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LATHAM & WATKINS LLP

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July 21, 2016

VIA HAND DELIVERY

Santa Barbara County Board of Supervisors
c/o Clerk of the Board
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101

Re: Appeal of Entire Planning Commission Action re. Pacific Coast Energy Company
Orcutt Hill Resource Enhancement Plan Project (Case Nos. 13PPP-00000-00001;
14EIR-00000-00001)

Dear Honorable Supervisors:

On behalf of Pacific Coast Energy Company ("PCEC"), the applicant for the Orcutt Hill Resource Enhancement Plan (the "Project"), please find enclosed an appeal of the County Planning Commission's entire action. There are a number of grounds for the appeal, as set forth in the enclosed application and attachment. We appreciate your consideration of the appeal and respectfully request your approval of the Project.

Very truly yours,



Shivaun Cooney
of LATHAM & WATKINS LLP

cc: Dianne Black, County of Santa Barbara Planning and Development
Errin Briggs, County of Santa Barbara Planning and Development
Matt Young, County of Santa Barbara Planning and Development
Randall Breitenbach, Pacific Coast Energy Company
Phil Brown, Pacific Coast Energy Company
George Muhlsten, Latham & Watkins LLP



COUNTY OF SANTA BARBARA

Planning and Development ~~2016 JUL 21 PM 3:49~~
www.sbcountyplanning.org

COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

Appeal to the Board of Supervisors or Planning Commission (County or Montecito)

APPEAL TO THE BOARD OF SUPERVISORS OR PLANNING COMMISSION (APL) on the issuance, revocation, or modification of :

- All Discretionary projects heard by one of the Planning Commissions
- Board of Architectural Review decisions
- Coastal Development Permit decisions
- Land Use Permit decisions
- Planning & Development Director's decisions
- Zoning Administrator's decisions

THIS PACKAGE CONTAINS _____

- ✓ APPLICATION FORM
- ✓ SUBMITTAL REQUIREMENTS

AND, IF ✓'D, ALSO CONTAINS _____

South County Office 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030	Energy Division 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030	North County Office 624 W. Foster Road, Suite C Santa Maria, CA 93455 Phone: (805) 934-6250 Fax: (805) 934-6258	Clerk of the Board 105 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2240 Fax: (805) 568-2249
Website: www.sbcountyplanning.org			

SUBMITTAL REQUIREMENTS

_____ 8 Copies of the attached application.

_____ 8 Copies of a written explanation of the appeal including:

- If you are not the applicant, an explanation of how you are an “aggrieved party” (“Any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either.”);
- A clear, complete and concise statement of the **reasons or grounds for appeal**:
 - Why the decision or determination is consistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; or
 - There was error or abuse of discretion;
 - The decision is not supported by the evidence presented for consideration;
 - There was a lack of a fair and impartial hearing; or
 - There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

_____ 1 Check payable to County of Santa Barbara.



Note: There are additional requirements for certain appeals including:

- a. **Appeals regarding a previously approved discretionary permit** – If the approval of a Land use permit required by a previously approved discretionary permit is appealed, the applicant shall identify: 1) How the Land Use Permit is inconsistent with the previously approved discretionary permit; 2) How the discretionary permit’s conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed; 3) How the approval is inconsistent with Section 35.106 (Noticing).
- b. **Appeals regarding Residential Second Units (RSUs)** – The grounds for an appeal of the approval of a Land Use Permit for a RSU in compliance with Section 35.42.230 (Residential Second Units) shall be limited to whether the approved project is in compliance with development standards for RSUs provided in Section 35.42.230.F (Development Standards).



PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: 1555 Orcutt Hill Road, Orcutt, CA 93455 (within Orcutt Oil Field)

ASSESSOR PARCEL NUMBER: 101-020-074

Are there previous permits/applications? no yes numbers: 12EMP-00000-00006, 12EMP-00000-00008, 12EMP-00000-00009, 12EMP-00000-00012, 13EMP-00000-00001, 13EMP-00000-00002, 13EMP-00000-00003, 13EMP-00000-00004, 14EMP-00000-00003, 15EMP-00000-00001, 15EMP-00000-00003, 15EMP-00000-00008, 15EMP-00000-00009, and 16EMP-00000-00005.

(include permit# & lot # if tract)

Are there previous environmental (CEQA) documents? no yes numbers:

1. Appellant: Pacific Coast Energy Company Phone: (805) 937-2576 FAX:

Mailing Address: 1555 Orcutt Hill Road, Orcutt, CA 93455 E-mail: john.fox@pceclp.com
Street City State Zip

2. Owner: Pacific Coast Energy Company Phone: (805) 937-2576 FAX:

Mailing Address: 1555 Orcutt Hill Road, Orcutt, CA 93455 E-mail: john.fox@pceclp.com
Street City State Zip

3. Agent: Phone: FAX:

Mailing Address: E-mail:
Street City State Zip

4. Attorney: Latham & Watkins LLP (Shivaun Cooney) Phone: 213-891-7606 FAX:

Mailing Address: 355 South Grand Avenue, Los Angeles, CA 90071 E-mail shivaun.cooney@lw.com
Street City State Zip

COUNTY USE ONLY

Case Number: Companion Case Number:
Supervisorial District: Submittal Date:
Applicable Zoning Ordinance: Receipt Number:
Project Planner: Accepted for Processing
Zoning Designation: Comp. Plan Designation

COUNTY OF SANTA BARBARA APPEAL TO THE:

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title Orcutt Hill Resource Enhancement Plan (OHREP) Project

Case No. 13PPP-00000-00001; 14EIR-00000-00001

Date of Action July 13, 2016

I hereby appeal the approval approval w/conditions denial of the:

Board of Architectural Review – Which Board? _____

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? County

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

Please see Attachment A for detailed reasons. In brief:

- The rationale for denial of the Project is not supported by substantial evidence in the record.
- The Planning Commission’s denial is based on unfounded speculation regarding largely hypothetical potential impacts which are remote, particularly in the context of the Careaga Exclusion Alternative.
- The Planning Commission’s denial does not adequately acknowledge that the natural occurrence of seeps are a historic feature of the area, likely dating back thousands of years, and they are a function of the local geology correlated with the Careaga far zone.
- The denial does not account for the substantial economic benefits of the Project.

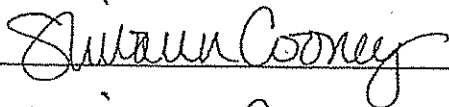
Specific conditions imposed which I wish to appeal are (if applicable):

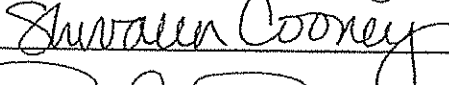
- Decision of the County Planning Commission is appealed in its entirety.
-
-
-

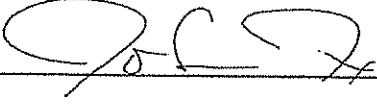
CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

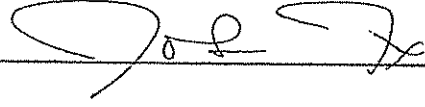
Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

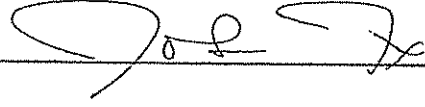
I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Shivaun Cooney of Latham & Watkins LLP  July 21, 2016
Print name and sign - Firm Date

Shivaun Cooney of Latham & Watkins LLP  July 21, 2016
Print name and sign - Preparer of this form Date

John Fox  7/21/2016
Print name and sign - Applicant Date

John Fox  7/21/2016
Print name and sign - Agent Date

John Fox  7/21/2016
Print name and sign - Landowner Date

ATTACHMENT A

GROUNDINGS FOR APPEAL

- The rationale for denial of the Project is not supported by substantial evidence in the record.
 - The County Planning Department and its consultant MRS prepared a comprehensive Environmental Impact Report (EIR) for the Project pursuant to the requirements of the California Environmental Quality Act (CEQA) and identified measures to mitigate the Project's potential impacts to the maximum extent feasible.
 - In Planning Staff's report to the Planning Commission dated April 20, 2016, the Planning Department recommended certification of the EIR and approval of the proposed Project as modified to implement the Careaga Exclusion Alternative, which would prohibit the drilling of new (or replacement) wells within the Careaga tar zone. Due to its proximity to the surface in some areas, the Careaga tar zone is the area from which seeps have historically originated.
 - In further support of the County's EIR for the Project and recommendation of approval, additional written information and testimony was provided to the Planning Commission at its hearings on May 11 and June 29. This information and testimony was specifically provided in large part at the request of the Planning Commission. Portions of the written information and testimony regarding environmental issues were prepared by expert biologists, including a biological survey report prepared by Chambers Group confirming the proliferation of Lompoc yerba santa on the site and information regarding the lack of probable impact on the California tiger salamander. Further, a representative of U.S. Fish and Wildlife Service testified to the ongoing cooperation between PCEC and U.S. Fish and Wildlife Service in preparing a Habitat Conservation Plan for the Project. Written information and testimony also was provided regarding the substantial economic benefits of the Project.
 - Questions and comments (including written submissions) raised by members of the public before and at the Planning Commission's June 29, 2016 hearing were addressed by the Planning Department and MRS at the hearing and in written memoranda to the Planning Commission dated June 28, 2016. These responses provided further support for the EIR and the Planning Department's recommendation to approve the Project as modified to implement the Careaga Exclusion Alternative, and to certify the EIR.
 - The Planning Commission's findings make overly broad statements and conclusions that are not supported by the evidence in the record. Specific points noted in the findings, such as potential impacts to Lompoc yerba santa, for example, were explicitly countered by scientific evidence in the record, and such findings are not based on substantial evidence.
 - The Planning Commissioners who voted to deny the Project cited unsubstantiated comments that were contradicted by the substantial evidence in the record.

- The Planning Commission’s denial is based on unfounded speculation regarding largely hypothetical potential impacts which are remote, particularly in the context of the Careaga Exclusion Alternative.
 - The Project’s potential significant impacts are only potential impacts and are based on conservative conclusions regarding potential seep activity related to the Careaga tar sands (the future occurrence and precise location of which cannot be predicted).
 - Staff recommended an alternative that would have precluded drilling through or under the Careaga tar sands, eliminating any such potential impact from seeps.
 - Lompoc yerba santa is thriving at the site. The total acreage of Lompoc yerba santa on the site in 2016 has increased to nearly 300% of the amount mapped in 2008, as documented by the Chambers Group biological survey report.
 - No California tiger salamander (CTS) has ever been seen within the proposed Project site, and the Project site does not contain any CTS breeding ponds. Two of the proposed Project pods (existing graded well pads where new diatomite wells would be placed) are at the periphery of a 2,200-foot radius from known breeding pond ORCU-12, and one of these pods and an additional pod is at the periphery of a 2,200-foot radius from the topographic depression labeled in 2010 as an “undetermined pond.” Both ORCU-12 and the “undetermined pond” are in a lowlands area with an abundance of small mammal burrows and grassland habitat, while the Project areas are separated by a dry ravine, up steep slopes that are heavily vegetated, and lacking any pond or substantial underground habitat resources.
- The Planning Commission’s denial does not adequately acknowledge that the natural occurrence of seeps are a historic feature of the area, likely dating back thousands of years, and they are a function of the local geology correlated with the Careaga tar zone.
 - The Project is within a state designated oil field that has been operating for over 100 years.
 - The Project is designed to use existing infrastructure and drill new wells on existing previously graded well pads.
 - Seeps are a function of the local geology and have been naturally occurring at Orcutt Hill for centuries. The 1980 California Department of Conservation, Division of Oil and Gas publication entitled “Onshore Oil & Gas Seeps in California” documents the use of seep oil by Native Americans for various purposes, identifies a number of California oil fields (including Orcutt) that were discovered by drilling near seeps, and provides data on the geology and occurrence of seeps throughout California.
 - While the occurrence of seeps initially appeared to increase when PCEC initially started diatomite production, the incidence of seeps has decreased significantly since 2009, even as PCEC has tripled the number of wells and increased production proportionally.

- The number of seeps has declined dramatically in recent years, with only one new seep can installed in 2014; four new seep cans in 2015; and two to date in 2016. The relatively low number of natural seeps in recent years could be considered to be normal for the naturally occurring conditions in the area. In addition, PCEC removed twenty inactive seep cans in 2016.
- Seeps are correlated with the Careaga tar zone, and the vast majority of the proposed Project areas are outside of the Careaga.
- Further, to the limited extent that the Careaga tar zone coincides with the new diatomite production areas proposed as part of the Project, the Careaga tar zone in these new production areas is deeper and less subject to surface exposure than elsewhere on the site, so the occurrence of seeps is expected to be less under the Project for multiple reasons.
- The denial does not account for the substantial economic benefits of the Project.
 - The Planning Commission's findings fail to properly consider the substantial economic benefits to the County in terms of jobs and ongoing annual tax revenues, as well as the direct, indirect, and induced economic output associated with Project construction and operations. Additional information and calculations substantiating the Project's economic benefits were presented to the Planning Commission in written information and testimony at the June 29, 2016 hearing.
 - PCEC has paid over \$18.5 million (cumulative) in property taxes to the County of Santa Barbara over the last five years, averaging approximately \$3.7 million a year.
 - This includes over \$2 million over the past four years which has already been paid to the County based on the projected reserves attributable to the proposed Project.
 - If the Project is approved as proposed, it is projected that at peak production an additional \$2.5 million a year directly attributable to the Project will be paid in property taxes to the County. While the precise amount would be determined through an annual process with the County Assessor's Office at the appropriate time, the order of magnitude is certain – the Project would result in millions of dollars of additional tax revenue to the County.
 - The record before the Planning Commission also included substantial evidence in the form of personal testimony from oil field workers, contractors, support staff, and other local firms regarding the economic benefits of the Project and its positive effect on the quality of life of County residents.
 - The denial fails to properly weigh the tangible benefits of the Project against the potential and largely hypothetical impacts conservatively addressed in the environmental analysis, and improperly concludes that the substantial economic benefits of the Project do not outweigh the potential impacts of the Project.