvertent preemption as the law evolves. That section provides that in all cases where there is conflict with state laws or regulations, "such state laws or regulations shall prevail over any contradictory provisions, or contradictory prohibitions or requirements, made pursuant to this ordinance."

Under these circumstances there is no express or implied preemption posed by the proposed Ordinance.

II. Ordinance Does Not Unlawfully Duplicate CEQA Requirements

You also expressed concerns the Ordinance duplicates required environmental review and mitigation monitoring under the California Environmental Quality Act (CEQA). No legal authority was provided regarding this issue.

There is no indication the Ordinance is inconsistent with the requirements of CEQA or that the requirements will result in inconsistent obligations under the law. In fact, CEQA Guidelines Section 15308 recognizes the role of a local ordinance in the regulatory process to establish standards and procedures for protection of the environment. Here, the findings and standards required by the proposed Ordinance harmonize with, and reinforce, the requirements of CEQA.

CEQA also does not apply to many of the situations regulated by the proposed Ordinance. For example, certain petroleum operations could have been in use before CEQA was even adopted. As a result, the environmental impacts of those operations were not assessed. If the operation wanted to expand – even by a single structure or well – the existing, unassessed operations would be considered the "baseline" for the purposes of CEQA and would not be assessed as part of the expansion. This means compliance monitoring would generally be limited to just the impacts caused by the expansion; not the entire site. The proposed Ordinance would ensure appropriate protections were in place for the entire site for defined operations.

Last of all, the City is not prohibited from adopting standards to protect against the impacts of uses. As noted above, California cities and counties have been validly regulating oil and gas operations since the early 1900's.

III. Role And Authority Of The Petroleum Administrator

---

[15] See, e.g., San Benito County Code of Ordinances, Ch. 19.21 (2014) ("Oil and Gas Wells").

[16] See, e.g., Santa Barbara County Code of Ordinances (County Land Use & Development Code), §§ 35.52.040, 35.52.050 (2014).

Another concern raised was the proposed Ordinance would vest the Petroleum Administrator with too much authority and there was no right of appeal from the Administrator's decision.

While this is largely a policy decision within the discretion of the City Council, not a legal issue, there appear to be some potential misconceptions regarding the scope of the Petroleum Administrator's authority. For example, proposed section 9509 does not authorize the Petroleum Administrator to unilaterally impose additional conditions on existing, operating projects. Instead, the Petroleum Administrator may make "recommendations" to the Planning Commission or City Council if the Administrator concludes corrective action is warranted.

Additionally, the Petroleum Administrator would not be acting "without guidance" to address "high risk" operations under proposed Section 9510.3.5.B.2. The Petroleum Administrator is generally authorized to "consult experts qualified in fields related to the subject matter of this ordinance ... as necessary to assist the Petroleum Administrator in carrying out duties."[17] Further, the purpose of proposed Section 9510.3.5 is to address "high risk" operations in order to bring them within normal, safe operating standards and protect the public safety, health and environment. As part of this process, the proposed Ordinance requires a procedure (including a declaration based on facts and an appeal process), provides investigation authority, etc. Under these circumstances, the Petroleum Administrator cannot be said to be operating "without guidance." In contrast, the proposed revisions submitted by Californians for Energy Independence would establish a process that could effectively preclude enforcement until all appeals and litigation had been resolved. Such a process could last years, during which time the "high risk" operation may still be operating in an unsafe manner or otherwise posing a thread to public safety, health and the environment.

The City has discretion whether to establish an appeal process from certain decisions of the Petroleum Administrator. The Ordinance proposes a process to the Planning Commission or City Council for many of these items. Even for those limited items for which no additional process is proposed, operators and other interested persons still have other avenues of appeal if they believe there is inadequate support for the Petroleum Administrator's decisions.

IV. Proposed Ordinance Not Overly Burdensome

Finally, the proposed Ordinance is not overly burdensome without any public benefit.

A land use restriction lies within the public power if it has a reasonable relation to the public welfare.[18] The courts may differ with the zoning authorities as to the necessity or propriety of an enactment, but so long as it remains a question upon which reasonable minds might differ, there will be no judicial interference with the municipality's determination of policy. In short, as stated by the Supreme Court in *Euclid v. Ambler Co.*, "If the validity ... be

[17] Proposed Ordinance, Section 9505(a).
[18] *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604, [135 Cal.Rptr. 41].

fairly debatable, the legislative judgment must be allowed to control."[19] It is neither the province nor the duty of courts to interfere with the discretion with which such bodies are invested in the absence of a clear showing of an abuse of that discretion.[20]

Each of the requirements articulated in your letter serve as part of a unified whole to protect the public health, safety and welfare. For example, maintaining a meteorological station at the project site allows for the identification of climatic patterns and for the collection of real-time meteorological data that can be used to assist in the investigation of odor events, in providing data for emergency response, and for the use in updating health risk assessments.

Likewise, requiring contractors licensed to do business in the City assures that the contractors have gone through local approval to do business in the city and through that licensing process ensure that they have the capability to conduct the required technical work for proper, technically sound and safe abandonment of facilities.

Last of all, an annual drilling and workover plan helps ensure that information is provided on what drilling, redrilling, well abandonment and pad restoration work will be occurring at the oil field over the next calendar year. This information is important in ensuring that the City has up to date information on all drilling expected to go on within the city for the upcoming year. It also helps assure that all proposed wells meet the applicable requirements of the ordinance. Finally, it helps promote the use of new technology, which is commercially available that could reduce impacts associated with drilling, in use at the oil and gas site.

The totality of the record establishes the basis and benefits to public health, safety and welfare in greater detail.

V. Conclusion

We thank you for this opportunity to address your client's concerns and look forward to any additional input you may have on this topic. Your proposed revisions to the Ordinance will be made available to the Planning Commission and City Council for their consideration.

Very truly yours,

ALESHIRE & WYNDER, LLP

Shannon L. Chaffin
Attorney

SLC/rkk

[19] *Id.*, 18 Cal.3d at p. 605, citing *Euclid v. Ambler Co.* (1926) 272 U.S. 365, 388 [47 S.Ct. 114]
[20] *Consolidated Rock Products Co. v. City of Los Angeles* (1962) 57 Cal.2d 515, 533 [20 Cal.Rptr. 638].

City of Carson Oil and Gas Code Update: FAQ Community Handout

1. **Will the oil and gas Code update ban hydraulic fracturing 'fracking' in the City of Carson?**

   Yes. Section 9536 and 9536.1 of the proposed oil and gas Code update ban any hydraulic fracturing 'fracking', acidizing, or any other well stimulation treatment in conjunction with the production or extraction of oil, gas or other hydrocarbon substance from any subsurface location within the City. The oil and gas Code update will also ban surface activities associated with well stimulation, including the operation of injection pumps above a defined pressure as well as the pumping of acids above a certain volume.

2. **Can the City place an outright ban on all drilling?**

   An outright ban on all operations cannot be approved as part of the current update process. The City Council directed staff to prepare an update of the oil and gas Code, with a ban on hydraulic fracturing and other extraction processes. City staff have complied with the process, noticing, and environmental analysis for the update of the oil and gas Code. At a minimum, an outright ban on all petroleum operations would be required to go through a separate initiation process, environmental review, notice, and other procedures before it could be considered by the Planning Commission and City Council. Adoption, or denial, of the oil and gas Code will not have any impact on the City's ability to explore other options in the future.

3. **What is the difference between 'fracking', a production well, an exploratory well, and directional well?**

   A 'well' that is "fracked" is a production well that has hydraulic fracturing fluid (which can be a mix of water, sand, chemicals or other materials) injected into an underground geologic formation containing oil or gas resources at pressures high enough to fracture the formation and enhance movement of the oil or gas through the well to the surface.

   ***A production well** is a term commonly used to describe wells from which oil and gas is actively flowing and being processed.*

   ***An exploratory well** is a well drilled in the initial phase in petroleum operations that includes generation of a prospect or play or both, and drilling of an exploration well. Appraisal, development and production phases follow successful exploration. In most cases, exploratory wells will become production wells.*

EXHIBIT NO. 4

A directional well or 'directional drilling' is a drilled wellbore that requires the use of special tools or techniques to ensure that the wellbore path hits a particular subsurface target located away from (as opposed to directly under) the surface location of the well. A directionally drilled well can be an exploratory well, which would then become a production well.

4. **What rights do oil and gas companies have to drill underneath my house? What can the City do to regulate this activity?**

   Unless you own the oil and gas rights under your property, the owners of those mineral rights have the right to access their property – even if they are below your house. Additionally, there are certain limitations on a city's ability to regulate subsurface/underground areas. However, a city may regulate land uses, such as which parcels of land can be used for drilling oil and gas wells. The current code requires drilling operations to be set back at least 300 feet from residences. However, the oil and gas Code update would require oil drilling to be at least 1,500 feet from residences.

5. **Why can't the City use eminent domain to buy up all of the mineral rights/oil and gas properties within the City of Carson?**

   In order to pursue eminent domain, the land must be taken for "public use" and the private property owners must receive "just compensation." If the City tried to use eminent domain and could make a "public use" argument, it and the residents of Carson would still be required to pay for all of the rights and properties they were taking. For example, the population of Carson is approximately 100,000 people. Assuming the value of the mineral rights was 1 billion dollars, this would effectively mean the proportionate share for every man, woman and child would be about $10,000 each. The owners of the mineral rights could establish an even higher amount, which would require even more money to be paid. If the City were to pursue this option, it would either have to acquire more money from the residents, or cut services to its residents, or both. Adoption, or denial, of the oil and gas Code will not have any impact on the City's ability to explore this option in the future.

6. **What types of noticing will I receive for oil and gas projects within the City if the oil and gas Code update is adopted?**

   The proposed oil and gas Code update requires any permits for oil and gas drilling, operations, facilities, site or well abandonment, re-abandonment, or restoration be noticed to the public consistent with the requirements set forth in the City's existing municipal Code (within 500'). Additionally, the Code update requires that all results and data from environmental monitoring at oil and gas sites or facilities (including air quality, odors, water quality, pipeline

monitoring, leak testing, etc.) be reported and posted online at a site that will be accessible to the public.

7. **How far away from my residence can oil and gas companies drill and/or construct facilities (a) under the City's current Municipal Code and (b) if the oil and gas Code update is adopted?**

   (a) Currently, oil and gas companies can drill within **300 feet of any residence** in the City.

   (b) Under the proposed oil and gas Code update, all oil **and gas drilling and sites/facilities will be required to be setback 1,500 from residential zones within the City.** This setback requirement creates a 1,500 foot buffer area around each entire residential zone, which will create a much larger separation than the current Code between any residentially zoned neighborhoods (and the homes located within them) and oil and gas drilling or operations.

8. **What is the difference between an active, idle and abandoned well?**

   An active well is a production or exploratory well that is actively being used to extract oil or gas resources.

   An idle well is a well that may have been active in the past and can easily become active again in the future, but is currently standing idle and not actively producing any oil or gas resources.

   An abandoned well is a well that is not active and has been plugged or capped according to specific standards of DOGGR to prevent any oil or gas from leaking out.

9. **How and where can I find out if there are any wells- active, idle, or abandoned- near or underneath my house?**

   The City has posted a link on their website at the website indicated below which will allow residents to search on the Division of Oil and Gas and Geothermal Resources' (DOGGR) website for any wells- active, idle, or abandoned- which might be located below or in close proximity to their homes.
   http://maps.conservation.ca.gov/doggr/index.html#close

10. **Where can I find the most up-to-date information about the City's Oil Code Update?**

    The City has developed a webpage specifically for the Oil Code Update that can be reached by the follong link:
    http://ci.carson.ca.us/department/communitydevelopment/oilcodeupdate.asp

March 18, 2014 City Council Staff Report, Drilling Moratorium:

http://ci.carson.ca.us/MeetingAgendas/AgendaPacket/MG59098/AS59110/AS59118/AI59166/DO59198/DO_59198.pdf

ITEM NO. (31) **CONSIDER ADOPTING INTERIM URGENCY ORDINANCE NO. 14-1534U IMPLEMENTING A MORATORIUM ON NEW OIL AND GAS DEVELOPMENT IN THE CITY OF CARSON PENDING A STUDY OF THE SCOPE OF THE CITY'S REGULATORY AND/OR LAND USE AUTHORITY OVER SUCH ACTIVITIES (CITY MANAGER)**

Item No. 31 was heard after Oral Communications – Members of the Public portion of the meeting at 9:50 P.M.

City/Agency/Authority Attorney Wynder presented the staff report and recommendation and requested that the Council incorporate the entire contents of the staff report as part of the record of the proceedings of the Council and as the evidentiary basis in addition to the testimonies that has been given this evening upon which the Council will act on the urgency ordinance. He referred to Government Code Section No. 65858 regarding the implementation of a moratorium.

He referred to two letters from law firms received who questioned the appropriateness of the moratorium and discussed the 45-day process. He referred to pages 13 and 14 of the staff report regarding Senate Bill 4; referred to Senate Bill 1132; referred to what the moratorium does not do; and referred to Triangle Page 23, Section 2-Moratorium, of what the moratorium does do for 45 days.

He referred to the letter received from Alston & Bird, LLP, representing Oxy, discussed the letter and discussed the findings outlined in the urgency ordinance, discussed the six additional elements set forth in the staff report which would support the adoption of the urgency moratorium ordinance and was of the legal opinion that it was lawful to do so. Additionally, he stated that the City Attorney did not believe that the issue as the authority to adopt the moratorium is preempted by State Law or DOGGR regulations.

City/Agency/Authority Attorney Wynder stated that to adopt an interim urgency ordinance and to implement a moratorium requires four affirmative votes of the City Council.

Mayor/Agency Chairman/Authority Chairman Dear ordered that the entire staff report be made part of the record. He ordered that the letter from the law firm of Alston & Bird LLP, representing Oxy, be made part of the record. City/Agency/Authority Attorney Wynder reported on another letter received late today by a law firm of Manatt/Phelps/Phillips representing the Carson Estate Trust. Mayor/Agency Chairman/Authority Chairman Dear stated for the record that the Carson Estate Trust is one of the families who are heirs of the Spanish land grant. Whereupon, Mayor/Agency Chairman/Authority Chairman Dear ordered that the Manatt/Phelps/Phillips letter be made part of the record.

Mayor/Agency Chairman/Authority Chairman Dear stated for public information that under State law, the California State Department of Conservation has a division known as DOGGR which stands for Division of Oil, Gas & Geothermal Resources. He reemphasized what City Attorney Wynder stated that the moratorium issue before us is not preempted by State law as some people have implied and stated that this chapter states we should not be deemed preemption by the State of any existing right of cities including the City of Carson or counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities including but not limited

EXHIBIT NO. 8

to zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment, and inspection.

Council Member/Agency Member/Authority Commissioner Robles thanked all the residents for coming this evening and coming at the previous City Council meeting and staying on top of this issue and offered comments in support of this item.

RECOMMENDATION for the City Council:

1. CONSIDER and PROVIDE direction.

ACTION: WITH FURTHER READING WAIVED, Interim Urgency Ordinance No. 14-1534U, was PASSED, APPROVED, and ADOPTED, as read by title only, on motion of Robles and seconded by Santarina.

During discussion of the motion, Council Member/Agency Member/Authority Commissioner Davis-Holmes offered a friendly amendment to the motion to Direct, by minute order, City staff to stay all on-going or future negotiations of any possible Development Agreement No. 04-11 with OXY USA, Inc. ("OXY") until such time as the new owner of its California operations is in place and has presented appropriate financial and other appropriate *bona fides* to the City which was accepted by the maker and second.

Mayor/Agency Chairman/Authority Chairman Dear thanked everyone for coming this evening.

The motion, as amended, was unanimously carried by the following vote:

Ayes:	Mayor/Agency Chairman/Authority Chairman Dear, Mayor Pro Tem/Agency Vice Chairman/Authority Vice Chairman Santarina, Council Member/Agency Member/Authority Commissioner Davis-Holmes, Council Member/Agency Member/Authority Commissioner Gipson and Council Member/Agency Member/Authority Commissioner Robles
Noes:	None
Abstain:	None
Absent:	None

RECESS:
The City Council, Successor Agency, and Housing Authority were recessed at 10:13 P.M., by Mayor/Agency Chairman/Authority Chairman Dear for Council Closed Session only.

RECONVENE:
The City Council, Successor Agency, and Housing Authority were reconvened at 11:00 P.M., by Mayor/Agency Chairman/Authority Chairman Dear with all members previously noted present, except Davis-Holmes absent.

REPORT ON CLOSED SESSION
City Attorney Wynder provided the Council Closed Session report as follows:

(Council Member/Agency Member/Authority Commissioner Davis-Holmes reentered the meeting at 11:01 P.M.)

April 29, 2014 City Council Staff Report,
Drilling Moratorium Extension:

http://ci.carson.ca.us/MeetingAgendas/AgendaPacket/MG59374/AS59386/AS59391/AI59400/DO59402/DO_59402.pdf

Exhibit No. 17

ORAL COMMUNICATIONS – MEMBERS OF THE PUBLIC (LIMITED TO ONE HOUR) (None)
The public may at this time address the members of the City Council/Housing Authority/Successor Agency on any matters within the jurisdiction of the City Council/Housing Authority/Successor Agency and/or on any items on the agenda of the City Council/Housing Authority/Successor Agency, prior to any action taken on the agenda. No action may be taken on non-agendized items except as authorized by law. Speakers are requested to limit their comments to no more than three minutes each, speaking once. If you would like to address the City Council/Housing Authority/Successor Agency, please complete the SPEAKER'S CARD. The card is available at the speaker's podium or from the City Clerk. Please identify on the card your name, address, and the item on which you would like to speak, and return to the City Clerk. The SPEAKER'S CARD, though not required in order to speak, assists the Mayor in ensuring that all persons wishing to address the City Council/Housing Authority/Successor Agency are recognized, time permitting. Oral communications will be limited to one hour unless extended by order of the Mayor/Chair with the approval of the City Council/Housing Authority/Successor Agency.

NEW BUSINESS CONSENT (None)
These items are considered to be routine items of COUNCIL business and have, therefore, been placed on the CONSENT CALENDAR. If COUNCIL wishes to discuss any item or items, then such item or items should be removed from the CONSENT CALENDAR. For items remaining on the CONSENT CALENDAR, a single motion to ADOPT the recommended action is in order.

DEMANDS (None)

SPECIAL ORDERS OF THE DAY (Item 2)
Public testimony is restricted to three minutes per speaker, speaking once (excepting applicants who are afforded a right of rebuttal, if desired), unless extended by order of the Mayor with the approval of the City Council.

ITEM NO. (2) **CONSIDER ADOPTING URGENCY ORDINANCE NO. 14-1538U EXTENDING THE 45-DAY MORATORIUM ADOPTED BY INTERIM URGENCY ORDINANCE NO. 14-1534U, ON THE DRILLING, REDRILLING OR DEEPENING OF ANY NEW OR EXISTING WELLS WITHIN THE JURISDICTION OF THE CITY OF CARSON THAT ARE ASSOCIATED WITH OIL AND/OR GAS OPERATIONS (CITY MANAGER)**

Item No. 2 was heard at 7:03 P.M.

Mayor Dear asked the City Clerk to enter into the record letters and/or emails that were received in the City Clerk's Office in support or opposed to the moratorium.

Council Member Davis-Holmes inquired how many people are Carson residents.

Mayor Dear directed the Carson residents in the audience to stand and announced that a vast majority were Carson residents.

At 7:14 P.M., Mayor Dear opened the Public Hearing.

EXHIBIT NO. 10

Mayor Dear requested that all persons wishing to testify to stand and take the Oath, which was administered by City Clerk Gause.

The following persons offered comments in opposition of Council Item No. 2:

Ron Miller, Executive Secretary of the LA-Orange County Building and Constructions Trade Council, Riverside, California
Representing 140,000 hard-working men and women in Los Angeles and Orange County, 1,500 of which live in Carson.

Marvin Kropke, Business Manager/Financial Secretary for IBEW Local 11
Representing Electricians with 11,000 members; 300 members were Carson residents. He submitted 1,500 signed postcards by Carson residents in support of the Oxy project.

The following persons offered comments in support of Council Item No. 2:

Dianne Thomas, 20219 Nestor Avenue, Carson, California 90746

Robert Lesley, Carson, California
Provided handouts from Congress of the United States dated April 1, 2014, and OSHA Fact Sheet

Willie Cravin, 19326 Belshaw, Carson, California 90746

Vivian Hatcher, Annalee Avenue, Carson, California
Provided letter addressed to City Council, staff and everyone

Lori Noflin, 19309 Tillman Avenue, Carson, California 90746

David Noflin, 19309 Tillman Avenue, Carson, California 90746

Miriam Vazquez, Carson, California

Dr. Tom Williams, 4117 Barrett Road, Los Angeles, California 90032

Michelle Kinman, 1200 Opel Street, No. 22, Torrance, California 90277

Barbara Post, Carousel Tract resident, Carson, California

Bob Bowcock

Ezell Waters, 19615 Galway, Carson, California 90746

Jackie Stewart, 1860 E. Cashdan Street, Carson, California 90746

Karell Campbell, 401 220th Street, Carson, California 90745

Golda Copeland, 19116 S. Kemp Avenue, Carson, California 90746
Submitted petition to the City Clerk

Rosa Banuelos, 17700 S. Avalon Boulevard, No. 66, Carson, California 90746

Roye Love, 19402 S. Cliveden Avenue, Carson, California 90746

Harry L. Wilson, 19006 Scobey Avenue, Carson, California 90746
Referred to correspondence dated March 11, 2014, mailed to Mayor and Council Members.

Norma Jackson, Carson, California
Urged Mayor and Council Members for a lifetime ban on fracking.

Jennifer Vazquez, Carson, California

Jack Graves, 1046 Helmick Street, Carson, California 90746

At 7:58 P.M., Mayor Dear announced that he would allow four additional speakers in support of the moratorium then the opposing side would have a chance to speak for 45 minutes.

Marvin J. Stovall

Rebecca Tuttle, 11659 McDonald Street, Culver City, California 90230

Chris Bradley, Kramer Driver, Carson, California 90746

Jane Brockman, 4260 La Salle Avenue, Culver City, California 90232

At 8:08 P.M., the following persons offered comments in opposition of Council Item No. 2:

Mayor Dear announced the order of speakers as follows: 1) Henry Tillman; 2) representatives of the NAACP of the LA Chapter; 3) Maria Elena Durazo; and 4) James Drew Lawson.

Henry Tillman, 21625 S. Avalon Boulevard, Carson, California 90745

Leon Jenkins and Joseph Alford, representatives of the NAACP, LA Chapter

Mila E. Bover, 520 E. Carson Street, No. 40, Carson, California 90745

(Council Member Davis-Holmes exited and reentered the meeting at 8:15 P.M.)

Maria Elena Durazo, Federation of Labor-AFL-CIO

(Council Member Robles exited the meeting at 8:18 P.M.)

James Drew Lawson, 426 W. Carson Street, No. 2, Carson, California 90745

(Council Member Davis-Holmes exited the meeting at 8:19 P.M.)

(Council Member Robles reentered the meeting at 8:20 P.M.)

Dean L. Jones, 1844 E. Fernrock Street, Carson, California 90746

Matthew De Los Santos, 452 E. 230th Street, Carson, California 90745

(Council Member Davis-Holmes reentered the meeting at 8:21 P.M.)

Bob Levenson, 211 E. 222nd Street, Carson, California 90745

Kevin McCall, Carson High School Football Coach

David McHugh, 2710 E. Madison Street, Carson, California 90810

Roberto with Spanish translator, 1415 235th Street, Carson, California

Peter Estrada, 24418 Marine Avenue, Carson, California 90745

Scott Roque, 753 N. Armel Drive, Covina, California 91722

Richard DeMello, 17040 Benbow, Covina, California 91740

JF Doc Holiday, 678 W. Heber Street, Glendora, California 91741

David Crow, 5060 California Avenue, No. 1150, Bakersfield, California 93309
Submitted letter dated April 29, 2014 to the City Clerk for distribution to the Mayor and Council Members

Richard Hernandez, 108 W. 226th Place, Carson, California 90745

Virginia Deroux, 341 E. 220th Street, Carson, California 90745

David Englin, 1000 N. Alameda, Los Angeles, California 90017

Pastor Josh Canales on behalf of Pastor Isaac Canales, Mission Ebenezer Family Church, 415 W. Torrance Street, Carson, California 90745

Elizabeth Warren, Box 768, San Pedro, California 90733

Andrew Davis, Sr., 357 E. Centerview Drive, Carson, California 90746

James Fritz, 1625 E. 218th Street, Carson, California 90745

Joey Cinco, 405 W. 235th Street, Carson, California 90745

Amir Zendehnoum, 11346 Iowa Avenue, Los Angeles, California 90025

Michael David

Male speaker, 217 Hurley Avenue, Carson, California

Salvador Carillo, 1053 East Renton Street, Carson, California 90745

At 8:54 P.M., Mayor Dear announced that he would allow three additional speakers in opposition of the moratorium then the supporting side would have a chance to speak for 45 minutes.

Christine Halley, 1025 W. 190th, Los Angeles, California 90248

Antonio Valadez, 1250 E. 222nd Street, Carson, California 90745

Jerald Alvarado Nunag, 22419 Marine Avenue, Carson, California 90745

Sergio Alvarez, 1229 ½ W. Anaheim Street, Harbor City, California 90710

The following persons offered comments in support of Council Item No. 2:

Male speaker
Provided handout to the City Clerk entitled, "Impeach of Fracking Bastards and Fracking is Genocide".

Female speaker, Carson, California

Lavonda Brown, 1307 E. Fernrock Street, Carson, California

Margurite A. Carter, 18805 Grambling Place, Carson, California 90746

Mamie Burleson, Carson, California

Lauren Steiner, 1725 Clear View Drive, Beverly Hills, California 90210

Kent Minault

Male speaker

Latrice Carter, Carson, California

David Fields, representing Society of St. Vincent de Paul, 210 North Avenue, No. 21, Los Angeles, California 90031

R L Miller, Chair of California Democratic Parties Environmental Caucus

Joe Galliani, 668 Calle Miramar, Redondo Beach, California 90277

Wendy R. Howlett, 19421 Kemp Avenue, Carson, California 90746

Faye Walton, Carson, California 90746

Joseph Roberts, Carson, California

Glenn White, 750 E. Carson Street, No. 84, Carson, California 90745

Karen Edmond, Carson, California

Shaaron MacLeod

(Council Member Davis-Holmes exited the meeting at 9:40 P.M.)

Female speaker, Los Angeles County resident

(Council Member Robles exited the meeting at 9:42 P.M.)

Patrice LeFleur, Carson, California

Freeman Watkins, 840 E. Cyrene Drive, Carson, California 90746

Amy Yuclapwan, representing Food and Water Watch

(Council Member Robles reentered the meeting at 9:46 P.M.)

(Council Member Davis-Holmes reentered the meeting at 9:48 P.M.)

Walker Foley, representing Food and Water Watch

Ty'Nesha Brown

Del Huff, 868 E. Meadbrook Street, Carson, California 90746

Male speaker, Hermosa Beach, California

At 9:51 P.M., Mayor Dear announced that he would allow three additional speakers.

Lia Dillard

Al Satler

Dr. Barbara Palmer, 1520 Cyrene Drive, Carson, California 90746

The following persons offered comments in opposition of Council Item No. 2:

Jesus Griffith, Carson, California

(Council Member Gipson exited the meeting at 10:01 P.M.)

Kevin Norton, Assistant Business Manager, representing IBEW Local 11

(Council Member Gipson reentered the meeting at 10:04 P.M.)

Gary L. Cook, 1111 West James M. Wood, Los Angeles, California 90015

Eunice Langford, 149½ E. 220th, Carson, California 90745

Ignacio Ramirez, 1502 E. Carson Street, No. 88, Carson, California 90745

Raymond Robago, 243 E. 220th Street, Carson, California 90745

Alyssia Clark, 17916 Tamcliff Avenue, Carson, California 90745

Tommy Fa'avae, Carson, California

Jessica Caniapan, 555 E. Carson Street, No. 52, Carson, California 90745

Dermon Cabs, 412 North Morie, Compton, California 90220

Diana, Carson, California

John Mitchell, Carson, California

Walter Neil, Chairman of the Board, Carson Chamber of Commerce

Mr. Montez, 548 E. Pacific Street, Carson, California 90745

Ed Rendon, 981 Corporate Center Drive, Pomona, California 91768

Dan Kurtz, Bakersfield/Kern County resident

(Council Member Robles exited the meeting at 10:22 P.M.)

Gary Kennedy, Carson, California

Frank Zavala

Tom Demoore

Tim DeBarr

Male speaker

Hugo Rivero

David Canedo, 21702 Acarus Avenue, Carson, California 90745

(Council Member Robles reentered the meeting at 10:28 P.M.)

Carson business owner

Jeff Davis, La Habra, California

Makecia Williams

Shenae Warren, 19003 Nestor Avenue, Carson, California 90746

Pilar Hoyos representing Watson Land Company, 22010 Wilmington Avenue, Carson, California 90745
Provided a copy of a letter from Children's Hospital dated April 25, 2014, to the Mayor and Council.

Bill McFarland, Human Resource Manager, Occidental Petroleum

George J. Mihlsten, 355 S. Grand Avenue, Los Angeles, California 90071

Joe Sullivan, 100 E. Carson Street, Pasadena, California 91103

David Cloud, Hawthorne, California

(Mayor Pro Tem Santarina exited the meeting at 10:40 P.M.)

Gary Tomlind, Long Beach, California

(Mayor Pro Tem Santarina reentered the meeting at 10:42 P.M.)

Michael Scott, Huntington Beach, California

Manuel Hernandez, South Los Angeles, California

Julio C. Franco, 1138 W. 127th Street, Los Angeles, California 90044

Steve Ramirez, Local 11 IBEW union member

Ronald Becerra, 5355 N. Persimmon Avenue, Temple City, California 91780

Morgan Karr, Whittier, California

Sharmaree Davis, Pasadena, California

Pat Stewart

Male Speaker

Gary Parker

Mitch Ponce, Long Beach, California

Larry Langford, Carson, California

Greg Jensen, Long Beach, California

Bill Baxter

At 10:57 P.M., Mayor Dear closed the Public Hearing.

City Attorney Wynder summarized the staff report.

RECESS:
The City Council was recessed at 10:57 P.M., by Mayor Dear.

RECONVENE:
The City Council was reconvened at 11:18 P.M., by Mayor Dear, with all members previously noted present.

City Clerk Gause noted the following:

Council Members Present:
Mayor Jim Dear, Mayor Pro Tem Elito Santarina, Council Member Mike Gipson, Council Member Lula Davis-Holmes and Council Member Albert Robles

Council Members Absent: None

Other Elected Officials Present:
Donesia Gause, City Clerk and Karen Avilla, City Treasurer

Other Elected Officials Absent: None

Also Present:
Jacquelyn Acosta, Acting City Manager; William Wynder, City Attorney; Sunny Soltani, Assistant City Attorney; and Kathy Phelan, Special Counsel, and staff:

Bruce Barrette, Interim Assistant City Manager; Cedric Hicks, Director of Community Services; Barry Waite, Acting Director of Community Development; Gilbert Marquez, Acting Director of Public Works; Robert Eggleston, IT Manager; Glenn Turner, Computer Systems Support Technician; Lisa Berglund, Principal Administrative Analyst; Sylvia Rubio, Council Field Representative; Regina Ramirez, Supervisor, Community Center; Joy Simarago, Deputy City Clerk; and Yolanda Chavez, Senior Clerk

City Attorney Wynder commented on the goodwill among opposing views. He announced the overall process was initiated by Council Member Robles due to concerns raised in the nature of the business of Occidental Petroleum. He continued to clarify that a moratorium does not permanently ban anything; it is an opportunity to study important issues. He summarized the staff report to clarify the purpose of tonight's meeting was to analyze the 10-day report findings: 1) Identified questions regarding the risks of oil and gas drilling and/or the use of well stimulation technologies which could raise public health, safety, or otherwise environmental concerns; 2) Issues include the study of the activities involved in oil and gas production on existing wells; 3) Identified regulatory or enforcement gaps in the Carson Municipal Code. State law permits to extend the moratorium for the first time for a period of ten months and fifteen days which when combined with the initial 45-day period equals one year.

City Attorney Wynder requested that all staff reports, beginning with the initial report, all actions oral and written communications that the Council received in opposition and support formally be entered into the record and made part of the administrative record.

Mayor Dear ordered all said documents made part of the record, with no objections heard.

City Attorney Wynder announced that the City received a letter today from the Law Firm of Latham & Watkins advising the City that Occidental Petroleum has committed to a particular method of oil and gas drilling. He clarified that the City was not targeting a specific project; the moratorium was citywide. He stated the City's ordinance was over twenty years old and the moratorium provides the opportunity to update the ordinance even though the City could do so without it. He summarized the Council's options.

City Attorney Wynder introduced the lawyers from his office who have worked extensively on this issue, Special Counsel Kathy Phelan and Assistant City Attorney Sunny Soltani.

At 11:36 P.M., Mayor Dear announced that the meeting has reached the deliberation session.

Deliberation

Council Member Robles apologized to the residents of Carson for what he has done and would do. He disclaimed the item for discussion tonight had nothing to do with the Oxy Project even though most speakers referred to the Oxy project. He reiterated what City Attorney Wynder stated earlier regarding the moratorium which has absolutely nothing to do with the Oxy Project or the EIR Process which was continuing and not halted by the moratorium. Also, the moratorium was only for 10 months and 15 days. He has seen flyers being disseminated with misinformation to residents. He stated that he has not formed any opinions on the Oxy Project, neither for nor against thus has not disqualified himself from this item. He referred to a meeting he attended in downtown Los Angeles; and prior to his departure, he was advised by a union leader that if he did not oppose the moratorium, they would find another candidate to run against him. He quoted his hero, Emiliano Zapata, "Prefiero morir de pie que vivir de rodias" and translated means, "I prefer to die standing than live on my knees." He referred to a letter from the Law Firm of Olsen and Burg, Oxy's other attorney, which stated that it was their position that any City proposed regulations of oil and gas activities are preempted by the State.

Main Motion

RECOMMENDATION for City Council

1. CONSIDER and PROVIDE direction.

ACTION: WITH FUTHER READING WAIVED, it was moved to ADOPT by 4/5ths vote Urgency Ordinance No. 14-1538U, "AN INTERIM URGENCY ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, EXTENDING THE 45-DAY MORATORIUM ESTABLISHED BY ORDINANCE NO. 14-1534U, ON THE DRILLING REDRILLING OR DEEPENING OF ANY WELLS WITHIN THE JURISDICTION OF THE CITY OF CARSON THAT ARE ASSOCIATED WITH OIL AND/OR GAS OPERATIONS, AND DECLARING THE URGENCY THEREOF," to ensure the public health, safety to and welfare is protected during the period of the extension for a period of 10 months and 15 days on motion of Council Member Robles and seconded by Council Member Davis-Holmes.

During discussion of the motion, Mayor Dear agreed with Council Member Robles but added that he supported Development Agreements to protect the people of Carson. He reiterated that the moratorium was on oil drilling and Carson sits on two oil fields which would be absurd to stop drilling in Carson or across America. He was completely against fracking and believed that any Development Agreement entered into with the City should clearly state that no fracking would

occur; he would vote no on the extension of the moratorium. The City could use the Development Agreement process which the City has control over and could be enforced through court to create tools and resources for addressing the contamination within the City; he suggested a $50 million bond or trust account be established to protect residents; in a Development Agreement and a contract have the authority to prohibit fracking where a City ordinance was triumphed by State law. The Preliminary Environmental Impact Report was distributed to and reviewed by the Mayor and Council.

Mayor Pro Tem Santarina thanked Council Member Robles for the facts shared and citizens for staying late; he added the Development Agreement would guarantee for a fair share to protect the citizens.

Council Member Davis–Holmes thanked Council Member Robles; she stated that she was elected to serve the residents of the City of Carson. Oxy has not referenced the environmental concerns; and her concern was if the moratorium was not passed, then the Development Agreement would not be able to be enforced and directed her question to the City Attorney.

City Attorney Wynder replied that if the moratorium was not extended it would expire on May 2, 2014.

Council Member Davis-Holmes further stated if passed, the moratorium could be cancelled. She referenced the Carousel Tract issues due to oil companies; the moratorium had nothing to do with jobs. Directed the residents to vote for someone who had their voice; and stated that she was elected to protect the residents of Carson.

Council Member Gipson expressed empathy for Council Member Robles; he acknowledged receiving numerous emails from both sides. He asked City Attorney Wynder if the moratorium does not receive sufficient votes and do we still have control over the project.

City Attorney Wynder shared their considered opinion that the moratorium does not affect the EIR process.

Council Member Gipson asked what the projected time frame was.

City Attorney Wynder consulted with staff and the period was three to five months from today. He addressed the issues if the moratorium expired then a two-fold process would occur. Staff would ask Council to rescind the minute order to direct staff to no longer negotiate a Development Agreement and to direct staff to negotiate contractual terms, important note the Development Agreement only applied to single project, not citywide. If Council was of mind to update the current ordinance and regulatory scheme, any application received prior to final approval would be processed under existing law. The EIR report would be heard before the Planning Commission, then the Council before a Public Hearing on the certification process; the Development Agreement would be brought before Council for public consideration and a formal action by Council to be approved and the Development Agreement would vest the rights to the parties and impose conditions. If the moratorium were to be extended, the only part of the process that would not move forward would be the Development Agreement. Staff would request additional studies, the assistance from scientific experts, other consultants, reach out to oil industries, Chamber of Commerce, homeowner

associations and a new 10-day report would need to be issued prior to expiration of the existing moratorium then staff would provide specific recommendations for Council's consideration.

Council Member Gipson thanked City Attorney Wynder. A discussion ensued among Council Member Gipson and City Attorney Wynder wherein Council Member Gipson requested clarification about the project not involving fracking and could a no fracking stipulation be added to a Development Agreement. City Attorney Wynder confirmed that legal representation from Oxy and from the City Attorney's perspective was that there was to be no fracking, however, City Attorney Wynder would prefer to have the language in writing and the project description amended. The Development Agreement would be negotiated between parties and if agreed, may be other well stimulation technologies studied which have not been explored per the minute order.

At 12:45 A.M., on Wednesday, April 30, 2014, Mayor Dear reopened the Public Hearing.

George J. Mihlsten, Latham and Watkins
Confirmed Council Member Gipson's understanding that no fracking would be used in this project and further agreed not to use other well stimulation methods and Oxy was willing to put this in writing as a commitment for Occidental Petroleum.

(Council Member Davis-Holmes exited the meeting at 12:47 A.M., on Wednesday, April 30, 2014.)

Council Member Gipson
Stated that based on what the City Attorney stated, if the project moved forward, the City needs protection and a Development Agreement would need to be negotiated and the City not surrender its authority over the project.

(Council Member Davis-Holmes reentered the meeting at 12:48 A.M., on Wednesday, April 30, 2014.)

Leticia Ortega, Carson, California
Stated that even though there was no fracking in the Carousel Tract when the telephone company dug into the ground, oil arose. She was of the opinion that drilling still has the same effect.

At 12:49 A.M., on Wednesday, April 30, 2014, Mayor Dear closed the Public Hearing.

Council Member Gipson stated that the Carson City Council was extremely supportive to the Carousel Tract and was not of the opinion that the Oxy Project was the same. If the moratorium does not pass tonight, then safe guards need to be in place. He requested that the City Attorney find out how many jobs would arise from the project, if approved. City Attorney Wynder did not have the information readily available.

Mayor Pro Tem Santarina requested the Public Hearing reopened.

At 12:51 A.M., on Wednesday, April 30, 2014, Mayor Dear reopened the Public Hearing.

Mayor Pro Tem Santarina asked Mr. Mihlsten if the issues of impact to air quality, water quality, water use and impact to wildlife have been addressed.

George J. Mihlsten, Latham and Watkins
On behalf of Occidental Petroleum, they agreed that all issues would be addressed thoroughly in the environmental review process, in the context of the negotiations of the Development Agreement, and the litigation measures be included as enforceable obligations.

Mayor Pro Tem Santarina expressed concerns if risks to the environment arose such as transportation, drilling, pumping, and disposal activities.

George J. Mihlsten, Latham and Watkins
State that all activities would be addressed through the environmental review process, the mitigation measures with respect to those issues would become part of the mitigation program and fully enforceable by the City. He would expect that the City would hire an environmental monitor to ensure compliance as the project proceeds.

Council Member Robles asked about acidization or use of other stimulants.

George J. Mihlsten, Latham and Watkins
Responded that acidization was not anticipated in this project; fully compliant with SB 4. Legislation was passed last year, SB 4 defining well stimulation techniques and agreed that they would not use those techniques at this facility.

Council Member Gipson confirmed with Mr. Mihlsten that the City would not expend any of the taxpayer's money to hire a consultant; the expense would be paid for by Occidental Petroleum.

Allen Smith
Expressed concern that Council was discussing a contract when the purpose of tonight's meeting was solely to extend the moratorium.

At 12:57 A.M., on Wednesday, April 30, 2014, Mayor Dear closed the Public Hearing.

Mayor Dear inquired if there was a legal problem with the City enforcing a Development Agreement that would include no fracking at any time during the life of the project, to include a bond or fees coming to the Carson residents to guarantee that Occidental complied with the City, if any drilling.

City Attorney Wynder confirmed no problem would arise provided all issues were negotiated and binding commitments to each other were properly documented of all enforcement tools and ultimately the Development Agreement would be enforceable according to its terms.

Mayor Dear asked if Occidental or other company would conduct oil drilling at the proposed site without a City permit and/or without a Development Agreement.

City Attorney Wynder stated that it would require the review of the terms of the current status of their specific plan was and whether it had expired.

Mayor Dear stated the 20-year time period had expired.

RECESS:
The City Council was recessed at 1:01 A.M., on Wednesday, April 30, 2014, by Mayor Dear.

RECONVENE:
The City Council was reconvened at 1:08 A.M., on Wednesday, April 30, 2014, by Mayor Dear, with all members previously noted present.

City Attorney Wynder consulted with staff and legal counsel understood that the particular applicant's vested right to drill had expired, however, the existing specific plan on the site grants, the right to drill as a matter of the right of zone. The specific plan was subject to the Council's discretion to amend; the Council may amend the specific plan to prohibit hence the applicant wishes to negotiate with the City a new Development Agreement which would grant them a vested right irrespective of whatever land use amendments the Council may enter into. There were advantages to the City in developing and negotiating a Development Agreement and advantages to the applicant in negotiating a Development Agreement.

Mayor Dear thanked City Attorney Wynder for the confirmation.

Council Member Davis-Holmes inquired if negotiations transpired, how would she ensure that the bond agreement be a part of the Development Agreement.

City Attorney Wynder stated that it would be negotiated as part of the Development Agreement, mutually agreed to by the parties.

Vote on Main Motion

The motion failed to carry by the following vote:

Ayes:	Council Member Davis-Holmes and Council Member Robles
Noes:	Mayor Dear and Mayor Pro Tem Santarina
Abstain:	Council Member Gipson
Absent:	None

Council Member Davis-Holmes asked the City Attorney if it was appropriate to request the City ordinance be developed to ban all fracking in the City of Carson.

City Attorney Wynder stated that it would be appropriate to request the topic be agenized at a future City Council meeting.

Council Member Davis-Holmes requested to be a topic on a future City Council agenda.

Mayor Dear concurred with his colleague and directed staff to add item to the agenda at the earliest opportunity to ban fracking which was hydraulic fracturing in the City of Carson.

A discussion ensued regarding other stimulation methods including acidization and the earliest date staff would have report available.

UNFINISHED BUSINESS (None)

NEW BUSINESS DISCUSSION (None)

SECOND ORDINANCE READING (None)

CONCLUDING ORAL COMMUNICATIONS (MEMBERS OF THE PUBLIC)
The public may at this time address the members of the City Council/Housing Authority/Successor Agency on any matters within the jurisdiction of the City Council/Housing Authority/Successor Agency. No action may be taken on non-agendized items except as authorized by law. Speakers are requested to limit their comments to no more than five minutes each, speaking once.

At 1:12 A.M., on Wednesday, April 30, 2014, Mayor Dear reopened Oral Communications- Members of the Public.

Diane Thomas
Thanked the residents of the City of Carson who came to voice their concerns; thanked Council Members Davis-Holmes and Robles for an outstanding job.

Male speaker
Thanked Council Members Davis-Holmes and Robles.

Latrice Carter
Thanked everyone to be able to see democracy in action; thanked the Mayor for never failing the residents and continuing to win; thanked Council Member Robles and Council Member Davis-Holmes for an outstanding job.

Female speaker
Thanked the City Attorney and staff for an outstanding job and was happy for their representation but she was sorry that not all the Council Members followed their recommendations and guidelines.

Robert Lesley
Agreed with the previous speakers and thanked Council Members Davis-Holmes and Robles for their courage. He was not sure what the other parties have said about the definition of conventional drilling; stated his definition and if the oil companies chose to not abide, the City Council had no recourse.

Francis Haywood
Thanked Council Members Davis-Holmes and Robles; reported that in 2011 or 2012 the Mayor came to her Homeowners Association meeting, Dominguez Hills Village, to talk about drilling that would be beneficial to the community which prompted her to conduct research; contacted the Mayor's office but did not receive a response and should have known the outcome.

May 20, 2014 City Council Staff Report,
Banning Hydraulic Fracturing:

http://ci.carson.ca.us/MeetingAgendas/AgendaPacket/MG59553/AS59605/AS59613/AI59651/DO59682/DO_59682.pdf

EXHIBIT NO. 11

85

4. APPOINT a chairperson to each City Council Committee.

ACTION: It was moved to create an Ad Hoc Advisory Committee of the City Council relative to the selection of the next Assistant City Manager on motion of Dear, seconded by Robles and unanimously carried by the following vote:

Ayes: Mayor/Agency Chairman/Authority Chairman Dear, Mayor Pro Tem/Agency Vice Chairman/Authority Vice Chairman Santarina, Council Member/Agency Member/Authority Commissioner Davis-Holmes, Council Member/Agency Member/Authority Commissioner Gipson, and Council Member/Agency Member/Authority Commissioner Robles
Noes: None
Abstain: None
Absent: None

Mayor/Agency Chairman/Authority Chairman Dear appointed Mayor Pro Tem/Agency Vice Chairman/Authority Vice Chairman Santarina and Council Member/Agency Member/Authority Commissioner Davis-Holmes to the Ad Hoc Advisory Committee who both accepted.

It was moved ratify the Mayor's appointments on motion of Dear, seconded by Robles and unanimously carried by the following vote:

Ayes: Mayor/Agency Chairman/Authority Chairman Dear, Mayor Pro Tem/Agency Vice Chairman/Authority Vice Chairman Santarina, Council Member/Agency Member/Authority Commissioner Davis-Holmes, Council Member/Agency Member/Authority Commissioner Gipson, and Council Member/Agency Member/Authority Commissioner Robles
Noes: None
Abstain: None
Absent: None

ITEM NO. (22) CONSIDERATION OF CITY-AFFILIATED ORGANIZATIONS (CITY CLERK)

Item No. 22 was heard after Council Item Nos. 21 and 25 at 12:32 A.M., on Wednesday, May 21, 2014.

RECOMMENDATION for the City Council:

1. Mayor Dear to REAFFIRM, RE-DESIGNATE and/or DESIGNATE delegates and alternates to the City-Affiliated Organizations listed on Exhibit No. 1, respectively.

ACTION: Mayor/Agency Chairman/Authority Chairman Dear ordered Item No. 22 continued until further notice, with no objections heard.

ITEM NO. (23) CONSIDER ADOPTING ORDINANCE NO 14-1540 BANNING HYDRAULIC FRACTURING, COMMONLY KNOWN AS "FRACKING," OR ACIDIZING IN CONJUNCTION WITH THE PRODUCTION OR EXTRACTION OF OIL, GAS OR OTHER HYDROCARBON SUBSTANCES WITHIN THE CITY OF CARSON (CITY MANAGER)

EXHIBIT NO. 10

Item No. 23 was heard after the Break at 11:09 P.M.

City/Agency/Authority Attorney Wynder summarized the staff report.

(Council Member/Agency Member/Authority Commissioner Gipson exited and reentered the meeting at 11:11 P.M.)

He reported that he received letters in opposition to the draft ordinance and further stated that he addressed the concern raised by one of the opponents dealing with inverse claims.

RECOMMENDATION for the City Council:

1. CONSIDER and PROVIDE direction.

ACTION: It was moved to 1) Direct staff and the City Attorney to hire all necessary experts and immediately commence a complete and comprehensive review and update our Municipal Code regarding oil and gas extraction and that we also study and address all modern day drilling issues and applications; 2) Direct staff and the City Attorney to return to the City Council with these comprehensive amendments to the City code within the next 90 days; and 3) If for any reason the amendments were not ready in 90 days , then provide a full and detailed explanation and status report brought back in 90 days on motion of Robles and seconded by Davis-Holmes.

During discussion of the motion, Council Member/Agency Member/Authority Commissioner Davis-Holmes offered a friendly amendment to the motion as part of the Code amendments requested that staff and the City Attorney have at least two workshops with the community to receive community input feedback on the proposed amendment and make it perfectly clear that the proposed amendment contain a ban on fracking and the use of other stimulants or acidizing consistent with the SB 4 definitions which was accepted by the maker and the second of the motion.

George Mihlsten, representing Latham & Watkins LLP on behalf of Oxy Petroleum
Upon inquiry, Mr. Mihlsten clarified that the Oxy project could proceed without fracking and without well stimulation as defined in Senate Bill 4 and as indicated in their letter disagreed with the City Attorney that there were legal infirmities with a ban on fracking but moving forward do not need fracking for their project and fracking and well stimulation was not involved in their project. He further stated that the issues with respect to the proposed ban were broader than their project and comments made by legal counsel and others with respect to it deal with those fundamental issues that were not related to the project itself.

Upon inquiry, City/Agency/Authority Attorney Wynder clarified with Senate Bill 4 that there was no preemption to the City and would regulate.

Council Member/Agency Member/Authority Commissioner Gipson requested the City Attorney to clarify with SB 4 if would preempt anything that the City was doing regarding this time today. Whereupon, City/Agency/Authority Attorney Wynder believed that there was no preemption and would regulate.

Mayor/Agency Chairman/Authority Chairman Dear clarified for the record that Item No. 23 was continued under the main motion and additional work was needed as outlined by Council Member/Agency Member/Authority Commissioner Robles.

Mayor/Agency Chairman/Authority Chairman Dear clarified that the maker of the motion was continuing Item No. 23 indefinitely and instead directing staff to bring back further action which the maker and seconder of the motion concurred.

The motion, as amended, was unanimously carried by the following vote:

Ayes:	Mayor/Agency Chairman/Authority Chairman Dear, Mayor Pro Tem/Agency Vice Chairman/Authority Vice Chairman Santarina, Council Member/Agency Member/Authority Commissioner Davis-Holmes, Council Member/Agency Member/Authority Commissioner Gipson, and Council Member/Agency Member/Authority Commissioner Robles
Noes:	None
Abstain:	None
Absent:	None

At 11:28 P.M., Mayor/Agency Chairman/Authority Chairman Dear reopened Oral Communications – Members of the Public.

Raul Murrga

Offered the following comments: 1) Offered comments in support of Council Item Nos. 3, 4, and 14; and 2) Referred to Council Item No. 7 for a video presentation but had technical difficulty. Whereupon, Council Member/Agency Member/Authority Commissioner Gipson requested to move forward to another item until technical difficulty was resolved.

ITEM NO. (24) CONSIDER RESCINDING THE COUNCIL DECISION TO NAME THE CARSON DOMINGUEZ ROOM AFTER KAY A. CALAS (CITY MANAGER)

Item No. 24 was heard after Council Item No. 22 at 12:33 A.M., on Wednesday, May 21, 2014.

City Manager/Agency Executive Director/Authority Executive Director Hernandez summarized the staff report and recommendation.

RECOMMENDATION for the City Council:

1. DISCUSS and PROVIDE direction.

ACTION: It was moved to rescind the March 18, 2014 action of the City Council naming the Carson Dominguez Senior Hall of the Community Center after Kay A. Calas and keep Kay Calas letter signs exactly to remain the way it is on motion of Santarina, seconded by Dear and unanimously carried by the following vote:

Ayes:	Mayor/Agency Chairman/Authority Chairman Dear, Mayor Pro Tem/Agency Vice Chairman/Authority Vice Chairman Santarina, Council Member/Agency Member/Authority Commissioner Davis-Holmes, Council Member/Agency Member/Authority Commissioner Gipson, and Council Member/Agency Member/Authority Commissioner Robles
Noes:	None
Abstain:	None
Absent:	None

JURISDICTION	RESIDENTIAL SETBACK	COMMERCIAL SETBACK	PUBLIC INSTITUTION SETBACK	PUBLIC ROADWAY SETBACKS
Huntington Beach	100ft.	100ft.	300ft.	25ft.
Bakersfield	500-1000 ft. depending on class of permit, with a 100ft. minimum setback from dwelling not incidental to drilling	500-1000 ft. depending on class of permit, with a 100ft. minimum setback from dwelling not incidental to drilling	100ft.	75ft.
Ventura County	500ft. unless waiver issued- 100ft. min	500ft. unless waiver issued- 100ft. min	500ft.	100ft.
Santa Barbara County	500ft. (from residence not zone)	200ft.	200ft.	200ft.
Signal Hill	100ft.	100ft.	300ft.	75ft.
Santa Fe Springs	300ft. except in certain circumstances- 100 ft. minimum	35-300 ft. depending on zoning	____	300ft.
Orange County	150ft.	Varies widely on zoning	300ft.	150-210ft. with provisions for different setbacks based on width of public streets
San Benito County	500ft.	500ft.	500ft.	500ft. (100 ft. from county road or state hwy)

EXHIBIT NO. 11

Additional Studies, Reports, and Other Written Materials Can Be Found at:

http://ci.carson.ca.us/department/communitydevelopment/oilcodeupdate.asp.

EXHIBIT NO. 12

City of Carson Oil and Gas Update (with Tracked Changes)
Dated April 7, 2015, Same as Item 11A which Can Be Found at:

http://ci.carson.ca.us/content/files/pdfs/planning/oilcodeupdate/CityofCarsonOilCode-Combined-040715.pdf

EXHIBIT NO. 13