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September 12, 2023

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**SUBJECT:** Adoption of Resolution Clarifying Certain Policies in Ventura County 2040 General Plan ("General Plan") Related to Oil and Gas to Implement Settlement Agreement Between County and Remaining Petitioners in Pending Litigation; Determination that Adoption of Resolution Does Not Change Text or Meaning of Applicable General Plan Policies or Require Additional Review under California Environmental Quality Act; Direction for the Planning Division to Set for Study, Hearing and Recommendation, Within a Reasonable Time, Amendments to General Plan Policies COS-7.7 and COS-7.8

### RECOMMENDED ACTIONS:

1. Adopt the attached Resolution (Exhibit A) clarifying certain policies of the Ventura County 2040 General Plan ("General Plan") to implement a settlement agreement (Exhibit B) between the County and all remaining petitioners in pending litigation challenging the General Plan.
2. Determine that adoption of the Resolution does not change the text or meaning of the applicable General Plan policies being clarified and does not constitute a change in circumstances or significant new information requiring further impact review of the General Plan under the California Environmental Quality Act.
3. Direct the Planning Division to set for study, hearing, and recommendation, within a reasonable time, amendments to General Plan Policies COS-7.7 and COS-7.8 to the form set forth on page 3 of the attached settlement agreement (Exhibit B).

**FISCAL IMPACT:** None.

## **DISCUSSION:**

On September 15, 2020, the Board of Supervisors approved the 2040 General Plan ("General Plan") and, pursuant to the California Environmental Quality Act ("CEQA"), certified an environmental impact report ("General Plan EIR") and made findings regarding environmental impacts associated with implementing the General Plan. The General Plan took effect on October 15, 2020.

Ten lawsuits challenging the General Plan were filed in Ventura County Superior Court. The lawsuits primarily alleged violations of CEQA, the Brown Act, state planning law, and state and federal preemption, and some allege the County's unconstitutional taking of property rights and other constitutional violations. The lawsuits seek to nullify the Board's approval of the General Plan, and some seek monetary damages from the County. To date, the County has successfully resolved two of these 10 lawsuits by entering into settlement agreements with petitioners Ventura County Coalition of Labor, Agriculture, and Business ("CoLAB") and the Ventura County Agricultural Association ("VCAA"), and the California Works Labor-Management Cooperation Trust ("CalWorks").

The eight remaining lawsuits were filed against the County by parties with interests in the Ventura County oil and gas industry including Aera Energy LLC, Western States Petroleum Association, Lloyd Properties, Carbon California Operating Company LLC, CalNRG, the National Association of Royalty Owners, as well as individual property and royalty owners. To better understand their differences regarding the General Plan and attempt to resolve these lawsuits, the County and these petitioners have engaged in extensive settlement discussions. These discussions culminated in the negotiation and execution by all parties of the settlement agreement attached hereto as Exhibit B.

Under the settlement agreement, ending the lawsuits is contingent upon the County taking two main actions. The first action is adopting the attached Resolution clarifying certain General Plan policies regarding oil and gas production ("Implementing Clarifications"). Your Board previously approved similar resolutions clarifying certain General Plan policies and programs to resolve the lawsuits with CoLAB/VCAA and CalWorks. Under applicable law, your Board is required to consider and act upon the Resolution in an open public meeting. Approval of the Resolution is a discretionary act of your Board. It is recommended that your Board approve the Resolution at today's meeting.

The second action is approving amendments to General Plan Policies COS-7.7 and COS-7.8 regarding flaring and transportation associated with oil and gas production ("General Plan Amendments"). In contrast to approval of the Resolution, the General Plan Amendments must be processed, considered, and acted upon pursuant to state planning law and CEQA which require, among other things, noticed public hearings before the County Planning Commission and your Board. Your Board is recommended to only initiate the General Plan amendment process today, and not to approve the actual

amendments which will come before you for discretionary approval at a noticed public hearing in the future. The public will have the full opportunity to comment on the proposed amendments, and to participate in subsequent public hearings before the Planning Commission and your Board.

The Implementing Clarifications and General Plan Amendments are discussed in more detail below.

Under the settlement agreement, petitioners will dismiss their lawsuits within 10 business days after the County takes both actions, with each party bearing its own litigation costs and attorneys' fees. Conversely, if the County does not take both actions, petitioners will not dismiss their lawsuits and the parties will instead continue litigating in court. The settlement agreement also provides that should the County take both actions and petitioners then dismiss their lawsuits, but then either the Implementing Clarifications or General Plan Amendment is challenged by a third party in a subsequent legal action, and if in response to that legal action the Implementing Clarifications and/or General Plan amendment are set aside by a reviewing court (or by the County in response to the legal action) and/or substantially and materially modified by the County in response to such third party legal action, then petitioners may re-file and resurrect their pending lawsuits in court. In summary, the settlement agreement requires the Implementing Clarifications and General Plan Amendments to be adopted by your Board, and to thereafter remain in place, for the lawsuits to be conclusively resolved.

### **Implementing Clarifications**

During settlement discussions, the parties agreed that certain General Plan policies regarding oil and gas production should be clarified by providing further explanation to address petitioners' concerns and to ensure that they are evenly applied and implemented by the County in a manner that is consistent with the Board's original intent in approving the policies and the General Plan EIR's analysis of the policies as approved. County staff is fully supportive of these Implementing Clarifications and believes they will benefit the County, the public, and the oil and gas industry by providing enhanced clarity and certainty. These Implementing Clarifications, which are set forth on pages 3 through 5 of the Resolution (Exhibit A), are summarized as follows:

#### **First Clarification**

Policy COS-7.4 ("Electrically-Powered Equipment for Oil and Gas Exploration and Production") is clarified to explain that the phrase "where feasible" as used in the policy applies to the policy as a whole.

## **Second Clarification**

Policies COS-7.2 (“Oil Well Distance Criteria”), COS-7.7 (“Conveyance for Oil and Produced Water”), and COS-7.8 (“Gas Collection, Use, and Disposal”), are clarified regarding the meaning of the phrases “new discretionary oil wells” and “new discretionary oil and gas wells” as used in the policies.

## **Third Clarification**

Policy COS-7.2 (“Oil Well Distance Criteria”) is clarified regarding the method of measuring dwellings and schools from “new discretionary oil wells” under the policy. The clarification also explains that Thomas Aquinas College is not a “school” for purpose of the policy.

County staff recommends that your Board adopt the attached Resolution setting forth the Implementing Clarifications to ensure their accurate application and consistent implementation in accordance with the Board’s original intent and the plain meaning of the policies themselves. Because approval of the Implementing Clarifications does not change the text or meaning of the applicable General Plan policies, which were previously subject to CEQA review in the General Plan EIR, adoption of the Resolution does not require additional review under CEQA or a legislative amendment to the General Plan policies. With respect to CEQA, given that there is no change in the General Plan policies, there is no project change requiring further impact review. In addition, there is no change in circumstances or significant new information requiring further impact review.

## **General Plan Amendments**

The General Plan Amendments would amend Policies COS-7.7 and COS-7.8 to replace the current, as-adopted versions of these policies with the “mitigation measure” versions of the same policies that were included in the General Plan EIR’s Mineral and Petroleum Resources section as “PR-2” and “PR-3.” Unlike the current, as-adopted versions, the mitigation measure versions would authorize the County to approve “new discretionary oil wells” where operators show that it is not “feasible” to conduct the proposed operation without trucking of oil and produced water under Policy COS-7.7, and/or without flaring or venting of natural gas under Policy COS-7.8.

The term “feasible,” as used in these policies, is defined in the General Plan as: “Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. Whether something is ‘feasible’ in the context of the General Plan policy, program or other provision in which the term is used shall be determined by the County based on substantial evidence.”

The mitigation measure versions of Policies COS-7.7 and COS-7.8 were included in the General Plan EIR to potentially address an impact that the policies were determined to have on the environment under CEQA. In particular, the General Plan EIR found that Policies COS-7.7 and COS-7.8 would effectively restrict the locations where new discretionary oil and gas wells could be developed due to the prohibitions on flaring and venting of natural gas, and on trucking of oil and produced water. The General Plan EIR determined that this geographic restriction would limit the availability of known petroleum resources of value to the region and the state, which is identified as an environmental impact under CEQA Guidelines Appendix G, Section XII, subpart (a). The mitigation measure versions of the policies addressed this potential impact by authorizing the County to approve new discretionary oil and gas wells that would otherwise be prohibited by the Policies COS-7.7 and/or COS-7.8, if the proponent could demonstrate that it is not feasible to conduct operations at the new well(s) without flaring or venting, or that it is not feasible to convey oil and produced water from the new well(s) by pipeline, or both, as the case may be.

The General Plan Amendments would revise Policies COS-7.7 and COS-7.8 as shown in legislative format below:

**“Policy COS-7.7: Limited Conveyance for Oil and Produced Water.** The County shall require new discretionary oil wells to use pipelines to convey crude oil and produced water, if feasible; ~~oil and produced water shall not be trucked. Trucking of crude oil and produced water may only be allowed if the proponent demonstrates that conveying the oil and produced water via pipeline is infeasible. In addition, trucking of crude oil and produced water is allowed in cases of emergency and for testing purposes consistent with federal, state and local regulations.~~”

**“Policy COS-7.8: Limited Gas Collection, Use, and Disposal.** The County shall require that gases emitted from all new discretionary oil and gas wells be collected and used or removed for sale or proper disposal, if feasible. Flaring or venting ~~shall~~ may only be allowed if the proponent demonstrates that conducting operations without flaring or venting is infeasible. In addition, flaring or venting is allowed in cases of emergency or and for testing purposes consistent with federal, State, and local regulations.”

The General Plan Amendments do not propose any other changes to the County’s existing General Plan. All other oil and gas resources policies in the General Plan remain unchanged.


It is important to repeat and emphasize that today, County staff recommends that your Board direct the Planning Division to merely initiate the General Plan amendment process. Your Board is not and cannot approve the actual General Plan Amendments today. The legislative process will involve subsequent noticed public hearings before the Planning Commission and your Board, as well as CEQA review. The public will have the

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opportunity to comment on the proposed amendments, and to participate in these public hearings, during the discretionary legislative amendment process.

This item has been reviewed by the County Executive Office and the Auditor-Controller's Office. If you have any questions, please call me at (805) 654-2581.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tiffany N. North", followed by a large, stylized circular flourish.

Tiffany N. North  
County Counsel

TNN:tdb

Exhibit A – Resolution of the Board of Supervisors Adopting Implementation Clarification for Certain Policies Regarding Oil and Gas Contained in the 2040 General Plan

Exhibit B – Settlement Agreement and Release