



**Sophie R. Ellinghouse**  
Associate Counsel

September 10, 2019

via email: [clerkoftheboard@ventura.org](mailto:clerkoftheboard@ventura.org)

Chair Bennett & Ventura County Board of Supervisors  
County Government Center  
800 South Victoria Avenue  
Ventura, California 93009

**Re: WSPA Comments on Report from County Counsel and Proposed Amendments to County Zoning Ordinance Regarding Oil and Gas Development**

Dear Chair Bennett & Members of the Ventura County Board of Supervisors,

The Western States Petroleum Association (WSPA) appreciates this opportunity to provide comments on the report from County Counsel and proposed amendments to County Zoning Ordinance regarding oil and gas development (County Counsel Report and Proposed Amendments). WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, and other energy supplies in California and four other western states. The industry contributes \$152 billion dollars every year in economic activity and directly contributes \$21.6 billion dollars in local, state and federal tax revenue to support schools, roads, public safety and other vital services. More specifically, in Ventura County alone, the oil and gas industry contributes over \$200 million dollars in state and local tax revenue annually.

The County Counsel Report incorrectly applies vested rights laws and concepts to the matter at hand, and as such, the Proposed Amendments would violate producers' vested rights to continue lawful oil and gas operations. Ventura County has historically recognized producers' vested rights and has outlined that recognition in various government documents, including a County Counsel report from 2014. In accordance with case law further detailed below, WSPA believes that oil and gas producers in Ventura County operating under existing use permits have a vested right to continue those operations and rescission of those vested rights would not only be unlawful but constitute an unconstitutional taking.

The County Counsel Report incorrectly relies on *Avco Community Developers, Inc. v. South Coast Regional Commission*, (1976) 17 Cal.3d 785 (*Avco*), disregarding subsequent case law that has held that use permits confer vested rights. In *HPT IHG-2 Properties Trust v. City of Anaheim* (2015) 243 Cal. App. 4th, the court found that when a Conditional Use Permit has been issued and the landowner relied on the permit, the landowner has a vested right. Furthermore, case law has also dictated that the scope of vested rights is the scope of activity authorized under the permit. (*Santa Monica Pines Limited v. Rent Control Board* (1984) 35 Cal. 3d 858, 865.)

Additionally, the Report's reliance on *Avco* overlooks relevant legal authority that deals specifically with vested rights as it relates to mineral extractions. (See *Hansen Brothers Enterprises v. Board of Supervisors*, (1996) 12 Cal. 4th 533 (*Hansen*).) *Avco* provides a general discussion of vested rights as it relates to residential development projects and it is clear that residential development projects significantly differ from oil and gas operations, as residential projects rely on fixed buildings and infrastructure. Unlike residential development projects, oil and gas extraction often requires relocation, re-drilling and deepening over time as reserves are depleted at various locations on the affected property and, as such, the production is considered a diminishing asset. In *Hansen*, the California Supreme Court expressly applied the diminishing asset doctrine and explained that mineral extraction uses are unlike other uses that operate within an existing structure or boundary. Because of this, the Court specifically noted that mineral extraction anticipates the extension of activities into areas of the property that were not being exploited at the time a zoning change was approved. (*Hansen* at p. 553.) Moreover, the Court stated:

"The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of lands as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed. A mineral extractive operation is susceptible of use and has value only in the place where the resources are found, and once the minerals are extracted it cannot be used again for that purpose."

(*Hansen* at pp. 553-554.) As detailed above, California case law has clearly defined vested rights as they relate to property owners and mineral extraction. The doctrine of vested rights seeks to protect property owners and developers who have substantially relied on past permits and proceeded accordingly with the government's acknowledgment. Unfortunately, here the County Counsel's Report essentially disregards well-establish law related to this subject, and the Proposed Amendments would ultimately be a drastic and unlawful overreach of Ventura County's power.

Furthermore, WSPA is troubled that stakeholders, and the public alike, were not given a meaningful opportunity to participate in the process. The Board Agenda was published on September 5, 2019, setting forth fully developed language of proposed amendments that were set to be heard just five days later on September 10, 2019. This limited period did not provide stakeholders or the public with the appropriate amount of time to review and comment on the County Counsel Report and Proposed Amendments. WSPA believes that our people, our state, our shared prosperity and our progress towards a sustainable, resilient energy future are all best served by inclusive dialogue and as such, the public and stakeholders should be given an additional opportunity to address this matter.

Finally, Ventura County oil and gas producers abide by some of the most stringent regulations in the world. The County's Proposed Amendments could have significant environmental impacts, including more reliance on other state and foreign imports for our oil and gas needs. This reliance is problematic, as it encourages supporting other states and countries that don't have the same stringent regulatory framework as California which is a leader in safety, labor, human rights and environmental standards. Ventura County's existing land use process has facilitated decades of safe and responsible local energy production by highly-trained Ventura County residents.

WSPA is committed to a truly sustainable energy future and empowering the future energy mix, partnering with state, local and community leaders in civil public discourse and calling out

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potentially damaging policy changes such as the ones being considered here that threaten equality, economy, environment, and energy. As such, WSPA appreciates this opportunity to provide our input because, as detailed above, we believe there are serious legal and policy implications regarding the County Counsel Report and Proposed Amendments. If you have any questions, please contact me at (916) 325-3117 or [sellinghouse@wspa.org](mailto:sellinghouse@wspa.org).

Respectfully,

A handwritten signature in blue ink, appearing to read "S. Ellinghouse".

Sophie Ellinghouse, Esq.  
Associate Counsel

cc: Ms. Rosa Gonzalez, Chief Deputy Clerk of the Board  
Mr. Leroy Smith, Esq., County Counsel (*via U.S. Mail*)