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October 6, 2008

VIA FACSIMILE & OVERNIGHT MAIL

Honorable Chairman Carbajal and
Members of the Santa Barbara County Board of Supervisors
105 E. Anapamu St., 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 to supplement our September 5, 2008 letter regarding Sunset's objections to the application of Plains Exploration, Inc. ("PXP") for approval for off-shore oil drilling in the Tranquillon Ridge. We respectfully request the Board grant the appeal and deny approval of the PXP project.

I. THE PXP PROJECT IS INCONSISTENT WITH THE COUNTY'S GENERAL PLAN.

California's Planning and Zoning Law, California Government Code sections 65000, *et seq.*, requires land use decisions made by cities and counties to be made in harmony with the applicable general plan for that city or county. (*City of Los Angeles v. State of California* (1982) 138 Cal.App.3d 526, 530; *Bownds v. City of Glendale* (1981) 113 Cal.App.3d 875, 880.) The PXP project is inconsistent with the County's General Plan. The County cannot look at the different goals, objectives, and policies of the General Plan in isolation; rather, a project must be consistent with the whole of the different policies of the General Plan. The County cannot pick and choose certain policies with which a project is consistent with the General Plan while ignoring other policies with which the project clearly conflicts.

A. The Project Is Inconsistent With the General Plan's Land Use Element.

The PXP project conflicts with numerous policies of the Land Use Element. The Land Use Element is the "core" of the County's General Plan, and sets forth acceptable and appropriate land uses throughout Santa Barbara County. Specifically, the PXP project is inconsistent with 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. Because Staff must look at the entirety of the PXP project and not just alternatives to the Lompoc Oil and Gas Production facility ("LOGP"), the environmental review

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of the PXP project fails because it does not provide a comprehensive analysis of all alternatives to the PXP project. In particular, the EIR or Staff Report does not consider the Sunset-ExxonMobil Vahevala project ("Vahevala project") in its analysis of alternatives.

In addition, the PXP project is inconsistent with the Lompoc Area Community Goals. According to the Environmental section of the Lompoc Area Goals, "all mineral extraction should be regulated to minimize adverse impacts." (Santa Barbara General Plan, Land Use Element, Lompoc Area Goals, p. 122.) The PXP project would create eleven Class I Impacts and fifteen Class II Impacts. It certainly would increase rather than *minimize* adverse impacts on the environment. The PXP project is *increasing* adverse impacts. Accordingly, because the PXP project fails to meet the policies of the Land Use Element of the General Plan, the PXP project is inconsistent with the General Plan and cannot be certified.

B. The Project Is Inconsistent With the General Plan's Conservation Element.

The County's Conservation Element outlines the major conservation issues facing the County. These issues include protecting ecological systems and managing mineral resources. (Santa Barbara General Plan, Conservation Element, p.11.) Regarding ecological systems, the County must balance the relative importance of ecological preservation with the competing and often conflicting goals and objectives of development. (*Id.*) Because the PXP project would result in eleven Class I Impacts and fifteen Class II Impacts, the PXP project conflicts with the goals of ecological preservation. Regarding mineral resources, the Conservation Element states:

A critical issue raised in the mineral resources study stems from the environmental impacts of existing and proposed operations. The benefits of new or continued operations in certain areas may not outweigh the damage directly and indirectly attributable to mineral extraction. Often, however, mitigation measures can be utilized to control adverse impacts. Consequently, it is recommended that mineral resource activities be permitted in the County only if adverse impacts would not result, if flooding and erosion problems would not be increased, and if adopted federal and state air and water quality standards would not be violated.

(Santa Barbara General Plan, Conservation Element, p. 12; see also Conservation Element, p. 182.) With twenty-six significant environmental impacts recognized by the County, approval of the PXP project would conflict with mineral resources section of the General Plan. The risk of environmental catastrophe to marine resources if there is an upset at the PXP project outweighs any benefit which the County may receive by approving the PXP project.

In its April 15, 2008 Staff Report for the PXP project, County Planning Staff indicated the PXP project was consistent with the Mineral Resources section of the Conservation Element, however, it provided no analysis to support this conclusion. In Staff's Errata to the April 15, 2008 Staff Report, Staff crossed out the Mineral Resources section of the Conservation Element and indicated that "policy does not apply." However, this statement is incorrect. Section 3.0 of the Staff Report outlines the jurisdiction of the County over the PXP project. The PXP project is

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clearly an oil drilling project in which the County retains jurisdiction. Accordingly, the Mineral Resources section applies and the PXP project is inconsistent with its policies.

II. THE PXP PROJECT IS INCONSISTENT WITH THE STATE AND FEDERAL ENERGY POLICIES.

The County should postpone its review and approval of the PXP project until the existing conflicts between the County offshore oil drilling policies and the State and Federal energy policies are resolved. Currently, these policies are in a state of flux. Whereas the United States Congress recently decided not to continue its moratorium on offshore drilling, the State of California has remained steadfast in its opposition to offshore oil drilling. However, depending on the outcome of the election in less than one month, Congress can revisit the offshore oil drilling moratorium next year and renew the moratorium or negotiate a compromise. This uncertainty in offshore oil drilling policy, especially in California, must be resolved before the County of Santa Barbara approves additional offshore oil drilling projects.

III. 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, June 16, 2008 and September 5 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.

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. 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 the Brown Act.

IV. THE PXP PROJECT VIOLATES CEQA AND MUST BE REVISED AND RECIRCULATED

As stated in our September 5, 2008 letter, the EIR prepared for the PXP project violates CEQA because it fails to address environmentally superior alternatives to the PXP project. CEQA requires an EIR to consider and analyze feasible project alternatives which would substantially lessen the significant environmental effects of such projects. (Pub. Resources Code, §§ 21001, subd. (g), 21002, 21002.1, subd. (a), 21003, subd. (c).) When developing an alternatives analysis, local agencies must undertake a "quantitative, comparative analysis" of the relative environmental impacts of project alternatives. (*Kings County Farm Bureau v. City of*

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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).)

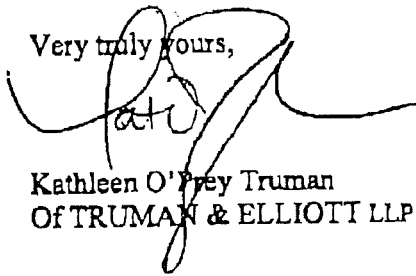
The Board of Supervisors in reviewing the PXP project cannot know whether "feasible alternatives" exist because the EIR does not adequately consider alternatives to the PXP project. While the EIR analyzes a conceptual on-shore alternative to the PXP project, it does not specifically analyze the on-shore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

CEQA Guidelines section 15088.5 requires recirculation of an EIR if a feasible project alternative considerably different from others previously analyzed is added to the EIR after public notice has been given but prior to certification. (CEQA Guidelines, § 15088.5.) Accordingly, County Staff must revise the alternatives portion of the EIR and recirculate the EIR for public comment following those revisions.

V. CONCLUSION AND REQUESTS.

Sunset respectfully requests that the Board of Supervisors: (1) comply with the Brown Act and (2) grant the Appeal and find the PXP project is inconsistent with Santa Barbara County's General Plan and CEQA. Alternatively, Sunset requests the Board postpone deliberations on the PXP project until the conflicts between Federal, State, and County energy policies are resolved.

Very truly yours,



Kathleen O'Prey Truman
OF TRUMAN & ELLIOTT LLP

cc: Mr. Robert Nunn, Sunset Exploration, Inc.