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TRUMAN & ELLIOTT LLP

September 5, 2008

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VIA FACSIMILE & OVERNIGHT MAIL

Honorable Chairman Carbajal and
Members of the Santa Barbara County Board of Supervisors
105 E. Anapamu Street, Room 407
Santa Barbara, California 93101

**Re: PXP Tranquillon Ridge Oil and Gas Project
(Case Nos. 06RVP-00000-00001, 06EIR-00000-00005)
Appeal from April 21, 2008 Planning Commission Decision**

Dear Honorable Chairman Carbajal and Honorable Members of the Board of Supervisors:

On behalf of our client, Sunset Exploration, Inc., we write this letter to summarize Sunset's objections to the application of Plains Exploration, Inc. ("PXP") for approvals for off-shore oil drilling in the Tranquillon Ridge and to respectfully request the Board grant the appeal and deny approval of the PXP project.

Standard of Review

Pursuant to Santa Barbara County Code section 35.102.050.C, appeals from the decision of the Planning Commission are heard *de novo* by the Board. Accordingly, the Board must make its own independent judgment in this matter.

The PXP Project Contradicts the County's Long-Range Planning Policies

Santa Barbara County's General Plan and Local Coastal Plan set forth the long-term goals and policies that the community uses to guide development decisions. The General Plan outlines the County's land use and planning goals. The County's Local Coastal Plan furthers the goals of the California Coastal Act, Government Code sections 30000, *et. seq.*

As recently as August 26, 2008, the County further considered long-range energy policies, and resolved to communicate with Governor Schwarzenegger the need for adopting new policies that would "continue the best environmental, aesthetic and economic policies to maximize the benefits and minimize the potential problems for [Santa Barbara County]." The PXP project is inconsistent with the County's stated goals under its General and Local Coastal Plans as well as the objectives outlined in its letter to the Governor.

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A. The PXP Project is Inconsistent with the County's General Plan

The Land Use Element is the core of the County's General Plan, which sets forth acceptable land uses throughout Santa Barbara County. The PXP project is inconsistent with the Land Use Element of the General Plan and specifically Land Use Development Policy 11. This policy requires a *comprehensive* analysis of alternative sites be conducted when the County receives an application for a development project to expand an oil and gas facility in the North County Consolidation Planning Area. The environmental review for the PXP project fails to provide a comprehensive analysis of alternatives to the PXP project because it does not consider the Sunset-ExxonMobil Vahevala Project ("Vahevala Project") in its analysis of alternatives.

B. The PXP Project is Inconsistent with the County's Local Coastal Plan

The PXP project also is inconsistent with the County's Local Coastal Plan which incorporates by reference the California Coastal Act. Section 30230 of the Coastal Act, entitled *Marine Resources*, states:

Marine Resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

While the Staff Report for the PXP project discusses the possibility that marine organisms may be impaired due to sea water intake for the PXP project or noise and light generated from the PXP project, the analysis fails to take into account the potential impact of PXP project on Marine Resources. Rather than maintaining, enhancing and restoring marine resources, as required in the Act, the PXP project puts at risk the very same marine resources damaged from a major oil spill in 1969. The EIR, which analyzes the potential impacts of the PXP project on the environment, indicates that the project creates Class I unavoidable impacts to Marine Biology, Oceanographic/Marine Water Quality, and Commercial and Recreational Fishing. Accordingly, these impacts make the PXP project wholly inconsistent with Santa Barbara County's Local Coastal Plan.

C. The PXP Project is Inconsistent with the Policies and Objectives of the County's Energy Meeting of August 26, 2008

The Board's decision to draft and send a letter to Governor Schwarzenegger supporting increased off-shore oil drilling off the coast of Santa Barbara County is premised upon expansion of oil exploration that "would continue the best environmental, aesthetic and economic policies to maximize the benefits and minimize the potential problems for [Santa Barbara County]." The County's letter also specifies that studies have been conducted on off-shore natural seeps that conclude oil extraction actually mitigates the natural seepage and reduces the amount of oil and

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gas introduced into the environment. There is no evidence, however, that the proponents of the PXP project have verified the PXP project will mitigate natural seepage. Until an analysis is undertaken of the effects of oil drilling on a county-wide basis, the cumulative impacts of the PXP project are unknown and unlikely to carry out best environmental practices in relation to Santa Barbara County's oil resources.

Because the PXP project is inconsistent with the County's General Plan, its Local Coastal Plan and the stated objectives and policies of the County's recent Energy Meeting, it should be denied.

The Project Violates Numerous CEQA Provisions

A local agency must prepare or cause to be prepared an EIR on any project which may have a significant effect on the environment. (Pub. Resources Code, § 21151.) An EIR is often referred to as the "heart of CEQA," and the mitigation and alternatives discussion forms the core of the EIR. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) The purpose of an EIR is to give the public and government decision-makers the information needed to make informed decisions, thus protecting "not only the environment but also informed self-government." (*Ibid.*) However, in this case, the EIR, in contravention of the requirements of CEQA, inadequately addresses or fails to address environmentally superior alternatives to the PXP project.

CEQA requires an EIR, in addition to analyzing the environmental effects of a proposed project, consider and analyze project alternatives that would reduce adverse environmental impacts. (Pub. Resources Code, §§ 21001, subd. (g), 21002, 21002.1, subd. (a), 21003, subd. (c).) State policy requires that "public agencies should not approve projects as proposed if there are *feasible alternatives* . . . available which would substantially lessen the significant environmental effects of such projects." (Pub. Resources Code, § 21002 (emphasis added).) "Feasible" alternatives are those "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (Cal. Code Regs., tit. 14, § 15364.)

In addition to considering feasible alternatives, local agencies must undertake a "quantitative, comparative analysis" of the relative environmental impacts of project alternatives. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.) The CEQA Guidelines indicate an EIR must "include sufficient information about each alternative to allow *meaningful* evaluation, analysis, and comparison with the proposed project." (Cal. Code Regs., tit. 14, § 15126.6, subd. (d) (emphasis added).)

The Board of Supervisors in reviewing the PXP project cannot know whether "feasible alternatives" exist because the EIR does not adequately consider alternatives to the PXP project. While the EIR analyzes a conceptual on-shore alternative to the PXP project, it does not specifically analyze the Vahevala Project alternative. The Vahevala Project is a feasible on-

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shore alternative to the PXP project which also proposes to obtain oil and gas from Tranquillon Ridge via a production facility located on or near the Vandenberg Air Force Base.

While the on-shore alternative discussed in the EIR provides one possible alternative, that alternative is completely conceptual. The Vahevala Project provides a feasible alternative that must be compared with the PXP project. Because, the EIR does not provide a comparative quantitative analysis of the Vahevala Project with the PXP project, it fails to offer the public a “meaningful comparison” of the relative environmental impacts of the PXP project and a feasible alternative and therefore the EIR is legally inadequate.

In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, the court held the EIR’s treatment of a “natural gas alternative” to a proposed coal-fired power plant, which would provide steam for a tire manufacturing facility, was deficient because it omitted “substantial information” about the use of natural gas and therefore was not an accurate comparison to the coal-fired proposed project. Because much of that information was available from the California Air Resources Board, the City’s failure to include it constituted an abuse of discretion. The EIR for the PXP project analyzes a conceptual on-shore alternative but this alternative is significantly different from the Vahevala Project. The quantitative information for the Vahevala Project is available to County planning staff and accordingly, approval of the PXP project without undertaking a quantitative comparison would constitute an abuse of discretion by the County.

County Planning staff argues that the “County is not obligated to delay action on PXP’s Tranquillon Ridge proposal to accommodate the uncertain schedule for the ExxonMobil/Sunset proposal....” But delay in this instance is certainly the most prudent course of action. The two projects must be appropriately reviewed and compared because CEQA requires quantitative analysis of feasible projects, and does not permit the County to simply skip a step in the CEQA analysis in order to sooner approve a project that is economically inviting but environmentally less feasible.

Because feasible alternatives have not been adequately considered, the Board should deny certification of the EIR.

As Recommended, the Board’s Approval of The PXP Project Would Constitute a Violation of California’s Brown Act

As stated in our April 30, 2008, May 27, 2008 and June 16, 2008 letters, the Planning Commission violated the Ralph M. Brown Act, Government Code section 54950, *et seq.*, when it approved the PXP project on April 21, 2008 without review or public disclosure of the secret side agreement entered into between PXP and two environmental organizations prior to the hearing. While some terms of this secret agreement appear throughout the record for the PXP project and substantially influenced the decision-making of the Commission, the Commission did not have a copy of the agreement as evidence of the project changes proposed by PXP. Accordingly, it could not legally rely on the agreement as substantial evidence in its decision-

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making process because discussion of the agreement was neither noticed nor agendaized. It was improper for the Commission to discuss and take action in reliance on provisions contained in the secret agreement.

Because all matters appealed to the Board of Supervisors are heard *de novo*, (Santa Barbara County Code section 35.102.050(c)), this very issue arises again. The Notice of Public Hearing (copy attached) issued by the County makes no mention of the agreement between PXP and certain environmental organizations. However, the Brown Act requires the agenda and notice for a meeting to "specify . . . the business to be transacted or *discussed*." (Gov. Code, §§ 54954.2, subd. (a)(2), 54956.) Because the Notice of Public Hearing fails to acknowledge the secret agreement, the Board of Supervisors is legally prohibited from discussing the agreement during the appeal hearing and Supervisor deliberations.

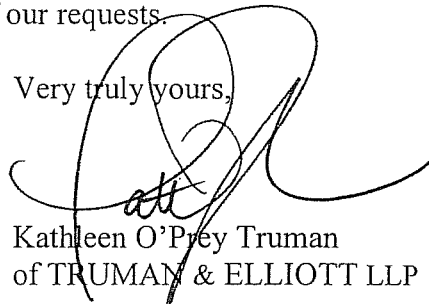
With this appeal, the County has an opportunity to avoid a second Brown Act violation and unnecessary litigation. By requiring the inclusion of the secret agreement in the administrative record, the Board of Supervisors can then openly deliberate about the whole of the PXP project, including the benefits and drawbacks to Santa Barbara County's economy and environment. Absent inclusion of the agreement in the administrative record, the Board may not rely on its contents nor consider the unnamed terms of the secret agreement as substantial evidence in order to approve the PXP project; to do so would constitute a violation of California's Open Meeting Law—The Brown Act.

Conclusion and Requests

Sunset respectfully requests that the Board of Supervisors: (1) comply with the Brown Act; if approval of the PXP project is predicated on a side agreement, the agreement must be made public; (2) grant the Appeal and find the PXP project is inconsistent with Santa Barbara County's long-range Planning, Coastal and Energy Policies, and find the EIR fails to analyze feasible project alternatives.

Thank you for your consideration of our requests.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen O'Prey Truman", is written over the typed name and firm name below. The signature is stylized and somewhat illegible due to overlapping loops.

Kathleen O'Prey Truman
of TRUMAN & ELLIOTT LLP

Enclosure

cc: Michael Brown, Official Clerk for the Board of Supervisors
(Via Facsimile and Overnight Mail)



County of Santa Barbara
BOARD OF SUPERVISORS
NOTICE OF PUBLIC HEARING

CASE NUMBERS: 08APL-00000-00019, 08APL-00000-00020, and 08APL-00000-00021

HEARING DATE: August 19, 2008 *This hearing was CONTINUED to September 9, 2008*
in Santa Maria

LOCATION: County Administration Building
105 E. Anapamu Street, Santa Barbara, CA 93101
Board of Supervisors Hearing Room (4th Floor)

SUBJECT: Appeals of PXP Tranquillon Ridge Project Approval

Hearing on the request of appellants ExxonMobil Exploration Company and Sunset Exploration, Inc., Appeal Case No. 08APL-00000-00019 [Appeal filed April 29, 2008], Vaquero Energy, Inc., Appeal Case No. 08APL-00000-00020 [Appeal filed April 30, 2008], and Bruce W. Bell, Appeal Case No. 08-APL-00000-00021 [Appeal filed May 1, 2008] to consider these appeals of the County Planning Commission's decision to conditionally approve Revised Development Plan Case No. 06RVP-00000-00001, the Plains Exploration and Production Company (PXP) Tranquillon Ridge Oil and Gas Development Project. PXP's existing Platform Irene, its associated offshore and onshore oil and gas pipelines, the Surf electrical substation, and the Lompoc Oil and Gas Plant (LOGP) would be used to produce, process, and transport the Tranquillon Ridge oil and gas reserves from a new lease area in State waters. The proposed development would require minor modifications to existing equipment and potential minor new construction, and would result in increased levels of oil and gas production. The Planning Commission's April 21, 2008 action included certification of the EIR (06EIR-00000-00005; SCH#2006021055), which identified significant effects in the following issue areas: marine and terrestrial biology, marine and onshore water resources, fishing, recreation, cultural, agricultural, visual, and geological resources, and public safety. The Tranquillon Ridge project involves the Lompoc Oil and Gas Plant on Assessor's Parcel No. 097-360-010, located 2.7 miles northeast of the City of Lompoc and 0.9 miles north of Vandenberg Village at 3602 Harris Grade Road in the Fourth Supervisorial District and Assessor's Parcel Nos. 097-350-018, 097-350-021, and 097-360-101 located from Wall Beach across Vandenberg Air Force Base to the Lompoc Oil and Gas Plant in the Third and Fourth Supervisorial Districts.

The Board of Supervisors hearing begins at 9:00 a.m. The order of items listed on the agenda is subject to change by the Board. These three appeals will be heard concurrently by the Board. Anyone interested in these matters is invited to appear and speak in support of or in opposition to the project and may address the Board of Supervisors in person or by using the remote video testimony system located at the Betteravia Government Center, Board Hearing Room, 511 East Lakeside Parkway, in Santa Maria. Written comments are also welcome. All letters should be addressed to the Santa Barbara County Board of Supervisors, 105 East Anapamu St., 4th Floor, Santa Barbara, CA 93101.

A staff analysis of each appeal and other related materials are available at the Planning and Development Dept. Energy Division, 123 E. Anapamu St., Santa Barbara, and at <http://www.countyofsb.org/energy/projects/PlainsPedernales.asp>. For further information, please contact Nancy Minick at (805) 568-2506, nminick@co.santa-barbara.ca.us, or Kevin Drude, at (805) 568-2519, kevin@co.santa-barbara.ca.us, or by FAX at (805) 568-2522.

If you challenge the project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence to the Board of Supervisors prior to the public hearing.

The Board Hearing Room in Santa Barbara is on the fourth floor of the County Administration Building and is wheelchair accessible. Accessible public parking is available behind the County Administration Building and in City Parking Lot #6 located at the corner of Anacapa Street and Anapamu Street. For other access services, please contact the Clerk of the Board at (805) 568-2240 prior to the hearing date. This hearing will be televised live on County of Santa Barbara Television (CSBTv) Channel 20 at 9:00 a.m. for the South Coast, Lompoc, Santa Ynez Valley, Santa Maria and Orcutt areas and also may be viewed from http://sbcounty.granicus.com/ViewPublisher.php?view_id=4.