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September 10, 2019

Ventura County Board of Supervisors  
800 S. Victoria Avenue, #L1740  
Ventura, CA 93009-1740

**Re: County Counsel Report – Agenda Item #35**

Honorable Members of the Board of Supervisors:

Thank you for the opportunity to comment on the September 10, 2019 report received by the Board from County Counsel regarding the issue of modification of the non-coastal ordinance to require discretionary permitting for certain activities under existing Conditional Use Permits held by the Oil and Gas Industry, many of whom are CoLAB members.

This report represents a complete about-face from statements made in three separate communications submitted by County Counsel and the Planning Division to the Board in 2013 and 2015. In all three of these previous documents, County Counsel concluded that “antiquated” oilfield permits were subjected to the vested rights doctrine as well as constitutional taking and due process principles.

Of particular note is the County memorandum dated February 18, 2015, which analyzes this language from an existing Conditional Use Permit issued in 1956:

“[This CUP] authorizes the following uses:  
*Drilling for and extraction of oil, gas, and other hydrocarbon substances and installing and using buildings, equipment, and other appurtenances accessory thereto, including pipelines, but specifically excluding processing, refining and packaging, bulk storage or any other use specified in Division 8, Ventura County Ordinance Code, requiring review and Special Use Permit”*

In the February 18, 2015 memorandum, the County concludes that “according to the above language, [this CUP] authorizes oil and gas drilling and extraction operations but does not authorize other uses requiring review and Special Use Permit. The phrase ‘requiring review and Special Use Permit’ refers to uses subject to discretionary review. Thus, the conditions of approval of [this CUP] (including Condition #7) **do not require discretionary review for the drilling of oil wells...**”

In contrast, County Counsel’s September 10, 2019 report analyzes this language from an existing Conditional Use Permit issued in 1955:

*“Drilling for and extraction of oil, gas and other hydrocarbon substances and installing and using buildings, equipment, and other appurtenances accessory thereto, including pipelines, but specifically excluding processing, refining and packaging, bulk storage or any other use specified in Division 8, Ventura County Ordinance Code, requiring review and Special Use Permit”*

And has come to this opposite conclusion: “permittees are not entitled to construct any new oil and gas development, without first obtaining discretionary County approval...”

Furthermore, the September 10, 2019 report fails to even mention the existence of a 2013 report issued by the County CEO’s office and signed by County Counsel. On page 6 of that 2013 report, the County states “At the May 21, 2013 meeting, the Board also directed the County Counsel to provide the Board with a confidential legal analysis of three questions regarding the County’s ability to regulate oil and gas operations including....What options are available to the County to address antiquated oilfield CUPs that do not require discretionary review for new drilling, and/or do not incorporate current ordinance requirements, and/or do not provide time limits?”

This legal analysis – conducted by the same County Counsel - reached this conclusion: **“Conclusion: The County has only a limited ability to address antiquated oilfield permits due to the vested rights doctrine and constitutional takings and due process principles.”**

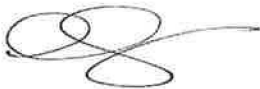
The same staff, conducting identical analysis on the same permit language, relying on the same applicable legal authorities, to answer the same relative question - and yet coming to the diametrically opposing determinations - requires more explanation and factual argument than is provided in County Counsel’s report in order to be considered anything more than political maneuvering.

Moreover, County Counsel incorrectly asserts there will be no fiscal impacts to the County from amending the Non-Coastal Zoning Ordinance (NCZO) in a manner that effectively prevents an entire industry from continued operation. The Oil Industry represents over \$50 million each year in tax revenue to the County. All County residents benefit from this

revenue through County-provided services. Amending the NCZO will reduce this source of tax revenue that is required to continue providing such County services such as police, fire, and public health assistance to lower income residents. County Counsel's statement of "zero fiscal impact" is unsupported, at best. CoLAB requests that the County disclose the data and information used to reach their conclusion of zero fiscal impacts.

Most concerning, the County has failed to follow the administrative process to ensure due-process to those affected by the County's proposed ordinance amendments. Due process requires that interested parties and the public be involved in government decisions that have a potential to impact their interests, especially where, as here, constitutionally-protected fundamental vested rights are at stake. Yet, on September 5, 2019, County Counsel issued a fully-formulated proposed amendment to the NCZO in advance of any meaningful opportunity for public comment. This was drafted entirely in secret, without any public involvement. CoLAB strongly recommends that the County re-consider proceeding with adopting the pre-determined language into the NCZO, as any future hearing will simply be a *post hoc* justification of amendments proposed and adopted without consideration of due process considerations attached to the fundamental rights at stake in this matter.

Sincerely,

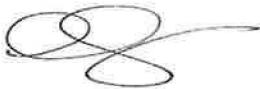
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Louise Lampara  
Senior Program Director

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Louise Lampara  
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