



Planning Commission Staff Report – Hearing on July 30, 2020

County of Ventura • Resource Management Agency • Planning Division

800 S. Victoria Avenue, Ventura, CA 93009-1740 • (805) 654-2478 • <http://vcrma.org/planning/>

Subject: Public Hearing to Consider County-Initiated Amendments to Article 7, Section 8107-5 of the Ventura County Non-Coastal Zoning Ordinance and Article 5, Section 8175-5.7 of the Ventura County Coastal Zoning Ordinance, to Modify Permitting Requirements for Certain New Oil and Gas Exploration and Production Operations and to Address the Applicability of the County's Oil Development Regulations (PL20-0052).

A. PROJECT INFORMATION

1. Applicant

County of Ventura, 800 S. Victoria Ave, Ventura, CA 93009

2. Project Location

The proposed zoning ordinance amendments would apply to land located in the following zones in the unincorporated area of Ventura County where the oil and gas production and exploration land use is authorized by use permit under the Ventura County Non-Coastal Zoning Ordinance (NCZO) and Ventura County Coastal Zoning Ordinance (CZO): Open Space (OS), Agricultural Exclusive (AE), Rural Agricultural (RA), Rural Exclusive (RE), Industrial Park (M1), Limited Industrial (M2), General Industrial (M3), Coastal Open Space (COS), Coastal Agricultural (CA), Coastal Commercial (CC) and Coastal Industrial (CM). Maps of these areas are attached as Exhibit 2.

3. Request

County staff requests that your Commission review this staff report and exhibits hereto. The proposed ordinance amending Section 8107-5 of the NCZO is attached as Exhibit 3 (clean format) and Exhibit 4 (legislative format), and the proposed ordinance amending Section 8175-5.7 of the CZO is attached as Exhibit 5 (clean format) and Exhibit 6 (legislative format). These proposed ordinances are collectively referred to as the "zoning amendments" or the "project." The purposes of the zoning amendments are to (1) uniformly require discretionary permitting approval for all new oil and gas exploration and production operations, or components thereof, in the unincorporated area and (2) clarify that the County's oil development operational standards and guidelines generally apply to all existing oil and gas exploration and production operations in the unincorporated area, except where application of such standards would impair a vested right.

4. Review/Decision-Making Authority

Pursuant to the County's zoning ordinances and state law, your Commission is required to review, conduct a public hearing on, consider and make a recommendation to the Ventura County Board of Supervisors (Board) regarding

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the proposed zoning amendments. The Board, at a subsequent public hearing, will consider your Commission's recommendation and decide whether to adopt, not adopt, or adopt with modifications the zoning amendments. In addition, changes to the CZO constitute an amendment to the County's Local Coastal Program. As such, the CZO amendments would require review and certification by the California Coastal Commission before they can take effect. This certification process would occur following the Board's adoption of the CZO amendments.

B. BACKGROUND

1. Board of Supervisors' Direction

This legislative matter arises from item 46 of the Board's April 9, 2019 regular public meeting addressing the Board's concern regarding the potential contamination of local groundwater caused by oil and gas exploration and production operations. This concern was based on the preliminary findings from a United States Geologic Survey (USGS) study of groundwater quality in potable groundwater aquifers underlying the Oxnard Plain in an area where the process of cyclic steam injection has been utilized to extract heavy oil from shallow reserves known as the Vaca tar sands.

On February 25, 2019, the USGS reported it had found indications that petroleum-related gases are migrating into the Fox Canyon aquifer system in the vicinity of existing oil wells utilizing cyclic steam injection. The Board deemed this concern to be urgent, particularly in light of an application then under review by the Planning Division for Peak Operator LLC (Peak) to develop a new 65-well oil production facility that would utilize cyclic steam injection in the same area.

At the conclusion of the April 9, 2019 item, the Board directed staff to prepare an interim urgency ordinance pursuant to Government Code section 65858 temporarily prohibiting the drilling of new oil wells, and the re-drilling of existing wells, that would utilize steam injection in the vicinity of potable groundwater aquifers while the County studied potential regulatory changes to address the concern. On April 23, June 4, and November 5, 2019, the Board approved and then extended the proposed interim urgency ordinance prohibiting County approval of new oil wells, and the re-drilling of existing wells, that would utilize steam injection on a portion of the Oxnard Plain overlying the Fox Canyon aquifer that is the subject of the USGS study. This interim urgency ordinance will remain in effect until December 7, 2020 unless terminated sooner by the Board.

The April 9, 2019 item also addressed the Board's related concern regarding uncertainty over the extent of the County's discretionary permitting authority over, and environmental review regarding, development of new oil and gas production facilities under "antiquated" permits such as those cited in Peak's application for

its proposed 65-well oil production project.¹ The Board letter for the April 9, 2019 item explained how Peak's proposal highlighted the need to study the County's regulation and permitting of new oil and gas development under these older permits.

At the conclusion of the April 9, 2019 item, the Board directed County staff to "study potential amendments to the County's zoning ordinances to require discretionary approval of new development under antiquated oil and gas permits." In response to this direction, County Counsel, in consultation with the Planning Division, provided the Board with a written report that was the subject of item 35 of the Board's September 10, 2019 regular public meeting. The report states, among other things, that the County has a strong legal argument it can require discretionary approval and environmental review of proposed new oil and gas production facilities on land covered by antiquated permits, and that the County can, in general, apply its oil development standards to all existing oil and gas production facilities.

A potential draft amendment to the NCZO that would accomplish these objectives was attached to the September 10, 2019 staff report. At the conclusion of the September 10, 2019 item, the Board directed "the Planning Division to prepare draft amendments to the County's zoning ordinances that are consistent with the potential draft amendment attached to the County Counsel report to be processed through the standard land use public hearing process."

2. Existing Permitting of Oil and Gas Facilities

Oil and gas exploration began in Ventura County during the mid-1800's, and established itself as one of the primary economic drivers behind the county's growth from the early 1900's onward. With the adoption of the County's first zoning ordinance in 1947, oil and gas exploration and production projects were identified as a "special use" requiring discretionary approval that could only be authorized by the Board following the consideration and advisory recommendation of the Planning Commission.

Of the nearly 800 conditional use permits (CUPs) issued by the County for oil and gas exploration and production operations since 1947, approximately 120 are active today.

¹ The Planning Division, in a September 12, 2019 letter to Peak, stated that Peak's proposal would require authorization through the discretionary granting of either a major modification to its existing conditional use permit or a new conditional use permit, rather than ministerial approval through the issuance of a zoning clearance.

a. Antiquated Oil and Gas Permits

The first discretionary special use permits² issued for oil and gas operations typically authorized the continuation or expansion of operations which existed before the County adopted its first zoning ordinance and imposed a permit requirement in 1947. These long-standing operations involved lease areas that covered substantial portions of the county and often included hundreds of pre-existing wells and associated facilities. The standardized language used in these permits, which continued to be used through the mid-1960s, typically contains some variation of the following project description:

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

Permits from this era generally do not specify the maximum number or exact location of allowable wells and associated equipment or facilities, nor do they typically contain a specific expiration date by which the land use must end unless extended by the County. At present, approximately 60 percent of the wells in the Ventura County are operated under permits that were first issued between 1948 and the end of 1950. Although revisions to the County's zoning ordinance enacted in 1951, 1954, and 1961 automatically applied a series of special conditions (e.g., regulations regarding the placement of sumps, installation of soundproofing, and the identification of conditions and processes under which the permit could be transferred or would be considered expired) to development proposed under new permits as well as subsequent development proposed under then-existing permits, many of these ordinance provisions have since been superseded, and some are now considered unenforceable based on changes in the law. Additionally, because these permits were granted before enactment of the California Environmental Quality Act (CEQA) in 1970, none of the projects underwent CEQA review prior to their initial permitting.

Oil and gas CUPs granted by the County prior to 1966 that did not initially include, and that were not subsequently modified to include, permit expiration dates are hereinafter referred to as "antiquated permits." Of the more than 540 CUPs issued prior to 1966 that do not currently include expiration dates, approximately 80 remain active today covering the operation of approximately 2,800 active and idled wells, as well as associated equipment and facilities, throughout Ventura County. A representative example of an antiquated permit is attached as Exhibit 7.

² Special use permits are the predecessors to the County's CUPs and are sometimes hereinafter referred to as CUPs to avoid confusion.

b. Modern-Era Oil and Gas Permits

From the 1960's onward, the County began incorporating additional detail in the project descriptions for CUPs, and included more detailed conditions of approval compared to previously issued CUPs and modifications thereto. The CUPs from this era typically authorize the drilling and operation of only a limited number of drill sites, wells and/or other structures; require discretionary County approval for all subsequent development; and contain specific permit expiration dates. Beginning in the early 1980's, the County's CUPs imposed significantly more detailed and comprehensive conditions, including the application of specific permit expiration dates that were intended to allow for periodic review and updating of applicable conditioning. Approximately 40 of the more than 200 CUPs issued for oil and gas operations from 1966 to the present are currently active.

c. Ministerial Versus Discretionary Decisions

The distinction between ministerial and discretionary land use decisions is important to a full understanding of the County's regulation of oil and gas development. A ministerial decision is made by determining whether the request conforms to objective standards without the exercise of judgment by the decision-maker. In contrast, a discretionary decision is made by applying broader subjective standards through the exercise of judgment by the decision-maker. Only development actions that are subject to discretionary permitting decisions require environmental review under CEQA; conversely, development approved through a ministerial permitting process is exempt from CEQA. (CEQA Guidelines, § 15300.1.) Discretionary permitting decisions, unlike ministerial ones, also enable the County to impose permit conditions and mitigation measures, as applicable under CEQA, to address environmental, land use compatibility, and other issues regarding the proposed development. Finally, all County discretionary permitting decisions, except for permit adjustments subject to NCZO section 8111-6.1.1 or CZO section 8181-10.4.2(a), involve the public noticing of, and a public hearing regarding, the permit request.

d. Approval of New Oil and Gas Development

Under the County's zoning ordinances, an entirely new oil and gas development project must be authorized by a discretionary CUP. (See NCZO, §§ 8105-4 and 8105-5, under the headings "Mineral Resource Development," subheading "Oil and Gas Exploration and Production"; "Pipelines/Transmission Lines/Aboveground"; and "Manufacturing Industries", subheading "Petroleum Refining and Related Industries"; and CZO, § 8174-5, under the headings "Oil and Gas: Exploration and Production," "Energy Facilities," and "Pipelines and Transmission Lines, and Appurtenant Structures.") Likewise, changes to development authorized under an existing, modern-era oil and gas CUP require

County discretionary approval in the form of a permit adjustment or modification. See NCZO, § 8111-6.1; CZO, § 8181-10.4.)³

The County's current zoning ordinances direct the Planning Division to evaluate discretionary oil and gas proposals for their consistency with the oil development operational standards set forth in NCZO section 8107-5.6 and CZO section 8175-5.7.8. Similarly, the County's current zoning ordinances direct the Planning Division to develop and impose conditions of approval on a project based on the oil development design guidelines set forth in NCZO section 8107-5.5 and CZO section 8175-5.7.7.

However, the County's zoning ordinances do not clearly establish the process and permitting mechanism for operators' requests to conduct new or expanded oil and gas development on land covered by active, antiquated permits. While NCZO section 8111-6.1 and CZO section 8181-10.4 require any changes to existing CUPs to undergo a discretionary permit adjustment or modification process, the applicability of these sections to antiquated permits is not clear. This is because antiquated permits do not expressly identify well limits, expiration dates or similar discretionary adjustment/modification triggers that are contained in most modern-era oil and gas CUPs. Consequently, new oil and gas development proposed under antiquated permits, particularly the drilling of new wells, has often been interpreted as permissible for approval with a ministerial zoning clearance alone.

The primary standards for determining if a zoning clearance is to be issued in relation to a proposed oil and gas development are whether the proposed development is consistent with and authorized by an underlying, active discretionary permit, and whether the proposed development complies with the County's applicable zoning ordinance and General Plan provisions. (See NCZO, § 8111-1.1.1b; CZO, § 8181-3.1a.) Making this permit consistency determination often requires intensive analysis which can be challenging given the age of many antiquated permits. Complications can include uncertainty regarding a CUP's status (i.e., whether it is active, has been abandoned, or whether the original permit area has expanded or contracted due to the expiration or quitclaiming of individual leases over time), the fact that the mineral leases that provide the basis for some permits may only authorize oil production at certain subsurface depths, and the fact that permit boundaries sometimes overlap.

Staff's analysis of a proposed new development's compliance with the County's applicable zoning ordinance provisions is also not a simple endeavor. The County's zoning ordinances state that the oil development regulations apply to permits granted by the County on or after March 24, 1983 (NCZO, § 8107-5.2; CZO, § 8175-5.7.2), but do not clearly establish which regulations apply to new

³ The CZO refers to discretionary permit adjustments a "site plan adjustments."

oilfield structures and operations proposed under CUPs granted before March 24, 1983.

C. PROPOSED ZONING ORDINANCE AMENDMENTS

1. Amended Requirements for Discretionary Review of New Development

As explained above, the County's zoning ordinances require oil and gas projects to be approved through the granting of a CUP. (NCZO, § 8107-5.4; CZO, § 8175-5.7.5.) Any material change to an existing CUP likewise requires approval in the form of a discretionary permit adjustment or modification (NCZO, § 8111-6 and CZO, § 8181-10.) The proposed zoning amendments would amend NCZO section 8107-5.2, and CZO section 8175-5.7.2, to require the issuance of a new CUP, or approval of a discretionary permit adjustment or modification, to authorize all new oil and gas development, including that proposed under antiquated permits, unless the proposed development is already specifically described as being authorized under an existing CUP. New development triggering the need for discretionary approval would include, but not be limited to, the installation of new wells, tanks and other oil field facilities, and the re-drilling or deepening of existing wells. The proposed zoning amendments are shown in Exhibits 3 (NCZO, § 8107-5) and 5 (CZO, § 8175-5.7), and are provided in legislative format in Exhibits 4 (NCZO, § 8107-5) and 6 (CZO, § 8175-5.7).

The zoning amendments would complement the zoning ordinances' existing permit adjustment/modification requirements which, as explained above, apply whenever a permittee seeks to change the terms and conditions of an existing discretionary permit. The zoning amendments would establish a single, consistent permitting and environmental review process for all new oil and gas development proposals, regardless of the age of the original underlying permit, and would ensure some level of CEQA review of the new development being proposed. A public hearing by the County's decision-making authority would also be required for all proposed development except for small proposals, such as replacing or moving equipment from one well to another well, related to existing CUPs that qualify for a permit adjustment.

In order to approve the proposed new oil and gas development, the County's decision-making authority would need to find that the proposed development meets the County's general permit approval standards (see NCZO, § 8111-1.2.1.1a; CZO, § 8181-3.5) including, among others, that the proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare; would not be obnoxious or harmful; and is compatible with existing and potential land uses in the general area.

The discretionary permitting process would provide the County with the ability to: (1) study and publicly disclose the potential environmental impacts of the proposed development under CEQA; (2) weigh the merits of the proposed development against its potential negative impacts in deciding whether to approve the new development; and (3) impose permit conditions on approved development to mitigate potential environmental impacts and to address relevant land use and public health and safety issues, including modern conditions developed pursuant to the County's oil development guidelines and design standards set forth in NCZO section 8107-5.5 and CZO section 8175-5.7.7.

It is also important to note that implementation of the proposed amendments requiring discretionary approval for all proposed new oil and gas development would not violate the vested rights of existing permittees. As explained in County staff's September 10, 2019 report to the Board, a vested right only exists, and thus could only be unlawfully impaired, if a new governmental regulation would prevent the completion of construction or use of facilities that are specifically described and authorized in an existing County permit or other land use entitlement. Holders of antiquated permits do not typically have vested rights to engage in new oil and gas development because of the lack of specificity regarding the scope and composition of the authorized development found in most antiquated permits. In addition, the holders of these permits have had over 50 years to build out the oil and gas projects authorized under the initial approvals. Any vested rights to construct additional new development are likely to have lapsed many years ago, as a delay of so many decades in a holders' completion of an initially approved development would be unreasonable.

2. Applicability of Current Oil Development Guidelines and Standards

The proposed zoning amendments would also clarify another issue implicated by antiquated permits: the applicability of the County's current oil and gas development design guidelines and operational standards. These regulate various project design and operational issues such as well and equipment siting, pipeline installation, grading, lighting, waste handling, noise, site maintenance and site restoration. (See NCZO, §§ 8107-5.5 and 8107-5.6; CZO, §§ 8175-5.7.7 and 8175-5.7.8.) The County's zoning ordinances currently state that these regulations apply to permits granted by the County on or after March 24, 1983 (NCZO, § 8107-5.2; CZO, § 8175-5.7.2), but do not clearly state which regulations apply to proposed new oilfield structures and operations conducted pursuant to permits granted before March 24, 1983.

The proposed zoning amendments would clarify this issue by amending NCZO section 8107-5.2, and CZO section 8175-5.7.2, to state that the County's current oil development design guidelines and operational standards uniformly apply to all oil and gas exploration and production operations to the extent: (i) such guidelines and standards would impose more stringent requirements than those set forth in

existing permit conditions, laws, or regulations applicable to the operation; and (ii) application of such guidelines and standards would not impair any vested right of an operator under California law.

In general, the application of such guidelines and standards could only impair a vested right if they prevented the completion of construction or use of facilities that are specifically described and authorized in an existing County permit. For example, an operator with an existing, permitted oil well or tank could have a vested right to continue operating the well or tank notwithstanding the fact that the well or tank does not comply with current setback requirements. Conversely, an operator proposing to expand its operation by drilling new wells or installing additional tankage on a site would need to abide by the current requirements regarding minimization of grading and pad size, and site the new wells and tanks outside all currently designated setbacks.

Disagreements between an applicant/permittee and the County over the existence, scope or impairment of vested rights would be administratively resolved through the zoning ordinances' existing appeals process. (NCZO § 8111-7 and CZO § 8181-9.)

3. Non-Substantive Revisions

Finally, the zoning amendments would revise NCZO section 8107-5.4 and CZO section 8175-5.7.5 to limit the level of new development that could be authorized under a single zoning clearance in order to make this existing provision consistent with the zoning ordinances' general rule regarding the 180-day timeframe within which improvements that are the subject of a zoning clearance must be developed. Other non-substantive revisions have been made to the zoning ordinances' oil and gas regulations to clarify existing provisions and to use consistent terms for the same provisions and section headings that are included in both the NCZO and CZO.

D. CEQA COMPLIANCE

1. NCZO Amendment

Pursuant to the requirements of CEQA (Pub. Resources Code, div. 13 §§ 21000-21178) and the state CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000-15387), the proposed NCZO ordinance amendments constitute a "project" that was evaluated for compliance with CEQA.

County staff has determined that adoption of the NCZO zoning amendments is exempt from CEQA review pursuant to CEQA Guidelines section 15308 as an action by a regulatory agency to assure maintenance or protection of the environment "where the regulatory process involves procedures for protection of the environment." As explained above, because antiquated permits were granted

by the County before enactment of CEQA in 1970, none of the original oil and gas operations covered by these permits underwent CEQA review. Under the status quo, many operations authorized under antiquated permits have been expanded or modified subsequently through the County zoning ordinances' ministerial zoning clearance process. Ministerial projects are exempt from CEQA review and are not subject to the imposition of additional permit conditions.

This project would assure the County's maintenance and protection of the environment by requiring the discretionary approval of, and environmental review under CEQA for, all new oil and gas development on lands covered by antiquated permits, and by implementing a single, uniform review process for all new oil and gas development proposed in the unincorporated areas of the county. Oil and gas development can result in potentially significant adverse impacts to a number of important resource issue areas including, but not limited to, air quality, public health and safety, climate change, land subsidence, as well as water resources, biological resources, and agricultural, visual, and recreational resources. Potential impacts from oil and gas development can also implicate environmental justice issues.

By requiring discretionary approval for all new oil and gas development, the project will enable the County to achieve the five major objectives of CEQA: (1) study and disclose potential environmental impacts; (2) prevent or reduce environmental damage; (3) disclose and provide reasoning for County permitting decisions; (4) promote interagency coordination; and (5) encourage public participation. (Pub. Resources Code, §§ 21000-21004; CEQA Guidelines, §§15002, 15086 and 15087.)

When an agency finds that a project is subject to a categorical exemption such as the CEQA Guidelines section 15308 exemption that County staff has determined to apply here, the agency's use of the exemption is precluded if one of the exceptions set for in CEQA Guidelines section 15300.2 applies. The most commonly cited exception is set forth in subdivision (c) of section 15300.2, which provides that an activity that would otherwise be categorically exempt under CEQA is not exempt if there are "unusual circumstances" which create a "reasonable possibility" that the activity will have a significant effect on the environment. However, as explained below, County staff has determined that neither this exception, nor any other exception, applies here.

The "unusual circumstances" exception can apply in two ways. The exception applies if a project would in fact have a significant adverse effect on the environment based on substantial evidence. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114-1116 ("*Berkeley Hillside*").) Staff has determined that the County's proposed project would not have a significant adverse environmental effect. To the contrary, the project would enable the County to study, and then prevent or mitigate, potentially significant environmental

impacts of proposed oil and gas development which, under the status quo, could otherwise be ministerially approved despite the existence of potentially significant unstudied adverse environmental impacts. Any claims that the project may have significant indirect impacts in some manner are speculative. It is not known what oil and gas development projects would be the subject of future discretionary permit applications, the volume of oil and gas that would be associated with such potential future permit applications, how the County's decision-makers would decide each such application based on its individual merits, or how future applicants may react to such future County decisions. CEQA review of each proposed project would occur at the project-specific level. Consequently, there is no substantial evidence establishing that the County's proposed project would in fact have a significant adverse effect on the environment.

The exception also applies if unusual circumstances related to some feature of the project distinguishes it from other features in the exempt class, and there is substantial evidence of a reasonable possibility that the project will have a significant impact due to the unusual circumstances. The existence of unusual circumstances is a factual issue for the lead agency to decide based on substantial evidence. (*Berkeley Hillside, supra*, 60 Cal.4th at pp. 1114-1115.) Staff has determined that no unusual circumstances are related to the County's proposed project. To the contrary, by requiring proposed oil and gas development on land covered by antiquated permits to comply with the same discretionary permitting and CEQA review requirements applicable to new oil and gas development that is proposed everywhere else in the unincorporated area, the County would be implementing one uniform permitting and environmental review process for all proposed new oil and gas development. Moreover, there is nothing unusual about requiring new oil and gas development that could cause a significant environmental impact to undergo CEQA review. And as explained in Section F below, the County's proposed project is also not unusual because it would help implement existing County General Plan goals calling for the environmental review and modernization of oil and gas development conducted on land covered by antiquated permits.

Based on the foregoing, staff recommends that your Commission recommend that the Board find that the County's proposed project is exempt from CEQA review pursuant to CEQA Guidelines section 15308, and that no unusual circumstances or other exception set forth in CEQA Guidelines section 15300.2 preclude use of this categorical exemption.

2. CZO Amendment

The proposed CZO ordinance amendment constitutes an amendment to the County's Local Coastal Program (LCP). Section 21080.9 of the Public Resources Code (which is part of CEQA) exempts local governments from preparing an environmental impact report or other CEQA document in connection with an amendment to an LCP. Instead, certification of an LCP amendment by the

California Coastal Commission (Coastal Commission) is required and is subject to Coastal Commission review for compliance with the California Coastal Act of 1972. The Coastal Commission's regulatory program for the preparation, approval and certification of LCPs has been certified by the Natural Resources Agency under Public Resources Code section 21080.5 as the functional equivalent of CEQA review.

E. COASTAL ACT AND LOCAL COASTAL PROGRAM CONSISTENCY ANALYSIS

In submitting a proposed LCP amendment to the Coastal Commission for review and certification, cities and counties are required, pursuant to California Code of Regulations, title 14, section 13552, to include an analysis of the amendment's consistency with the jurisdiction's LCP and the Coastal Act. To this end, the Planning Division has prepared a consistency analysis of the proposed CZO/LCP amendment which is attached as Exhibit 8 to this report.

F. ZONING ORDINANCE AMENDMENT FINDINGS AND SUPPORTING EVIDENCE

The County's zoning ordinances may be amended if the following findings are made by the Board.

1. The proposed amendment would not be detrimental to the public health, safety or general welfare:

The zoning amendments would enhance the public health, safety and general welfare by amending the NCZO and CZO to implement a single, uniform permitting and environmental review process for all new oil and gas development. The zoning amendments would enable the County to: apply more consistent environmental review to proposed new development; review the proposed development for consistency with applicable General Plan and Area Plan (including the Coastal Area Plan) policies and land use development standards and requirements; and impose permit conditions and mitigation measures, if applicable under CEQA, to address identified environmental and public health and safety issues. This would result in a more consistent decision-making process that is also more protective of public health and environmental resources.

Based on the foregoing, this finding can be made.

2. The proposed amendment represents good zoning practice:

The zoning amendments represent good zoning practice because they would implement a single, uniform permitting and environmental review process for all new oil and gas development that is expected to result in a more consistent decision-making process that is also more protective of both public health and environmental resources.

Based on the foregoing, this finding can be made.

3. The proposed amendment is consistent with the Ventura County General Plan, the Ventura County Coastal Area Plan and the California Coastal Act:

The zoning amendments to the NCZO would not conflict with the existing or draft updated General Plan, and the proposed amendments to the CZO would not conflict with the General Plan, the Coastal Area Plan or the California Coastal Act. By requiring discretionary review and permitting for land covered by antiquated permits, the proposed amendments would address an issue that is identified in the existing General Plan Resources Appendix at section 1.4.2.6, which states in relevant part:

“Petroleum extraction on non-Federally owned lands is regulated by the County Zoning Ordinance and State laws and guidelines. A problem has arisen in that many existing production facilities are operating under archaic, long-term permits that do not provide the degree of regulation afforded by today’s Zoning Ordinance. This situation will be corrected as these old permits expire or are modified.”

The existing General Plan’s Goals, Policies and Programs, Mineral Resources, at sections 1.4.2.4 and 1.4.2.5, respectively, similarly state:

“Petroleum exploration and production shall comply with the requirements of the County Zoning Ordinance and standard conditions, and State laws and guidelines relating to oil and gas exploration and production.”

“As existing petroleum permits are modified, they shall be conditioned so that production will be subject to appropriate environmental and jurisdictional review.”

The draft updated General Plan Policy 7.3 similarly states:

“The County shall require new or modified discretionary development permits for oil and gas exploration, production, drilling, and related operations be subject to current State and County policies, standards, and conditions.”

The zoning amendments would implement these existing and proposed General Plan provisions in two ways. First, they would clarify that all oil and gas production operations are subject to all applicable regulations in the County’s zoning ordinances. Second, they would require new oil and gas development proposed on land covered by antiquated permits to be approved with a new discretionary

CUP or discretionary permit adjustment/modification in a process that would: involve environmental review; enable the County to ensure compliance with all relevant General Plan policies, many of which only apply to discretionary actions, County land use development standards and requirements, and state and federal laws; and enable the County to impose permit conditions to ensure the protection of environmental resources and public health and welfare.

Existing General Plan policies that would or could apply to proposals for new oil and gas development include the following:

- Air quality policies 1.2.2.1 through 1.2.2.4;
- Water resource policies 1.3.2.1, 1.3.2.2, 1.3.2.4, 1.3.2.5 and 1.3.2.8;
- Mineral resource policies 1.4.2.1, 1.4.2.4, and 1.4.2.6;
- Biological resource policies 1.5.2.1 through 1.5.2.8;
- Farmland resource policies 1.6.2.1 and 1.6.2.6;
- Scenic resource policies 1.7.2.1, 1.7.2.2 and 1.7.2.4;
- Paleontological and cultural resource policies 1.8.2.1, 1.8.2.2, 1.8.2.3 and 1.8.2.5;
- Energy resource policy 1.9.2.1;
- Coastal beaches and sand dunes policies 1.10.2.1 and 1.10.2.2;
- Hazards policies 2.1.2.1 and 2.1.2.3;
- Fault rupture policies 2.2.2.3, 2.2.2.5 and 2.2.2.6;
- Landslide/mudslide policies 2.7.2.1, 2.7.2.2 and 2.7.2.3;
- Subsidence policies 2.8.2.1 and 2.8.2.2;
- Flood hazard policies 2.10.2.1, 2.10.2.2, 2.10.2.3 and 2.10.2.4;
- Fire hazard policies 2.13.2.1 and 2.13.2.2;
- Hazardous materials and waste policies 2.15.2.1, 2.15.2.2, 2.15.2.3, 2.15.2.4 and 2.15.2.5;
- Noise policies 2.16.2.1, 2.16.2.2 and 2.16.2.3;
- Public facilities and services policies 4.1.2.1 and 4.1.2.2;
- Transportation/circulation policies 4.2.2.3, 4.2.2.4, 4.2.2.6 and 4.2.2.10;
- Water supply facilities policies 4.3.2.2 and 4.3.2.3;
- Flood control and drainage facilities policies 4.6.2.1 and 4.6.2.2; and
- Fire protection policies 4.8.2.1.

And draft policies in the updated General Plan that would or could apply to proposals for new oil and gas development include the following:

- Agricultural policies 1.2 and 2.1;
- Conservation and Open Space policies 1.1, 1.4, 1.5, 1.6, 1.9, 1.10, 1.11, 1.12, 3.5, 4.4 and 7.1 through 7.8;

- Hazard and Safety policies 1.1, 1.2, 2.3, 4.2, 4.4, 4.5, 4.6, 4.8, 4.10, 4.15, 4.16, 5.2, 5.3, 5.5, 5.8, 6.7, 7.1, 9.1, 9.2, 9.3, 9.5, 10.1, 10.2, 10.3, 10.11 and 10.12;
- Land Use and Community Character policies 6.1, 17.3, 17.4 and 18.3;
- Circulation, Transportation and Mobility policies 1.1 through 1.7;
- Water Resources policies 1.12 and 2.2; and
- Public Facilities, Services and Infrastructure policies 3.2, 6.1, 7.4, 7.8 and 12.4.

G. PLANNING COMMISSION HEARING NOTICE AND COMMENTS

The Planning Division provided a public notice regarding the Planning Commission hearing in accordance with Government Code section 65090, NCZO sections 8111-3.1 and 8115-2, and CZO sections 8181-6.2.1 and 8184-3. The Planning Division placed a legal advertisement providing notice of this public hearing in the *Ventura County Star* on July 16, 2020. Staff also mailed notice of this public hearing to all oil and gas operators of record in the unincorporated area. This Planning Commission staff report was posted on the Planning Division website on July 16, 2020.

As of the date this staff report was made available to the public, staff has not received public comments regarding the project.

H. RECOMMENDED ACTIONS

Based upon the analysis and information provided above, Planning Division staff recommends that your Commission take the following actions:

1. **CERTIFY** that your Commission has reviewed and considered this staff report and all exhibits hereto, and has considered all comments received during the public comment and hearing processes;
2. **ADOPT** a Resolution recommending that the Board of Supervisors take the following actions regarding the proposed amendments to the Ventura County Non-Coastal Zoning Ordinance and Ventura County Coastal Zoning Ordinance:
 - a. **CERTIFY** that the Board of Supervisors has reviewed and considered the Planning Commission staff report and all exhibits thereto and all other written materials submitted to the Board and has considered all comments received during the public comment process;
 - b. **FIND** on the basis of the entire record and as set forth in Section D of the Planning Commission staff report that the adoption of the proposed ordinances amending the Ventura County Non-Coastal Zoning Ordinance (Exhibit 3) and the Ventura County Coastal Zoning Ordinance (Exhibit 5),

are exempt from CEQA pursuant to CEQA Guidelines section 15308 as actions by a regulatory agency to assure the maintenance and protection of the environment because the project would implement a regulatory process involving procedures for protection of the environment, and **FIND** that no substantial evidence exists precluding the use of this categorical exemption based on the presence of unusual circumstances or any other exception set forth in CEQA Guidelines section 15300.2;

- c. **FIND** on the basis of the entire record and as set forth in Sections A, B, C, D, E, F, and H of the Planning Commission staff report that the proposed ordinance amending the Ventura County Non-Coastal Zoning Ordinance (Exhibit 3) is consistent with the goals, policies and programs of the Ventura County General Plan and good planning practices and is in the interest of public health, safety and general welfare;
- d. **FIND** on the basis of the entire record and as set forth in Sections A, B, C, D, E, F, and H of the Planning Commission staff report that the proposed ordinance amending the Ventura County Coastal Zoning Ordinance (Exhibit 5) is consistent with the goals, policies and programs of the Ventura County General Plan, the Ventura County Coastal Area Plan, the Coastal Act (Exhibit 8) and good planning practices and is in the interest of public health, safety and general welfare;
- e. **ADOPT** the proposed ordinance amending the Ventura County Non-Coastal Zoning Ordinance (Exhibit 3);
- f. **ADOPT** the proposed ordinance amending the Ventura County Coastal Zoning Ordinance (Exhibit 5); and
- g. **SPECIFY** the Clerk of the Board of Supervisors at 800 S. Victoria Avenue, Ventura, CA 93009 as the custodian and location of the documents and materials that constitute the record of proceedings upon which these decisions are based.

This staff report was reviewed by County Counsel.

If you have any questions concerning the information above, please contact Dave Ward at (805) 654-2481 or by email at Dave.Ward@ventura.org. You may also contact Mindy Fogg at (805) 654-5192 or by email at Mindy.Fogg@ventura.org.

Prepared by:



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Ventura County Planning Division

Reviewed by:



Dave Ward, AICP
Planning Director
Ventura County Planning Division

EXHIBITS

- Exhibit 2 Maps of Project Areas – Applicable Non-Coastal and Coastal Use Zones
- Exhibit 3 Ordinance Amending NCZO Section 8107-5
- Exhibit 4 Amendments to NCZO Section 8107-5 in Legislative Format
- Exhibit 5 Ordinance Amending CZO Section 8175-5.7
- Exhibit 6 Amendments to CZO Section 8175-5.7 in Legislative Format
- Exhibit 7 Representative “Antiquated Permit”
- Exhibit 8 Coastal Act and County Coastal Area Plan Consistency Analysis