



Date: July 27, 2009

To: Mayor and Members of the City Council

From: Patrick H. West, City Manager

Subject: Wetlands Exchange – Response to Public Comment Questions from July 21, 2009 Council Meeting

At the end of the July 21, 2009 City Council meeting, Mr. Thomas Marchese posed a number of questions and comments related to the proposed Wetlands Exchange. Following is staff's response to Mr. Marchese's questions and comments, which he subsequently submitted in writing via email. This document will also be posted on the City's website for other interested parties.

Q1. Is the Wetlands exchange planned to come back for a vote on August 4th, if not, when?

A1. The exchange is scheduled for City Council consideration on August 4th.

Q2. And, is agreeing to no oil well relocation or removal a stipulation?

A2. The mineral interest owner will reserve certain exclusive surface easements for ongoing oil operations. The owner can voluntarily remove, relocate and remediate the exclusive surface easement areas at its cost or, in the alternative, the surface interest owner (initially, the City) can request and require removal, relocation and remediation of exclusive surface easement areas at the requester's expense. The owners of the mineral interest and surface interest agree to reasonably value the facilities requested to be relocated and, if the value is less than the cost to relocate, the mineral interest owner will sell the facilities to the surface owner and waive the relocation requirement.

Q3: Is not road relocation, or removal a stipulation?

A3: The mineral interest owner will reserve certain non-exclusive surface rights for access purposes. The non-exclusive surface rights can be relocated consistent with an approved restoration plan.

Q4: Is no soil remediation a stipulation?

A4: The mineral interest owner maintains responsibility for soil and groundwater remediation of impacts from oil and gas operations. The remediation standard shall be that standard established by the appropriate oversight agency for the existing zoning. If there exists a desire to remediate to a higher standard, the related incremental costs will not be borne by the mineral interest owner. If the mineral interest owner is required to relocate facilities from, and abandon, an exclusive easement area, the costs to relocate and remediate will not be borne by the mineral interest owner.

Q5: Has an estimate of partial or complete soil remediation been prepared? Will one be forthcoming?

A5: An estimate of remediation of soils impacts related to oil and gas operations has been prepared. The estimate assumes a remediation standard consistent with the existing zoning. The City has had an independent environmental consultant review the estimate and update the cost. It is estimated that 5,117 cubic yards of soil would need to be addressed. The City's consultant assumed the most expensive process to address the impacted soil, which includes, remediation planning, agency approval, excavation, loading, transport, monitoring, landfill disposal and reporting. The cost estimate per cubic yard is \$225, resulting in a potential cost to remediate to standards consistent with existing zoning at \$1.1 million.

If the remediation standard is raised to a level consistent with the Bolsa Chica Full Tidal Area Contaminant Cleanup Plan, the number of cubic yards requiring remediation could raise to an estimated 20,000 cubic yards. Utilizing the same unit cost of \$225, this results in a clean-up estimate of \$4.5 million. Under the proposed exchange agreement, the incremental increase of \$3.4 million would not be borne by the mineral interest owner.

It is important to understand that these quantities are for all the oil wells located within the exclusive easement areas. To the extent that some percentage of these wells remain in place, the clean-up cost will reduce proportionately.

Q6: Has any allocation of relative fault been discussed, or approximated as to the sources of the contamination? This seems to be a material fact critical to these negotiations.

A6: The Phase I Environmental Assessment produced by the City's consultant reveals that:

1. The only identified contamination originates from oil operations
2. There is no landfill on the property
3. No pesticides or PCBs were identified
4. Metal concentrations tended to be within natural background levels
5. Volatile Organic Compounds have been scattered and minor
6. No petroleum related contamination was found in the groundwater
7. The property does not appear on any environmental database
8. There does not appear to be any data gaps, except for an elevated area in the northwest corner, which requires additional investigation

The mineral interest owner maintains liability for contamination related to oil and gas operations on the property. This liability is limited to clean-up standards consistent with existing zoning. If the mineral interest owner is requested and required to relocate facilities from, and abandon, an exclusive easement area, those costs are not borne by the mineral

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interest owner. If the mineral interest owner is required to remediate to standards more stringent than the standard for existing zoning, that incremental cost is not borne by the mineral interest owner.

The subsequent comments made were distilled into three topics: location of the additional land, acquisition of mineral rights, and clean-up costs. I offer further discussion below.

The additional land will be that portion of the property fronting along the north side of Second Street, beginning at the easterly boundary of the In & Out Burger and continuing easterly to the existing access roadway, roughly opposite Shopkeeper Road. The depth of the property will be that distance necessary to create 4 acres. This property is currently zoned for residential development and its acquisition would remove additional potential density.

There continues to be public interest in the City acquiring the mineral interest in the property. This becomes a matter of allocation of scarce monetary resources. The basis for this exchange aligns closely with the Bryant acquisition. In the Bryant acquisition, mineral interests were not acquired and exclusive surface easements were reserved for continued oil and gas operations. The Coastal Conservancy has determined that oil operations are compatible with the goals of wetland restoration. As a result, as long as facilities can be relocated, acquisition of the mineral interest is not a prerequisite to wetland restoration. Further, it is not feasible to bifurcate the working oil interest to just that area south of Second Street. The City would need to acquire the entire oil operations, which would include that portion north of Second Street. Lastly, acquisition of the oil interests would necessarily include assuming the environmental liability.

It was commented that a 2005 estimate of clean-up costs was \$90 to \$140 million. One must assume that this is for the entire 180 acres, not specific to the 37 acres currently under consideration. If there are environmental documents available that support this estimate through physical investigations, the City would like an opportunity to review them. Absent these documents, we rely on the Phase I Environmental Assessment produced by the City's consultant.

The Phase I Environmental Assessment is available at your request. If there are any further questions, please contact Mike Conway at extension 8-5282.

cc: Suzanne Frick, Assistant City Manager
Robert E. Shannon, City Attorney