

Summary of:

**The Proposed Development
Agreement between
E&B Natural Resources
Management Corporation
And
City of Hermosa Beach**

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Background

- Measure O implements a 2012 Settlement Agreement between the City of Hermosa Beach, E&B Resources Management Corporation (“E&B”) and Macpherson Oil Company (for itself and Windward Associates) to resolve a lawsuit brought by Macpherson Oil Company against the City for breach of contract regarding oil drilling at the site of the existing City Maintenance Yard at 555 Sixth Street.

Background

- The Settlement Agreement obligates the City, at E&B's request, to ask the voters whether to (1) amend the Hermosa Beach Municipal Code to allow E&B's oil drilling and production project to proceed at the City maintenance yard, and (2) approve a development agreement that would afford E&B a vested right to proceed with the Project notwithstanding any future inconsistent change in the City's Municipal Code.
- → MEASURE O

Summary of a DA

- A development agreement is an agreement authorized under state law that allows the parties to agree to freeze applicable zoning rules, regulations and policies that are in place at the time of the execution of the agreement in order to protect the project developer from future changes in the law that would adversely affect the project. This is what is meant by affording the developer a “vested right.”

Summary of DA

- Main Body of the Agreement -- 48 Pages
 - 250 Additional Pages of Exhibits
- Lets discuss what is in the Development Agreement so you can make an informed decision at the ballot box

Summary of DA

- Preliminary recitals of events that led to E&B project ballot measure.
- Definitions of defined terms in Agreement

Summary of DA

- A grant of vested rights to the project (Section 3.1)
 - If approved, the agreement provides assurances to E&B that it can proceed with this project (including the pipeline and subject to all of the conditions and mitigation measures) for the term of the agreement pursuant to the laws in effect when the ballot measure is approved.

Summary of DA

- A grant of vested rights to the project (Section 3.1) Cont'd.
 - This means future attempts to change the law and prohibit oil drilling at the City Yard site will not apply to this project, which can proceed under this agreement.
 - These assurances are granted in exchange for the public benefits listed in Exhibit C to the agreement.

Summary of DA

- A provision governing how the project may be transferred by E&B to a third party (Section 4.1)

E&B may sell or transfer its rights and obligations under the agreement to a third party with the City's approval

Summary of DA

- A provision governing how the project may be transferred by E&B to a third party (Section 4.1)
Cont'd.
- City may withhold or delay approval if the new party lacks the financial ability or capability to implement the project with the equivalent capabilities of E&B.
 - Nationally and regionally recognized oil and gas companies are deemed to meet this requirement.
- City may also withhold or delay approval if the new party has a record of dangerous or unhealthy performance failures at other oil drilling and production facilities or if E&B is in default of the agreement.

Summary of DA

- Rules governing how changes, both major and minor may be made to the project (Section 4.2)
 - *Some refinements or modifications of the project may be required during the life of the project. The City Manager will determine whether a change is major or minor, subject to City Council confirmation.*
 - Minor changes are approved by a letter from the City Manager, subject to City Council approval at a public Council meeting. Minor changes do not require an amendment to the agreement or a public hearing.
 - Major changes require, among any other required approvals, an amendment to the agreement, which must be approved by the voters.

Summary of DA

The following are examples of major project changes:

- Changes to the permitted use of the property;*
- Changes requiring a legislative act (such as a change to the Zoning Code or General Plan);*
- Increases to the intensity of the project;*
- Changes that will have adverse environmental impacts requiring a subsequent or supplemental EIR under the California Environmental Quality Act; or*
- Changes that create a situation adverse to public health or safety.*

Summary of DA

- A requirement that the Agreement be reviewed annually by the City Council (Section 4.3)
 - *Every twelve months, the City will review the extent of E&B's good faith, substantial compliance with the terms of the agreement.*
 - *The City Council may order special review of compliance with the Agreement at any time.*
 - *E&B may request a hearing to discuss its performance under the Agreement.*

Summary of DA

- Available remedies in the event of a default by either party, including the City's right to suspend the project under certain circumstances and exact penalties from E&B for violations (Section 5.1)

Summary of DA

The remedies for failure to comply with the terms of the Agreement are as follows:

- *Following a notice of default and opportunity for that party to cure the default, either party may sue the other party to cure, correct or remedy any default, to enforce any agreements provisions, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies.*
- *If the City brings a lawsuit against E&B for violation of the Agreement or conditions of approval (following notice of violation and E&B's failure to cure) or violation of a stop order issued under the Oil Code, a court may impose civil penalties against E&B up to \$10,000/day for each day E&B is determined to be noncompliant.*

Summary of DA

- *City may sue E&B for monetary damages if E&B fails to pay any amounts owing under the agreement.*
- *If E&B's failure or refusal to perform any provision of the Agreement causes an immediate and serious threat to life, health, property or natural resources, the City may pursue all legal remedies including immediate project suspension available under the Hermosa Beach Oil Code Chapter 21-A and Section 21 of the Lease.*
- *E&B may not seek monetary damages for City's default under the Agreement. This means that E&B's only recourse is to sue the City for specific performance, under which the Court could order the City to comply with the terms of the agreement.*

Summary of DA

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Summary of DA

- The term of the Agreement and how and under what circumstances the Agreement may be terminated prior to expiration (Section 5.2 and 6.1)

Summary of DA

- Term of the agreement will run for 34 years (coterminous with the 1992 Lease)
- *Agreement becomes effective the date the California Coastal Commission approves the Agreement.*
- *Both parties have the right to terminate the agreement early if the other party defaults and fails to cure the default within the cure period.*
- E&B is not obligated to proceed with the project, if approved, and could terminate the agreement in the event it chooses not to proceed.

Summary of DA

- An indemnification by E&B protecting the City from its activities and requirements for insurance coverage for the project (Section 6.5)

Summary of DA

- *E&B must defend, protect, indemnify and hold harmless the City from and against any claims by a third party for damages, costs, expenses, liabilities, and losses of any kind claimed to arise in any way from the project.*
- *This is very broad and also includes E&B paying the reasonable fees for accountants, attorneys, engineers, and other professional consultants needed to defend against the claim. The only limit on this indemnification is that E&B is not required to pay for actions resulting from the City's own gross negligence or intentional acts.*

Summary of DA

➤ Six pages of insurance requirements (Section 6.16) including:

- Commercial General Liability Insurance
 - Bodily Injury, Property Damage, Personal Injury, Contractual Liability, Premises and Operations, Fire Legal Liability, Sudden and Accidental Pollution Liability, Explosion, Collapse, Underground Hazard
 - \$1M per occurrence
 - \$2M aggregate

Summary of DA

➤ Six pages of insurance requirements (Section 6.16)

Cont'd:

- Loss of Control of Well and Pollution Liability Coverage
 - \$40M for Well Out of Control Insurance, Redrill/Extra Expense, and Seepage, Pollution, Clean-up and Contamination
 - \$5M Care, Custody and Control for bodily injury, property damage and clean-up and defense costs for Well Out of Control incident
- Worker's Compensation Insurance- as required by law and no less than \$1M

Summary of DA

➤ Six pages of insurance requirements (Section 6.16)

Cont'd:

- Auto Insurance
 - \$1M combined single limit
- Following Form Excess or Umbrella Liability
 - \$25M
- Amounts reviewed every 5 years and may be adjusted based on independent insurance advisor's review

Summary of DA

- An enforced delay provision that suspends the parties' performance in the event of occurrences outside the parties' control (Section 6.24)
 - *Standard term in many contracts, also referred to as Force Majeure Delay.*

Summary of DA

- *Performance delays will not be considered a default where the performance delay are due to occurrences outside the parties' control, such as war, riots, floods, earthquakes, strikes, fires, third party challenges to the Project, and delays due to the enforcement of environmental regulations.*
- *If one of these situations takes place and prevents the party from performing, the agreement shall be extended for the period of time that the cause of the enforced delay exists.*

Summary of DA

- A requirement that E&B reports to the City any lawsuits, notices of violation or investigations concerning alleged violations of law or permits arising from or related to E&B's other oil and gas drilling and production operations. (Section 6.26)

Summary of DA

- *E&B is required to notify the City within 15 days of receipt of notice of any lawsuits, notices of violation, or notices of administrative or governmental agency investigations concerning alleged violations of any law or permit condition raising material issues at E&B's oil and gas drilling and production operations.*

Summary of DA

- *In addition to notifying the City, E&B must provide the City with the documents initiating the proceeding against E&B. The City may request any documents E&B files in response or the final decision in the matter. E&B is not obligated to send the City routine correspondence in the matter.*

Summary of DA

- Exhibit A, comprised of A-1, A-2 and A-3
- Legal property descriptions for:
 - City Yard site
 - The supply and staging site at 602 Cypress Avenue
 - Parking lot that will be utilized at 636 Cypress Avenue.

Summary of DA

- Exhibit B is a lengthy project description, derived from the EIR.
- Question about project details?
LOOK HERE

Summary of DA

- Exhibit C
- Financial benefits that the City will receive in exchange for granting the vested rights to proceed with the project for the term.
- If the voters approve the project, E&B will provide the following benefits in addition to the royalties set out in the Lease:

Summary of DA

Exhibit C- Benefit 1

Five, annual accelerated uplands royalty payments of up to \$1,000,000 commencing with issuance of the City drilling permit for first well to be counted towards the City's future, unrestricted royalties.

Summary of DA

- *The 1992 Lease under which E&B will use the site sets out the schedule for royalty payments for oil derived from the uplands and the tidelands. Royalties derived from oil taken from the tidelands is restricted for tidelands uses. Royalties derived from oil taken from the uplands is unrestricted. So this benefit means that E&B will accelerate uplands (unrestricted) royalty payments to the City at the issuance of the first drilling permit.*

Summary of DA

- *Without having to pay interest or taking into account the time value of money, the accelerated payments will be counted toward and offset against future, unrestricted royalties. These payments are estimated to continue for five years for a total of \$5,000,000, until actual royalties start coming in. If these accelerated payments are more than the actual uplands royalties, City does not have to repay the overpayment.*

Summary of DA

Exhibit C- Benefit 2

Bonus payments during years 4-13 of the Lease to ensure \$1 Million royalty amount.

- *The Lease also provides for a \$500,000 Minimum Royalty starting on the fourth anniversary of the completion of the first well drilled and continuing to the thirteenth anniversary.*

Summary of DA

Exhibit C- Benefit 2

- *When actual royalties are received during years 4-13 under the Lease, the City is supposed to receive a minimum royalty payment of \$500,000.*
- *E&B has agreed in the Development Agreement to ensure that the City receives a minimum of \$1,000,000 per year during those years. These bonus payments are not royalties; but rather bonus payments to the City as lessor of the property. Thus, these payments are also unrestricted funds.*

Summary of DA

Exhibit C- Benefit 3

E & B will pay for and implement the Remedial Action Plan for the Project to remediate soil contamination at the existing City Maintenance Yard if the Project proceeds to Phase 3, full production. If the Project does not proceed to Phase 3, E & B will conduct remediation activities at the City Maintenance Yard to allow the site to be used for industrial and commercial purposes.

- *There is documented soil contamination at the City Yard site (and analyzed in the EIR) which must be assessed and remediated. In lieu of the City paying for the remediation, E&B will implement and pay for the remediation activities onsite.*

Summary of DA

Exhibit C- Benefit 4

E&B will forgive the City's obligation (set forth in the Settlement Agreement) to pay E&B \$ 3.5 Million upon issuance of the drilling permit for the first well and if E&B proceeds with Phase 3 of the Project, E&B will advance \$6.5 Million to the City for permanent relocation of the City Maintenance Yard.

- *If the voters approve the project, the City has the option of moving the City Yard directly to a permanent location, or to a temporary facility and then to a permanent facility. If the project proceeds to Phase 3, the City can use the \$6.5 Million advance to pay for the permanent City Yard relocation.*

Summary of DA

Exhibit C- Benefit 5

Payment of 1% of gross revenues to City to fund community improvements.

- *In addition to the royalty payments already required under the Lease and set forth above, E&B will pay the City an additional 1% of all of the project gross revenues. The money may be used in the City's sole discretion to pay for community improvements.*

Summary of DA

Exhibit C- Benefit 6

Creation of a Hermosa Beach Residential Property Fund to provide owners of residential properties within 600 feet of the Project with assurance that they will incur no loss as a result of the Project to their property's fair market value.

- *Residents who own residential properties within 600 feet of the Project can voluntarily participate in a Hermosa Beach Residential Property fund.*

Summary of DA

- *The Fund will pay the difference between an eligible property's actual negotiated sale price and the appraised Market Value of the property, which will be determined as if the Project had not been built. A predetermined independent appraisal process will demonstrate if there is a loss in the market value of an owner's residential property.*
- *There will be a \$25 Million cap on the total amount of the benefits that the fund can pay out. The fund will commence upon City's issuance of the drilling permit for the first well and will continue until either six years have passed or one year after completion of the final well, whichever is later, or the entire funding cap has been dispersed to eligible property owners. The Fund will be administered by a qualified, independent fund administrator.*

Summary of DA

- Exhibit C- Benefit 6- Residential Property Fund Cont'd
 - To apply, selling owner of residential property must submit:
 - Program Participating Agreement
 - Copy of accepted written offer to purchase the residence from a buyer not related to or affiliated with selling property owner
 - A current appraisal
 - Upon expiration of the fund term, remaining amount in fund will be distributed to owners of eligible residential property within 300 feet for which there has not already been a claim.

Summary of DA

- In addition to the above, Recital J of the agreement acknowledges that E&B has assigned to the Hermosa Beach Education Foundation a 1% overriding royalty interest in oil and gas produced from the project site, with a \$1,000,000 advance payment of royalty to the Foundation upon issuance by the City of the drilling permit for the first well.

Summary of DA

- Exhibit D
- All of the conditions of approval and environmental mitigation measures identified in the Environmental Impact Report governing the project, including provisions that E&B pay for all of the City's costs in administering and enforcing the project conditions and hiring of an environmental monitor to ensure compliance with all project conditions over the life of the project.

Summary of DA

- Exhibit D-1
- Restatement of the 1993 Conditional Use Permit conditions (replacing some conditions with stricter mitigation measures and modifying the conditions to reflect the existence of a development agreement). The 1993 Conditional Use Permit was granted by the City for a proposed oil and gas drilling and production at the City Maintenance Yard site and that Conditional Use Permit is abandoned and superseded by the development agreement, which contains the same or stricter conditions and mitigation measures.

Summary of DA

- Exhibit D-2 contains approximately 20 pages of the City's new project conditions drafted specifically for this project.
- Exhibit D-3 reflects the Mitigation Monitoring Plan derived from the Environmental Impact Report, incorporating all of the environmental mitigation measures required in the Environmental Impact Report and identifying the responsible party and timing for their implementation.

Two Questions

OIL PRICES HAVE DROPPED

1. Given drop in oil prices, can E&B wait to proceed with the project until oil prices go back up?

NO

Two Questions

- Lease Section 12- E&B must diligently pursue all permits necessary for drilling and production
- Once all permits are issued, E&B must promptly proceed with exploratory phase
 - Lease Section 1(c)- 345 days to commence operations for drilling of a well once all permits are issued (the remaining time left in the primary term)
- Condition 11 under Exhibit D-1
 - All wells must be drilled within 55 months from start of drilling

Two Questions

- 2. What if E&B decides that it does not make financial sense to build the pipeline and proceed to full production, can E&B truck the oil produced from the exploratory wells for the life of the DA?

NO

Two Questions

- The project description commits E&B to the 4 phases
- The EIR studied 4 phases and did not study traffic trips for trucking oil for the life of the project
- Condition 11 limits Drilling, Testing and Permanent Facility Construction (Phases 2 and 3) to 26 months
- Lease Section 12
 - After exploration and testing, if E&B determines that commercial production cannot be obtained, lease terminates
 - If commercial production can be obtained, E&B shall immediately proceed with development and production (which includes the pipeline)

Summary of DA

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