

**BEFORE THE ALAMEDA COUNTY BOARD OF SUPERVISORS**

In the Matter of Center for Biological Diversity’s )  
Appeal of Alameda East County Board of Zoning )  
Adjustments Approval of Conditional Use Permits ) Appeal  
PLN2017-00110 and PLN2017-00181 ) (County Code 17.54.670)  
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**INTRODUCTION**

Pursuant to Alameda County Code section 17.54.670, the Center for Biological Diversity (the “Center”) and Livermore Eco Watchdogs (collectively, “Appellants”) hereby appeal the Alameda East County Board of Zoning Adjustments’ (“BZA”) decision to approve conditional use permits PLN2017-00110 and PLN2017-00181 (collectively, the “CUPs”) The approvals are not based on adequately supported findings, are inconsistent with local and state law, and are contrary to the interests of the residents of this County. Appellants request the Board of Supervisors to deny these permits to protect the county’s groundwater and general welfare.

**BACKGROUND**

E&B Natural Resources operates an oil extraction projects near Livermore, California. E&B’s operations consist 8 oil production wells, one wastewater injection well, and a variety of ancillary structures and equipment such as pipelines, storage and processing tanks, fencing, and a well head pump. The operation is spread across three adjacent parcels, but at bottom it is a single interconnected operation. The BZA has issued separate CUPs to the operations on each parcel.

The operation is directly above high-quality groundwater resources. Water closer to the surface has been drawn for beneficial use. The deeper aquifer also contains high-quality groundwater that could be used for beneficial uses after some treatment.

E&B operated under two conditional use permits that expired in January 2018. In 2017, E&B Natural Resources applied for two conditional use permits to extend its operations for another 10 years. The permit applications first came before the BZA on February 22, 2018. The Appellants submitted written and oral comments opposing each application, and the BZA postponed a decision until a later date.

The BZA announced that it would consider the permits again at its May 24, 2018 meeting. Appellants and more than 300 residents submitted comments opposing the project. Two days prior to the meeting, the BZA issued two staff reports recommending approval of the CUPs. Appellants received these two reports on May 21, 2018. The BZA made attachments and other related materials available on May 22.

The Center submitted supplemental comments on May 23 to address some of the omissions and inaccuracies contained in the staff reports.

At the May 24 meeting, numerous local residents spoke in opposition to the permits. Following public comments, a representative for E&B proposed and submitted handwritten changes to the permit. Despite overwhelming opposition to the project and the absence of any opportunity for the public to review these last-minute changes, the BZA adopted E&B's proposed changes and approved both permits. Appellants file this timely appeal pursuant to County Code 17.54.670.

## **GROUND FOR APPEAL**

Appellants have raised numerous concerns regarding the propriety and validity of the permit approvals. Those concerns include, but are not limited to, the following:

### **I. E&B's History of Environmental Violations Endanger County and Its Residents**

The BZA failed to adequately consider the operator's long history of disregard for environmental and safety regulations, which has resulted in scores of spills and accidents across the state. Since 2007, E&B has reported 48 spills in four counties, including Alameda.<sup>1</sup>

#### **a. 2015 Livermore Leak and Contamination**

E&B has been cited in this very oil field for failing to conduct required testing on the safety of their injection wells. In April 2015, a leak in from a crude oil storage tank at E&B's facility at 8647 Patterson Pass Rd, Livermore was discovered<sup>2</sup>, allowing chemicals to leach into the soil below the tank. E&B failed to immediately notify the state's Office of Emergency Services, as it was required by law to do.<sup>3</sup>

In May the company arranged for testing of soil affected by the leak, which revealed contamination with substances including lead, toluene and ethyl benzene.<sup>4</sup> After "investigative excavation," it was determined that the contamination was "beyond the capabilities of company personnel."<sup>5</sup> At some point E&B moved 10 yards of soil from the contaminated site to another of E&B's facilities in Livermore, to be used as part of a secondary containment soil berm.<sup>6</sup>

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<sup>1</sup> See List of E&B Spills reproduced from Cal. OES database, Attachment 1 (available at [https://w3.calema.ca.gov/operational/mal haz.nsf/\\$defaultview](https://w3.calema.ca.gov/operational/mal haz.nsf/$defaultview) [last visited May 22, 2018].)

<sup>2</sup> Governor's Office of Emergency Services, Hazardous Materials Spill Report Control Number Cal OES - 15-4361 NRC, <https://w3.calema.ca.gov/operational/mal haz.nsf/f1841a103c102734882563e200760c4a/736acb9e8379b22c88257e9100774b31?OpenDocument&Highlight=0,E,B,Natural,Resources>, last visited September 18, 2015.

<sup>3</sup> Cal. Health & Saf. Code § 25510(a).

<sup>4</sup> Letter from Juan Magana, Project Manager, Zalco Laboratories to Jennifer Brady, E&B Natural Resources Corp, (Jun. 3, 2015).

<sup>5</sup> Alameda County Health Care Services Request for Voluntary Remedial Action Agreement (Aug. 5, 2015), p. 1.

<sup>6</sup> Alameda County Department of Environmental Health Inspection Report for 8467 Patterson Pass Road (Jun. 11, 2015) ("ACDEH Report"), p. 4.

By the time Alameda County Environmental Health officers inspected the site in June, the spill extended more than 12 feet deep, and went beyond the boundaries of E&B's leased property.<sup>7</sup> The State Water Resources Control Board has identified that an aquifer used for drinking water supply may be affected by the spill.<sup>8</sup> On June 11, 2015, following a site visit by Alameda County Public Health officials, the County found that E&B Resources was in violation of section 25510(a) of the California Health and Safety Code because it failed to immediately notify the California Unified Program Agencies ("CUPA") and the California Office of Emergency Services Warning Service of a release of hazardous material.

Even after this notice of violation, E&B Resources would not contact the Office of Emergency Services for another seven weeks. It finally notified the Office of Emergency Services until July 29, 2015,<sup>9</sup> approximately four months after the spill was first discovered.<sup>10</sup>

This spill puts California's precious groundwater supplies at risk during an historic drought. The work plan shows that groundwater in the area where the spill occurred is extremely shallow – initial groundwater in saturated zone is anticipated to be less than 60 feet below grade, with the potential for even shallower zones.<sup>11</sup> The depth of the spill was at least 12 feet below ground surface. Residential wells are between 100 – 350 feet below ground surface, and municipal and irrigation wells are between 315-810 feet below ground surface.<sup>12</sup> The spill occurred less than half a mile from an aqueduct that transports water from the Delta to San Jose, and less than half a mile from Patterson Reservoir.

b. Other violations in the Livermore Oilfield

These were not the only violations of state law and regulations found at E&B's Alameda County sites. In addition to the failure to report the produced water spill, Alameda County Public Health Inspectors found that E&B Resources had failed to determine if waste from seven of its tanks was hazardous before disposing of the waste as non-hazardous.<sup>13</sup> Water analysis for the tank bottom sludge of one tank showed lead levels of 6.4 mg/L, which requires disposal as hazardous waste; and results for three other tanks showed differentiating hazard levels. All this waste was disposed of as non-hazardous.<sup>14</sup>

The failure to determine whether its waste was hazardous, and to maintain analysis results for three years, was contrary to section 66262.11 and 66262.40(c) of Title 22 of the California Code of

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<sup>7</sup> *Id.* at p. 3.

<sup>8</sup> State Water Resources Control Board GeoTracker, GIG Facility Soil Cleanup (T10000007269), [http://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=T10000007269](http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000007269), last visited September 16, 2015.

<sup>9</sup> Governor's Office of Emergency Services, Hazardous Materials Spill Report Control Number Cal OES - 15-4361 NRC, <https://w3.calema.ca.gov/operational/mal haz.nsf/f1841a103c102734882563e200760c4a/736acb9e8379b22c88257e9100774b31?OpenDocument&Highlight=0,E,B,Natural,Resources>, last visited September 16, 2015.

<sup>10</sup> *Ibid.*: "Per the Caller: The release came from a facility storage tank. The release was discovered in April 2015, date and time unknown."

<sup>11</sup> *Ibid.* at p. 1.

<sup>12</sup> *Ibid.*

<sup>13</sup> ACDEH Report, p. 1.

<sup>14</sup> *Ibid.*

Regulations. E&B's failure to determine whether its waste was restricted from land disposal was contrary to section 66268.7(a) of Title 22 of the California Code of Regulations.<sup>15</sup>

The company also failed to include on its annotated site maps of the locations of its fire extinguishers at 8467 Patterson Pass Road,<sup>16</sup> and its hazardous material storage, fire extinguishers and spill kits at 8617 Patterson Pass Road,<sup>17</sup> contrary to sections 25505(a)(2) and 25508(a)(1) of the California Health & Safety Code. Further, it failed to submit a Hazardous Materials Inventory Chemical Description page to the California Unified Program Agencies ("CUPA"), contrary to section 25506 of the California Health & Safety Code.<sup>18</sup> Finally, the hazardous waste generator EPA identification number for 8617 Patterson Pass Road was inactive, contrary to section 66262.12 of Title 22 of the California Code of Regulations.<sup>19</sup>

Ultimately, the county district attorney was forced to take action against E&B for illegally and improperly disposing of hazardous waste from its site. E&B was fined over \$80,000<sup>20</sup>, and the property owner estimated at least \$200,000 in damage.<sup>21</sup> Additionally, in 2014, E&B's facilities in Alameda County were fined a total of \$7,500 by the Bay Area Air Quality Management District in relation to its storage of organic liquids.<sup>22</sup>

c. Other E&B violations of note

In October 2014, E&B agreed to pay almost \$40,000 to settle charges brought by the Central Valley Water Board that E&B illegally dumped about 5,000 gallons of oilfield wastewater and crude oil into two unlined pits in the Poso Creek Oil Field.<sup>23</sup>

In May, 2013, the County of Los Angeles ordered J. and H. Drilling Co., a sub-contractor working on an E&B site at Hermosa Beach,<sup>24</sup> to cease drilling without the required Public Health Permit.<sup>25</sup> An E&B spokesperson acknowledged that E&B was supposed to file the required permits.<sup>26</sup>

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<sup>15</sup> *Id.* at p. 2.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> RPM Holdings LP, letter to Department of Conservation (Jan. 24, 2017), p. 2

<sup>21</sup> *Id.*, Exhibit C – *People v. E&B Natural Resources Management Corp.* Case No. RG1684266 (Super. Ct. Alameda County, 2016, No. RG1684266, Stipulation for Entry of Final Judgment and Permanent Injunction.

<sup>22</sup> Bay Area Air Quality Management District, Board of Directors Regular Meeting Agenda (Sept. 3, 2014), pp. 29, 33, available at [http://www.baaqmd.gov/~media/files/board-of-directors/2014/brd\\_agenda\\_090314.pdf?la=en](http://www.baaqmd.gov/~media/files/board-of-directors/2014/brd_agenda_090314.pdf?la=en)

<sup>23</sup> Cox, John, Oxy Settles Charges it Illegally Dumped Waste, *The Bakersfield Californian*, (Oct. 7, 2014), available at [http://www.bakersfield.com/news/oxy-settles-charges-it-illegally-dumped-waste/article\\_2769c68c-c492-571f-b659-8a0a534170db.html](http://www.bakersfield.com/news/oxy-settles-charges-it-illegally-dumped-waste/article_2769c68c-c492-571f-b659-8a0a534170db.html).

<sup>24</sup> East Bay Reader News, Hermosa Beach Residents Catch E&B Drilling without County Permit, (May 15, 2015), available at <http://www.easyreadernews.com/70181/hermosa-beach-residents-catch-eb-drilling-without-county-permit/>.

<sup>25</sup> Los Angeles County Public Health, Notice of Violation and Order (May 10, 2013), p. 1.

<sup>26</sup> *Ibid.*

In May, 2015, the Central Valley Regional Water Quality Control Board issued an order closing four of E&B's injection wells in the Central Valley because those wells were unlawfully injecting fluids into aquifers not designated as exempt under the federal Safe Drinking Water Act.<sup>27</sup> This followed the closure in March, 2015 of two of E&B's injection wells<sup>28</sup> that were injecting oilfield waste water, also containing oil and trace chemicals, into aquifers that may have been suitable for drinking or agricultural uses.<sup>29</sup>

E&B has a worrying track record of oilfield wastewater disposal problems across the state, including 48 spills reported since 2007 in 4 counties.<sup>30</sup> It is clear from E&B's long history of spills, leaks, and legal violations across California that the operator cannot be trusted to follow any restrictions or conditions issued concurrently with the exemption, and thus should not be allowed to continue and expand its operations.

## II. There Has Been No Environmental Review of the Project's Impacts

Incredibly, despite the well-documented dangers of oil and gas operations, E&B's Livermore operations have never been subject to environmental review. The BZA, the Board, and the public have had no opportunity to analyze the true extent of the harms and potential impacts of the project. In essence, the BZA approved a project without knowing what the consequences will be, nor did it explore potential mitigation or alternatives that could lessen the harm to the environment.

The Staff Reports incorrectly state that this permit is categorically exempt from environmental review requirements under the California Environmental Quality Act (CEQA). E&B's intentions to expand and change its operations (or at the very least, the reasonably foreseeable scenario in which E&B expands), disqualifies these permits from CEQA categorical exemptions. (See Section III, *supra*.) DOGGR, the state regulator that issues permits for waterflooding, does not appear to have initiated any sort of CEQA review. Thus the County must take responsibility for analyzing the environmental impacts of these activities. The record before the board does not indicate that E&B's oil and gas operation has ever been scrutinized under CEQA. As such, any changes would have to be analyzed.<sup>31</sup> E&B's expansion would render the Class 1 exemption inapplicable.

Moreover, even assuming the CUPs preliminarily qualify for the Class 1 categorical exemption, the BZA may not apply the exemption without determining whether any exceptions would apply.<sup>32</sup> Here, E&B's proposed permits would not qualify for a categorical exemption because when E&B total oil and gas operations are considered, together and over time, the project would likely result in significant environmental impacts.<sup>33</sup> The Staff Reports fail to analyze the environmental impact of all of E&B's oil

<sup>27</sup> Central Valley Regional Water Quality Control Board, Order Pursuant to California Water Code section 13267 (May 15, 2015).

<sup>28</sup> California Department of Conservation, Division of Oil, Gas and Geothermal Resources, Calif. Division of Oil, Gas and Geothermal Resources Seeks End to Injection in Kern, Tulare County Wells (Mar. 3, 2015), available at <http://www.conservation.ca.gov/index/news/Documents/2015-03%20Division%20of%20Oil,%20Gas,%20and%20Geothermal%20Resources%20orders%20UIC%20wells%20shut%20in.pdf>.

<sup>29</sup> Baker, David, State Shuts 12 Oil Company Wells That Pumped Waste into Aquifers, SF Gate (Mar. 3, 2015), available at <http://www.sfgate.com/business/article/State-shuts-12-oil-company-wells-that-pumped-6112846.php>.

<sup>30</sup> See List of E&B Spills reproduced from Cal. OES database, Attachment 1 (available at [https://w3.calema.ca.gov/operational/mal haz.Fnsf/\\$defaultview](https://w3.calema.ca.gov/operational/mal haz.Fnsf/$defaultview) [last visited May 22, 2018].)

<sup>31</sup> See *Lewis v. Seventeenth District Agricultural Assn.* (1985) 165 Cal.App.3d 823, 835-838 (Blease, J., concurring)

<sup>32</sup> Cal. Code Regs. tit. 14, § 15300.2.

<sup>33</sup> *Id.* § 15300.2(b).

and gas operations in the Livermore oil field, improperly separating its analysis into two separate reports while acknowledging that the operations are connected. The Staff Reports also omit analysis of the adjacent Schenone oil wells, owned and operated by the same company.

Further, the unusual circumstances of the project increases the risk of significant environmental impacts.<sup>34</sup> The circumstances particular to this project and this operator have been discussed more fully in the Center's previously submitted comments, incorporated herein, including the projects proximity to active fault lines, the flawed reliance on faults to stop fluid migration, and the operator's history of spills and noncompliance. In *Meridian Ocean System, Inc. v. California State Lands Commission* (1990), the court held that an agency could consider the deleterious effects of the applicant's prior activity in assessing whether unusual circumstances were present.<sup>35</sup>

### **III. The BZA Did Not Account for E&B's Plans for Expansion**

The Staff Reports erroneously state that E&B proposes no expansion or changes to its current operations. The Project Description also asserts that operations will continue "without changes or expansion of the site at this time." This is incorrect. It is willful denial to view the tripling of the injection area as anything but an expansion.

First, E&B is seeking to triple the area into which it can inject wastewater—from 26 to 75.4 acres—a fact that is conspicuously absent from both the Staff Reports. In 2016, E&B submitted an application to the Division of Oil, Gas, and Geothermal Resources ("DOGGR") to exempt a far greater area of the aquifer from the federal protections that would ordinarily apply to groundwater of this quality.<sup>36</sup> DOGGR, the State Water Board, and E&B refer to the proposed aquifer exemption as an "expansion."<sup>37</sup>

The Staff Reports' assertion that the aquifer exemption process seeks to "more clearly define"<sup>38</sup> the aquifer's boundaries amounts to nothing more than wordplay. The Staff Reports also assert that the "Aquifer Exemption process is not being conducted at the behest of E&B Resources."<sup>39</sup> That is patently false. It was E&B that submitted the application for an aquifer exemption in December 2016. The application's title page states that it was prepared by and submitted by E&B Natural Resources. That is in fact what federal law requires. Federal regulations specify that the "[o]wners or operators of Class II enhanced oil recovery ... wells may request that the Director approve an expansion of the areal extent of an aquifer exemption...."<sup>40</sup> That is the case here.

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<sup>34</sup> Id. § 15300.2(c).

<sup>35</sup> *Meridian Ocean Sys. v. State Lands Com*, (1990) 222 Cal.App.3d 153, 164.

<sup>36</sup> E&B Aquifer Exemption Revision Application (2016), submitted by E&B Natural Resources.

<sup>37</sup> E&B Aquifer Exemption Revision Application (2016), p. 4 (E&B states it is "proposing the Exemption Area boundaries be *expanded*."); *Id.* at Appx. IV; DOGGR, State Water Resources Control Board, Statement of Basis for the Expansion of the Aquifer Exemption at the Livermore Oil Field, December 9, 2016 ("Expansion of the Aquifer Exemption at the Livermore Oil Field.")

<sup>38</sup> PLN 2017-00181 Staff Report at p. 4.

<sup>39</sup> PLN2017-00181 Staff Report at p. 4.

<sup>40</sup> 40 C.F.R. § 144.7(d).

E&B's explanation is equally unavailing and misleading. In its April 30, 2018 submission to the BZA, it asserts that the aquifer exemption is "federally required."<sup>41</sup> But nothing "requires" the U.S. EPA to exempt a federally protected underground source of drinking water. Rather, an exemption approval is required *if an operator wants to expand injection activity into a larger area of the aquifer.*<sup>42</sup> E&B's desire to expand is what triggers this requirement. An approval requires a change in federal regulations, and since the earliest days of these regulations, California has only added or expanded exemptions for federally protected aquifers a handful of times.

E&B also disclosed plans to expand its operations to incorporate previously unpermitted activities. Namely, it plans to conduct secondary recovery water injection, i.e., waterflooding, an enhanced oil recovery technique.<sup>43</sup> Rather than mere disposal of the toxic wastewater generated through oil production, E&B now intends to inject that waste fluid and through increased pressure displace oil and move it toward production wells.

Even if E&B's claim that it does not plan to expand were credible, the proposed CUPs are unclear on what activities would constitute expansion and require future review. The proposed permits do not expressly prohibit expansion and in fact contain language *contemplating* expansion. They note that if E&B were to expand in the future, "it would consist of drilling new wells, changing an existing producing well to a water disposal well, or vice versa."<sup>44</sup> (See also Project Description: "no changes or expansion of the site *at this time.*"<sup>45</sup>) The CUPs also mention "redrilling or deepening," suggesting that those activities, which expand the reach of E&B's current operations, would be allowed. Such activities would constitute expansion and would not be part of the existing project. Should E&B expand after receiving these CUPs through these techniques, it is unclear whether the County plans to impose a requirement to seek a new permit.

#### **IV. The BZA's Approvals Are Based on Unsupported and Incorrect Findings.**

##### **A. Oil production is detrimental to the public, not a "public need."**

Oil production has resulted in unprecedented levels of greenhouse gas emissions and climate change. California's oil production is a significant contributor to greenhouse gas emissions. In response, the state intends to reduce its greenhouse gas emissions over the coming years. At a time when the public needs its public officials to be acting to reduce fossil fuel production as much and as quickly as possible, choosing to allow E&B's operations would be inimical to the public interest.

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<sup>41</sup> E&B, Comparison of Center for Biological Diversity Allegations and E&B Responses (undated), p. 2.

<sup>42</sup> 40 C.F.R. § 144.7

<sup>43</sup> E&B Aquifer Exemption Application (2016), p. 2 (The company has publicly stated that it intends to "either modify or cancel the existing [state underground injection control permit] and replace it with a [permit] for secondary recovery water injection....").

<sup>44</sup> PLN2017-00181 p. 4

<sup>45</sup> *Id.* at p. 2.

The BZA staff claims, without any support, that oil extraction is “required by the public need” because E&B would develop a “valuable natural resource.”<sup>46</sup> The statement does not explain why oil extraction is required, how it benefits the community, or why it is more important than protecting another natural resource—groundwater.

E&B’s unfounded claim that producing oil in Livermore would reduce greenhouse gases is contrary to basic economic principles and has been thoroughly debunked by economists and rejected by courts. When fundamental supply and demand maxims are applied, it is clear that reducing oil production in California is not negated by increases elsewhere.<sup>47</sup> Furthermore, when paired with a decrease in *demand* for oil, as California has planned, the benefits from reducing supply are even greater.

What is *required* in terms of oil production is well established by the scientific community: fossil fuel extraction must dramatically decrease in order to have a chance of avoiding the worst effects of climate change. That means keeping oil in the ground.

B. E&B’s operations are not properly related to facilities in the vicinity.

The Staff Reports’ finding that there are “similar facilities” in the area appears to refer to other oil wells owned and operated by E&B on neighboring parcels. These wells are all part of the same operation and should not be artificially piecemealed to prop up this finding. The risk to groundwater, detailed in previous comments, makes oil production incompatible with agriculture. Several groundwater sources in the state have been contaminated and degraded as a result of oil and gas production. Oil companies have faced multiple lawsuits from farmers after oil and gas development damaged or killed nearby crops.

Finally, there is no evidence that Livermore’s urban areas are a sufficient distance away from the project to adequately protect public health. Such analysis might have been made in an environmental impact report, but here there is none. Air and water pollution can travel long distances from the well site and threaten public health and safety for residents miles away.

C. Continued and Expanded Oil Production Would Adversely Affect Health and Safety and Be Detrimental to Public Welfare.

As discussed in previous comments, E&B’s operations are likely to result significant environmental impacts, including air and water pollution and damage to the climate. The staff’s conclusion that the 1967 conditions will “guarantee”<sup>48</sup> against pollution is belied by the history of E&B site. These same conditions were in place in 2015 when county officials found hazardous waste leaching into the soil. Needless to say, guarantees of future protections ring hollow.

Again, because there has been no environmental review of the project and its potential impacts, the staff’s conclusions are not based on evidence in the record and are in fact contradicted by evidence submitted by public commenters.

D. Continued and expanded operations would be contrary to law.

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<sup>46</sup> PLN2017-00181 Staff Report at p. 5.

<sup>47</sup> E&B’s has shown that ceasing its production would have any noticeable effect on the global oil market. If it did, a decrease in oil supply would increase the price and lower demand. E&B would also have to assume it costs nothing to transport oil or that oil demand is completely inelastic for its conclusions to hold water.

<sup>48</sup> PLN2017-00110, p. 6.

As discussed further below, the CUP approvals do not comply with state and local law. The staff's assertion that its approvals are consistent with applicable laws and regulations is therefore incorrect.

E. The Staff Erred in Stating No Chemicals Would Be Stored On-site

The Staff Report for PLN2017-00110 asserts, without support, that “there are no hazardous materials stored on-site.”<sup>49</sup> The record demonstrates this not the case. Well maintenance, equipment maintenance, redrilling and well works, and other related activities employ the use of chemicals. E&B admits it will apply “chemical surfactants” to the produced water before injecting it into the formation as part of its waterflooding operation.<sup>50</sup> Yet E&B still has not disclosed to the public what chemicals will be used and in what quantities. E&B states that it has provided information regarding chemical use to the County.<sup>51</sup> Yet the Staff Reports contain no information on what chemicals will be used.

**III. The Approvals threaten Alameda County's water and climate**

The Center has provided ample evidence of the harm that will foreseeably result from continued operations of E&B's oil extraction project.

A. E&B's operations pose a risk to groundwater.

DOGGR and the State Water Board confirmed that there is high quality groundwater where E&B plans to operate.<sup>52</sup> These groundwater resources will be put at risk of contamination from petroleum and the chemicals used in oil production processes being moved around the subsurface. Alameda's agriculture and wineries depend on having clean, ample supplies of clean groundwater, especially when the next drought hits California. Sacrificing this water for the convenience of a single oil company would be short-sighted and conflict with the long-term interests of our communities and local economy.

First, the water table near the surface consists of high-quality groundwater that would be put at risk be E&B continuing and expanding operations. Neither E&B nor state regulators have shown that the toxic waste fluid injected via injection wells will stay in the intended zone. E&B has also failed to disclose what chemicals will be used in operations.

Second, the slightly deeper aquifer into which E&B plans to inject waste fluid directly *also* consists of high-quality water suitable for beneficial use. E&B's own report admits that the groundwater may be treated to be used for beneficial purposes to effectively remove salts, suspended solids and hydrocarbons.<sup>53</sup>

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<sup>49</sup> PLN2017-00110, p. 5.

<sup>50</sup> E&B Aquifer Exemption Revision Application at p. 2.

<sup>51</sup> E&B, Comparison of Center for Biological Diversity Allegations and E&B Responses, p. 5.

<sup>52</sup> Statement of Basis (2016), p. 2.

<sup>53</sup> E&B Aquifer Exemption Revision Application, Appendix VII, “Veolia Opus II” brochure (unpaginated).

Oil and gas operations like E&B's use harmful chemicals in all phases of development, including drilling, well maintenance, enhanced oil recovery, and well cleanout. E&B admits that it uses "small amounts of chemicals," but has not disclosed a list of chemicals it will use nor the quantities of those chemicals. Oil itself contains harmful constituents, including benzene<sup>54</sup>, a carcinogenic chemical, that may migrate to cleaner portions of aquifers and degrade water quality. There are numerous potential pathways for these chemicals to migrate and contaminate groundwater. As the Center explained in its January 15, 2017 Comment Letter to DOGGR regarding the Livermore Aquifer Expansion Application (attached and incorporated herein), chemicals can move vertically or laterally via permeable strata, faults, dips and other formations when oil production is introduced.<sup>55</sup>

Despite the necessity of chemical use in oil and gas operation, there is no list of chemical information in the record. E&B provides no information on chemicals used in the oil field in the processes of oil extraction and well maintenance, although these chemicals can make their way into produced water, ultimately putting groundwater resources at risk. However, even with the little information provided, it is clear that the water has excessive levels of benzene and boron, pointing to the need for more disclosure to reveal what other toxic constituents may be present.

All chemicals that could make their way into produced water, including those protected by trade secret claims, must be disclosed if an accurate assessment of the risks to USDWs is to be made. This is especially so considering the injected fluid may migrate to other parts of the aquifer.

**B. E&B's operations contribute to climate change.**

This project is inconsistent not only with United States' climate commitments under the Paris Agreement but also with California's mandates for rapid statewide GHG emissions reductions. California has strict mandates to rapidly reduce emissions to prescribed levels by the years 2020, 2030, and 2050. The Governor's Executive Order B-30-15 and Senate Bill 32 establish an ambitious greenhouse gas emissions reduction target for California of 40 percent below 1990 levels by 2030. Executive Order S-3-05 calls for the state to reduce emissions levels by 80 percent below 1990 levels by 2050.

Locking in continued and expanded oil production in Alameda County for another 10 years directly contradicts.

**IV. The Approvals are contrary to law.**

**A. The State Requires an Environmental Impact Report**

Under California's foundational environmental law, CEQA, an agency must conduct an environmental review before granting discretionary approval for a project that will or may potentially have significant impacts on the environment. Here, despite well-documented harms associated with oil and gas projects,

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<sup>54</sup> DOGGR, Benzene in Water Produced from Kern County Oil Fields Containing Fresh Water (1993)

<sup>55</sup> See Center for Biological Diversity, Public Comment Letter re: Livermore Aquifer Expansion Application (Jan. 25, 2017), pp. 21-25.

the BZA approved the permits without disclosing, studying, or evaluating the environmental harms.

B. E&B's Operations Violate the State's Anti-degradation Policy

State Water Resources Control Board Resolution 68-16 requires that waters of the state must be protected "to promote the peace, health, safety, and welfare of the state."<sup>56</sup> Water disposal may not create pollution or a nuisance and be "consistent with the maximum benefit of to the people of the state...." Allowing wastewater injection into the Livermore aquifer, Greenville sands is inconsistent with this statewide policy.

C. The Approvals Do Not Comply with the County Ordinances

The CUPs are inconsistent with Alameda County Code in multiple ways.

1. Permit approvals would be contrary to the East County Area Plan.

The East County Area Plan ("ECAP") is clear that "[w]hile the ordinance does not affect existing parcels, development, structures, and uses that were legal at the time it became effective, structures *may not be enlarged or altered and uses expanded or changed* inconsistent with the ordinance, except as authorized by State law."<sup>57</sup> As described above, E&B has applied for an expansion of the injection zone as well as a permit to transition to waterflooding.

Furthermore, Policy 167 states: "The County shall impose conditions of approval on new Petroleum Resource Exploration and Extraction conditional use permits to protect future onsite and nearby uses from potential impacts resulting from petroleum exploration or extraction; potential impacts include but are not limited to traffic, noise, dust, health and safety, and visual impacts, as well as land contamination, surface and groundwater contamination, improper disposal of petroleum wastes, and improper site reclamation. The conditions should at least include, but not be limited to, those developed through the California Environmental Quality Act review process, and shall be monitored accordingly." Here, the conditions for approval have not changed substantially since E&B's last conditional use permits. Those conditions did not prevent soil contamination or the improper disposal of petroleum wastes. Yet the BZA believes the same conditions will prevent future harm. Moreover, the BZA failed to conduct an environmental review pursuant to CEQA.

2. E&B's Conditional Use Has Not Been Confined to the Property.

The BZA cannot approve conditional unless it establishes that "under all circumstances and conditions of the particular case, the use is properly located in all respects as specified in Section 17.54.130, and otherwise the board of zoning adjustments shall disapprove the same." (Alameda County Code Section 17.54.140.) The County Health Department confirmed that E&B's leak went beyond the boundaries if

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<sup>56</sup> State Water Resources Control Board Resolution No. 68-16.

<sup>57</sup> ECAP at p. i. (emphasis added).

E&B's parcel.<sup>58</sup> Over the next ten years, it is highly likely that pollution migrating into the air, water, and soil will result from these inherently dangerous operations. Thus, approval is improper under Section 17.54.140.

### 3. The CUPs Do Not Contain a Specified Term

Pursuant to County Code 17.54170, the "approval of a conditional use permit may be valid only for a specified term...." The CUPs do not contain a specified term after which a renewal is expressly required. Instead, the BZA improperly approved a permit with new language requiring only a "review" of the permit.

While past permits have included a finite period of operation, the CUPs removed the expiration date: "in lieu of a 20 year term prior to expiration, there shall be a mandatory review in ten (10) years..."<sup>59</sup> The CUPs do not provide any explanation about the what the single mandatory review would entail, whether subsequent reviews are contemplated, whether it constitutes an expiration date, or what will be reviewed. The operator may interpret this change in the permit as a license to continue its operations in perpetuity, until the last drop of oil is extracted from the formation. This interpretation could handcuff future efforts by the BZA and Board of Supervisors if they take action to protect natural resources from harm.

Approval without a specified expiration is irresponsible. As oil becomes harder to extract, oil companies turn to more dangerous and intensive methods to extract oil. Already, E&B is turning to waterflooding to maintain its oil production. In the future, it may employ other dangerous techniques to extract harder-to-reach oil. At the very least, future applications must be required so that the public and the BZA are able to review E&B's operations.

### 4. The BZA Adopted Amendments without Opportunity for Public Review or Comment

At the May 24 BZA meeting, E&B submitted a handwritten amendment to the CUPs and requested the BZA approve the CUPs containing the new language. E&B's submission came after the public had submitted comments on the permit. As a consequence, there has been no opportunity for the public to review or comment on the newly proposed and adopted language in the CUPs. The last-minute additions contravene the letter and spirit public notice requirements under County Code section 17.54.830, which are intended to offer a fair opportunity for the community affected by a proposed permit to voice its opinion.

## **V. The Approvals Are Not in the Interests of Current and Future Alameda County Residents.**

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<sup>58</sup> ACDEH Report, p. 4.

<sup>59</sup> PLN2017-00181 at p. 6.

At its core, the decision to allow E&B to extend its operations prioritizes the narrow, financial interests of a single oil company above the well-being of area residents. The Board of Supervisors has a duty to represent, and protect, the interests of its residents. The BZA failed to do so, but by denying these ill-conceived permits, Alameda County has a chance to rectify this mistake and move the county toward a safer, more sustainable future.

### CONCLUSION

For the foregoing reasons, we urge the Board of Supervisors to deny Conditional Use Permits PLN2017-00110 and PLN2017-00181.

Respectfully submitted,

CENTER FOR BIOLOGICAL DIVERSITY



By: \_\_\_\_\_

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