July 20, 2019

To: The Ventura County Board of Supervisors
Re: Statement by Co-Appellant Climate First: Replacing Oil & Gas (CFROG) regarding an appeal from the Planning Commission approval of a Modified CUP, and an MND Addendum for Renaissance Petroleum, Case No. PL14-0103

The approval of this Addendum is contingent on this Board answering the following question:

Does the project have unstudied environmental effects which will cause significant adverse impacts on human beings, either directly or indirectly?

There is substantial evidence that strongly supports the fair argument that there are significant adverse effects on human beings. Under CEQA, 'substantial evidence' is defined to include **'fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.'**

Note also, that the law requires a mandatory finding of *"less than significant"* effects if you are to approve this project.

I. There is Substantial evidence supporting a fair argument that the proposed project may produce a previously unstudied significant environmental impact.

1. Fracking Waste from the Rosenmund drill site is processed at Naumann, a fact supporting the reasonable assumption of significant health risk at the nearby community.

This permit allows the transport of production fluids from Rosenmund drill pad to the Naumann drill pad via pipelines through a strawberry field. The Rosenmund CUP was last modified in 2010 and permitted 10 new oil wells, for a total of 15 on that site. There is nothing in that permit that prohibits fracking, except that the operator must meet the requirements of SB 4. Therefore, this new permit allows fracking waste to go from the Rosenmund

drill site to the Naumann drill site for processing. Three of the 8 wells at the Rosenmund drill site have already been fracked.

Physicians for Social Responsibility published a Compendium of research[1] regarding the impacts of oil and gas production and fracking to the health of nearby residents. Some of the conclusions from the Compendium are:

"More than 200 airborne chemical contaminants have been detected near drilling and fracking sites. Of these, 61 are classified as hazardous air pollutants, including carcinogens; 26 are endocrine-disrupting compounds that have been linked to reproductive, developmental, and neurological damage. (See footnotes 134, 146.) Drilling and fracking operations emit fine particles and vapors that combine to create ground-level ozone (smog). Exposure to these pollutants is known to cause premature death, exacerbate asthma, and contribute to poor birth outcomes and increased rates of hospitalization and emergency room visits."

"Other documented adverse health indicators among residents living near drilling and fracking operations variously include exacerbation of asthma as well as increased rates of hospitalization, ambulance runs, emergency room visits, self-reported respiratory problems and rashes, motor vehicle fatalities, trauma, drug abuse, and gonorrhea."

"A 2017 Colorado study found higher rates of leukemia among children and young adults living in areas dense with oil and gas wells. A Yale University research team reported that carcinogens involved in fracking operations had the potential to contaminate both air and water in nearby communities in ways that may increase the risk of childhood leukemia. The Yale team identified 55 known or possible carcinogens that are known to be used in fracking operations, and that may be released into the air and water. Of these, 20 are linked to leukemia or lymphoma. (See footnotes 632, 1424.)"

"Naturally occurring radioactive materials that occur in shale layers containing oil and natural gas are brought to the surface in the solid waste removed during drilling (drill cuttings) and in fracking wastewater. Radionuclides can also build up in pipes and equipment, and fracking itself

---

[1]Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking (Unconventional Gas and Oil Extraction) Sixth Edition June 2019 https://www.psr.org/wp-content/uploads/2019/06/compendium-6.pdf

can open pathways for the migration of radioactive materials. Exposure to increased radiation levels from fracking materials is a risk for both workers and residents."

While the VCAPCD Health Risk Assessment concludes that the cancer risk to the nearby Disadvantaged Community is too low to be significant, this single document did not consider the other health effects of fracking detailed here. These health effects are seen throughout the nearby community.

We have data from CalEnviroScreen 3.0 that is reliable, up to date, and very regionally specific. So we know that asthma rates and low birth weight are significant health impacts in the families living near the drill pad.

These health issues are not coincidental. There is a reason they are not found at the same levels in the city of Ventura, or Camarillo or Simi Valley, or Thousand Oaks.

The proximity of this project, part of the steady, piece-meal development of the Cabrillo oil field, is a significant threat to nearby residents. The project must be considered in light of all the other toxic exposures to which these people are already exposed on a daily basis, which makes them particularly susceptible to the cumulative effect of this project, and nearby projects, *both past, present, future and probable.*

In addition, new science and data must be part of a thorough study to determine the true, total impacts.[2]

2. **The Cabrillo oil field produces an exceptionally high quantity of natural gas, a fact supporting the reasonable assumption of significant health risk at the nearby community.**

A memo written by the operator to DOGGR was found by CFROG in the well file for Vivian Rosenmund API #11122022, drilled in 2010. The memo contains this warning:

[2] https://www.ehn.org/fracking-harms-health-new-report--2638917368.html

"*As you are aware, Cabrillo's light oil production includes significant volumes of associated gas. As a result, RenPet found that is has had to slow delineation and development because of constraints on gas delivery and sales that have been established externally by the Southern California Gas Compnay (SGC).* ***The only alternative around this situation would have been to flare significant volumes of gas which would have created unnecessary attention and adverse publicity for RenPet, the oil and gas industry, and potentially the DOGGR.*** *(emphasis added)*
In March, 2011, RenPet was approved by SGC to increase its maximum daily volume delivery from 800Mcf/Day to 1200 Mcf/Day. Following that increase, RenPet immediately applied for another increase to 3000 Mcf/Day. That increase was approved late 2011 pending the replacement of a small pressure vessel that is part of SGC's gas meter set that is located at adjacent to RenPet's Naumann drill site. RenPet has been waiting for several months for the vessel to be installed by SGC. It is estimated the vessel will be replaced before the summer 2013."

The exceptionally high volume of gas produced in the Cabrillo oil field is newly discovered information that has not been analyzed in the current Addendum to the 1986 MND, in the Health Risk Assessment, nor in the MND itself.

The high volume of gas referred to in this memo is an unknown volume, unquantified, and not addressed in any environmental documents. More oil wells will produce more natural gas, and disposal through Southern California Gas lines is in question. Nearby gas-fired power plants are being shut down. Where will the operator send the increased volume of gas if SCG refuses to take it? The answer is flaring.

The single reference to a flare in the Addendum refers to its occasional use as an emergency flare. Yet, the operator's memo shows genuine concern over the potential size of the flare, and its potential for "adverse publicity" for the oil and gas industry, and potentially DOGGR. The potential for *even more flaring* from the requested well expansion is an unstudied significant impact for the sensitive residents living downwind of the flare.

The Compendium, referenced above, contains significant scientific information about the health concerns associated with flare emissions.

Here are two of the concerns established in the Compendium that are pertinent to this project:
-Emissions from flare stacks contribute to ozone creation and include several carcinogens, notably benzene and formaldehyde.
-Flaring also releases carbon monoxide, soot, and toxic heavy metals. In 2016, the EPA acknowledged that it had dramatically underestimated health-damaging air pollutants from flaring operations.

Strong evidence of harmful impacts are found in the record, including data compiled by the Office of Environmental Health Hazard Assessment (OEHHA) for the CalEnviroScreen 3.0, individual testimony of personal health issues, studies of the impacts of oil and gas emissions to sensitive receptors, and recent changes in the law recognizing the cumulative impacts of pollution burdens on people of color living in California Disadvantaged Communities.

The Disadvantaged Community, sitting just a quarter mile from the Cabrillo oil field flare, is at risk of exposure to a long list of toxic chemicals at anytime. According to the VCAPCD Health Risk Assessment (HRA) of 2019, So Cal Gas does not accept the produced gas about 13% of the time, however there is no documentation included in the HRA to support this estimate, which may be much higher when considering the nearby power plant closures.

Please note that liquid natural gas (LNG) is particularly troublesome. The Compendium has this to say about LNG:

"LNG is purified methane in the form of a bubbling, super-cold liquid. It is created through the capital-intensive, energy-intensive process of cryogenics and relies on evaporative cooling to keep the methane chilled during transport. Explosive, and with the ability to flash-freeze human flesh, LNG creates acute security and public safety risks. Its greenhouse gas emissions are 30 percent higher than conventional natural gas due to refrigeration, venting, leaks, and flaring, which is used to control pressure during regasification. The need to strip volatile impurities such as benzene from the gas prior to chilling it also makes LNG liquefaction plants a source of toxic air pollutants."

A conclusion found in the Compendium contains this warning about living near natural gas flares:

"Exposure to emissions from natural gas flares and diesel exhaust from the [estimated lifetime] 4,000-6,000 truck trips per well pad also pose respiratory health risks for those living near drilling operations. The United States leads the world in the number of flare stacks. Air pollutants from flaring operations include VOCs, polycyclic aromatic hydrocarbons, carbon monoxide, toxic heavy metals, formaldehyde, and soot." *(emphasis added)*

We ask this Board to avoid the potential for an accidental release of gas, an explosion, pipeline leak, or high quantities of toxic chemicals released over time by denying this Addendum. At the least, these dangers must be studied and evaluated in an EIR so that adequate mitigations can be included in the project conditions to protect the residents' health.[3]

3. Processing at the Naumann Site Has a Significant Environmental Impact that is Unstudied, a fact supporting the reasonable assumption of significant health risk at the nearby community.

This permit also allows the processing of oil, gas, and natural gas liquids, at the Naumann facility. Yet the environmental impact of the processing plant, given a CEQA exemption by the planning staff in 2007, is unknown. This processing operation will be receiving larger, unknown quantities of toxic liquids, coming from the new wells, as well as that piped from the Rosenmund site.

4. **The Addition of Four Wells Adds to the Cumulative Significant Environmental Impact that is Unstudied, a fact supporting the reasonable assumption of significant health risk at the nearby community.**

---

[3] Whitworth et al. (2018) Study documenting the potential health hazard of living within 2,640' of gas development facilities.
This study used an unconventional gas development activity exposure metric, accounting for proximity and density of wells in the drilling phase within 0.5 mi (2,640 feet) of maternal residence and the sum of natural gas produced within 0.5 mile (2,640 feet) of maternal residence. Preterm birth was associated with the highest categories of drilling activity and natural gas production, with the strongest association observed for women in the first trimester. Severity of preterm birth was also associated with increased drilling activity and gas production near maternal residence.

The County has not conducted a study of the cumulative impacts of this project. This is particularly troubling since there has been a steady, piece-meal development of the Cabrillo oil field, which has allowed the avoidance of findings of significant impact that would have triggered environmental review.

Staff did not include any data or dataset that would constitute substantial evidence of the existing pollution burden on this community. Rather, at the Planning Commission 9/7/17 hearing, county counsel argued that the pesticide and oil pollution types for CEQA consideration were "like apples and oranges" and could not be cumulatively considered. This misstates, at best, the meaning of 'cumulative impact.'

CEQA requires consideration of past, present, future, and reasonably foreseeable probable projects, in conjunction with 'setting,' in this case, close proximity to a community severely affected by other air quality.

CEQA also requires "a lead agency to consider whether a project's effects, while they might appear limited on their own, are "cumulatively considerable" and therefore significant."

CEQA tasks lead agencies with the responsibility of ensuring that new projects "(b) do not result in the unmitigated concentration of polluting activities near communities that fall into the categories defined in Government Code section 11135. The Office of Attorney General, Environmental Justice advisory letter of 07/10/12 explained, "To support such a finding that such concentration will not occur, the local government likely will need to identify candidate communities and assess their current burdens." This has not been done for this permit.

It is settled law that, "Substantial evidence is enough relevant information *and reasonable inferences from this information* that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[4] We ask this Board to conclude that this project should be rejected, or examined through an EIR, rather than allowed to proceed without addressing the potentially dire impacts it may cause.

---

[4] (14 Cal.Code Regs.1$ 15384, subd. (a).) *Committee for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agen*cy (2016) 6 Cal.App.5th 1237, 1245. Cited in Citizens for Responsible Oil & Gas vs. County of Ventura

5. **The Increase of Trucking Limits by 16 One-way Trips per Day is a Significant Environmental Impact that is Unstudied, a fact supporting the reasonable assumption of significant health risk at the nearby community.**

The estimate of truck trips, besides being unstudied, is also improperly prepared. The County must have evidentiary support to rely on an averaged baseline for truck trips, which it fails to do.

To assess the number of trips per well, the addendum divides the monthly amount produced at the 9 wells using the same roadways and then divides it by the average capacity of haul trucks, and then divides it by either 26 or 30 days. This is problematic for several reasons.

First, there is no evidence supporting the average capacity of the tanker trucks. It is also unclear how many days per month the wells operate. More importantly, this baseline average is then divided by 9 to assess the number of trips per well per day. It is inaccurate to divide the truck trips by 9 wells because only 4 to 7 wells are in operation per month. This underestimates the number of trips per well.

6. The Increased Size of Storage Tanks for Oil and Produced Water Storage Onsite is a Significant Environmental Impact that is Unstudied, a fact supporting the reasonable assumption of significant health risk at the nearby community.

The storage tanks for this permit are doubling in size, from 500 to 1000 barrels. This is, at least, a significant visual change, and also an indication of the increase in processing that will occur.

II. The VCAPCD Health Risk Assessment is not Sufficient to Make a Determination of Significant Environmental Impact

The Health Risk Assessment (HRA) submitted for this Addendum measures only whether the emissions from the new wells, and attendant operations, might cause cancer and certain other chronic and acute non-cancer risks. This information appears reasonable based on the built-in model assumptions and information available to the APCD almost a year ago last September. **However, the analysis is of limited usefulness, because it**

fails to assess the totality of the impact. The reason for this is that the VCAPCD has limited tools to do air quality assessments and must base their estimates on unverifiable assumptions.

VCAPCD only has a limited ability to assess risks. They do not have the tools to fully assess asthma, low birth-weight in babies, and other impacts that show up in studies, detailed in this letter, for areas burdened by pollution. The APCD risk assessment ONLY looks at 3 drilling related chemicals (benzene, toluene and xylene). For combustion (flare and glycol reboiler) they only evaluate assumed emissions for 11 compounds. They are, therefore, missing as many as 200 potential exposure agents.

Even with regard to cancer, the VCAPCD cannot fully assess the risk, because they do not have the information or tools to assess emissions related to fracking.

We know that the Rosenmund site has been fracked, and material from those operations have been sent by pipe to Naumann. There is no monitor measuring those fracking emissions, because the chemicals which are used are proprietary to the companies that make them, and that information is therefore unknown to the APCD.[5] The only way to assess the environmental impact from fracking is to look at the ill effects on people, which we can see in the nearby community.

In addition, **the HRA does not look at the *cumulative impact* on the nearby sensitive population.** Yet CEQA law requires a cumulative determination: "CEQA requires a lead agency to consider whether a project's effects, while they might appear limited on their own, are "cumulatively considerable" and therefore significant." This is especially true when there are higher susceptibility factors as found here in the nearby community.

***The HRA is too limited a tool* to be used to approve a drilling site with multiple previously unstudied significant environmental impacts including: -fracking, -large volumes of gas disposal, -expanded**

---

[5] Toxic Secrets Companies Exploit Weak US Chemical Rules to Hide Fracking Risks Dusty Horwitt Partnership for Policy Integrity April 7, 2016, http://www.pfpi.net/wp-content/uploads/2016/04/PFPI_ToxicSecrets_4-7-2016.pdf

processing operations, -additional truck trips, -four new wells, -expanded storage tanks, detailed above.

If this project is not rejected, an EIR is needed to allow residents to fully know the hazards they may be facing if a permit is issued.

The HRA must consider not just the 4 wells, but all projects present, future and probable. This was not done.

The Rosenmund site has 15 wells, and shares pipelines with Naumann. The operator has also obtained leases, and done all the groundwork for the proposed Doud multi-pupose site, which would accommodate 15 wells, and is 2500' from the Naumann drill site. Although undeveloped, it is a probable drilling operation, and CEQA requires it to be considered.

Note also that the 1986 MND for the Naumann drill site did not consider the potential health impacts from this project. The MND included a line item titled Human Health. That line item contained a notation referring the reader to number 14 in the MND, "risk of upset." Number 14 states that because the County has zoning ordinances and provisions for hazardous materials, there is "no risk of upset."

Human Health was ignored in the 1986 MND, and has been inappropriately considered in this addendum

If this project is not rejected, an EIR is needed to allow residents to fully know the hazards they may be facing if a permit is issued.

III. The Fair Argument Standard Must be Applied

At the 9/7/17 Planning Commission Hearing, Commissioner Aidukas asked twice, "what do these folks have to do to meet the fair argument standard? Do they have to go out and get their own health study to show there may be a significant effect from the air emissions to this community?"

Commissioner Aidukas' questions went unanswered. However, the fair argument standard is clearly explained in CEQA.

"The fair argument standard means enough relevant information and **reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.**

Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence."[6]

The whole record for this project includes letters and testimony from local residents who have attested to health problems including asthma, heart disease, and babies born with low birth weights. A local nurse wrote a letter regarding her observations while working at the local hospital of clusters of health issues centering on particular communities, especially the mobile home park nearest this project.

The record contains scientifically compiled, accurate data on the census tract within which the project lies that demonstrates such a high level of existing pollution that it should trigger a very careful, thorough analysis of the impacts of any future localized emissions.

There are currently 16 oil wells permitted on two drill pads on either side of this mobile home park, to the north and south. This permit would add 4 more. And the Doud permit application, while expired, can be resurrected anytime as a probable future expansion of drilling.

All of the wells were permitted a few at a time. For that reason, the total emissions from the whole project of producing oil from the Cabrillo oil field may never be cumulatively evaluated without an EIR.

According to the VCAPCD, 15 oil wells produce 30 lbs. of ROC/NOx per day, well above the 25 lb. level of significance set by your Board. However, staff asserts that the addition of 4 oil wells, expanded processing and

---

[6] (Cal. Code Regs., tit. 14, § 15384(a), emphasis added; see also § 21082.2.

storage, and additional truck trips do not amount to a significant level of emissions, one that would trigger a subsequent EIR.

If the applicant always applies for a number of wells that does not exceed the level of significance, and does not conduct a cumulative analysis, there can never be a CEQA review of the emissions. It is unreasonable to insist that 30 lbs./day of emissions goes up into the air, regardless of prevailing winds and weather conditions, and therefore, are insignificant, especially in light of the cumulative impact on sensitve receptors nearby.

Thus, if this project is not rejected, there is a pressing need for an EIR focusing on the environmental impacts of this project to these particular census tract residents.

The California Supreme Court recently clarified the standard of review applicable to subsequent approvals for activities that have been analyzed in a previous MND, instead of an EIR, in *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016).[7] The fair argument standard of review was found to apply when determining whether an addendum was adequate, or whether subsequent environmental review, either a subsequent MND or subsequent EIR, was required.[8] The Court found:

"when a project is initially approved by negative declaration, a "major revision" to the initial negative declaration will necessarily be required if the proposed modification *may produce a significant environmental effect that had not previously been studied.* Indeed, if the project modification introduces previously unstudied and potentially significant environmental effects that cannot be avoided or mitigated through further revisions to the project plans, then the appropriate environmental document would no longer be a negative declaration at all, but an EIR. (*Id*. at 958.)"

On remand, the Court of Appeals elaborated, and found **the fair argument standard must be applied to determine whether a subsequent EIR was**

---

[7] 1 Cal.5th 937 ("*San Mateo Gardens I*")

[8] (*San Mateo Gardens I, supra,* 1 Cal.5th at 959.)

required after preparation of an MND. The Court of Appeals stated this was the only "reasonable interpretation" of *San Mateo Gardens I*:

[J]udicial review must reflect the exacting standard that an agency must apply when changes are made to a project that has been approved via a negative declaration, as opposed to the deferential standard that applies when the project was originally approved by an EIR.

[The fair argument standard of review] is less deferential because a negative declaration requires a major revision—i.e., a subsequent EIR or mitigated negative declaration—whenever there is substantial evidence to support a fair argument that proposed changes 'might have a significant environmental impact not previously considered in connection with the project as originally approved.'[9]

Thus, when a project's impacts were previously reviewed in an MND, if substantial evidence shows that changes to the project, changes in circumstances, or new information might result in a significant impact, adoption of an addendum is not permitted under CEQA. (*Id.* at 606-607.)

The circumstances in which an addendum is appropriate are limited to "minor technical changes or corrections." The following are the changes to the project, as detailed above, go well beyond 'minor,' or 'corrections':

-the addition of 4 new previously unapproved, and not considered under CEQA, oil and gas wells,
-an increase of trucking limits by at least 16 one-way trips per day,
-the potential for increased flaring
-doubling the size of storage tanks for oil and produced water storage onsite,
-and expanded processing for the Cabrillo Oil Field.

There is a fair argument that these changes, far from being 'minor technical changes or corrections,' may result in a significant impact to the environment for the reasons included here.

There is substantial evidence of a direct or indirect adverse health effect

---

[9] *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2017) 11 Cal.App.5th 596, 606-608

CalEnviroScreen 3.0 was developed by the OEHHA at the Direction of Cal EPA, and identifies California communities by census tract that are disproportionately burdened by, and vulnerable to, multiple sources of pollution. The census tracts are ranked, and the highest (worst) scoring 25% of tracts are considered "disadvantaged"."

Within that worst scoring disadvantaged 25%, each community received a comparative percentile score to demonstrate the severity of the specific burden as compared to other identified Disadvantaged Communities.

The project will have a direct or indirect adverse effect on the residents of census tract 6111004704 (mostly Pacific Mobile Estates) because their pesticide exposure level is 100%, the highest exposure of any community in the State of California according to CalEnviroScreen 3.0. Their pollution burden percentile is 91.

While planning staff may have the latitude to use other data compiled for the purposes of understanding the pollution burden on a community, it cannot dismiss CalEnviroScreen data without substituting some other substantial evidence of the existing pollution burden.

County has not made any assertions about the communities' existing burdens except to say, "If the main driver of this environmentally disadvantaged community is the fact that its located in this census tract which is 97% agriculture and has a lot of pesticides, they have no cumulative effect because there is no effect from this project." Brian Baca 09/07/17 Planning Commission Hearing.

Mr. Baca's cavalier dismissal of the effects of pesticides is contrary to CEQA law, and the concept of cumulative impact. As detailed below, *both the 'cumulatively considerable' effects of a project, and its setting must be taken into account.*

Nor does Mr. Baca's attempt to 'water-down' the exposure, by dividing it over 30 years, pass muster. As discussed below by a highly qualified air quality expert, this idea is "**absurd and would not be supported by any qualified health expert."[1]**

[1] Dr. Steve Colomé earned a doctoral degree from Harvard University in Air Pollution Control and an SB from Stanford University; has served on the faculties of UCLA and UC Irvine. Colomé has started several successful research and consulting firms and has research experience in the areas of air pollution exposure, pollution control, epidemiology, risk assessment, and has advised the US EPA and governments of Mexico and Croatia on air quality.

The Significance of the pollution burden depends on the setting

CEQA law makes it clear that setting and location are the heart of CEQA.

> It is well established that: "[t]he significance of an activity depends upon the setting." (*Kings County Farm Bureau v. City of Hanford* (1990) [10]
>
> For example, a proposed project's particulate emissions might not be significant if the project will be located far from populated areas, but may be significant if the project will be located in the air shed of a community whose residents may be particularly sensitive to this type of pollution, **or already are experiencing higher-than-average asthma rates. A lead agency therefore should take special care to determine whether the project will expose "sensitive receptors" to pollution (see, e.g., CEQA Guidelines, App. G); if it will, the impacts of that pollution are more likely to be significant." (**emphasis added)[11]

Here, the project is located in the air shed of a community whose residents are heavily burdened by pollution, and have high rates of asthma as documented by CalEnviroScreen.

The lead agency has not taken special care to determine whether the project will expose "sensitive receptors" to pollution. For example, the Addendum fails to evaluate the dust from the dirt road leading to the project location, and its potential impacts.

---

[10] 221 Cal.App.3d 692, 718 [citing CEQA Guidelines, § 15064, subd. (b)]; see also *id.* at 721; CEQA Guidelines, § 15300.2, subd. (a) [noting that availability of listed CEQA exceptions "are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant."])

[11] (Office of California Attorney General, Environmental Justice, Updated 07/10/12)

Nor does the Addendum consider the health effects to "sensitive receptors suffering from asthma" from, for instance, the spike in emissions over 120 days of drilling activity, which produces 90 lbs of ROC/NOx per day (staff report).

The permit also allows an unlimited number of re-drills or re-works (most of the existing wells have been reworked twice, and one three times). The Addendum makes no attempt to evaluate the spikes in emissions during these subsequent operations.

Additionally, Ventura County is in nonattainment for the 1 and 8 hour state ozone standards. A project would have a significant adverse impact if it could result in a cumulatively considerable increase in criteria pollutant for which the region is in non-attainment.

The 90 pounds per day of NOx and ROC that would be produced during drilling activities are cumulatively considerable criteria pollutants that could lead to ozone formation. The addendum improperly divides the daily emissions over 30 years, which fails to address the short-term health impacts that would actually be produced during the 120 days of drilling.

As Dr. Steve Colome writes in his remarks on this permit, "(T)here is no supportable health-based argument for averaging a short-term exposure that occurs during drilling with a longer-term exposure. **To average a 120-day exposure over a thirty-year time period is, frankly, absurd and would not be supported by any qualified health expert.** The appropriate exposure is 90 lbs/day of NOx and ROC as estimated by the APCD to occur during the 120 days of drilling activity. This emission level clearly exceeds any reasonable threshold for potentially significant impacts on air quality.

A project's effects may be "cumulatively considerable," and this must be considered under CEQA

With regard to the nearby community, the chemicals in pesticides, and those released in oil and gas operations, may have a **negative <u>synergistic</u> effect on human health.** This effect is specifically recognized in CEQA.

"CEQA requires a lead agency to consider whether a project's effects, while they might appear limited on their own, are "cumulatively considerable" and

therefore significant. [12] **[C]umulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."** (*Id.*)

This requires a local lead agency to determine whether pollution from a proposed project will have significant effects on any nearby communities, when considered together with any pollution burdens those communities already are bearing, or may bear from probable future projects.

Accordingly, the fact that an area already is polluted makes it ***more likely*** that any additional, unmitigated pollution will be significant. Where there already is a high pollution burden on a community, the "relevant question" is "whether any additional amount" of pollution "should be considered significant in light of the serious nature" of the existing problem.[13]

1. "[A] number of studies have reported increased sensitivity to pollution, for communities with low income levels, low education levels, and other biological and social factors. This combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact." [14]

At the Planning Commission Hearing of September 7, 2017, County Counsel Jeffrey Barnes explained, "I think Mr. Villegas from APCD discussed this before. Right now we're looking at an oil and gas project, and so maybe to paraphrase his testimony, the environmental impacts from this are insignificant. They're in fact, once you get 1600' from the project, there's basically no air pollution. **And so the type of air pollution that's created by this sort of facility for better or for worse goes up in the air, and so that's why APCD's permitting program looks at the county as a whole.** You're not talking about toxic chemicals here such as might be involved with pesticides and so CEQA requires us to really hone in on the

---

[12] (Pub. Res. Code, § 21083, subd. (b)(3).)

[13] (*Hanford, supra*, 221 Cal.App.3d at 661; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 [holding that "the relevant issue ... is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools.")

[14] Office of Environmental Health Hazard Assessment, *Cumulative Impacts: Building a Scientific Foundation* (Dec. 2010), Exec. Summary, p. ix, available at http://oehha.ca.gov/ej/cipa123110.html.

project before us. And so, I totally understand and sympathize with the community's concerns, but you can't lose track of what emissions are being released by this project, and the effect of those emissions on human health. **And so that's what you really need to hone in on as opposed to how the community might be harmed by pesticides from completely unrelated activities other than they're in the same vicinity."**

Mr. Barnes' argument is incorrect for three reasons. First, he seems to ignore the court's findings in Hanford.[15] Specifically, "This requires a local lead agency to determine whether pollution from a proposed project will have significant effects on any nearby communities, when considered together with any pollution burdens those communities already are bearing, or may bear from probable future projects. Accordingly, the fact that an area already is polluted makes it *more likely* that any additional, unmitigated pollution will be significant. **Where there already is a high pollution burden on a community, the "relevant question" is "whether any additional amount" of pollution "should be considered significant in light of the serious nature" of the existing problem.** (emphasis added).

Second, there are toxic chemicals emitted from oil and gas facilities. For example, the Ventura County Air Pollution District has estimated that the following air pollutants may be released from natural gas flares: benzene, formaldehyde, polycyclic aromatic hydrocarbons (PAHs, including naphthalene), acetaldehyde, acrolein, propylene, toluene, xylenes, ethyl benzene and hexane. The list includes toxic chemicals known to cause cancer in humans.

Third, Mr. Barnes summarily declared that the pollution from this project "goes up in the air." However, that contention is contradicted by Mr. Villegas's (VCAPCD) warning at the same Planning Commission hearing, "the most dangerous emissions to human health are diesel particulates. The lesson there is, don't live by a freeway."

If one dismisses the emissions from 5 oil wells, flaring, processing, drilling, re-drilling and completion activities as simply going up in the air, we are still left with the project's additional diesel truck traffic amounting to 7,300

---

[15] *Hanford, supra*, 221 Cal.App.3d at 661; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025.

permitted truck trips per year, not counting additional truck trips and emissions during drilling or work-over activities.

This community is surrounded by, and directly abuts Highway 1, Pleasant Valley Road, and South Rice Road, all of which are used as the primary truck routes to and from Port Hueneme. The pollution burden is already excessively high (CalEnviroScreen pollution score 91, diesel 36 and impaired water 97) and thus the pertinent question is "whether any additional amount of pollution should be considered significant in light of the serious nature of the existing problem." [16]

Appellants believe that the additional pollution from this permit modification should be considered significant. The high pollution burden of this community, and the high asthma and low birth weight rates[17] combine for the reasonable inference, based on substantial evidence, that Appellants have made a fair argument that the addition of the emissions from this project may be significant.

IV. Other MND Deficiencies

When a project's impacts were previously only reviewed in an MND, if substantial evidence shows changes to the project, changes in circumstances, or new information might result in a significant impact, adoption of an addendum is not permitted under CEQA. There are significant changes detailed here, and including visual impacts from the project, no longer screened by trees.

The Court of Appeal in *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2017) 11 Cal.App.5th 596 also found that the need for mitigation measures for the subsequent project demonstrated the potential for adverse impacts. Subsequent environmental review, at least a subsequent MND, is required instead of an addendum where, mitigation measures are imposed upon the subsequent project.

Here, the conditions of approval include mitigation for potential significant environmental impacts, such as impacts from truck trips and noise impacts.

---

[16] Id.

[17] (CalEnviroScore: 31 and 45 respectively)

Thus, subsequent environmental review is required under CEQA instead of reliance on an addendum.

V. Violations of the NCZO

1.) Staff relies on NCZO 8105-4 and 8111-1.2.1.1, under which findings must be made by the staff for the granting of the CUP.

Staff must provide "specific factual findings," to support each requirement, which they have not done.

Staff findings contain no empirical data, scientific authorities, or explanatory information. Instead, the Planning Director Staff Report of 2/23/17 provides only conclusory, unsupported statements with regard to two critical findings:

c. The proposed development would not be obnoxious or harmful, or impair the utility of neighboring property or uses;

d. The proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare.

These deficient staff findings can be traced back to the 1986 MND environmental assessment. Despite Ventura County Initial Study Guidelines requiring a study of health impacts, no such study was included in the 1986 MND. As detailed above, the Health Risk Assessment does not adequately evaluate either the full range of significant adverse impacts, or their cumulative impact on the nearby community.

In addition, the NCZO states that "The applicant shall have the burden of proving to the satisfaction of the appropriate decision-making authority that the following standards can be met."

We can find no documentation that Renaissance Petroleum has addressed the standards in *any* way, further undermining staff's findings.

A major modification, or an EIR, would cure the failure to comply with the mandates of the NCZO by both staff and the applicant.

2.) The staff report of September 7, 2017, in section A7, relies on NCZO, Sec.8111-6.1.2 as the Planning Director's authority to approve the oil field expansion with Minor Modification. However, Section 8111-6.1.2 also states that the proposed change cannot "change any findings contained in the environmental document prepared for the permit." If such a change is found, then a minor modification cannot be issued.

The MND in question was issued on 12/15/1986, with an Initial Study containing an Environmental Checklist, attached. These documents, (taken together as the "MND,") constitute the 'environmental document prepared for the permit."

Renaissance Petroleum's request would make significant changes in the findings of the 1986 MND, Initial Study, and therefore NCZO Sec. 8111-6.1.2 prohibits the issuance of a Minor Modification.

These changes of findings include:

Adverse visual effects (22); increased noise and vibration (24); a four-fold increase in the number of oil wells (5); additional light pollution (23).

In addition, as detailed in these comments, there are new scientific studies on health impacts of oil fields, as well as new requirements for adverse impacts on environmental justice communities that have not been fully considered.

For these reasons, this permit Addendum should be rejected as violative of the County NCZO, or an EIR should be required.

This appeal also relies on the Superior Court Decision:

Citizens for Responsible Oil & Gas vs. County of Ventura, 2017

https://drive.google.com/viewerng/viewer?url=https://assets.documentcloud.org/documents/4311754/Court-Order-Granting-Writ-Min-2.pdf

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

CITIZENS FOR RESPONSIBLE OIL & GAS **Petitioners,** **v.** **COUNTY OF VENTURA** **Respondent.**	**Case No.: 56-2016-00484423-CU-MU-OXN** **ORDER ON AMENDED PETITION FOR WRIT OF MANDATE**
MIRADA PETROLEUM INC.; and DOES 1 to 10, **Real Parties in Interest.**	

HISTORY OF CUP-3543

On June 27, 1975, an application for a conditional use permit ("CUP-3543") was submitted by Phoenix West Oil and Gas Corporation ("Phoenix") to respondent County of Ventura ("County"). *Whitman v. Board of Supervisors* ("*Whitman*") 88 Cal.App.3d 397, 402. The application requested permission for Phoenix to drill an exploratory oil and

gas well on 1.5 acres in the Sisar Creek area of the upper Ojai Valley in Ventura County. (*Id*; Administrative Record ["AR"] 257-260 [maps][1].)

Truck and vehicular traffic to the CUP-3543 site traverses State Highway 150, turning (depending upon direction of ingress) onto Koenigstein Road. *Whitman*, *supra*, at 403. State Highway 150 is a 24-foot wide, two-lane highway. (*Id.*) Koenigstein Road is a 14-foot wide county road. (*Id.*) The oil well site is approximately "one-fourth mile" from "scattered residences" to the north. [AR 261.]

The County of Ventura prepared a draft environmental impact report for the CUP-3543 application and, on January 13, 1976, the Ventura County Board of Supervisors found that the EIR for CUP-3543 was legally sufficient. *Whitman*, *supra*, at 403. A petition for writ of mandate was filed challenging the approval under the California Environmental Quality Act ("CEQA"). (*Id.*, at 404.) Judge Ben Ruffner denied the petition, which decision was appealed. (*Id.*)

While the *Whitman* case was pending appeal, Phoenix placed its exploratory well into production, immediately followed by a modified application from Phoenix to allow a total of six oil wells on the subject site. [AR 1, 252.] Using the existing EIR, the Board of Supervisors approved the additional drilling of five additional oil wells. [*Id.*]

After that approval, the Superior Court's ruling in *Whitman* on the exploratory well was reversed by the Court of Appeal for failing to consider, *inter alia*, the cumulative impacts associated with CUP-3543. (*Id.*, at 406-419.)[2] As noted by the appellate court in *Whitman*, supra, at 410 [fn. 6]:

> "Subsequent to the issuance of CUP-3543, the Board [of Supervisors] modified the CUP to permit the drilling of five additional wells without the preparation of a new or modified EIR... It is difficult to accept that an EIR prepared for single well adequately covered all the impacts associated with five additional wells."

---

[1] The County has certified a 5633-page administrative record consisting of 570 electronically indexed documents, each of which is hyperlinked on a court-requested DVD. Each page of the digital administrative record is numbered sequentially, with the court's citations to the administrative record identified as "AR [page]". There is no paper record.

[2] *Whitman* remains a seminal decision on various interpretive CEQA principles. See, *e.g.*, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 398. *City of Irvine v. County of Orange* (2015) 238 Cal. App. 4th 526, 548.

After remand from the Court of Appeal, CUP-3543 returned to the Board of Supervisors. [AR 248-317.] In the absence of an injunction pending appeal, the ensuing 1980 EIR noted that two of the six authorized wells were then "currently under production." [AR 251, 252, 2324.] The County's rewritten EIR of June 18, 1980, proposed a 4000' pipeline to be built if oil production on the well site exceeded 350 barrels per day. [AR 256.]

The County's revised and subsequently approved 1980 EIR sets forth the following quantification of anticipated air quality impacts [AR 262]:

Air Quality Assessment[1]

The drilling operation would require approximately 400 gallons of diesel fuel per day, according to the applicant. Emission factors for stationary diesel sources (Environmental Protection Agency publication #AP-42) follow:

Reactive Hydrocarbons = 37.5 lbs/1000 gal. fuel burned
NO_x = 469 lbs/1000 gal. fuel burned

Daily emissions follows:

Reactive Hydrocarbons $\frac{\frac{400 \text{ gal.}}{1000 \text{ gal.}} \times 37.5 \text{ lbs.}}{2000 \text{ lbs/tons}} = .008 \text{ tons}$

NO_x $\frac{\frac{400 \text{ gal.}}{1000 \text{ gal.}} \times 469 \text{ lbs.}}{2000 \text{ lbs/ton}} = .094 \text{ tons}$

Impact: The project would result in a 0.016 per cent increase in reactive hydrocarbons and a 0.1 per cent increase in NO_x emissions countywide. These emissions, in addition to some associated with vehicle miles traveled by project vehicles, would have a slight impact on the County's oxidant problem.

The traffic assessment in the County's revised 1980 EIR [AR 266] concludes that flagmen would be physically required to allow for safe movement of large trucks at the intersection of State Highway 150 and Koenigstein Road:

Traffic Assessment[5]

Access to the site is via State Route 150 to Koenigstein Road. State Route 150 is a 24 foot wide paved road with graded shoulders. The current volume is 3000 average daily traffic (ADT) and the average speed is 45 mph. There are curves on State Route 150 both east and west of Koenigstein Road. Koenigstein Road is a 14 foot wide paved road with graded dirt shoulders. The road is in average condition. The current volume is approximately 50 ADT with no viable estimate of capacity available due to the surface width and seasonal variation of weather conditions. This road currently carries oil field related traffic. Access via Koenigstein Road is marginal with respect to the road width, the structural section, and the junction with State Route 150. There has been one recorded accident at the intersection of State Route 150 and Koenigstein Road during the last 12 months. This accident involved a car and a pickup; one driver was driving under the influence of alcohol.

The project would result in a traffic volume of 40 ADT during the drilling stage. If the well is successful, the traffic volume would be approximately 4 ADT after the pipeline is constructed for removal of oil from the site. Large truck-trailer equipment would be used at the beginning and end of the drilling phase of the project to move drilling equipment on and off the site. This activity would be limited to 3 or 4 large vehicles.

Impact: Both Bridge #326 on Koenigstein Road and the road itself are adequate to carry heavy equipment. Since the road is inadequate to accommodate two passing trucks, one truck would be required to pull over to the shoulder. This condition would create an inconvenience; however, it would not be characterized as unsafe due to the small volume of traffic currently occuring on the road.

The movement of large vehicles at the intersection of State Route 150 and Koenigstein Road could create unsafe conditions.

Mitigating Measures: The applicant proposes that the movements of large vehicles at the intersection of State Route 150 and Koenigstein Road be mitigated by the use of traffic control personnel furnished by the Sheriff's Department.

Staff Evaluation: The Public Works Agency indicates that the control of traffic is the responsibility of the applicant, not the Sheriff or California Highway Patrol, as required by a County Encroachment Permit for oversized/overweight loads. Flagmen should be required for movements of large vehicles at the intersection.

The revised 1980 EIR contains a significantly expanded analysis of project cumulative impacts [AR 278-312], with extensive discussion of cumulative air quality impacts. [AR 296-305.] The County's formal notice of determination approving the additional five oil wells did not issue until January 21, 1982. [AR 2.]

Phoenix subsequently drilled a third oil well on the subject site, and on March 25, 1982, Phoenix transferred its interest in CUP-3543 to Agoil Inc. ("Agoil"). [AR 2339.]

Agoil applied for and received an extension of time from the County to drill the remaining three permitted wells. [AR 9, 2339-2358.]

The County's environmental review associated with the 1983 drilling extension to drill the exact same three wells sought to be drilled under the current application found significant geologic impacts, significant hydrologic impacts, **significant traffic impacts**, significant noise impacts and significant visual resource impacts. **The same environmental analysis also found significant impacts involving cumulative air quality** for which a statement of overriding considerations was issued.[3] [AR 2339-2340.]

The County's 1983 traffic analysis mitigated the significant traffic safety impact finding by precluding large oil trucks entirely from driving on Koenigstein Road and relocating them ½ mile to the east [AR 522, 526, 2341.]:

> 9. Traffic Circulation: Access to the drill site for small vehicles would be via Koenigstein Road, thence several hundred feet north along private access roads to the subject drill site. Truck traffic would access the site via Highway 150 one half mile west of Koenigstein Road, thence north and east along an unpaved private access road through the Ojai Oil Company property (CUP-293 A). Condition 52 would prohibit truck traffic (over 3/4 ton) on Koenigstein Road. This prohibition is necessary because of a narrow bridge on Koenigstein Road immediately adjacent to Highway 150 which results in poor turning radii for large vehicles.
>
> Traffic to the site during drilling phase is estimated to average 26 trips per day. When the drilling phase is complete, traffic is expected to average three vehicles per day.
>
> The nearest oil pipeline is the Arco Four Corners Pipeline located south of Highway 150. Condition 49 would require connection to an oil pipeline when production averages 350 barrels of oil per day (about two trucks per day).

---

[3] Notably, while the County's 1983 EIR determined that there to be significant *cumulative* air quality impacts associated with the proposed new three CUP-3543 wells, the 1983 EIR did not find there to be significant stand-alone significant impacts associated with the proposed three additional oil wells. **It was not until 1995 that the Board of Supervisors adopted the Ojai Valley Area Plan ("OVAP"), which general plan component established a 5 pound ROC/NOx per day "threshold of [CEQA] significance" for projects within the OVAP boundaries.** So while the 1983 EIR found that three additional oil wells were consistent with associated land use and zoning [AR 2341], this was arguably not the case after adoption of the OVAP in 1995. The OVAP is discussed in greater detail, *infra*.

The significant cumulative air quality impacts associated with the three additional wells found in 1983 could not be mitigated, compelling issuance of a statement of overriding considerations. [AR 2340.]

County's final EIR on the CUP-3543 was approved on November 17, 1983. [AR 521.] The County issued a permit modification on March 31, 1987. The modified permit determined that CUP-3543 was to terminate on November 17, 2013. **Condition 77 of the modified permit prohibited the permit holder from using Koenigstein Road "as a primary access road with ¾ -ton and over trucks, except for secondary emergency traffic**. [AR 76.]

The three additional oil wells authorized by the permit were not drilled prior to the expiration of the 25-year term of CUP-3543 on November 17, 2013. [AR 520.] At some point over the course of that permit, rights under CUP-3543 were acquired by Mirada Petroleum, Inc. ("Mirada").

THE 2013 EXTENSION/ MODIFICATION APPLICATION

On November 8, 2013, nine days prior to CUP-3543 expiration, an application was filed on behalf of Mirada to renew the permit for an additional 25 years, including re-drilling one of the three existing wells, and for authorization to drill the remaining three wells authorized under the original permit. [AR 533, 5217-5249.]

According to the County, the permitted access route for oil drilling and tanker trucks was destroyed by flooding in 1995. [AR 518, 528, 533, 540, 5289.] The record is substantially uncontradicted that from and after 1995, the successive permittees illegally and impermissibly used Koenigstein Road for all oil field-related truck trips. [AR 528, 529, 540, 3954 (per the County—"absolutely" a permit violation).]

Upon receipt of complaints, violation of CUP-3543 permit conditions prohibiting use of Koenigsten Road by oil trucks was raised by the County, but stalled by then-permittee Bentley-Simonson, Inc. on its claim that the County's ¾-ton truck trip prohibition on Koenigstein Road was limited only to oil field drilling (rather than all) operations.[4] [AR 539, 5110-5113.] Mirada's current permit renewal application requests

[4] The balance of the administrative record does not support the Bentley-Simonson contention, nor is it being advanced by either the County or the real party in interest on the permit renewal/

that all oil field-related trucks, drilling or otherwise, exclusively use Koenigstein Road to and from State Highway 150 for the duration of the proposed 25-year project extension. [*Id.*]

The Mirada application requests reduction in the number of permitted weekly truckloads traveling to/from the site from twelve (24 one-way trips) to eight (16 one-way trips), plus 14 weekly "maintenance" visits. [AR 520, 533-534.]

On April 19, 2015, the County circulated a draft subsequent EIR ["SEIR"] for the proposed CUP-3543 permit renewal, designed to augment the 1983 final EIR. [AR 515-581, 5449.] The SEIR concluded that the only material change in the project since the 1983 environmental approval involved the transfer of all oil trucks to Koenigstein Road. [AR 519, 3712.]

At the time of the renewal application, the "baseline" Mirada facilities at the site consisted of three oil wells, one water tank, two wastewater tanks, two storage tanks, one barrel tank, three assorted vertical tanks, a gas flare, electrical equipment and "several local pipelines." [AR 533-535.] Because it was not part of the prior permit authorization, "baseline" truck trips on Koenigstein Road were deemed in the SEIR to be zero. [AR 535.][5]

In considering contemporaneous "related" projects for purposes of determining further cumulative impacts under CEQA, the SEIR included a Mirada project authorizing the drilling of nine oil wells approximately one mile east of the subject site, and a pending Vintage Petroleum project proposing to drill 19 oil wells approximately two miles east of the subject site. [AR 536.]

---

modification application. (See, *e.g.*, AR 532 [SEIR]—"The use of Koenigstein Road by large oil-related trucks is prohibited by the current conditions of approval of CUP-3543.")

[5] The first commercial oil well in California, drilled nearly 150 years ago, is located approximately one mile from the subject site. [AR 535.] According to the County in 1977, "[a]pproximately 200 wells have been drilled in this area since 1868." [AR 2326.] [See fn. 16, *post*.]

In consideration of anticipated air quality impacts of the proposed CUP-3543 permit renewal, the SEIR concludes that "**no new impacts or impacts different from what was evaluated in the 1983 EIR would occur with project implementation**." [AR 538.] Mirada's proposed reduction in weekly truck trips than previously permitted in 1983 would, according to the SEIR, result in "reduction of potential diesel exhaust emissions due to [oil field] fluid transport." [AR 538.]

The specific air quality mitigation regimen required for Agoil's oil field production equipment in the 1983 CUP was deemed in the SEIR to have been supplanted by regulations issued by the Ventura County Pollution Control District ("VCAPCD"). [AR 537.] According to the SEIR (contrary to the analysis in 1983), **oil wells, well tanks, gas flaring operations and local pipelines "are not considered [by VCAPCD] to have the potential to cause a project-specific or cumulative significant impact on air quality**...." [AR 537.] The SEIR quotes VCAPCD Guidelines to support this proposition:

> "The Guidelines are not applicable to equipment or operations required to have Ventura County APCD permits (Authority to Construct or Permit to Operate)."
>
> "Moreover, **the emissions from equipment or operations requiring APCD permits are not counted towards the air quality thresholds**. This is for two reasons. First, such equipment or processes are subject to the District's New Source Review permit system, which is designed to produce a net air quality improvement. Second, facilities are required to mitigate emissions from equipment or processes subject to APCD permit by using emission offsets and by installing Best Available Control Technology (BACT) on the process or equipment." [Emphasis added.] [AR 538.]

With respect to traffic circulation and safety, the SEIR notes the County's 1983 finding that "the movement of large vehicles at the intersection of State Route 150 and Koenigstein Road could create unsafe conditions." [AR 538.] As noted by the County in its 1977 analysis:

> "The Public Works Agency states that 'the intersection of **Koenigstein Road and Highway 150 has a seriously deficient intersection configuration, partially due to the bridge on Koenigstein Road being immediately adjacent to Highway 150. Said bridge has a narrow width and no turning radii to facilitate turning movements. Most vehicles must come to a stop on Highway 150 to make the turn and if the vehicle is on the bridge, the condition**

becomes significantly worse. Public Works states the trucks cannot make this turn without serious problems.

Koenigstein Road has varying widths of paving over the straight route to the subject site. One section of paving is only 14 feet wide, a situation which presents a potential hazard for vehicles driving in opposite directions. ...

The Public Works Agency states that the present road and bridge configurations are substantially below standard and create serious traffic safety problems... Also, Public Works states that **the adequacy of the bridge is not primarily related to numbers of vehicles but to basic minimum road geometrics**; that if the applicant chooses to use an alternate, approved access route, then this would ...solve the problem." [Emphasis added.] [AR 2328-2329.]

While there is no suggestion in the administrative record that the construction, geometrics or breadth of Koenigstein Road or its bridge at the intersection of State Highway 150 was in any way changed or modified since 1977, the County concluded in the 2013 SEIR review that "Koenigstein Road (including the bridge over Sisar Creek) can be safely used by large trucks" operating under CUP-3543. [AR 540.] This revised finding is based upon the interim unpermitted use of Koenigstein Road where, between 2002 and 2013, "only two accidents occurred at the subject intersection and neither involved trucks." [AR 541.][6]

The SEIR calculates that between 2003 and 2013, tanker trucks made a turn at the intersection of Koenigstein and State Highway 150 (albeit in violation of CUP-3543) between 1603 and 2886 times. [AR 542-543.] As opined in the SEIR:

"No reported accidents involving these trucks occurred. Given this record, it can be concluded that there is no substantial evidence that the use of Koenigstein Road/State Highway 150 intersection by oil-related large trucks represents a significant impact on traffic safety." [Emphasis added.] [AR 543.]

The SEIR notes that the proposed reduction in permitted traffic trips would reduce the number of "baseline" truck trips on State Highway 150. [AR 545.] With respect to Koenigstein Road, the SEIR determined that the additional vehicular load "is minimal and does not have the potential to cause a significant impact on traffic circulation or constitute a cumulatively considerable contribution to overall traffic volumes." [*Id.*]

---

[6] The "only two accidents" reported by the SEIR at the intersection during the referenced time frame were both injury accidents. [AR 902.]

The traffic safety findings are supported by a two-page memorandum from the County Public Works Agency dated December 4, 2014. [AR 872-873.]

Public comments were submitted in response to the draft SEIR. [AR 2027-2135.] Among the written comments included communications from petitioner Citizens For Responsible Oil & Gas ("petitioner"). The concerns expressed by petitioner included traffic safety at the Koenigstein Road/State Highway 150 intersection. [AR 1453-1456, 1460.]

On June 12, 2015, a letter was submitted by the branch chief of responsible agency Caltrans upon its review of the SEIR. According to the Caltrans letter, in pertinent part:

> "Although the number of tanker truck trips would be minimal and there haven't been any accidents involving tanker trucks at the intersection of Koenigstein Road and State Route 150, **Caltrans is concerned with sight distance along State 150. The turning radius may not be adequate to accommodate a right turn** from SR-150 on Koenigstein Road without encroaching onto the opposite lane. **Caltrans requests installation of warning flashing lights and signs in both directions approaching the Koenigstein Road intersection.**"
>
> "**Caltrans recommends widening of the Sisar Creek Bridge to improve tanker truck ingress and egress movements from State Route 150 to Koenigstein Rd. Please coordinate with Caltrans** to determine the feasibility of the bridge widening[7] and/or other mitigation alternatives." [Emphasis added.] [AR 5526-5527.]

Mirada's permit renewal application came to hearing before a subordinate employee of the Ventura County Planning Director on October 27, 2015. [AR 3710.] A supervisor's assistant questioned the consistency of the project with county zoning ordinances, and cited oil and gas guidelines directing oil and gas well production to be piped to a centralized processing location, rather than being trucked (oil) and flared (gas) as proposed under CUP-3543. [AR 3719.]

---

[7] In support of the proposed permit modification to allow CUP-3543 oil trucks to use Koenigstein Road, the County submitted a videotape of a truck turning right at the Koenigstein Road/ State Highway 150 intersection. [AR 3935.] Because of the limited width of the bridge over Sisar Creek in close proximity to Highway 150, viewers described the video as showing the truck's inability to stay in its proper lane [AR 3936, 3975], hence Caltrans' concern with "turning radius." Further, the video also allegedly shows difficulties presented by such a turn to oncoming traffic on the state highway. [AR 3936.]

On November 16, 2015, the Planning Director, through his employee designee, granted the CUP-3543 modification/extension, certified the EIR, and made required CEQA findings. [AR 220-224.] There is no indication in the record that the County attempted to discuss the feasibility of traffic impact mitigation measures with Caltrans.

The decision of the Planning Director was appealed. [AR 5562-5563.] Petitioner at that point contended that the SEIR was inconsistent with the Ojai Valley Area Plan ("OVAP") component of the county general plan. [AR 2782.] The Planning Director conceded that his case planner/hearing officer had "erred" in properly mapping OVAP boundaries, vacated the case planner's earlier CEQA approval, and deferred project determination to a "*de novo*" hearing before the Ventura County Planning Commission ("Planning Commission"). [AR 3859.]

Petitioner followed with a letter to the Planning Commission dated April 4, 2016, raising a number of additional issues, and elaborating upon others. [AR 3260-3267.]

Petitioner asserted, *inter alia*, that site-specific air pollution emissions from the proposed oil wells and associated facilities were not addressed in the SEIR, as allegedly required by the Ojai Valley Area Plan ("OVAP"). [AR 3260-3262.] Petitioner noted that "**the three proposed oil wells would [individually] emit 2 pounds each day of ROC/NOx for a total of 6 pounds per day of ROC/NOx air pollution into the Ojai Valley air shed.**" [*Id.*] Under the OVAP portion of the Ventura County General Plan, discretionary development in the Ojai Valley "shall be found to have **a significant adverse impact on the regional air quality if daily emissions will be greater than 5 pounds per day** of Reactive Organic compounds (ROC) and/or greater than 5 pounds per day of Nitrogen Oxides (NOx)." [Emphasis added.]

Petitioner contended that "**any claim by the County that the air pollution from the proposed oil wells would be mitigated below the level of significance (i.e. 5 pounds of ROC/NOx) through the Air Pollution Control District ministerial permitting process must be scientifically quantified and otherwise documented within the publicly reviewable environmental impact report**." [AR 3262.]

In addition to its earlier objections associated with the proposed tanker truck usage of Koenigstein Road, petitioner's letter to the planning commission cited the Ventura County Non-Coastal Zoning Ordinance (NCZO) oil development guidelines, which mandate the use of pipelines, not trucks, to transport petroleum products "whenever physically and economically feasible and practicable." [AR 3265.]. Petitioner noted that Mirada uses such transport pipelines on other permits locally, and criticized the SEIR's lack of discussion on its conclusory finding of "infeasibility," other than low production from existing wells. [*Id.*]

The Planning Commission hearing was conducted on April 7, 2016. [AR 3858-3923.] The earlier hearing officer, now advocating on behalf of the County, contended that **oil and gas operations within the County are exempt from numerical air quality "thresholds of significance"** identified as a "significant" environmental impact under its general plan, and are **instead subject to** the ministerial **permitting requirements** of the Ventura County Air Pollution Control District ("VCAPCD"). [AR 3861-3864.] The VCAPCD permitting requirements, as interpreted by the County, are by their very nature intended to mitigate local air quality impacts to levels of environmental insignificance. [AR 3823.][8]

VCAPCD testified that as to all proposed new emissions in excess of County threshold standards, **VCAPCD requires "emission reduction credits" designed to offset the proposed emissions increase** through "banking" of existing emissions sources taken off line or subject to more stringent emissions controls. [AR 3866-3867.] A former UCLA professor of air pollution control and environmental health sciences took issue with that testimony, **characterizing the VCAPCD guidelines as "advisory only", and the "emissions credit" program limited to "[v]ery large pollution sources" with no direct trade-off to the Ojai Valley**. [AR 3893.]

---

[8] Stated in what is now arguably "presidential" simplicity, rather than attempt to quantify site specific CUP-3543 air quality impacts as the County had done in 1983 [AR 262], the county hearing officer/project advocate summarily stated to the Planning Commission in 2016:"The [project's] air emissions are so small.... There's no concern whatsoever over the air emissions...." [AR 3864.]

The Planning Director's designated hearing officer testified that one-half of all ROC emissions in the immediate vicinity of CUP-3543 result from "natural oil and gas seeps occurring on Sulfur Mountain." [AR 3875.] The same county employee testified "there's no legal nexus to require a pipeline [for CUP-3543], because there's a public road available, and… we haven't identified any reason why [Mirada] can't use the public road." [*Id.*] While there are oil and gas pipelines in the immediate vicinity, the employee further testified that the nearby pipelines were "private and proprietary" to the company owning the lines. [*Id.*] Finally, though Mirada and its predecessors had been in violation of the roadway restrictions of CUP-3543 since 1995, the County's advocate found no issue "as long as [Mirada is] pursuing abatement of their violation through this permit [modification application]." [AR 3876.][9]

The Planning Commission approved the renewal and modification of CUP-3543 by a 4-1 vote. [AR 2834.] Petitioner timely appealed the Planning Commission approval to the Ventura County Board of Supervisors ("Board of Supervisors"). [AR 2835.]

The Board of Supervisors hearing was conducted on June 21, 2016. [AR 3924.] The designated hearing officer on the nullified Planning Director decision [see fn. 9, below] once again advocated county planning staff's support of permit reissuance. [AR 3525-3529.] At this hearing, the employee contended that the county general plan redirects any air quality impacts from oil operations to VCAPCD's air quality assessment guidelines. [AR 3927-3928.] According to the county representative, *inter alia*, the guidelines state: "The [threshold ROC/NOx limits] are *not applicable* to equipment or operations required to have Ventura County APCD permits." [*Id.*]

The VCAPCD representative expanded upon his earlier testimony, conceding that while new sources of air pollution emissions must be offset by "emission reduction

---

[9] The very same county department employee protectively advocating CUP-3543 permit reissuance before the Planning Commission [see, e.g. AR 3875-3876] and ultimately the Board of Supervisors [AR 3925-3929], was the "impartial" designated hearing officer previously conducting and deciding the initial hearing on the permit application. [AR 220-223, 3710-3729.] While it is not an issue on this writ application because the initial determination of CEQA compliance was ultimately vacated by the Planning Director with *de novo* consideration by the Planning Commission, the transcript of the initial hearing suggests considerable antipathy by that hearing officer toward both the CEQA process and the concerns of local residents. [*Id.*]

credits," there is an **exemption from obtaining offset credits** for "small facilities" (such as Mirada). [AR 3929.] According to the VCAPCD, this lack of duty on behalf of Mirada is nevertheless compensated for by "larger sources" of pollution on other permits offsetting at a ratio of 1:1.1 [*Id.*] VCAPCD attempted to assure the Board of Supervisors on the wisdom of this countywide and largely opaque debit/credit ledger system by asserting that Ventura County is "on pace" to reduce ozone levels to maximum federal thresholds, and that "I think we have some of the best rules in place in the country." [AR 3930.]

With respect to the proposed revised Koenigstein Road access, misrepresenting his own planning department files [AR 5110-5113], the county hearing officer/advocate testified to the Board of Supervisors that "no complaints have been filed and we didn't get a complaint until the [modified] project was before us...." [AR 3932.] According to the county hearing officer/advocate, the alternate access requirement on Koenigstein Road evolved via consensus after "a lawsuit [and] a trip to the Supreme Court,"[10] but that in the final analysis "the... minimal volume of [truck] traffic makes it very unlikely that you're going to induce some kind of a severe safety hazard." [AR 3932.][11] The county's assertion of lack of truck safety hazard was contradicted by residents of the area. [See, *e.g.*, AR 5571.]

Regarding testimony of feasibility of connecting CUP-3543 production to an oil pipeline, the county hearing officer/advocate responded that projected production from the proposed three additional oil wells "is not anything that Exxon would be interested in." [AR 3940.] With respect to exceeding the 5 pound per day ROC/NOx limit imposed by the OVAP for determining significant impacts in the Ojai Valley airshed, the county representative responded "the argument of air quality [sic] it really revolves around one additional pound per day ROC emissions as if we were at 4.99 in the general figure for

---

[10] This court's review of *Whitman* through multiple electronic sources has not suggested any subsequent case activity in either the state or federal Supreme Court.

[11] In actual fact, at the time of the January 13, 1976 approval of CUP-3543, specific permit conditions mandated "at least two flagmen to be stationed near the intersection of Koenigstein Road and Highway 150 during any time in which drilling rigs, tank trucks or other large trucks and equipment are being moved to or from the subject site." [AR 20.] The alternate access allowance established post-*Whitman* alleviated this burden upon the permittee.

three oil wells [sic], then we'd be below the threshold, there wouldn't be any argument over air quality." [AR 3940.]

The air quality professor, Dr. Steven Colome, addressed the Board of Supervisors as to the vulnerability of Ojai Valley topography to excessive harmful emissions. [AR 3682-3693, 3955-3957.] Dr. Colome testified that the minimum amount of volatile hydrocarbon emissions from the three additional wells would be **six pounds per day "assuming best available control technology."** [AR 3955-3957.]

With respect to traffic impacts, petitioner requested that the County conduct a formal traffic study "by a licensed traffic engineer" evaluating the risk. [AR 3958-3959.] A retired petroleum engineer testified that installing a pipeline alternative down Koenigstein Road "would be a snap." [AR 3960.] The county's response was, **under the requirements of CEQA, "[y]ou're not required to look at alternatives** to a project which has no significant impacts." [AR 3969.]

By a 3-2 vote, the Board of Supervisors approved the CUP-3543 renewal/ modification. The Board of Supervisors certified the Final SEIR, finding no significant impacts resulting from the project renewal/modification, including air quality and traffic safety. [AR 225-235.] Because of its findings of no significant impact, the Board of Supervisors did not consider project alternatives. [AR 231.]

The formal notice of determination ("NOD") was posted and delivered to the State Clearinghouse on June 23, 2016. [AR 14-16.] At some point after the June 21, 2016 project approval, Mirada transferred its interests in CUP-3543 to real party in interest Carbon California Company LLC ("real party").

STATEMENT OF THE CASE

Petitioner seeks writ of mandate under the Public Resources Code by a petition timely filed on July 21, 2016. The initiating petition was supplanted by an amended petition for writ of mandate ("FAP") filed on August 17, 2016. A verified answer filed by the County on March 20, 2017. A verified answer was filed by real party on March 21, 2017.

The FAP raises four issues under CEQA. First, petitioner alleges that the SEIR's discounting of significant ROC/NOx emission levels to undisclosed levels of insignificance in contemplation of subsequent VCAPCD facilities permitting contravenes the informational aspects of CEQA, as well as prohibitions against segmentation and deferred mitigation. (FAP, ¶¶66-79.) Second, petitioner alleges that conceded project emissions of a minimum of six pounds of ROC/NOx per day is *ipso facto* a significant impact under the OVAP portion of the county general plan, compelling discussion of reasonable air quality mitigation requirements in the environmental document. (FAP, ¶¶80-88.)

Third, petitioner contends that the County's 1983 CEQA findings of significance of traffic safety impacts on Koenigstein Road cannot be ignored, nor can the recommendations of Caltrans, because nothing has changed since 1983 other than the opinion of the Planning Department. (FAP, ¶¶ 89-113.) Petitioners claim that the lack of injury truck accidents while petitioner's predecessors have violated the terms of the previous CUP does not constitute sufficient "substantial evidence" upon which to base a finding of insignificance. (*Id.*) Finally, petitioner alleges that Miranda has more than one pending oil field permit application in close geographic proximity, running afoul of CEQA "piecemealing" concerns. (FAP, ¶¶114-119.]

The cause was fully briefed by petitioner and real party. Petitioner requests judicial notice of the OVAP, which land use document appears to have been inadvertently omitted from the certified administrative record. The request for judicial notice is granted.

The parties argued the issues at length before the court on September 1, 2017. The matter was taken under submission. This ruling follows.

I

THE COUNTY'S CLAIMED EXEMPTION OF ALL OIL AND GAS PROJECT EMISSIONS FROM CEQA AIR QUALITY IMPACT ANALYSIS CONTRAVENES STATE LAW

Under the CEQA Guidelines, "[e]ach public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects." (14 Cal. Code Regs. §15064.7(a).) Consistent with state regulatory requirements, Ventura County adopts certain thresholds of significance in its general plan. Specifically, in its OVAP, which is a component part of the county general plan, the county's air quality thresholds of significance in the Ojai Valley are as follows:

> "***Discretionary development*** **in the Ojai Valley <u>shall be found</u> to have a significant adverse impact on the regional air quality if daily emissions would be greater than 5 pounds per day of Reactive Organic Compounds (ROC) and/or greater than 5 pounds per day of Nitrogen Oxides (NOx).**" [Emphasis added; italics in original.] [Request For Judicial Notice ("RFJN"), at 15.]

In this case, county staff conceded that "**[t]he proposed project would generate an estimated 6 pounds per day of new ROC emissions (i.e. 2 pounds per day for each new well.)**" [AR 2807, see also AR 2138.] This estimate was confirmed by Professor Colome as a "minimum" "assuming best available control technology." [AR 3955-3957.] As such, the proposed project should have been deemed a significant impact in terms of air quality, with concomitant CEQA-mandated discussions of mitigation and project alternatives.

The County, beyond its unpersuasive suggestions that its published air quality thresholds of significance in the Ojai Valley should be disregarded because 6 pounds per day is only slightly over an allowable 4.99 pounds per day ROC threshold [AR 2940] and because the project site is "just inside the [OVAP] boundary at the extreme eastern end" [AR 2925], relies principally upon its contention that the OVAP air quality thresholds of significance do not apply to oil and gas project emissions. [Real party's brief, at 11-23.]

There is nothing in the OVAP itself exempting oil and gas projects from thresholds of air quality significance under CEQA. [RFJN 5-45.] OVAP makes direct reference to oil and gas exploration and production permits. [RFJN 16-17.][12]

The County nevertheless reaches its conclusion of threshold of significance calculation exemption in light of a VCAPCD policy referenced only peripherally in its general plan. The linchpin of this position is the County's representation that the general plan "requires" compliance with the Air Quality Assessment Guidelines ("AQAGs") promulgated by VCAPCD. [Real party's brief, at 11-23.][13]

The sole reference in the County's general plan to the AQAGs is arguably less definitive than suggested. According to the "Air Quality Management" provision of the County general plan:

> "Another avenue of implementation of emission control measures is through the environmental review process (a standard step in the processing of discretionary entitlements). **The [VC]APCD has adopted the Guidelines for Preparation of Air Quality Analyses to enhance the effectiveness of the environmental review process. Adherence to the Guidelines will assist emission control efforts.**" [Emphasis added.] (County General Plan, at §1.2.2.)

The AQAGs were adopted in 2003. [AR 3011.][14] The introductory provisions of the AQAGs contain the following language, in pertinent part:

---

[12] Among other things, contrary to the proposed conditions of the reissued/modified CUP-3543, OVAP authorizes the "flaring" of gas "only in cases of emergency or for testing purposes." [RFJN 16.]

[13] The administrative record does not contain the County general plan. Since the County and real party are relying upon the general plan as the basis for their argument that OVAP thresholds of significance are inapplicable to oil and gas projects, this court, on its own motion, judicially notices the content of the Ventura County General Plan. (Evid.C.§452(b).)

[14] Taken to its logical conclusion, the County is contending that the CUP-3543 renewal/modification review would have been considered a CEQA "significant" impact for the three proposed new wells from 1995 when the OVAP was adopted, until 2003 when the AQAGs were adopted. Another logical extension of the County's argument is that on the day the AQAGs were adopted in 2003, reactive organic compounds emitted by the proposed three wells were somehow reduced from 6 pounds of ROC per day to zero pounds per day, or at least something less than 6 pounds per day, but no one is willing to say exactly how much.

"**The Guidelines are not applicable to equipment or operations required to have Ventura County APCD permits** (Authority to Construct or Permit to Operate). APCD permits are generally required for stationary and portable (non-vehicular) equipment or operations that may emit air pollutants. **This permit system is separate from CEQA** and involves reviewing equipment design, followed by inspections, to ensure that the equipment will be built and operated in compliance with APCD regulations. ..."

"**Moreover, the emissions from equipment or operations requiring APCD permits are not counted towards the air quality significance thresholds. This is for two reasons. First, such equipment or processes are subject to the District's New Source Review permit system, which is designed to produce a net air quality improvement. Second, facilities are required to mitigate emissions from equipment or processes subject to APCD permit by using emission offsets and by installing Best Available Control Technology (BACT) on the process or equipment.**"

"To determine whether or not the proposed equipment or operation requires an APCD Permit, contact the APCD Engineering Division at 805/645-1401. Table 1-1 lists examples of equipment and operations that may require an APCD permit pursuant to the APCD Rules and Regulations. See Appendix B, Common Equipment and Processes Requiring a Ventura County APCD Permit To Operate, for more a more detailed list of processes and equipment that require an APCD Permit to Operate" [AR 3022-3023.]

Referenced Table 1-1 identifies, *inter alia*, "gasoline tanks" as one of the items of equipment requiring VCAPCD permit. Appendix B to the AQAGs includes within its chart "[e]ngines which are 50 HP or greater including but not limited to... [o]il well and water well drilling rigs;... [w]aste gas flares; and "gasoline tanks" with a capacity of greater than 250 gallons. [AR 3127.]

Chapter 3 of the AQAGs, entitled "Air Quality Significance Thresholds," states that **"a project will have a 'potentially significant impact on air quality if it will:...[v]iolate any air quality standard.**" [AR 3050.] The county's air quality standards are once again reiterated in the AQAGs:

" **Ozone** (based on emission levels of reactive organic compounds and oxides of nitrogen)

The following are the reactive organic compounds (ROC) and nitrogen oxides (NOx) thresholds that the Ventura County Air Pollution Control Board has determined will individually and cumulatively jeopardize attainment of the federal one-hour ozone standard, and thus have a significant adverse impact on air

quality in Ventura County. Chapter 5, Estimating Ozone Precursor Emissions, presents procedures for estimating project emissions.

(a) **Ojai Planning Area***

Reactive Organic Compounds: 5 pounds per day

Nitrogen Oxides: 5 pounds per day

(b) Remainder of Ventura County**

Reactive Organic Compounds: 25 pounds per day

Nitrogen Oxides: 25 pounds per day

* The Ojai Planning Area is the area defined as the 'Ojai Valley' in Ventura County Non-Coastal Zoning Ordinance, Article 12, Section 8112-2… ." [Emphasis added.][AR 3051-3052.]

Based upon its assumption that the undisputed 6 pounds of project-related ROC produced per day resulting from the additional three oil wells *are exempt by County policy* from otherwise mandatory findings of CEQA significance, the County here found project-related and cumulative air quality impacts of the CUP-3543 renewal/modification to be "less than significant." [AR 519, 537-538.] In the absence of a finding of significance, as noted by the County, there is no duty under CEQA to consider project-related mitigation or alternatives. [AR 3969.]

Legal analysis typically begins with the CEQA "baseline," which the litigants agree in this case should be the *de facto* physical condition of the land at the time of the CEQA analysis, as opposed to "allowable conditions defined by a [previously existing] plan or regulatory framework." *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 320-321.

"The fundamental goal of an EIR is to inform decision makers and the public of any significant adverse effects a project is likely to have on the physical environment. *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439, 447 ("*Smart Rail*"); As stated by the California Supreme Court in *Smart Rail*:

> "An omission in an EIR's significant impacts analysis is deemed prejudicial if it deprived the public and decision makers of substantial relevant information about the project's likely adverse impacts. … "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking

and informed public participation, thereby thwarting the statutory goals of the EIR process." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 712.)

The lead agency, in this case the County, is responsible for determining whether an adverse environmental effect identified in an EIR should be classified as "significant" or "less than significant." (14 Cal. Code Regs.§15064(b).) In making that determination, the lead agency has the discretion to formulate standards of significance. *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal. App. 4th 1059, 1068 ("*Save Cuyama Valley*").

The County having unequivocally adopted quantitative air quality thresholds of significance in the Ojai Valley through the adoption of the OVAP (see 14 Cal.Code Regs. §15064.7), the issue becomes whether the County can fairly disregard the 6 lb./day OVAP threshold where, as here, there is a competing policy through VCAPCD to completely exempt oil and gas projects when calculating ROC/NOx emissions.

While the Board of Supervisors certainly has the discretion to raise (or lower) thresholds of significance across the Ojai Valley, the discretion to change boundary lines as to those lands located within the protected OVAP, and the discretion to apply its own judgment in determining an appropriate standard of significance where no threshold standard is set, the blanket VCAPCD exemption rule for all oil and gas project emissions effectively **avoids setting any standard of significance simply because the application involves oil and gas emissions, relying instead upon the ministerial permitting practices of VCAPCD to provide required mitigation.** This protocol, while expedient because it sidesteps project-specific CEQA mitigation and alternatives analysis on oil and gas permits, is an **abdication of the lead agency's responsibility in the environmental document to consider and inform the public as to project-related health risks and the steps being taken, if any, to mitigate those risks**.

According to the California Supreme Court in *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 935 ("*Banning Ranch*"):

> "[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. ([Pub.Res.C.]§ 21168.5.) Judicial review of these two types

of error differs significantly: While we determine *de novo* whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' [citation]), we accord greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court 'may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,' for, on factual _questions, our task 'is not to weigh conflicting evidence and determine who has the better argument.' [Citations.]"

"Whether an EIR has omitted essential information is a procedural question subject to *de novo* review. [Citations.]" [Emphasis added.]

Within the topographical and epidemiological context of the Ojai Valley, the SEIR omits essential information regarding health risks associated with the additional 6 pounds/day in emissions from the proposed oil wells, without even considering emissions from the proposed flaring. As noted in the AQAGs, in pertinent part:

"**Ventura County is a severe nonattainment area for the federal and state one-hour ozone standards, and has been recommended by the ARB as a nonattainment area for the federal eight-hour ozone standard**. ... Although ozone levels have declined significantly in recent years, **the county still experiences frequent violations of the state ozone standard.** Inland areas ... exceed the ozone standard more frequently than the coastal areas." [AR 3032.]

The uncontroverted health impacts of air pollution are recognized in the AQAGs:

"**Ambient air pollution is a major public health concern**....

"According to the ARB, **80,000 deaths that occur each year in California may be attributed to illnesses aggravated by air pollution**. While air pollution affects everyone, **some people are more susceptible to its effects than others**. Research has established that air pollution:

***Aggravates heart and lung** illnesses.
***Adds stress to the cardiovascular system**, forcing the heart and lungs to work harder to provide oxygen to the body.
***Speeds the aging process** of the lungs, accelerating the loss of lung capacity.
***Damages respiratory system cells** even after symptoms of minor irritation disappear.

***May cause immunological changes**.
***Causes lung inflammation**.
*Increases health care utilization (hospitalization, physician, and emergency room visits).

***May contribute to the development of diseases such as asthma, bronchitis, emphysema, and cancer.**
***May cause a reduction in life span.**

"The federal government estimates that **between 10 and 12 percent of United States total health costs are attributable to air pollution-related illnesses**. Air pollution is thought to be responsible for a two percent loss in United States worker efficiency. If ozone pollution were reduced in urban areas, there would be approximately 49.9 million fewer cases of air pollution-related illnesses annually in the United States; asthma attacks alone would decrease by 1.9 million annually." [AR 3037.]

The pollutants in question, ROC and NOx, are the principal constituents of ozone. [AR 3040.] According to the AQAGs, in relevant part:

"**The major sources of ROC in Ventura County** are motor vehicles, cleaning and coding operations, **petroleum production and marketing operations**, and solvent evaporation.

Ozone is a strong irritating gas that can **chemically burn and cause narrowing of airways**, forcing the lungs and heart to work harder to provide oxygen to the body. A powerful oxidant, **ozone is capable of destroying organic matter – including human lung and airway tissue; essentially burns through cell walls**. Ozone damages cells in the lungs, making the passages inflamed and swollen. **Ozone causes shortness of breath, nasal congestion, coughing, eye irritation, sore throat, headache, chest discomfort, breathing pain, throat dryness, wheezing, fatigue, and nausea**.... Ozone has been associated with a decrease in resistance to infections. **People most likely to be affected by ozone include the elderly,** children and athletes**. Ozone may pose its worst health threat to people who already suffer from respiratory diseases** such as asthma, emphysema, and chronic bronchitis. " [AR 3040-3041.] [Emphasis added.]

According to the testimony of Dr. Colome, the permit area is "**extremely vulnerable to harmful [ROC/NOx] emissions** due to the topography of the Ojai Valley, within the unique context of its mountains, wind patterns, temperature inversions and other topographic/meteorological factors, all trapping harmful air contaminants to the detriment of its residents. [AR 3956.] As concluded by Dr.Colome before the Board of Supervisors:

"The emission factor that [VCAPCD] uses is 2 pounds per day per pump jack. That assumes we have the best available control technology. It assumes that the permittee is in compliance with all conditions. It assumes that there are no leaks or accidents that are occurring. The ... lease **will pump every 6 pounds of volatile hydrocarbons** [each day] **into the Upper Ojai-Koenigstein neighborhood. That's simply a fact. ...The SEIR does not acknowledge these**

> **real emissions and passes them off for subsequent ministerial review by the APCD**... So take home three messages; first, that there is **a topographical vulnerability to the Ojai Valley;** second, that **the** [Mirada] **proposal represents new and real omissions of reactive hydrocarbons that exceed 5 pounds per day** – please don't be misled by convoluted explanations by staff to the contrary – third, the outdated 1983 EIR – 33 years old – [is] an incomplete and seriously inadequate EIR [which] does not satisfy the requirements of CEQA." [AR 3956-3957.] [Emphasis added.]

The contention by the County that air emissions associated with oil and gas drilling in the Ojai Valley can be calculated and mitigated internally through VCAPCD permitting *after permitting approval* contravenes a basic principle of CEQA integration. As recently held by the Supreme Court in *Banning Ranch*, *supra*:

> "CEQA sets out a fundamental policy requiring local agencies to "integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively." (§ 21003, subd. (a).) The CEQA guidelines similarly specify that "[t]o the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency." (Guidelines, § 15080.)" (2 Cal.5th at 936.)

The County's error in failing to qualify and analyze air emissions from the proposed oil wells and the associated gas "flaring" in the SEIR document was prejudicial. "**Evaluation of project alternatives and mitigation measures is '[t]he core of an EIR**"." (*Banning Ranch*, *supra*, 2 Cal.5th at 937.) By failing, if not outright refusing, to quantify what would otherwise be a significant site-specific air quality impact under its general plan, and then relying upon the mantra that "[y]ou're not required to look at alternatives to a project which has no significant impacts [AR 3969]," the County deprived the public not only of information associated with critical of public health concerns, but stripped CEQA of its core objectives of analyzing project-specific mitigation and alternatives.

Beyond the project-specific significance of the air quality impacts of CUP-3543 extension/modification under the OVAP, the Board of Supervisors repeats history by again refusing to analyze the significant *cumulative air quality* impacts of CUP-3543 with other new oil and gas projects within the immediate airshed, including another

recent project of Mirada, PL 13-0158, involving nine new oil wells, and a Vintage Petroleum project, PL 13-0150, involving nineteen new oil wells. [AR 1558-1560.] [15]

As the Court of Appeal in 1978 was perplexed by the County's failure to address five additional oil wells in *Whitman*, *supra*, here there appears to be no less than 28 additional oil wells in the vicinity as to which the County again refuses to discuss in the context of cumulative impacts.[16] The repeated but quantitatively vacant claim that the AQAGs *ipso facto* render all cumulative oil and gas emission calculations insignificant [AR 1558-1559] is unsupportable.[17]

II

GOOD FORTUNE IS NOT SUFFICIENT SUBSTANTIAL EVIDENCE TO CONVERT A SIGNIFICANT ENVIRONMENTAL TRAFFIC SAFETY IMPACT INTO AN "INSIGNIFICANT" ONE

This court is mindful that its task "is *not* to weigh conflicting evidence [before the administrative tribunal] and determine who has the better argument." (*Banning Ranch*,

---

[15] A further casualty of the County's refusal to calculate oil and gas facility emissions as part of CEQA air quality thresholds of significance relates to the allowance in the new permit for gas flaring. The initial 1976 CUP-3543 permit conditions issued by the County had greatly restricted the right of the permittee to flare excess gas. According to initial permit condition 30: **"[A] gas flare shall not be used unless there is no other possible method to get relief on the well, and then only in an emergency**. For each flaring, a report detailing the emergency shall be provided to the Planning Director within one week of the subject emergency." [Emphasis added.] [AR 3700.] The reissued CUP-3543 permit proposes no such restriction, and further refuses to consider mitigation or alternatives associated with gas flaring because of its conclusion *ipse dixit* that any and all individual and cumulative air quality impacts are necessarily "insignificant."

[16] The "drop in the bucket" argument used by the county representative here to the Board of Supervisors [AR 3931—"[J]ust to put it again in sort of some perspective, the project … would involve a six pounds per day of ROC relative to 9,000 pounds per day in the Ojai planning area and 4,500 pounds per day in the natural oil seeps that are right in the vicinity of the project. And remember, this is …just so you can get some perspective as to how relative the size of this project is"] is an impact minimization tactic expressly disapproved by the Second Appellate District, Division Six, in *Save Cuyama Valley*, *supra*, 213 Cal. App. 4th at 1072.

[17] The fact that Mirada is required by PL 13-0150 permit conditions to transport its oil and gas production by pipeline as opposed to truck consistent with OVAP policy [AR 1560], further highlights the deficiencies caused by the County's failure to analyze alternatives and mitigation with respect to air quality.

supra, 2 Cal. 5th at 935.) The issue on substantial evidence review is simply whether there is substantial evidence in the record to support the agency's decision.

> "Under CEQA, 'substantial evidence' is defined to include 'fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact'([Pub.Res.C.]§ 21080, subd. (e)(1)), and 'argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.' ([Pub.Res.C.]§ 21080, subd. (e)(2).) 'Substantial evidence' is 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' ([14 Cal.Code Regs.] § 15384, subd. (a).)" *Committee for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1245 [fn. 12].

The administrative record in this case consists almost entirely, if not entirely, of uncontradicted evidence:

In May of 1976, an oil truck "accident" at the Koenigstein Road bridge adjacent to State Highway 150 "jammed the bridge" and closed the road for a meaningful period. [AR 4454.]

By 1977, the Ventura County Public Works Agency concluded that the intersection of Koenigstein Road and Highway 150 had a "**seriously deficient intersection configuration**." [AR 2277.] Among other things, the bridge on Koenigstein Road "immediately adjacent to Highway 150" "has a narrow width and no turning radii to facilitate turning movements." [*Id.*] The difficulty, according to the County, "becomes significantly worse" when vehicles turning onto Koenigstein Road encounter a vehicle on the bridge. [*Id.*] According to the County, in 1977 at least, "**trucks cannot make this turn without serious problems**." [*Id.*]

Beyond problems with the Koenigstein Road bridge, according to the County in 1977, **one section of paving "is only 14 feet wide, a situation which presents potential hazard for vehicles driving opposite directions**..." [AR 2277.]

At the time of the initial 1980 EIR in the aftermath of a *mandamus* order from the Court of Appeal, truck traffic safety dangers at the intersection of Koenigstein Road and State Highway 150 resulted in a County permit condition that **"[f]lagmen should be**

required for movements of large vehicles at the intersection." [AR 266.] By the time of the EIR associated with the 1983 permit modification, that condition was further mitigated by the County in order **to forbid oil trucks on Koenigstein Road altogether.** [AR 522, 526, 2341—" Condition 52 would prohibit truck traffic (over 3/4 ton) on Koenigstein Road."]

There is *no evidence* in the administrative record presented that *any* ameliorative improvements were ever made to the Koenigstein Road bridge, nor was Koenigstein Road widened or otherwise improved, since the initial permit application by Phoenix in 1975. The further uncontradicted evidence in the administrative record is as follows:

After severe flooding in 1995, the successive CUP-3543 permit assignees *illegally* drove oil field tank trucks over Koenigstein Road, with minimal pushback from the County. [AR 518, 528, 533, 540, 3954, 5110-5113, 5289.] At the time the Mirada CUP-3543 renewal/modification application was filed on November 8, 2013, the permittee continued to impermissibly use Koenigstein Road in violation of permit conditions. [*Id.*]

The responsible public agency with unique expertise in state highway traffic safety, Caltrans, in its letter of June 12, 2015, noted its concern with "**sight distance** along State Route 150," and the **adequacy of the turning radius** from Highway 150 onto Koenigstein Road "without encroaching onto the opposite lane." [AR 5526-5527.] Caltrans' branch chief requested **"installation of warning flashing lights and signs in both directions approaching the Koenigstein Road intersection,"** and recommended **"widening of the Sisar Creek Bridge to improve tanker truck ingress and egress movements from State 150 to Koenigstein Road.** [AR 5527.]

In its response to Caltrans' comments, the County in its final SEIR replies as follows:

> "**From 1995 to 2014, trucks were driven southward on Koenigstein Road and turned onto State Highway 150 an estimated 2,746 to 4,943 times. There is no record or other evidence of any accidents involving oil-related trucks during this period.**" [AR 2054.] [Emphasis added.]

With respect to Caltrans' state highway sight distance concerns, the County responded that its own staff had "determined that the sight distance at this intersection

was adequate *given the posted speed limit* and that warning lights [on the state highway] are not required given this available sight distance." [Italics added.] [AR 2055.] The posted speed limit on the relevant portion of State Highway 150 at Koenigstein Road is 35 miles per hour. [AR 1945.] Any vehicle traveling eastward on State Highway 150 over 45 miles per hour at that location would have **insufficient sight distance** to accommodate an oil truck attempting to navigate the turn.[18] There was no evidence presented whatsoever in the environmental documents of the speed vehicles actually travel on the relevant portion of State Highway 150.

Finally, with respect to the Koenigstein Road bridge over Sisar Creek and the adjacent to State Highway 150, the County responded to Caltrans comments that the 22.1 foot bridge width is "consistent with the range of lane widths recommended by the American Association of State Highway and Transportation Officials (AASHTO)." [AR 2055.] While that conclusion sounds authoritative, the underlying documentation from the County's public works agency discusses only bridge length and truck weight, not width. [AR 1944-1949.] Further, this County response to comments, intentionally or otherwise, misstates generic minimum roadway *lane* width standards as AASHTO minimum *bridge* width standards.

The AASHTO bridge width standard, confirmed through both federal and state AASHTO reference, is that "**[t]he roadway width shall generally equal the width of the approach roadway section including shoulders**."[19] Nowhere in the administrative record, at least that this court could locate, is there an analysis of the width of the

---

[18] California Department of Transportation Highway Design Manual
http://www.dot.ca.gov/design/manuals/hdm/chp0200.pdf
The court takes judicial notice of what appears to be undisputed and nationally applied AASHTO road traffic "sight distance" standards. (Evid.C.§452(h).

[19] American Association of State Highway and Transportation Officials (17th ed. 2002)
http://bofdata.fire.ca.gov/regulations/regulations_file_library/regulation_files_301-350/347%20B_2%20of%204.pdf
Also, http://www.dot.ca.gov/hq/esc/techpubs/manual/bridgemanuals/bridge-design-specifications/page/section2.pdf
The court takes judicial notice of what appears to be undisputed and nationally applied AASHTO road traffic "bridge width" standards. (Evid.C.§452(h).

approach roadways, including shoulders, on both sides of the Koenigstein Road bridge at its intersection with State Highway 150.

As noted by one member of the Board of Supervisors at the public hearing [AR 3933-3934], there was no testimony presented *by any traffic safety expert* that the intersection at Koenigstein Road and State Highway 150 would be safe to accommodate the proposed permit reassurance/modification uses in the absence of any mitigation. The county representative advocating the purported insignificance of traffic safety impacts before the Board of Supervisors was a self-represented geologist, not a civil engineer. [AR 3925.]

The issue boils down to whether 2,746 to 4,943 illegal truck turns without a reported injury accident between 1995 and 2014 [AR 2054] constitutes substantial evidence of an insignificant traffic impact under CEQA, despite the County's own prior expert opinion that it is a "seriously deficient intersection configuration " one where "trucks cannot make this turn without serious problems." [AR 2277.]

The County provided no modeling analysis of oil and drilling truck turns onto and off of the narrow Koenigstein Road bridge in light of the range of actual highway traffic speeds along that section of State Highway 150. The County offered up not one current expert from its public works agency to confirm its claimed lack of significant safety concerns over the intersection, despite availability of those employees and a request from the Board of Supervisors to have them testify. The County further completely ignored the mitigation recommendations of the state agency, Caltrans, which has responsibility for assuring state highway traffic safety.

While 2,476 to 4,943 truck trips sounds like a meaningful number, numbers mean nothing in the absence of context. The only reported accidents at the Koenigstein Road/ State Highway 150 intersection during the time frame in question from the database cited by the County involved *injury* accidents. [AR 902.] According to the National Highway Traffic Safety Administration, in its most recent statistics (2015), **for every 100 million**

motor vehicle miles driven, there are 4.47 people injured in truck and bus crashes.[20] Because such injuries from truck collisions are arguably *infrequent* over 100,000,000 motor vehicle miles driven [AR 902][21], the statistical value of 2,476 to 4,943 injury-free rural truck trips seems to have only tangential correlation, if any, to a concededly "seriously deficient intersection configuration." What is relevant is how frequently, given this peculiar narrow bridge/State Highway configuration, an injury accident would be expected, and whether that frequency would be deemed a significant traffic safety impact under CEQA.

What the successive CUP-3543 permittees have enjoyed since 1995 by illegally driving oil trucks on Koenigstein Road is a lack of oil truck-related injury accidents. Good luck is not substantial evidence. The County's CEQA findings as to "insignificant" traffic safety impacts due to the proposed project modification is without adequate evidentiary support.

III

THE SEIR MUST BE REVISED TO ANALYZE SIGNIFICANT AIR QUALITY AND TRAFFIC SAFETY IMPACTS, INCLUDING APPROPRIATE PROJECT MITIGATION AND ALTERNATIVES

The court is empathetic to the Board majority's stated motivation in its CEQA deliberation that "[its] job is to try to drive economics, give jobs" [AR 3978]. The Board's *obligation* under CEQA, however, is to fully inform the public as to the environmental impacts of proposed projects and, where significant public health and safety issues are implicated, to properly consider project mitigation and alternatives.

For reasons set forth in Section I above, the County failed to proceed in the manner required by law through its blanket exclusion of all oil and gas project emissions in determining significance of project impacts upon Ojai Valley air quality. The County further failed to proceed in the manner required by law by refusing to deem the project's

---

[20] https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/Large-Truck-and-Bus-Crash-Facts-2015.pdf

proposed increases from baseline emissions as significant in direct contravention of its own thresholds of significance under the OVAP component of the county general plan.

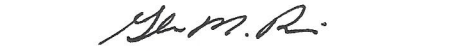
For reasons set forth in Section II above, substantial evidence in the record supports only a conclusion under CEQA of significant traffic safety impacts at the intersection of the Koenigstein Road bridge and State Highway 150, notwithstanding good fortune in not injuring people as they have violated permit conditions year in and year out.

The County is ordered to set aside its notice of determination filed June 23, 2016, and its associated project approval and findings, and is directed to issue a revised SEIR consistent with CEQA requirements and this ruling.

Petitioners are directed to prepare a judgment granting peremptory writ of mandate and injunction for this court's signature, to be delivered within ten days.

The clerk shall give notice.

Dated: November 14, 2017



GLEN M. REISER

Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA
4353 East Vineyard Avenue
Oxnard CA 93036

Citizens for Responsible Oil & Gas v. County of Ventura

Case No.: 56-2016-00484423

CLERK'S CERTIFICATE OF SERVICE BY MAIL

I certify that I am not a party to this cause. I certify that a true copy of the **ORDER ON AMENDED PETITION FOR WRIT OF MANDATE** was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing ~~and~~ this certification occurred at Oxnard, California, on 11/14/17.

Clerk of the Court _____
Sandy McCarty

Attorneys for Petitioner Citizens for Responsible Oil & Gas

DOUGLAS P CARSTENS
AMY MINTEER
MICHELLE BLACK
CHATTEN-BROWN & CARSTENS LLP
2200 PACIFIC COAST HIGHWAY 318
HERMOSA BEACH CA 90254
DPC@cbcearthlaw.com
JRCB@cbcearthlaw.com
MNB@cbcearthlaw.com

Attorney for Respondent, County of Ventura

LINDA K ASH
JEFFREY BARNES
OFFICE OF THE COUNTY COUNSEL
800 S VICTORIA AVENUE
VENTURA CA 93009
Linda.Ash@ventura.org
Jeffrey.Barnes@ventura.org

Attorneys for Real Party in Interest Carbon California Company, LLC

GINETTA L GIOVINCO
WHITNEY G MCDONALD
MARVIN E BONILLA
RICHARDS WATSON GERSHON
847 MONTEREY STREET 201
SAN LUIS OBISPO CA 93401
ggiovinco@rwglaw.com
wmcdonald@rwglaw.com
mbonilla@rwglaw.com