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July 29, 2020

Ventura County Planning Commission  
800 S. Victoria Avenue  
Ventura, CA 93009-1740  
Attn: Mindy Fogg  
[mindy.fogg@ventura.org](mailto:mindy.fogg@ventura.org)

Re: Opposition to July 30, 2020 Agenda Item No. 7 (Case No. PL20-0052)

Dear Ventura County Planning Commissioners:

California Resources Corporation (“CRC”) submits these comments regarding the recommended amendments to Ventura County’s zoning ordinance, including the modification of the terms of existing permits to impose new discretionary permit requirements regardless of whether such activities have been previously authorized in a conditional use permit. The amendments would require a new Conditional Use Permit or a discretionary permit adjustment or modification in order to authorize any new component of an oil and gas exploration and production operation, including the drilling, re-drilling or deepening of any new oil and gas well, or the installation of any permanent structure, unless specifically identified by location and number in an active discretionary permit. As conceded by the County staff, this amendment is specifically intended to negate certain so-called “antiquated permits.” These “antiquated permits” authorize operators to use specifically-described parcels of land for “drilling for and extraction of oil, gas and other hydrocarbon substances and installing, and using, buildings, equipment and other appurtenances accessory thereto....” (Staff Report for PL20-0052, Exh. 7.) CRC urges the Commission to deny the recommended amendments and to reaffirm the long-standing interpretation of County Counsel that holders of such permits have vested rights in their continued operation that cannot be modified or revoked without due process of law.

## **The Proposed Amendments Would Strip Permitholders of their Vested Rights.**

CRC has previously identified multiple instances where the County recognized its limitations in modifying “antiquated permits.” (Exhibit 1 [4/8/19 CRC Ltr.].) In these analyses, the County correctly articulated the constitutional limitations that govern a local agency’s attempts to modify an existing permit. “The County has only a limited ability to

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County of Ventura  
Board of Supervisors  
Case No. PL20-0052  
Exhibit 25 - Public Comments  
CRC, AERA and ABA

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# ENERGY CORPORATION

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July 29, 2020

**Sent Via Email Only - [mindy.fogg@ventura.org](mailto:mindy.fogg@ventura.org)**

Ventura County Planning Commission  
Hall of Administration  
Resource Management Agency/Planning Division  
Attn: Mindy Fogg, Planning Manager  
800 S. Victoria Ave., L#1740  
Ventura, CA 93009-1740

RE: Comment Letter for Agenda Item 7; Hearing Date: July 30, 2020  
Concerning Public Hearing to Consider County-Initiated Amendments to Article 7, Section 8107-5 of the Ventura County Non-Coastal Zoning Ordinance and Article 5, 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).

Dear Chair White and Honorable Planning Commissioners:

This letter provides comments on behalf of ABA Energy Corporation ("ABA") on the proposed amendments to the Ventura County Non-Coastal Zoning Ordinance and Article 5, 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 ("Proposed Amendments") that was just released for public review on Friday evening, July 17, 2020. This letter will first address the procedural deficiencies associated with holding this hearing behind closed doors and then I will provide background information about my company and its operations in Ventura County and on oil and gas exploration and production operations generally before addressing the legal deficiencies surrounding the County's effort to unlawfully take away vested property rights.

## **Holding a Hearing on Changes to an Oil and Gas Ordinance While Precluding Direct Public Participation is a Violation of Law**

Following the public notice for this Planning Commission hearing, which includes a proposed ordinance to strip citizens of their vested property rights, the County elected to throw a further impediment in the path of those seeking to protect their rights by holding this hearing behind closed doors and limiting the public to a limited peek through a camera lens, assuming they have the means and ability to navigate the technology imposed by the County. The California Constitution declares and guarantees the public's right to instruct their representatives, including their local governments, and guarantees the public's right to participate in the meetings of public bodies. (Cal. Const., art. I, § 3, subdiv. (a), (b)(1).) The Constitution directs all branches of the government, including both local agencies and the courts, to broadly construe any statute or other authority that furthers the people's right of access, and narrowly construe any statute or other authority that limits the right of access. (Cal. Const., art. I, § 3, subdiv. (b)(2).)

In enacting the Brown Act (Gov. Code § 54950 et. seq.) the California legislature codified its intent that the actions of public commissions and boards be taken openly and that their deliberations be conducted openly and it further declared that it is not up to public servants to decide what is good for the people to know and what is not good for them to know. The Brown Act does authorize the County to hold teleconference meetings in certain circumstances where it provides the public with teleconference locations in which the County provides the means for the public to view, comment and otherwise participate in a public hearing (see Gov Code § 54953(b)). In the instant case, however, the County has failed to provide any teleconference location for the hearing such that the public is forced to acquire the means (computer, software, internet connection, etc.) and technical know-how to participate in the meeting. The failure of the County to provide teleconference locations that provide the public with free access to the meeting and an opportunity to be heard is a violation of the Brown Act and thus, this meeting should be postponed until the public is given access to the meeting as required by California law.

Governor Gavin Newsom's Executive Order N-29-20 ("EO N-29-20") provides that local governments do not have to observe "strict compliance with various statutes and regulations" if such compliance "would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic." As noted above, California Constitution, Article 1, Section 3(b)(2) requires that EO N-29-20 be narrowly construed and narrowly applied to meetings to permit actions that "prevent and mitigate the effects of the COVID-19 pandemic." Here, there is absolutely no connection between the Oil and Gas Ordinances and the COVID-19 pandemic. The County can easily postpone consideration of these proposed ordinance changes until such time as the public can participate in person, as required by the Brown Act. To move forward as proposed is a violation of the constitutional rights of the public and is a violation of the Brown Act.

### **ABA Energy Corporation Conducts Oil and Gas Operations Pursuant to a Valid and Existing Special Use Permit.**

By way of background, since graduating from Texas A&M University in 1983 with a degree in Petroleum Engineering, I have spent my entire 37-year career exploring for and producing oil and gas. I began my career with ARCO drilling wells both overseas and domestically and later led the management team of a smaller public oil and gas producer. I founded ABA Energy Corporation ("ABA") in 1991 as a California based exploration and production company and presently all of ABA's oil and gas operations are focused in Ventura County. I remain the President of ABA and direct and control its operations.

In 2010 ABA became an owner of the lessee's interest in, and the operator of, an oil and gas lease situated in the Oxnard oilfield that was and continues to be subject to Special Use Permit #672 ("SUP #672"). SUP #672 was issued on November 5, 1957 by the Ventura County Board of Supervisors who voted in a public hearing to accept and approve a thoroughly-considered, site-specific, detailed, and fully-conditioned discretionary permit in accord with the recommendation of the Ventura County Planning Commission for the following purposes:

"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 specifically mentioned in Division 8, Ventura County Ordinance Code, requiring review and Special Use Permit . . ." (A true and correct copy of SUP #672 is attached hereto as Exhibit A.)

While it is true that SUP #672 does not limit the mineral rights owners to a specific length of time to explore for and develop their mineral interests nor is there a limit on the number of wells the mineral owners can drill to produce minerals from their property, the Board of Supervisors did impose thirteen specific conditions in SUP #672 that include express provisions to protect the environment that are reasonable and environmentally sound by any standard. These conditions include setback requirements, noise attenuation, dust controls and other nuisance avoidance mandates, among others.

Since acquiring its interest in these mineral rights and in SUP #672, ABA has routinely applied for and been granted ministerial Zoning Clearances by the County Planning Department in which the County has acknowledged time and time again that SUP #672 is a valid and subsisting Special Use Permit (sometimes also referred to as a Conditional Use Permit or CUP) and based upon its vested property rights in SUP #672, ABA has invested millions of dollars on upgrades to the infrastructure of its operations to modernize and improve the facilities and install environmental upgrades in anticipation of developing additional new oil and gas reserves that ABA has discovered in this well-established oilfield. Specifically, ABA has removed and remediated old tanks and constructed a modern tank battery with concrete-lined containment, upgraded the electrical infrastructure, installed new gathering lines, installed a BACT low emission flare and acquired air credits to assure compliance with the mitigation programs established by the Ventura County Air Pollution Control District. These upgrades were made in anticipation that future development would occur under SUP #672 and as such the capacity of such facilities greatly exceed the current production as it is anticipated that this facility will form the backbone of the development of the mineral interests that can be produced under SUP #672.

In addition to working with the professional staff at the Planning Department to ensure compliance with the regulatory guidelines in place for new oil and gas wells, ABA works cooperatively with the Ventura County Fire Department, Ventura County Building Department, Ventura County Air Pollution Control District and the California Geologic Energy Management Division (formerly Division of Oil, Gas & Geothermal Resources "DOGGR") to ensure compliance with all laws rules and regulations that are applicable to each new well.

For clarification purposes, it should be noted that the production from wells drilled by ABA are considered light crude and these wells do not produce heavy oil and do not require cyclic steaming that was subject to the moratorium referenced in the staff report.

## **Overview of Oil and Gas Operations in California**

To better understand the issues being presented in this proposal to amend the Ventura County oil and gas ordinance and eliminate the vested rights of mineral rights owners, it is necessary to understand in basic terms how oil and gas interests are treated under California law. A helpful synopsis was set forth by the court in *Lynch v. State Board of Equalization* (1985) 164 Cal.App.3d. 94 (overruled on other grounds) and I will summarize without direct citation below the key principles that were noted by the court and provide further incite on matters which I believe reflect accurately the facts and the law regarding oil and gas operations in California.

Oil and gas deposits generally occur in sedimentary beds of sandstone, shale and limestone. The oil and gas exist in the interstices of the rock occupying certain strata, referred to as "oil sands." Within a reservoir fluid are trapped under pressure, the amount of which is dependent largely upon the depth of the



deposit. This pressure is referred to as "reservoir energy" and may be utilized in the initial extraction process.

Oil and gas deposits, due to their fluid nature, are capable of migration through the rock interstices in which they exist. In the course of time oil and gas deposits have become trapped in the most favorable location and there is little if any migration in the absence of a disturbance of the deposit's equilibrium. However, when this equilibrium is disturbed, such as by penetration by a well bore, the pressure differential can cause the oil and gas to migrate. This aspect of the nature of oil and gas has caused them to be referred to as "fugacious minerals" which implies that they are not fixed in a certain place, but are wandering.

Recoverable gas deposits often exist where there is no recoverable oil. The wells which produce gas only are referred to as "dry gas wells." Most oil wells also produce some associated gas. In such a deposit the force of gravity has generally caused the gas and oil to separate with the lighter gas existing in the upper strata and the heavier oil existing in the lower strata of the formation. There is generally some water associated with the deposit which, because of its heavier nature, exists below the oil bearing strata. The total oil and gas within a deposit is referred to as the oil in place or the gas in place.

There are three separate phases in the life of an oil and gas producing reservoir [although it can also be found that these separate phases can have separate pulses depending on how they are developed]. These are discovery, development, and production. Discovery is a function of geological effort wherein geophysicists and geologists determine the optimum place to drill a new well. During the development process wells are drilled and petroleum engineers and technical staff constantly evaluate the field in order to make knowledgeable decisions regarding how the field can best be produced. The primary development phase ends when the total field has been delineated. Nevertheless, as is noted below with the respect to the oilfield in which ABA is presently operating, there are occasions where new discoveries occur in old fields and the development phase [a new pulse] begins again.

The production phase of an oil and gas producing property may be subdivided into a primary phase and a secondary (and even tertiary) phase in which augmented recovery programs are utilized. Primary recovery utilizes the natural reservoir energy (pressure) and pumping or lifting to extract the hydrocarbon substances. The proportion of the original oil in place which can be recovered through primary recovery methods varies with the particular property, but is typically very low, for example, the Supreme Court has taken judicial notice that only 10 to 25 percent of the oil in place was ultimately recovered, [however advancements in technology have improved that ratio due to directional drilling and other techniques.] The primary production phase may last for an extended time (20 or more years) and typically the amount of oil and gas produced declines over time. The primary production phase comes to an end when, based upon existing economics and technology, it is more profitable to cease production or to commence an augmented recovery program. [Thus, each oilfield has a life of its own and depending on the amount of resources contained therein.]

It should be noted that the first well drilled under SUP #672 was the Maulhardt #1 well drilled in 1958 and that well continues to produce oil in paying quantities to this day.

### **Mineral Rights Ownership Means the Exclusive Right to Drill for and Take Away Oil and Gas**

The primary means for exploitation of an oil and gas producing property is through an oil and gas lease. Under such leases the landowner conveys to the producing company the exclusive right to drill and produce the oil and gas which may be underlying the land. Such leases may be for a fixed term with an option for renewal, but typically provide for a fixed term with a provision for continuance for so long thereafter as the lessee is able to produce oil and/or gas in "Paying Quantities." Paying quantities means at

a profit, and when the lessee can no longer produce hydrocarbons at a profit the lease typically terminates and the rights revert back to the landowner.

The California Supreme Court established long ago in the case of *Callahan v. Martin* (1935) 3 Cal.2d 110 that the lessee under an oil and gas lease has an interest or estate in real property in the nature of a *profit a prendre*, which is an incorporeal hereditament (Hereditament means any kind of property that can be inherited.) The French phrase "*profit a prendre*" literally means profit to take. A *profit a prendre* is an incorporeal hereditament; it is a right to take something from the land of another. In essence, the courts now recognize that the owner of land does not have title to the oil and gas which may underlie his property; instead he has the exclusive right on his premises to drill for oil and gas and to retain as his property all substances brought to the surface. When this interest is transferred to a lessee the lessee obtains a *profit a prendre*.

ABA, as a lessee and the Operator of this oil and gas lease, owns the right to drill for oil and gas on the affected property and sell it to a refinery or other purchaser subject to the express rights granted under SUP #672.

### **Significant Oil Reserves Remain to Be Discovered and Produced that Have Not Been Quantified**

Over the last 10 years, ABA has made an extensive empirical study of the geology and remaining hydrocarbon reserve potential of the Oxnard/Santa Clara Field areas of Ventura County. The study focused only on Sespe and Topanga oil accumulations. After drilling 21 wells and extensively mapping out each Sespe and Topanga Sand penetration, I have concluded that millions of barrels of oil remain in the study area which have as yet been left un-produced due to a lack of drilling and the understanding of the geologic trapping mechanisms.

Oil and gas traps, sometimes referred to as petroleum traps are below ground traps where a permeable reservoir containing oil and/or gas is covered by some low permeability cap rock. This combination can take several forms, but they all prevent the upward migration of oil and natural gas up through the reservoir. The oil and natural gas continue to migrate upwards through the pore spaces of the reservoir until blocked by some sort of seal with a cap rock. The low permeability cap rocks are generally shale or low permeability sandstones and carbonate rocks. One common type of petroleum trap is a fault trap. This trap is formed by the movement of permeable and impermeable layers of rock along a fault plane. The permeable reservoir rock faults such that it is now adjacent to an impermeable rock, preventing hydrocarbons from further migration. The fault itself can also act as an impermeable barrier where between the walls of the split reservoir, clay along the fault traps oil and prevents it from leaving the trap.

After ABA completed its initial mapping of the various Sespe Sand and Topanga intervals in the Oxnard Field in 2010, including the study of the legacy wells drilled since 1952 but prior to 2010 ("Legacy Zones"), a working thesis was developed. Specifically, ABA believed that the Oxnard Field was not drilled densely enough and that a large amount of reserves were left behind, and just as importantly, ABA felt that deeper zones (below the Legacy Zones then existing in the Oxnard Field) could also house an enormous amount of un-tapped potential.

The actual drilling results were very surprising. While both of the anticipated sources for new reserves not found since the 1950's were found in practice to be quite valid (infill wells drilled on greater density and deeper new pool discoveries), the intriguing facet of the re-development program was that with each new well drilled by ABA, at least one new fault was discovered. In fact, over 30 new faults were mapped in ABA's last 21 wells. The implications for these new faults were many and can be summarized by the realization that the Oxnard Field area was significantly more faulted than as first mapped and more importantly, without a concerted effort of additional significant infill drilling to exploit each new fault block, the potential for ABA's portion of the Oxnard Field will never be fully realized.

Since 2010, ABA has drilled 21 wells, with 20/21 finding oil, and approximately 1.34 million new barrels of oil have already been produced with an estimated 1.9 million barrels still remaining to be produced from these existing wells. Based on the results of these 21 wells, ABA contends that it has many wells left to drill in the Oxnard field in order to fully develop the available petroleum resources. ABA has also extensively mapped the same geologic pattern of deeper Sespe drilling potential and multiple infill legacy well locations in the Santa Clara Field 4 miles away which are subject to separate SUP/CUPs. If one assumes that a similar potential exists over just 10% of the combined Oxnard/Santa Clara field areas (9,000 acres per CALGEM), as compared to what ABA has discovered so far, this would result in a field-wide remaining potential of approximately 22.96 million recoverable barrels (ABA current empirical recovery factor of 25,511 barrels/acre x 9,000 acres x 10%). This would equate to approximately \$918.4 million of future taxable oil revenues at an oil price of only \$40/barrel. Based on these figures, +/- \$183 million would be generated in royalty revenues to local Oxnard mineral owners. As oil prices return to pre-COVID-19 rates, these calculations will be adjusted upward accordingly.

As relevant as the foregoing reserve and revenue numbers are, consider an order of magnitude greater when considering all the other Ventura County fields not mentioned in this example which have existing SUP/CUPs and are yet to be fully drilled that would be affected by the Proposed Amendments. By requiring operators to subject their future drilling projects to a public hearing in the current political climate in Ventura County is tantamount to automatic denial as was seen in the recent hearing in July of 2019 for Renaissance Petroleum before the Board of Supervision wherein the oil company, despite having met all the legal requirements for a small modification of its existing CUP to drill four additional wells at its existing drill site, and despite the approval recommendations of the Planning Commission and county staff, the Board of Supervisors denied the modification because they simply did not want any further expansion of oil and gas production to occur in the County. The Proposed Amendments requiring discretionary approval of all new wells in public hearings before a Board of Supervisors who unabashedly have asserted on the record their intent to eliminate oil and gas production in the County will have the intended effect of eliminating future oil and gas well drilling in the County of Ventura.

### **Limiting the Production of Locally Produced Oil Will Increase, Not Reduce, Greenhouse Gases.**

A major focus of the proposed changes to the Oil and Gas Ordinance is the purported goal of reducing Greenhouse Gases associated with oil and gas production. To understand the actual consequences of reducing local oil and gas production requires a basic understanding of supply and demand. The oil produced by ABA and other operators in Ventura County is transported to refineries in California that refine and process the crude oil into petroleum products primarily for use as gasoline, diesel, and jet fuel. Unlike the COVID-19 pandemic, which due to travel restrictions has resulted in a temporary reduction in the need for such products, eliminating local supply by curtailing any or all future production of oil and gas produced in Ventura County will not have a corresponding effect on the demand for these petroleum products and the refineries will simply procure replacement quantities of crude oil from sources outside of Ventura County. The primary sources for such replacement oil will be crude oil shipped via tanker from Alaska and from foreign countries such as Saudi Arabia.

In my 37-year career as a petroleum engineer, I have had the opportunity to participate in the exploration and production of oil and gas both domestically in various states and all over the world and as a result, I am familiar with the regulations that have been imposed on oil and gas production by various foreign and state governments as well as other jurisdictions within the State of California. The existing laws, rules and regulations in Ventura County that apply to oil and gas production are among the strictest I have experienced in my career. For example, the Ventura County Air Pollution Control District enforces strict air quality standards and air credit programs that have resulted in dramatically reduced emissions as compared to the emissions from oil and gas production from other states and certainly other countries. In addition, and as noted below, not all oil is created equal when it comes to Carbon Intensity. The California

Air Resources Board (“CARB”) publishes Carbon Intensity values for the various crude oil sources under their Low Carbon Fuel Standard Regulation. (See <https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/crude-oil/2019draft-crude-ave-ci.pdf>.) The most recent published data is from 2019 which demonstrates that the Carbon Intensity from the oil produced in the Oxnard Oilfield (where all of ABA’s production is located), on an annual average, is less than half the Carbon Intensity of the crude oil produced in California as a whole during 2019 (5.39 vs. 12.52 gCO<sub>2</sub>e/MJ). A quick look at this Carbon Intensity data also reveals that while every field in Ventura County has a Carbon Intensity of oil that is less than 6.00 gCO<sub>2</sub>e/MJ, the Carbon Intensity of oil from Alaska was 15.91 gCO<sub>2</sub>e/MJ and the Carbon Intensity of the blended average of oil from Saudi Arabia was 9.12 gCO<sub>2</sub>e/MJ which are the two most likely locations from which oil would be imported to replace locally produced oil.

Drop per drop, barrel per barrel, simply replacing locally produced Ventura County oil with imported oil will result in an increase in GHG due to the fact that oil produced in Ventura County is subject to more restrictive environmental controls and the oil from these alternate sources will have a higher Carbon Intensity. This is true even before considering the huge environmental impacts associated with the GHG and other pollutants generated in the process of shipping that replacement oil across the world in oil tankers and across the country on oil trains (not to mention the increased risks associated with oil spills).

### **The Proposed Ordinance Changes are Not Exempt from CEQA.**

The staff report acknowledges that the Proposed Amendments constitute a “project” that must be evaluated for compliance with CEQA. (Pub. Resources Code, div. 13 §§ 21000-21178) and the state CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000-15387). The California Supreme Court has stated in the context of a proposed ordinance change that “. . . a proposed activity is a CEQA project if, by its general nature, the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. This determination is made without considering whether, under the specific circumstances in which the proposed activity will be carried out, these potential effects will actually occur. Consistent with this standard, a “reasonably foreseeable” indirect physical change is one that the activity is capable, at least in theory, of causing. (Citation omitted.) Conversely, an indirect effect is not reasonably foreseeable if there is no causal connection between the proposed activity and the suggested environmental change or if the postulated causal mechanism connecting the activity and the effect is so attenuated as to be “speculative.” (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal 5<sup>th</sup> 1171, 1197.)

The County has attempted to avoid conducting a CEQA analysis of the Proposed Amendments by asserting that County staff has determined that adoption of the Proposed 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.” However, a new regulation that strengthens some environmental requirements may not be entitled to an exemption if the new requirements could result in other potentially significant effects. (See *California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist.* (2009) 178 Cal.App.4th 1225, 1240.) In the *California Unions* case, the agency found exempt from CEQA a new rule regarding the use of road paving as a mitigation measure to offset fugitive dust emissions. The Court of Appeal overturned the exemption because newly-paved roads could lead to adverse environmental impacts from increased vehicle emissions. The Court of Appeal noted that the agency “failed to show that those effects would be either de minimis or too speculative to analyze.”

The Proposed Amendments do not qualify for the section 15308 exemption because they will adversely impact the environment both directly and indirectly. Public Resources Code § 21060.5 defines

the “environment” to mean “the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, **minerals**, flora, fauna, noise, or objects of historic or aesthetic significance”. (Emphasis added.) Requiring holders of SUPs and CUPs deemed “antiquated” by the County to obtain discretionary approval under more restrictive conditions will obviously have a negative impact on the ability to produce minerals which is a direct impact on the environment. Further, as I noted earlier, it is reasonably foreseeable that an indirect physical change in the environment will occur as the County’s preference for imported foreign oil over locally produced, environmentally cleaner oil will result in greater amounts of Greenhouse Gases being produced to the detriment of the environment. I have provided substantial evidence that ABA has many millions of barrels to produce in additional wells and there is more than a reasonable probability that such wells will not be drilled due to the antipathy of local politicians toward the oil and gas industry as evidenced by their on the record comments in public meetings. These millions of barrels of oil will be replaced by imported oil that contains a higher Carbon Intensity, as determined by CARB, and the transportation of such oil will also result in an increase in air emissions including Greenhouse gases.

Because the passage of the Proposed Amendments will cause both a direct and a reasonably foreseeable indirect physical change in the environment and no exemption is applicable, the County must conduct a CEQA analysis of the direct and reasonably foreseeable indirect impacts of the Proposed Amendments.

### **The Proposed Amendments Would Result in a Wrongful Taking of ABA’s Vested Rights.**

In 2014, County Counsel for the County of Ventura specifically addressed the issue of vested rights and “antiquated permits” in an 8-page memorandum, a copy of which is attached hereto as Exhibit B which is incorporated herein by reference. This thorough and thoughtful legal analysis considered the County’s authority, or lack thereof, to impose new conditions on existing oil and gas operations subject to an existing SUP/CUP. Without reciting the full legal authority and citations here, it is enough to note County Counsel’s conclusion that “vested rights cannot be terminated or impaired by ordinary police power regulations, and can be revoked or impaired (such as by new conditions imposed by a county) only to serve a “compelling state interest,” such as a harm, danger or menace to public health and safety or public nuisance, and that the government’s interference with the vested right be narrowly tailored to address the compelling interest and its magnitude.”

Rather than cite any actionable harm, danger or menace to public health and safety or public nuisance, the County seeks to terminate the vested rights of property owners such as ABA because it would be more convenient for staff in conducting their reviews of Zoning Clearances as new CUPs have different, and more restrictive, conditions than the “antiquated” permits and the County believes, without substantial evidence, that all the minerals should have been produced already. As noted above, in ABA’s case, the original well drilled pursuant to SUP #672 in 1958 is still producing and in the last ten years of development, ABA has discovered additional resources that will require the drilling of additional wells in order to properly recover the natural resources.

Ventura County’s current legal analysis to justify the proposed taking of vested rights is a complete about face as it now asserts that it can simply disregard the vested property rights of mineral rights owners based on its flawed analysis of *Avco Community Developers, Inc. v. South Coast Regional Commission*, (1976) 17 Cal.3d 785 “Avco”). With respect to *Avco*, the current County Counsel’s revised thinking on the

matter is that vested rights only attach to specific development proposals. Such a position by the County disregards two critical legal points concerning vested rights. First, subsequent case law has clearly concluded that the doctrine of vested rights applies to use permits and the activities authorized thereunder. Second, while the *Avco* case provides a general discussion of vested rights in the context of residential development projects, the relevant legal authority when dealing with a vested right to extract minerals is *Hansen Brothers Enterprises v. Board of Supervisors*, (1996) 12 Cal.4th 533 ("Hansen").

Post-*Avco* decisions have held that use permits confer vested rights. *HPT IHG-2 Properties Tr. v. City of Anaheim* (2015) 243 Cal. App. 4th 188, 199 (where a CUP has been issued and the landowner has relied on it to its detriment, the landowner has a vested right.); see also *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 367. The scope of the vested rights is the scope of activity authorized under the permit. *Santa Monica Pines, Ltd. v. Rent Control Bd.* (1984) 35Cal.3d 858, 865.

**The *Hansen* Decision, Not the *Avco* Decision, Governs Vested Rights in the Context of Mineral Extraction.**

In *Avco*, a housing developer sought to establish a vested right to complete a residential project for which it never obtained any permits for the buildings it wished to construct and sell to the public. Oil and gas operations involve ongoing working operations such that, by their nature, wells and facilities will need to be located and relocated, re-drilled and deepened from time to time over the course of many years as the extraction of the oil and gas is a diminishing asset and facilities for extraction must be deployed so as to access the reserves as they are depleted at various locations on the affected property. California law regarding vested rights for diminishing assets is different from the vesting concepts set forth in *Avco*, as the California Supreme Court confirmed in the *Hansen* decision. In that case, the Supreme Court made the point that mineral extraction uses, unlike uses that operate within an existing structure or boundary, anticipate the extension of extraction activities into other areas of the property that were not being exploited at the time a subsequent zoning change is proposed. The *Hansen* Court stated:

"The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed. A mineral extractive operation is susceptible of use and has value only in the place where the resources are found, and once the minerals are extracted it cannot again be used for that purpose." (*Hansen supra* 12 Cal.4th at 553-554.)

In order to circumvent these fundamental rules governing property ownership, the County's current staff report now asserts that "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." (Staff Report for PL20-0052 at p. 8.) Based on this novel interpretation of the vested rights doctrine, the new staff report asserts that holders of the "antiquated permits" do not "typically" have vested rights for new oil and gas development because these permits do not specifically identify the new wells or other structures that will be allowed under the permit. County's position ignores the foregoing legal precedent, and is further extremely suspect in light of: (1) County's Counsel's very own 2014 legal assessment of vested rights, which patently contradicts County's staff report; and (2) the County's historical practices regarding oil and gas

operations within its jurisdiction and specifically in the case of SUP #672, wherein County has repeatedly confirmed the validity of the special use permit time-and-time again within the last ten years.

Courts have recognized that conditional use permits may form the basis for a vested right so long as it is the final discretionary permit to be issued by the government agency. *Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach*, (2001) 86 Cal.App.4th 534, 552 (holding that “no right to develop vests until all final discretionary permits have been authorized and significant “hard costs” have been expended in reliance on those permits—that is, until substantial construction has occurred in reliance on a building permit”). Where a permit allows for the continued drilling for and extraction of oil, the County has no basis to impose new discretionary permit requirements for certain components of the previously permitted activity. As recognized by County Counsel in its 2014 legal memorandum, “for purposes of analyzing the scope of a vested right to operate a business, a business cannot be broken down into components and vested rights recognized for less than the entire business operation.” (Exhibit B, quoting *Hansen Bros. Enters. v. Bd. of Supervisors*, supra at 566, (indicating that there is “no authority for refusing to recognize a vested right to continue a component of a business that itself has a vested right to continue using the land on which it is located for operation of the business”).

### **The Principle of Equitable Estoppel Precludes the County from Changing the Rules Mid-Development.**

In ABA’s case the County Board of supervisors issued a final discretionary permit (SUP #672) and in reliance on the permit and the repeated confirmation of its validity by the County, ABA has expended millions of dollars in building and expanding the infrastructure for the oilfield it continues to develop. For this reason, ABA has a vested property right in SUP#672 which the County now seeks to discard.

The equitable principle of estoppel prohibits a governmental entity from exercising its regulatory power to prohibit a proposed land use when a developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive the developer of the right to complete the development as proposed. (*Patterson v. Central Coast Regional Com.* (1976) 58 Cal.App.3d 833, 844.) The theory of equitable estoppel simply recognizes that, at some point in the development process, a developer's financial expenditures in good faith reliance on the governmental entity's land use and project approvals should estop that governmental entity from changing those rules to prevent completion of the project. (*Toigo v. Town of Ross* (1998) 70 CA4th 309, 321). In the instant case ABA has been conducting oil and gas development in reliance on the rights granted in SUP #672 with the full throated and continual approval of the County for the last ten years and has invested millions in support of future development only to have County now assert, without substantial evidence or valid reason, that it will change the rules mid-development to the financial detriment of ABA and the associated mineral owners who have a vested interest in the minerals affected thereby. The Proposed Amendments must be denied as the County is equitably estopped from changing the rules mid-development.

### **Ventura County’s Effort to Invalidate Existing Special Use Permits Violates the Law**

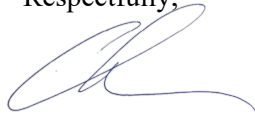
The Proposed Amendments have as their direct and indirect goal, the elimination of oil and gas exploration and production in Ventura County. These proposed changes, as described herein, affecting new oil and gas wells are infeasible in that they will result in a ban on new drilling and cannot be lawfully implemented, which conduct by the County is preempted by state and federal law, is unconstitutional under

Ventura County Planning Commission  
July 29, 2020  
Page 11

both the California and United States Constitutions, violates equal protection under the law, is discriminatory as a matter of law, is an abuse of discretion, and constitutes a taking. ABA reserves all of its rights to pursue every available remedy resulting from the attempt by Ventura County to strip it of its vested property interest in SUP #672 and otherwise ban future oil and gas exploration and production in Ventura County.

ABA hereby adopts and relies upon the comments in opposition to the Proposed Amendments contained in comment letters filed on behalf of all other oil and gas producers and oil industry associations that have provided comment letters as though such comments are fully set forth herein and as such they are incorporated herein by reference.

Respectfully,

A handwritten signature in blue ink, appearing to read 'A. Adler', with a stylized flourish at the end.

Alan B. Adler, President

Enclosures



EXHIBIT A  
TO COMMENT LETTER OF ABA ENERGY CORPORATION 07/29/2020

1.8.672

GRANTING SPECIAL USE PERMIT TO TIDEWATER OIL COMPANY  
UNDER PROVISIONS OF VENTURA COUNTY ORDINANCE CODE

WHEREAS, **Tidewater Oil Company** in accordance with the provisions of Division 8 of the Ventura County Ordinance Code, did on the **2nd** day of **October**, **1977**, file ~~the~~**their** application in writing with the Ventura County Planning Commission for a **Special Use Permit** for oil and gas production on certain lands within Subdivisions 34 and 36, Rancho Colonia, located adjacent to and west of Rice Road and south of Wooley Road about 1/2 mile east of the City of Oxnard, and;

WHEREAS, proof is made to the satisfaction of this Board, and this Board finds, that notice of the hearing of said application and petition has been regularly given in accordance with the provisions of said Division 8 of the Ventura County Ordinance Code, and said application and petition having come on regularly for hearing before said Commission, and said Commission having announced its findings and made its decision after hearing the evidence presented at said hearing; and,

WHEREAS, the findings and decision of said Commission have been transmitted to this Board for its action thereon; and,

WHEREAS, the Board has considered the application and petition of the applicant and the findings and decision of said Commission thereon,

NOW, THEREFORE, upon motion of Supervisor **Ax**, seconded by Supervisor **Appleton**, and duly carried,

IT IS ORDERED AND RESOLVED, that said application and petition be approved and allowed, and that a **Special Use Permit** be, and it is hereby, issued to said applicant for the following purpose, to-wit:

SUP 672 Page 2

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 specifically mentioned in Division 9, Ventura County Ordinance Code, requiring review and Special Use Permit,

and subject to the following conditions:

1. That the permit is issued for the land as described in the application.
2. That any derrick used in connection with the drilling of a well, and all machinery or equipment used to operate such derrick, shall be enclosed with fire-resistant and sound-proofing material, whenever such well or derrick is located within five hundred (500) feet of any dwelling not owned by the lessor or lessee.
3. That the use and purpose for which this permit is issued shall conform in all respects to the regulations and requirements of the California State Regional Water Pollution Control Board No. 4.
4. That no earthen sumps shall be constructed or maintained within 500 feet of any natural channel in which there is, or may be, flowing water.
5. That all oil drilling and production operations shall be conducted in such a manner as to eliminate, as far as practicable, dust, noise, vibration or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for and the production of oil, gas, and other hydrocarbon substances. Where economically feasible and where generally accepted and used, proven technological improvements in drilling and production methods shall be adopted as they may become from time to time, available, if capable of reducing factors of nuisance and annoyance.
6. That within ninety (90) days after the drilling of each well has been completed, and said well placed on production, the derrick, all boilers and all other drilling equipment shall be entirely removed from the premises unless such derrick and appurtenant equipment is to be used within a reasonable time limit determined by the Ventura County Planning Commission and the Board of Supervisors for the drilling of another well on the same premises.
7. That all sumps, or debris basins, or any depressions, ravines, gullies, barrancas or the like, which are used or may be used for the impounding or depositing of water, mud, oil, or any other fluid, semi-fluid, or any combination thereof, shall be fenced; when located more than one-half (1/2) mile from any school, playground or dwelling shall be entirely enclosed by a cattle fence in accordance with specifications adopted by the Planning Commission on January 11, 1954; and when located within one-half (1/2) mile of any school, playground or dwelling shall be entirely enclosed by a wire fence in accordance with specifications adopted by the Planning Commission on December 14, 1953.
8. That all water, mud, oil, or any other fluid, semi-fluid, or any combination thereof, which is removed from the limits of the land for which a Special Use Permit is issued for the purpose of disposal as waste material, shall only be deposited in an approved disposal site. If such disposal is done by other than the permittee, the permittee shall inform the hauling or disposal contractor or agent of the requirements of this condition.
9. That no wells shall be drilled within 150 feet of the centerline of the right of way of any public road, street or highway and that no permanent buildings or structures shall be erected within 100 feet of the centerline of any public road, street or highway.
10. That the permittee shall at all times comply with the provisions of Section 3220 and Section 3221 of the Public Resources Code of the State of California, relating to the protection of underground water supply.
11. That the permittee shall at all times comply with the provisions of Chapter 3, Article 3600, Public Resources Code of the State of California, regarding the proper location of wells in reference to boundaries and public streets, roads or highways.
12. That upon abandonment of any well or when drilling operations cease, all earthen sumps or other depressions containing drilling mud, oil or

EXHIBIT A  
TO COMMENT LETTER OF ABA ENERGY CORPORATION 07/29/2020

other waste products from the drilling operation shall be cleaned up by removing such waste products or by consolidating all mud, oil or other waste products into the land by disking, harrowing and leveling to restore the land to the condition existing prior to the issuance of this permit as nearly as practicable so to do.

13. That the permittee shall comply with all conditions of the Ventura County Ordinance Code applicable to this permit.

THIS IS TO CERTIFY that the foregoing is a full, true and correct copy of the resolution or order adopted by the Board of Supervisors of Ventura County, California, on the 5th day of Nov, 1957, a majority of the members being present and voting for the adoption of the same.

Dated this 8th day of Nov, 1957.

L. E. HALLOWELL, County Clerk and ex-officio  
Clerk of said Board of Supervisors

By Bernice Klatt Deputy

Copies to:  
Tidewater Oil Co.  
Planning  
Calif.Reg.Water Pollution Control Board  
United Water Conservation Dist  
Calleguas Soil Conservation Dist.  
File (2)  
Item 6D  
11/5/57

Appl. No. 672  
File 601 12

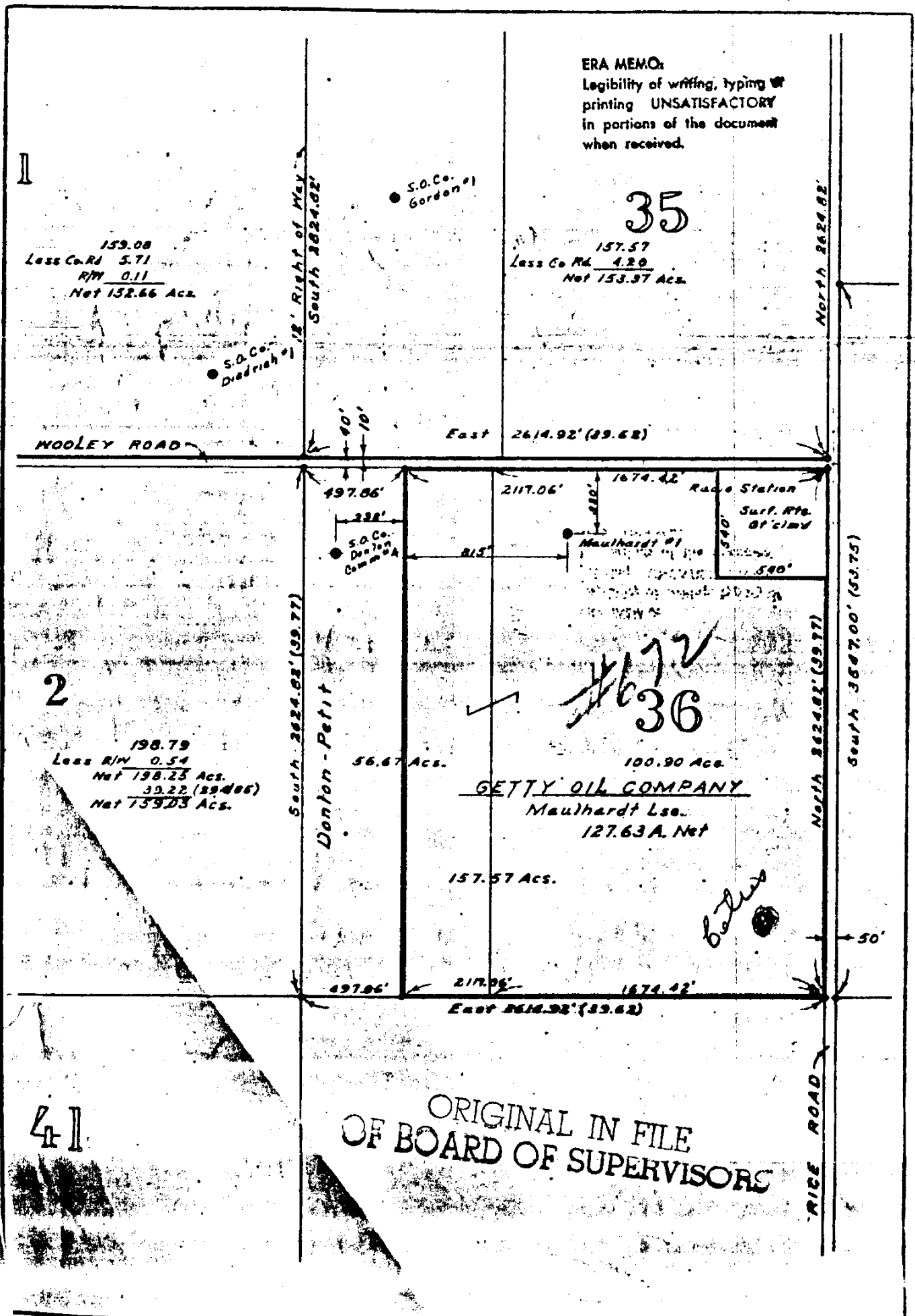


EXHIBIT A  
TO COMMENT LETTER OF ABA ENERGY CORPORATION 07/29/2020

02

APPLICATION FOR SPECIAL USE PERMIT  
(to be filed in duplicate with filing fee of \$25.00)

TO THE VENTURA COUNTY PLANNING COMMISSION:  
56 North California Street, Ventura, California.

The applicant, being the owner/lessee of the land described below, requests a Special Use Permit, in accordance with provisions of Division 8, Ventura County Ordinance Code, for the use of said land for the purposes described herein or on attachments hereto:

Name of Applicant TIDEWATER OIL COMPANY  
Operator for Getty Oil Company

Address P. O. Box 811, Ventura, California

Name of owner of land Gustave H. Maulhardt and Evelyn  
M. Maulhardt

Address 1557 Rice Road, Oxnard, California

NO. 672

RECEIVED

DEC 2 1957  
VENTURA COUNTY  
PLANNING COMMISSION

Zone: A-1

Area: Oxnard

Inspected: 10/14/57

By: C. E. Gien

Location of land All of Subdivision 36 and part of Subdivision 34 of Rancho El Rio  
de Santa Clara O'La Colonia, in Ventura County, California. Please refer to attached  
map and legal description.

An exact legal description of the land involved and a map or plot plan showing the land described and all other land located within 300 feet of the exterior boundaries of the land involved is attached hereto and made a part of this application.

Land was acquired by present owner on \_\_\_\_\_ 19\_\_\_\_ and has the following deed restrictions affecting the use thereof \_\_\_\_\_

\_\_\_\_\_ which expire on \_\_\_\_\_ 19\_\_\_\_

Present use of subject land: Agriculture

The Special Use Permit is requested for the use of subject land for the following purposes: To drill a well for oil and/or gas to be designated as Maulhardt #1

ERA MEMO:  
Legibility of writing, typing or  
printing UNSATISFACTORY  
in portions of the document  
when received.

(A comprehensive statement will facilitate action upon this application.)  
(Attach properly identified additional sheets if required)

The applicant, or representative, has discussed this matter with the staff of the Planning Commission; has read the Ventura County Ordinance Code, or such portions as concern this application; and is aware of the requirements and conditions thereof.

See sheet No. 2

PC 11A; 7-54-500 trip. sets

ORIGINAL IN FILE  
OF BOARD OF SUPERVISORS

Special Use Permit

Application No. 672

Sheet No. 2

The following information is submitted for consideration and, in the opinion of the applicant, indicates that this application conforms to the intent and purpose of Ventura County Ordinance Code.

The drilling of a development well at this location and its production  
of oil and/or gas will in no way create a public nuisance. Fresh water sands  
will be protected by cement as required by Division of Oil and Gas.

(Explain briefly why this land is especially adapted to the uses intended; what effect, if any, such uses will have upon surrounding property or improvements; exceptional or extraordinary circumstances applicable to the land involved or to the intended use, etc.)

Where applicable, a favorable statement from adjacent property owners may assist in facilitating action upon this application.

## A F F I D A V I T

County of Ventura )  
 State of California ) ss.

ERA MEMO

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 printing UNSATISFACTORY  
 in portions of the document  
 when received.

I, G. O. Suman, being duly sworn, depose and say that I am the owner/lessee, or representative thereof, of land involved in this application and that the foregoing statements herein contained and the information herewith submitted are in all respects true and correct to the best of my knowledge and belief, and further affirm that the applicant or those whom the applicant represents, has the right either as owner or lessee, to develop the land described in the application for the purpose stated therein.

Signed G. O. Suman

District Supt.

Telephone Miller 3-2154

Mailing Address

Tidewater Oil Company

P. O. Box 811

Ventura, California

City

State

Subscribed and sworn to before me this 2<sup>nd</sup> day of October 1957

A. Gayle Caldwell  
 Notary Public

My Commission Expires January 4, 1961

Applicant not to write in this space

Application No. 672 Filed Oct. 2, 1957

Receipt No. 4672 Fee \$ 25.00 Received Oct. 2, 1957

Filing Fee deposited with County Treasurer

on OCTOBER 29, 1957

T. R. 3947

[Signature]  
 Secretary  
 Ventura County Planning Commission.

PC 11B; 7-54-500 sets in triplicate

VENTURA COUNTY PLANNING COMMISSION

Meeting of October 28, 1957

ERA MEMO:  
Legibility of writing, typing or  
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in portions of the document  
when received.

RESOLUTION NO. 1362

RECOMMENDING GRANTING SPECIAL USE PERMIT TO TIDEWATER OIL COMPANY (APPLIC. NO. 672) IN ACCORDANCE WITH VENTURA COUNTY ORDINANCE CODE, FOR THE PRODUCTION OF OIL AND GAS ON LAND LOCATED ABOUT 1/2 MILE EAST OF THE CITY OF OXNARD.

WHEREAS, in accordance with the provisions of Ventura County Ordinance Code, an application was filed October 2, 1957, by Tidewater Oil Company, Ventura, California, for a Special Use Permit for oil and gas production on certain lands within Subdivisions 34 and 36, Rancho Colonia, located adjacent to and west of Rice Road and south of Wooley Road, about 1/2 mile east of the City of Oxnard, as set forth in legal description attached to said application and shown on the map attached thereto, and

WHEREAS, a public hearing on this matter was held by the Planning Commission at Oxnard, California, on October 22, 1957, and notice of said public hearing was published, pursuant to law, as shown by affidavit of publication and notices have been mailed or posted as shown by certificate of public notice as filed with this application, therefore be it

RESOLVED, that as a result of investigation caused to be made by the Planning Commission and testimony given at the public hearing, the Commission finds as follows:

1. That the land involved is located adjacent to and west of Rice Road and adjacent to and south of Wooley Road, about 1/2 mile east of the City of Oxnard, is in a level area, and is generally unimproved and being used for citrus production and row crops.
2. That the land involved is located in an area which is remote from any intensive residential use and adjacent to an oil producing area for which Special Use Permits have been previously granted.
3. That the land involved is located in the "A-1" Agricultural (unrestricted) Zone.
4. That under certain conditions stated hereafter, the production of oil and gas would not constitute any material detriment to existing or probable surface uses of other lands in the same zone and vicinity, and it is

FURTHER RESOLVED, that the Ventura County Planning Commission finds and declares that under the conditions cited herein, the granting of the Special Use Permit would conform to the general purpose of Division 8, Ventura County Ordinance Code, and therefore recommends to the Honorable Board of Supervisors that the permit be granted for the following purposes:

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 specifically mentioned in Division 8, Ventura County Ordinance Code, requiring review and Special Use Permit,

and subject to the following conditions:

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OF BOARD OF SUPERVISORS

ERA MEMO:  
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in portions of the document  
when received.

RESOLUTION NO. 1362 - Page 2

1. That the permit is issued for the land as described in the application.
2. That any derrick used in connection with the drilling of a well, and all machinery or equipment used to operate such derrick, shall be enclosed with fire-resistant and sound-proofing material, whenever such well or derrick is located within five hundred (500) feet of any dwelling not owned by the lessor or lessee.
3. That the use and purpose for which this permit is issued shall conform in all respects to the regulations and requirements of the California State Regional Water Pollution Control Board No. 4.
4. That no earthen sumps shall be constructed or maintained within 500 feet of any natural channel in which there is, or may be, flowing water.
5. That all oil drilling and production operations shall be conducted in such a manner as to eliminate, as far as practicable, dust, noise, vibration or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for and the production of oil, gas, and other hydrocarbon substances. Where economically feasible and where generally accepted and used, proven technological improvements in drilling and production methods shall be adopted as they may become from time to time, available, if capable of reducing factors of nuisance and annoyance.
6. That within ninety (90) days after the drilling of each well has been completed, and said well placed on production, the derrick, all boilers and all other drilling equipment shall be entirely removed from the premises unless such derrick and appurtenant equipment is to be used within a reasonable time limit determined by the Ventura County Planning Commission and the Board of Supervisors for the drilling of another well on the same premises.
7. That all sumps, or debris basins, or any depressions, ravines, gullies, barrancas or the like, which are used or may be used for the impounding or depositing of water, mud, oil, or any other fluid, semi-fluid, or any combination thereof, shall be fenced; when located more than one-half (1/2) mile from any school, playground or dwelling shall be entirely enclosed by a cattle fence in accordance with specifications adopted by the Planning Commission on January 11, 1954; and when located within one-half (1/2) mile of any school, playground or dwelling shall be entirely enclosed by a wire fence in accordance with specifications adopted by the Planning Commission on December 14, 1953.
8. That all water, mud, oil, or any other fluid, semi-fluid, or any combination thereof, which is removed from the limits of the land for which a Special Use Permit is issued for the purpose of disposal as waste material, shall only be deposited in an approved disposal site. If such disposal is done by other than the permittee, the permittee shall inform the hauling or disposal contractor or agent of the requirements of this condition.
9. That no wells shall be drilled within 150 feet of the centerline of the right of way of any public road, street or highway and that no permanent buildings or structures shall be erected within 100 feet of the centerline of any public road, street or highway.
10. That the permittee shall at all times comply with the provisions of Section 3220 and Section 3221 of the Public Resources Code of the State of California, relating to the protection of underground water supply.
11. That the permittee shall at all times comply with the provisions of Chapter 3, Article 3600, Public Resources Code of the State of California, regarding the proper location of wells in reference to boundaries and public streets, roads or highways.
12. That upon abandonment of any well or when drilling operations cease, all earthen sumps or other depressions containing drilling mud, oil or



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RESOLUTION NO. 1362 - Page 3

other waste products from the drilling operation shall be cleaned up by removing such waste products or by consolidating all mud, oil or other waste products into the land by disking, harrowing and leveling to restore the land to the condition existing prior to the issuance of this permit as nearly as practicable so to do.

13. That the permittee shall comply with all conditions of the Ventura County Ordinance Code applicable to this permit.

This is to certify that the foregoing is a full, true and correct copy of Resolution No. 1362, adopted by the Planning Commission of Ventura County, California, on the 28th day of October, 1957, the required number of members being present and voting for the adoption of the resolution.

Dated this 29th day of October, 1957.

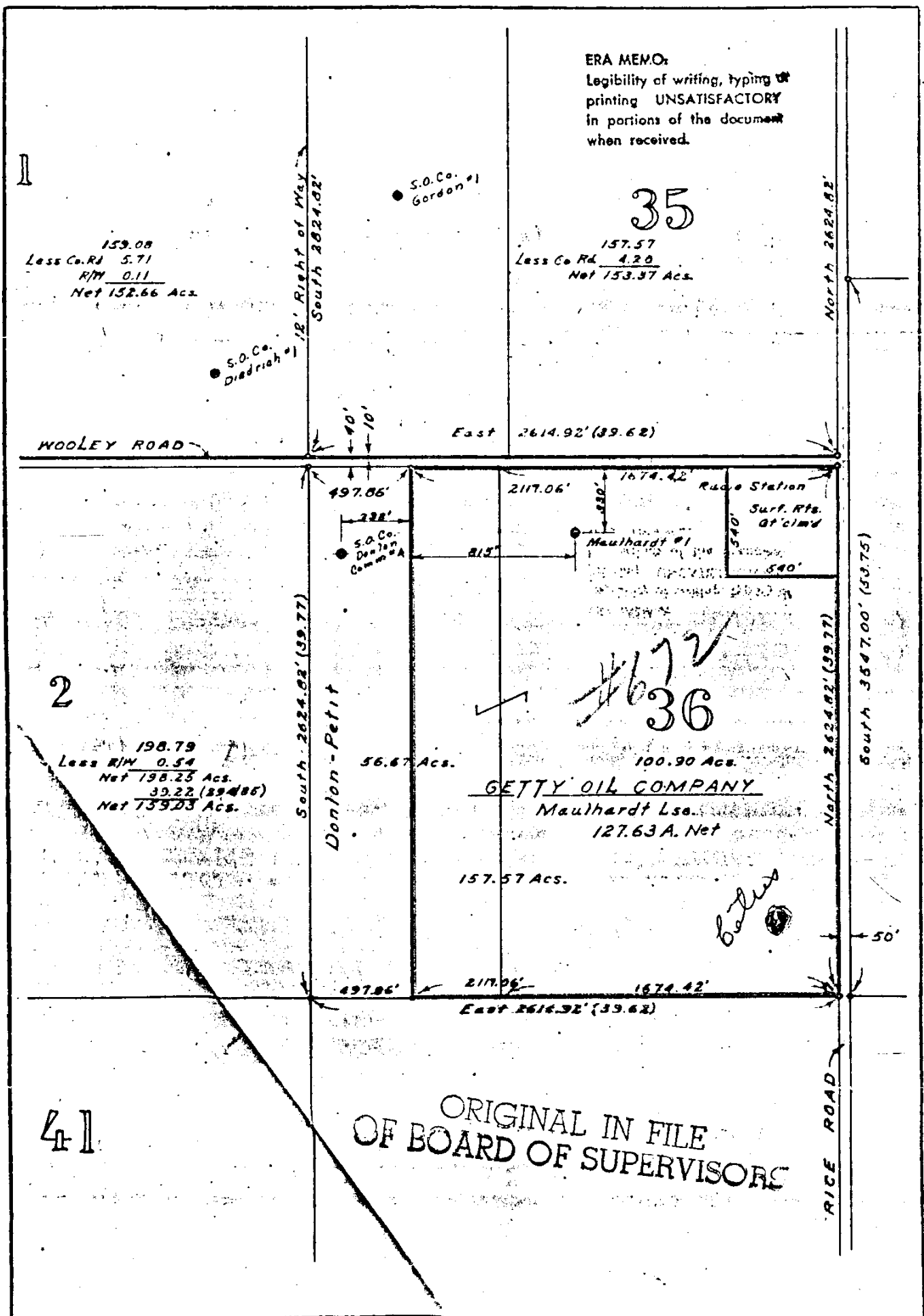
  
L. J. BORSTELMANN, Secretary

cc to:

Tidewater Oil Company  
Commissioner Sweetland  
Supervisor Carty  
Board of Supervisors  
County Surveyor  
County Health Officer  
County Fire Warden  
City of Oxnard  
Calif. Regional Water Pollution Control Board  
United Water Conservation District  
Calleguas Soil Conservation District

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when received.

Appl. No. 672  
416 10/21  
12



TIDE WATER ASSOCIATED OIL CO.

SKETCH OF GETTY OIL CO's. Maulhardt Lease #3257  
Oxnard District, Ventura County, Calif.  
showing location of proposed Maulhardt Well #1

SCALE 1" = 600' = 1 FOOT  
DATE October 2, 1957  
FILE NO. V-01A-695

**MEMORANDUM  
COUNTY OF VENTURA  
COUNTY COUNSEL'S OFFICE**

**LEGAL ANALYSIS OF ANTIQUATED OILFIELD  
CONDITIONAL USE PERMITS**

The County of Ventura's ("County") ability to impose new conditions on antiquated oilfield permits is very limited. Because of the vested rights doctrine and constitutional protections afforded these permits, the County can impose new, narrowly tailored conditions on these permits only when a compelling public necessity, such as danger, harm or public nuisance, or significant violations exist, and not through an ordinary exercise of the police power for the general welfare.

If an antiquated oilfield permit contains open-ended conditions that allow for future requirements or modifications to the permit, the permit language might provide a limited basis for new conditions based on the terms of the permit. Older permits do not contain such language, and imposition of new conditions under this theory would require detailed analysis of each permit's terms and the conditions sought.

**ANALYSIS**

**A. BACKGROUND**

The drilling of wells for oil and gas production has been continuously subject to a permit from the County since the adoption of the County's first zoning ordinance in 1947. (Ventura Co. Ord. No. 412, §16 II.10., adopted March 18, 1947.)

Over time, the zoning ordinance has become more stringent in its regulation of oil and gas exploration and production and the conditions imposed on use permits have become more stringent. The language authorizing the oil and gas exploration and production use in permits, as well as conditions on the permits, vary greatly depending on when the use permit was first issued or later modified at the permittee's request.

The County's ordinance provisions for oil permits must be interpreted in a manner consistent with constitutional requirements, as analyzed below.

**B. VESTED RIGHTS AND PERMIT MODIFICATIONS**

A county may, under its police power, impose new requirements on an antiquated oilfield conditional use permit when a modification to the permit is sought by the

Page 2

permittee. In such instances a county has broad powers to apply new modern conditions to a permittee-initiated request, subject to principles of reasonable relationship, essential nexus, rough proportionality and preemption. (See Gov. Code, § 65909; *Nollan v. California Coastal Com'n* (1987) 483 U.S. 825 [107 S.Ct. 3141]; *Dolan v. City of Tigard* (1994) 512 U.S. 374 [114 S.Ct. 2309]; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1618-1624.)

Vested rights limit the power of a county to impose new, more restrictive zoning regulations, new conditions and other use limitations on a property owner after a certain point in the approval process or after actual development has occurred. (See *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1179 [holding that zoning moratorium may operate retroactively to require denial of pending applications or nullify permits issued but not utilized, but may not operate retroactively to divest permittee of vested rights previously acquired].)

In *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, the California Supreme Court stated the vested rights doctrine as applied to land use as follows:

“[I]f a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. [Citations.] Once a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he relied.” (*Id.* at p. 791.)

The vested rights doctrine protects a permit holder’s right not only to construct, but also to use the premises as authorized by the permit. (*County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 691.) Also, for purposes of analyzing the scope of a vested right to operate a business, a business cannot be broken down into components and vested rights recognized for less than the entire business operation. (See *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 565-566 [indicating there is “no authority for refusing to recognize a vested right to continue a component of a business that itself has a vested right to continue using the land on which it is located for operation of the business.”].)

The vested rights rule is grounded upon the constitutional principle that a vested right is a property right which may not be taken without due process of law or just

Page 3

compensation. (*Urban Renewal Agency v. California Coastal Zone Conservation Com.* (1975) 15 Cal.3d 577, 583-584.) When a conditional use permit has been issued and then relied upon by the permittee, giving rise to a vested right, the permit becomes immunized from impairment or revocation by subsequent government action. This rule is subject to the qualification that such a vested right, while immune from divestment through ordinary police power regulations, may be impaired or revoked if the use authorized or conducted under the permit constitutes a menace to public health and safety or a public nuisance. (*Highland Development Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 169, 186.) Thus, a vested right creates a property right in the permit holder which cannot be terminated or impaired by the imposition of new conditions *at all*, unless constitutional requirements addressing the permittee's rights of due process are met. (See *Washington v. Glucksberg* (1997) 521 U.S. 702, 721-722 [117 S.Ct. 2258]; *Kerley Industries, Inc. v. Pima County* (9th Cir. 1986) 785 F.2d 1444, 1446.)

There are both procedural and substantive due process constitutional requirements that apply to governmental interference with such rights. The procedural requirements include notice to the permittee, a hearing on the termination of the permit or impairment of the permit through modified conditions, findings based on evidence received at the hearing and a decision based on the findings. (See *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal.App.2d 776, 797; *Topanga Assn. For a Scenic Community* (1974) 11 Cal.3d 506, 511.)<sup>1/</sup> The substantive due process requirements are that vested rights cannot be terminated or impaired by ordinary police power regulations, and can be revoked or impaired (such as by new conditions imposed by a county) *only* to serve a "compelling state interest," such as a harm, danger or menace to public health and safety or public nuisance, and that the government's interference with the vested right be

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<sup>1/</sup> "The fourteenth amendment to the constitution of the United States provides that no person shall be deprived of life, liberty, or property, without due process of law. Article I, Section 1, of the constitution of California, provides that all men have certain inalienable rights, among them being those of enjoying liberty and possessing and protecting property, and section 13 thereof provides that no person shall be deprived of life, liberty, or property, without due process of law. The deprivation of such right without due process of law would be a violation of these provisions. The meaning of this is that no one can be deprived thereof without notice and an opportunity for a hearing before some tribunal authorized to determine the question. . . ." (*Trans-Oceanic Oil Corp. v. Santa Barbara*, *supra*, 85 Cal.App.2d at p. 796.)

Page 4

narrowly tailored to address the compelling interest and its magnitude. (See *Washington v. Glucksberg*, *supra*, 521 U.S. at p. 721.)

These principles are best explained by the two following cases.

In *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639 (“*Davidson*”), the court addressed an attempt by the county to impose a new 650-foot setback requirement on a property owner that had a vested right to a building permit for a crematorium without the new setback. The court explained that:

“Vested rights, of course, may be impaired ‘with due process of law’ . . .” (*Davidson*, *supra*, 49 Cal.App.4th at p. 648.)

“The vested rights doctrine in the land use context ‘is subject . . . to the qualification that such a vested right, *while immune from divestment through ordinary police power regulations, may be impaired or revoked if the use authorized or conducted thereunder constitutes a menace to the public health and safety or a public nuisance.* [Citations.]’ (*Highland Development Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 169, 186 [ ] (italics added), disapproved on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11 [ ].) Public welfare demands may even require the complete destruction of vested property rights. (*Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80 [ ].)” (*Davidson*, *supra*, at p. 649.)

“The constitutional question, on principle, therefore, would seem to be, not whether a vested right is impaired [by a change in the law], but whether such a change reasonably could be believed to be sufficiently necessary to the public welfare as to justify the impairment.” (*Davidson*, *supra*, at p. 649.)

“Probably the single most important factor to be considered in determining whether a particular impairment is constitutionally permissible is the nature and extent of the impairment. “The severity of the impairment measures the height of the hurdle the . . . legislation must clear.” ’ [Citations.] Other important factors to be considered are the nature, importance and urgency of the interest to be served by the challenged legislation; and whether the legislation was appropriately tailored and limited to the situation necessitating its enactment. [Citations.]” (*Davidson*, *supra*, at p. 649.)

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The court concluded that, while the usual exercises of the police power in the land use context are not so directly related to danger or potential danger to the health and safety (such as down-zoning of uses, lot densities and height requirements) to be applied to the property owner's permit, it was conceivable that the 650-foot setback requirement could be applied to the crematorium project, but only if the county could demonstrate that such a setback was necessary to prevent the operation of the crematorium from being a danger or nuisance to the public. (*Davidson, supra*, at p. 650.)

Similarly, in *O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151, ("O'Hagen"), the court reviewed a city's revocation of a use permit for the operation of a drive-in restaurant for which the permittee held a vested right under an ordinance which allowed revocation of permits "for violation of conditions and other good cause upon notice and hearing." The court stated that:

"Once a use permit has been properly issued the power of a municipality to revoke it is limited. (*Trans-Oceanic Oil Corp. v. Santa Barbara [supra]*, 85 Cal.App.2d [at p.] 783 [ ].) Of course, if the permittee does nothing beyond obtaining the permit it may be revoked. (*Trans-Oceanic Oil Corp. v. Santa Barbara, supra*.) Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled. (*Trans-Oceanic Oil Corp. v. Santa Barbara, supra*, at pp. 784-787; *Dobbins v. Los Angeles* [(1904)] 195 U.S. 223, 239 [[ ] 25 S.Ct. 18]; *Jones v. City of Los Angeles* [(1930)] 211 Cal. 304, 309-312 [ ]; see *Brougher v. Board of Public Works* [(1928)] 205 Cal. 426, 433-434 [ ].) When a permittee has acquired such a vested right it may be revoked if the permittee fails to comply with reasonable terms or conditions expressed in the permit granted (*Trans-Oceanic Oil Corp. v. Santa Barbara, supra*, at p. 783; *Brougher v. Board of Public Works, supra*, at p. 433) or if there is a compelling public necessity. (*Jones v. City of Los Angeles, supra*, at p. 314; see *Lawton v. Steele* [(1894)] 152 U.S. 133, 137 [[ ] 14 S.Ct. 499]."

(*O'Hagen, supra*, 19 Cal.App.3d at p. 158, italics added.)

The court further explained that procedurally:

"The constitutional requirements are met with respect to the right of revocation for good cause when notice is given to the licensee or permittee of the charges made against him and he has been given an opportunity to be heard in his defense." (*O'Hagen, supra*, at p. 160.)

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And that substantively:

“[I]n order to justify the interference with the constitutional right to carry on a lawful business it must appear that the interests of the public generally require such interference and that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. (*Lawton v. Steele, supra*, 152 U.S. [at p.] 137 [ ].)

As observed in *Lawton*, ‘The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations.’ (At p. 137 [ ]; see *Dobbins v. Los Angeles, supra*, 195 U.S. [at p.] 236 [ ].)” (*O’Hagen, supra*, at p. 159.)

“In the present case we perceive that since plaintiff acquired a vested right in the use permit we must equate the term ‘good cause’ with ‘compelling public necessity.’ Such ‘compelling public necessity,’ in turn, must be viewed in the context of a public nuisance, i.e., whether the operation of plaintiff’s drive-in restaurant constituted a public nuisance in fact. If it did constitute a nuisance in fact, our inquiry is then directed to whether there was a compelling necessity warranting the revocation of the use permit.” (*O’Hagen, supra*, at p. 161.)

The court then indicated that conditions should be imposed on the permit to eliminate any public nuisance, if possible, rather than to prohibit the business operations by revocation of the permit. (*O’Hagen, supra*, at p. 165.)

Moreover, permits subject to vested rights are afforded special judicial protection by the courts when there is judicial review of the governmental decision to impair or revoke them. Longstanding vested rights under a use permit are generally treated as creating “fundamental vested rights” to use the property in the manner specified in the conditions for purposes of judicial review. This results in the court applying an “independent judgment” standard of review, rather than the more deferential “substantial evidence” standard of review ordinarily applied to land use decisions. (See *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 368-370; *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1526.) So, after affording the government’s findings a presumption of correctness, the court may, upon reviewing the record, exercise its own judgment in making its own findings and reach a different decision from that of the government. (See *Fukuda v. City of Angels* (1999)



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20 Cal.App.4th 805, 819). Thus, these fundamental vested rights enjoy “heightened protection against government interference” under the due process clause. (*Washington v. Glucksberg, supra*, 521 U.S. at p. 720.)

Consistent with the above case law, a county must establish the facts and make its decision justifying any modification of conditions or revocation of an antiquated oilfield permit on the basis of harm, danger or menace to the public health and safety or public nuisance.

The vested right in a permit entitles a permit holder significant and heightened judicial protections from revocation, imposition of new regulations, and changes to the permit. To impose new conditions on antiquated permits, a public agency has to demonstrate that for each condition it imposed, there was a danger or menace to public health and safety or public nuisance causing public concern that was addressed by the new condition in a manner commensurate to the level of public concern. The vested rights doctrine and constitutional principles of due process prevent a county from a general exercise of its police power to add modern conditions to antiquated oilfield permits just for the sake of improving their operation for the general welfare.

In addition to the harm/nuisance qualification on the exercise of a vested right, there are other limitations to vested rights. The rights which may vest are no greater than those specifically granted by the permit and its conditions. (*Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 866; *Metropolitan Outdoor Advertising Corp. v. City of Santa Ana* (1994) 23 Cal.App.4th 1401, 1401-1404.) Accordingly, a vested right may be modified or revoked for cause if the permit holder fails to comply with the conditions in the permit. (*O’Hagen, supra*, at p. 158.)

While violation of conditions or laws do provide a basis for permit revocation or modification separate from the “danger to the public/public nuisance” basis, courts continue to apply the heightened scrutiny to the government’s actions revoking or impairing permits on the bases of noncompliance with conditions or violations of law. The court decisions indicate that where failure to comply is extensive and alternative remedies are not feasible, revocation of a permit can be justified. (See *Malibu Mountains Recreation, Inc. v. County of Los Angeles, supra*, 67 Cal.App.4th at p. 359 [involving longtime, multiple uses that violated underlying zoning ordinance and failure to engage in initially allowed use].) However, heightened scrutiny arising out of the vested right in the permit and its due process protections would require a county to “narrowly tailor” its action, and when alternative remedies can achieve compliance with permit conditions, the county would need to pursue such alternatives to revocation if feasible.

EXHIBIT B  
TO COMMENT LETTER OF ABA ENERGY CORPORATION 07/29/2020

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(See *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 391-393, fn. 5 [indicating that harsh remedy of revocation requires strictest adherence to principles of due process and that alternative remedies to revocation (such as additional conditions or controls) that achieve goal of eliminating violations ought to be pursued if feasible].)

Another qualification on the exercise of a vested right is the existence of open-ended conditions in a vested permit which contemplate future limitations. Such open-ended conditions may restrict the permit holder's vested right when those limitations are subsequently enacted.

For example, in *Russ Bldg. Partnership v. City and County of San Francisco* (1988) 44 Cal.3d 839, 846, a developer was ordered to pay a transit impact development fee enacted after the permit was issued and substantial construction had commenced, based on a permit condition that required future participation in some type of transportation funding. The post-permit issued transit development fee was found by the court to be within the scope of the condition originally imposed and was properly applied to the permittee on this basis.

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July 29, 2020

**VIA ELECTRONIC MAIL**

Ventura County Planning Commission  
800 South Victoria Avenue  
Ventura, CA 93009-1740  
[vcrma.org/divisions/planning/](http://vcrma.org/divisions/planning/)

**Re: CASE NUMBER PL20-0052 – Zoning text amendments to Article 7, Section 8107-5 of the NCZO and Article 5, Section 8175-5.7 of the CZO**

Dear Commissioners:

This letter is submitted on behalf of Aera Energy LLC (“Aera”) to the County of Ventura (“County”) in connection with July 30, 2020, Planning Commission Agenda Item No. 7, more particularly described as an application by the County of Ventura for zoning text amendments to Article 7, Section 8107-5 of the Non-Coastal Zoning Ordinance (“NCZO”) and Article 5, Section 8175-5.7 of the CZO (the “Proposed Amendments”), to modify requirements for discretionary permitting for certain new oil and gas exploration and production operations, and to address the applicability of the County’s oil development regulations, including applicability of vested rights. We ask that this letter, and the comments contained herein, be made a part of the County’s administrative record regarding this matter.

As a threshold matter, Aera submits that the County is required to postpone this hearing until such time as the public can be guaranteed a fair opportunity to participate in the decision-making process, which will not be case at the County’s “virtual” public hearing. With respect to County’s Staff Report for the Proposed Amendments (“Staff Report”), we are compelled to point out multiple legal infirmities in the County’s position regarding the applicability of the vested rights doctrine in the context of oil and gas extraction and production activities undertaken pursuant to duly issued conditional use permits (“CUP”). As set forth in detail below, we strongly disagree with the County’s novel and unsupportable self-serving position on the scope and applicability of the doctrine of vested rights to oil and gas operations in Ventura County. We further disagree with the County’s assertion that the doctrine would not prevent the County from subjecting ongoing oil and gas operations to current provisions of the NCZO and requiring the issuance of discretionary permits for any new wells not specifically identified by location and number in an active CUP, or for the re-drilling or deepening of existing wells if such re-drilling or deepening is not specifically authorized in an active CUP. Further, the County’s determination that no environmental review is required prior to the adoption of the Proposed Amendments is flawed on multiple grounds.



Finally, the County mistakenly concludes that advancing this newly developed and legally unsupported take on vested rights, as well as the Proposed Amendments flowing therefrom, will have no fiscal consequences. This is demonstrably false, as discussed more fully below. The County's pursuit of the Proposed Amendments, which is based on a flawed legal analysis, would leave industry stakeholders no choice but to bring multi-million dollar legal challenges, the costs of which would be born directly by the County and its residents.

**A. RELEVANT BACKGROUND**

Aera and its predecessors in interest have been conducting oil and gas extraction and production operations in the County for more than seventy (70) years in accordance with use permits issued pursuant to County zoning regulations enacted in the 1940s. These permits did not include any requirement for subsequent discretionary approvals and did not include any requirement that the wells within use permit boundaries be subject to location or number conditions.

**B. HOLDING ONLY A "VIRTUAL" PUBLIC HEARING AND CONSIDERING THE PROPOSED AMENDMENTS DURING THE COVID-19 PANDEMIC VIOLATES THE CONSTITUTION, THE GOVERNOR'S EXECUTIVE ORDER, AND DUE PROCESS**

As addressed above, the Proposed Amendments will deprive County property owners of their vested development and property rights, yet the Planning Commission intends to make its decision on the amendments at a "virtual" public meeting, held during the COVID-19 pandemic, wherein access to and the ability to address the decisionmakers will be *radically* compromised. The public, including those very property owners whose existing property rights will be directly limited by these amendments, will have absolutely no opportunity to address the decisionmakers in person, and instead are forced to participate only through the County's muddle, inconsistent, and inadequate procedures for "virtual" participation.

As Aera has already explained to the County in its July 15, 2020, letter to the Planning Commission regarding the Ventura County 2040 General Plan Update, neither the California Constitution, nor Executive Order N-29-20, permit the County to proceed with a virtual hearing in this instance. The California Constitution declares and guarantees the public's right to instruct their representatives, including their local governments, *and guarantees the public's right to participate in the meetings of public bodies*. (Cal. Const., art. I, § 3, subdiv. (a), (b)(1).) Governor Newsom's recent issued Executive Order N-29-20 ("EO N-29-20") provides that local governments do not have to observe "strict compliance with various statutes and regulations" if such compliance "would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic." But here there is absolutely no connection between the County's proposed amendments and the County's ability to "prevent and mitigate the effects of the COVID-19 pandemic." The County could easily postpone consideration of these

amendments until such time as the public could participate in person, as required by the Brown Act.

Further, procedural due process requires that all members of the public have a fair and meaningful opportunity to be heard. Even if the California Constitution and EO N-29-20 permitted the County to proceed virtually, remote hearing participation does not and cannot provide the same fair experience and public access as an in-person hearing. Here, the County is considering depriving property owners *of their property rights*. Those same property owners are now forced to participate in an inferior virtual hearing experience. As Aera has previously pointed out to the Planning Commission, grave technological disparities exist within Ventura County, limiting the ability of everyone to equally participate in virtual hearings.<sup>1</sup> Furthermore, for those with the access and expertise needed for virtual participation, the realities of even seemingly rote technological “hiccups” have grave consequences. Just some examples of how virtual hearings can “chill” the participation of even savvy individuals and entities include the fact that even practiced videoconference participants are likely to find it difficult, if not impossible, to process non-verbal cues like facial expressions, body language, and vocal inflections during virtual meetings. Technological glitches and transmission delays frustrate communication. Poor sound quality, poor video quality, poor lighting, and buffering and connection issues chill participation. Decisionmakers and the public alike are more than likely to find it difficult to clearly hear and respond to questions, or share screens, slides, and exhibits. Hearing transcripts are much more likely to be incorrect, incomplete, and less reliable, despite the importance and significance of a fair, clear, and correct record of proceedings in this and all administrative proceedings.

Aera’s concerns about a virtual public meeting depriving the public of due process and a fair hearing are neither speculative nor overblown. Just two weeks ago, at the County’s July 16, 2020, Planning Commission meeting wherein the County’s General Plan Update was considered, the public experienced *countless* instances of the above issues. For example, while the County required that public comments be submitted via email, the County’s email server “kicked back” an unknown number of comments as “undeliverable” prior the hearing. Worse yet, the County changed the process for submitting comments hours before the hearing; resulting in comments intended to be read aloud at the hearing not being read at all. Last minute changes by County staff in how comments would be accepted suddenly required that comments be submitted only

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<sup>1</sup> Approximately 12,000 people in Ventura County do not have access to broadband internet service at the minimum level sufficient to participate in videoconferencing, and approximately 8,000 people in the County don’t have access to any wired internet at all. (See <https://broadbandnow.com/California/Ventura>.) As recently as 2017, public officials openly lamented the lack of sufficient broadband services in the County. (See Hersko, *Local Experts Say Ventura County Needs Fast and Stable Internet*, Ventura County Star (Oct. 13, 2017) [available at: <https://www.govtech.com/computing/Local-Experts-Say-Ventura-County-Needs-Fast-And-Stable-Internet.html>].) According to the County’s own chief information officer, only marginally sufficient internet was available in the cities of Camarillo, Oxnard and Thousand Oaks, while the rest of the County had insufficient access. (*Ibid.*)



during the hours that the hearing was actually taking place, despite prior statements to the public that comments submitted earlier would also be read. There was at least one clear example of County staff mis-attributing public comments to the wrong person.

The County has given absolutely no indication that it has taken any steps to ensure these or other due process and fair hearing issues will not arise again on July 30, 2020, at the virtual hearing considering the proposed amendments. Until the County can do so, **this hearing must be postponed**. Moving forward with a virtual hearing, now, violates the California Constitution, EO-29-20, due process, and property owner rights to a fair hearing, and as such it invalidates any action the County may choose to take regarding these proposed amendments.

### C. THE COUNTY'S VESTED RIGHTS ANALYSIS IS LEGALLY FLAWED

The Staff Report prepared for the July 30, 2020 hearing relies on the seminal case of *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785 ("Avco"), and asserts that vested rights only attach to specific development proposals. The report disregards two critical legal points concerning vested rights. First, subsequent case law has clearly concluded that the doctrine of vested rights applies to use permits and the activities authorized thereunder. Second, while the *Avco* case provides a general discussion of vested rights in the context of residential development projects, the relevant legal authority when dealing with a vested right to extract minerals is *Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 533 ("Hansen"). The County conveniently disregards this decision.

Notwithstanding County Counsel's previous comments to the contrary in its September 10, 2019 opinion letter, the *Hansen* decision, not the *Avco* decision, governs vested rights in the context of mineral extraction. In *Avco*, a housing developer sought to establish a vested right to complete a residential project for which it never obtained any permits for the buildings it wished to construct. Oil and gas extraction operations, like other mineral extractions operations, do not rely on fixed buildings. To the contrary, the number and location of wells and facilities depends on the necessary access to the oil and gas resources and need to be located and relocated, re-drilled and deepened from time to time over the course of many years as the extraction of the oil and gas is a diminishing asset. Facilities for extraction must be deployed so as to access the reserves as they are depleted at various locations on the affected property. California law regarding vested rights for diminishing assets is different from the vesting concepts set forth in *Avco*, as the California Supreme Court confirmed in the *Hansen* decision. In that case, the High Court made the point that mineral extraction uses, unlike uses that operate within an existing structure or boundary, anticipate the extension of extraction activities into other areas of the property that were not being exploited at the time a subsequent zoning change is proposed. As the High Court explained:

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

(12 Cal.4<sup>th</sup> at pp. 553-554.)

While County Counsel has in the past tried to draw a distinction between the mining activities that were the subject of the *Hansen* case and oil extraction activities, no such distinction exists. Both rely on the flexibility in the employment of equipment and related facilities to extract mineral resources. While some mining activities employ surfacing mining techniques, others, similar to oil extraction, utilize surface access to underground resources through mine shafts. The County cites no cases where a distinction is made among some mining activities and oil extraction activities with respect to the application of vested rights theory regarding diminishing assets and we are aware of no such authority. The underlying theory of vested rights with respect to diminishing assets applies equally to all forms of mineral extraction. There is no basis for the distinction County Counsel has asserted in September 2019 and which is now reflected again in the Staff Report.<sup>2</sup>

The Staff Report goes on to assert an extraordinary theory as to why the general principles regarding vested rights do not apply to what the County pejoratively labels as ‘antiquated oil and gas permits.’” This implies that such permits have somehow been around for too long. These permits are in fact long established entitlements that have been exercised consistently throughout their existence as dictated by market conditions and advances in technology. The fact is that significant oil and gas reserves remain and are subject to extraction under these long standing unquestionably valid permits.<sup>3</sup> The Staff Report suggests the since the holders of the permits have had over 50 years to build out the oil and gas projects authorized under the initial approvals, that “[a]ny vested rights to construct additional new development are likely to have lapsed many years ago.” This bold assertion cannot be supported by any legal precedent regarding the application of vested rights under any theory. The vested right to extract diminishing resources such as oil and gas continues so long as the resources remain.

Finally, The County’s new position on vesting is contrary to previous opinions expressed by County Counsel in light of (1) County’s Counsel’s very own 2014 legal assessment of vested rights, which patently contradicts Counsel’s newly prepared report; and (2) the County’s historical practices regarding oil and gas operations within its jurisdiction. Moreover, the

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<sup>2</sup> We further refer the County Planning Commission to *Lynch v. State Board of Equalization* (1985) 164 Cal.App.3d. 94, 99-101, for detailed discussion as to how oil and gas interests are treated under California law, and we enclose a true and correct copy of this decision with this letter.

<sup>3</sup> See CIPA excerpts, enclosed herein.



County itself has taken a contrary position on vested rights in the draft environmental documentation for the pending general plan update asserting that certain requested mitigation measures may be infeasible as a result of vested rights held by the oil operators within the County. (See Ventura County 2040 General Plan Update Final Environmental Impact Report ["FEIR"], Master Response MR-4D and MR-4J.)<sup>4</sup>

## **D. THE PROPOSED AMENDMENTS EXHIBIT MYRIAD LEGAL DEFICIENCIES**

### **1. The Proposed Amendments Cannot Lawfully Be Implemented.**

As a preliminary matter, Aera wishes to confirm its position for the record that the Proposed Amendments cannot be lawfully implemented. The Proposed Amendments constitute an unlawful taking under the United States and California Constitutions both on its face and as applied. Simply put, adoption of the Proposed Amendments is unlawful. The Takings Clause of the U.S. Constitution, and its California counterpart, guarantee that private property shall not be taken without just compensation. U.S. Const, amend. V; Cal. Const, art I, § 19. This constitutional protection covers not only physical takings of property, but also regulatory takings. (See *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 617 ["there will be instances when government actions do not encroach upon or occupy property yet still affect and limit its use to such an extent that a taking occurs"].) "[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." (*Lucas v. S.C. Coastal Council* (1992) 505 U.S. 1003, 1014, citing *Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 415.)

The United States Supreme Court has definitively established that a land use regulation "goes too far"—amounting to a facial taking of property—where it "denies an owner economically viable use of his land." (*Lucas v. S.C. Coastal Council*, *supra*, 505 U.S. at p. 1016, citing *Agins v. City of Tiburon* (1980) 447 U.S. 255, 260.) This occurs where a regulation, by implementation alone, leaves the property owner without "substantial economic use" of the affected property. (See *Maritrans Inc. v. U.S.* (2003) 342 F.3d 1344, 1351-1352.) A facial taking analysis does not require a fact-based probe as set forth in *Penn Central Transportation Co. v. New York City*, *supra*, 438 U.S. 104. Rather, the dispositive inquiry is "whether the mere enactment of the [regulation] constitutes a taking." (*Agins v. City of Tiburon*, *supra*, 447 U.S. at p. 295, abrogated on other grounds; see also *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency* (2002) 535 U.S. 302, 318.)

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<sup>4</sup> For ease of reference, and to incorporate the County's statements therein, we have enclosed a true and correct copy of excerpts from the Ventura County 2040 General Plan Update Final Environmental Impact Report (State Clearinghouse No. #2019011026) relating to vested rights.



## **2. Many Provisions of the Proposed Amendments Are Preempted by State And Federal Regulations.**

Under California law, “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const, art. XI, § 7.) However, “[i]f otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.” (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897, citing *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885.) Local legislation conflicts with state law where it “duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.” (*Ibid.*) Local legislation is “duplicative” when it is coextensive of state law. (*Ibid.*) And local law is contradictory where it obstructs or harms state law. (*Id.* at p. 898.) Finally, local legislation enters an area that is “fully occupied” by state law when the legislature expressly or impliedly manifested intent to occupy the area. (*Ibid.*; see also *Candid Enterprises, Inc.*, *supra*, 39 Cal.3d at p. 885.)

Implied preemption exists where, *inter alia*, the subject matter of the local legislation has been (1) “so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern;” or (2) “partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action.” (*Sherman, supra*, 4 Cal.4th at p. 898; see also *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725; *N. Cal. Psychiatric Soc’y v. City of Berkeley* (1986) 178 Cal.App.3d 90, 106-07 [“if the subject matter is one of general or statewide concern, the Legislature has paramount authority; and if the Legislature has enacted general legislation covering that matter, in whole or in part, there must be a presumption that the matter has been preempted”]; *City of Santa Clara v. Von Raesfeld* (1970) 3 Cal.3d 239, 246 [where a subject is regional in scope or statewide in character, it is not a local or municipal affair].)

The regulatory processes in the Proposed Amendments are preempted by state and federal law. Consistent with its strong interest in oil and gas resources and its intent to maximize the “wise development of oil and gas resources,” California has adopted numerous statutes and regulations that comprehensively regulate virtually all aspects of oil and gas operations, including in particular all downhole activities. (See e.g., Pub. Resources Code, § 3106(d).) The state has vested complete authority in CalGEM to “supervise the drilling, operations, maintenance, and abandonment of wells so as to permit owners or operators of wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case.” (Pub. Resources Code, § 3106(b). Further expressing the explicit policy of the state, section 3106(b) provides:

To further the elimination of waste by increasing the recovery of

underground hydrocarbons, *it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state* ... is deemed to allow the lessee or contractor ... to do what a prudent operator using reasonable diligence would do . . . including, but not limited to, the injection of air, gas, water, or other fluids into the productive strata, the application of pressure heat or other means for the reduction of viscosity of the hydrocarbons, the supplying of additional motive force, or the creating of enlarged or new channels for the underground movement of hydrocarbons into production wells, when these methods or processes employed have been approved by the supervisor.

*Id.* (emphasis added).

The specific statutory provisions regulating oil and gas operations are contained within, *inter alia*, Division 3 of the Public Resources Code, encompassing sections 3100 through 3865. These statutes address all aspects of oil and gas exploration and extraction in detail, including notice of intent to drill and abandon (§§ 3203, 3229); bonding (§§ 3204-3207); abandonment (§ 3208); recordkeeping (§§ 3210-3216); blowout prevention (§ 3219); use of well casing to prevent water pollution (§ 3220); protection of water supplies (§§ 3222, 3228); repairs (§ 3225); regulation of production facilities (§ 3270); waste of gas (§§ 3300-3314); subsidence (§§ 3315-3347); spacing of wells (§§ 3600-3609); unit operations (§§ 3635-3690); and regulation of oil sumps (§§ 3780-3787). By and through this all-encompassing statutory and regulatory scheme, the California legislature has manifested its intent to fully occupy the field of oil and gas operations, methods, and procedures to the exclusion of local legislation.

Indeed, the California Attorney General has recognized the preemptive effect of state oil and gas laws for more than 40 years: Where there is state regulation of oil, gas and geothermal resources well drilling and production activities for the purpose of conserving and protecting those resources, such state regulation has preempted certain phases of such activity. Particularly, ***where the state regulation approves of or specifies plans*** of operation, methods, materials, procedures, or equipment to be used by the well operator ***or where activities are to be carried out under the direction of the Supervisor, there is no room for local regulation.*** (59 Ops. Cal. Atty. Gen. 461, 462 (1976), emphasis added.) The Attorney General opinion went on to caveat that not every aspect of local control relating to oil and gas operations had been preempted at the time, and that certain local regulations could be tolerated (at that time) where they (1) did not intrude on an area fully regulated by the state; and (2) were not inconsistent with the state's regulations. (*Ibid.*) But the Attorney General concluded: "Where the statutory scheme or Supervisor specifies a particular method, material or procedure by a general rule or regulation or gives approval to a plan of action with respect to a particular well or field or approves a transaction at a specified well or field, it is difficult to see how there can be any room for local



regulation.” (*Id.* at p. 478; *see also Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1125 [where states “expressly permits operation under a certain set of standards, it implies that the specified standards are exclusive”].)

**3. The Provisions of the Proposed Amendments Are Inconsistent with the Provisions of the Current County General Plan As Well As the Proposed County General Plan.**

Zoning ordinances, like the Proposed Amendments at issue here, are required by law to be consistent with a local agency’s General Plan. (Govt. Code, § 65862.) The existing County General Plan was adopted at a time when the opinion of County Counsel on vested rights was far different than the most recent advice from County Counsel (*see* County Counsel Opinion letter from 2014) and the County’s historical practices regarding oil and gas operations within its jurisdiction.

The County Staff Report fails to provide an analysis of the Proposed Amendments’ consistency with the existing County General Plan. Merely listing potential policies that might apply is not a sufficient analytical connection under law relating to findings. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506.) The County needs to explain the substance of these policies and provide an analysis of their consistency with the Proposed Amendments in order to provide a basis for a finding that the Proposed Amendments are consistent with the current General Plan.

Similarly, the County fails to provide an adequate consistency analysis with respect to the proposed draft General Plan as described in the Draft EIR for the General Plan Amendment and as evaluated in that Draft EIR. In reading the responses to comments with regard to vested rights, the County seems to be asserting that the new policies only apply to new discretionary oil and gas wells. (See FEIR, MR-4B at p. 2-37.)<sup>5</sup> The Proposed Amendments go far beyond that. The same level of analysis of the proposed General Plan policies and the consistency of the Proposed Amendments is required in order to make the consistency findings that will ultimately be required should the proposed General Plan be adopted in its current form.

**4. The Proposed Amendments’ Administrative Appeals Requirement Is Meaningless and a Sham.**

The Staff Report asserts that disagreements between an applicant/permittee and the County over the existence, scope or impairment of vested rights would be administratively

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<sup>5</sup> See enclosure.

resolved through the zoning ordinances' existing appeals process. (NCZO, § 8111-7 and CZO, § 8181-9.)

Section 8111-7 and 8181-9 of the County zoning ordinances provide that all appeals must be addressed to the decision-making authority hearing the appeal. That body is the Planning Commission for administrative decisions by the Planning Director or designee and the Board of Supervisors for appeals of Planning Commission decisions and all other matters. Decisions regarding vested rights are legal matters, not administrative matters within the expertise or authority of administrative bodies. Moreover, since the challenged policies themselves are adopted by the bodies designated as the hearing bodies, the process is meaningless.

This circular process appears to be intended to be an administrative exhaustion requirement. As such it is an improper attempt to impede active litigation. By applying this appeals process, the County is self-servingly giving itself a means to argue that claims properly before a court of competent jurisdiction have become unripe. (*See Healing v. Coastal Commission* (1994) 22 Cal. App. 4th 1158.)

Further, the Staff Report fails to address how the Proposed Amendments will be implemented while various appeals are occurring. This again places Aera in the position of having its vested rights unconstitutionally taken, potentially for years while these unclear processes move forward, without any compensation during the period in which appeals for vested rights are being considered.

**5. The County's Shift from Ministerial to Discretionary Approvals for Existing Permitted Oil and Gas Operations Constitutes An Abuse of Discretion.**

The County has failed to provide the support necessary for the Proposed Amendments, which would convert existing ministerial approval processes to complete discretionary actions. (*See, e.g.*, proposed amended NCZO § 8107.5-2.) The County's failure to provide the evidence required to support the proposed fundamental changes to existing permitting processes that operators like Aera have relied upon for decades constitutes an unlawful abuse of discretion.

The proposed changes to employ discretionary approvals for the performance of field activities are unjustified under Aera's existing permits and would baselessly disrupt Aera's oil and gas operations. As County Counsel itself stated in its 2014 legal analysis on these issues—analysis that the County has since ignored—"the County can impose new, narrowly tailored conditions on these permits only when a compelling public necessity, such as danger, harm or public nuisance, or significant violations exist, and not through an ordinary exercise of the police power for the general welfare."

As has been repeatedly explained to the County, the State of California heavily regulates and supervises the oil and gas industry to ensure safe and effective operations, including in the



County. Consistent with its strong interest in maximizing oil and gas resources and intent “to encourage the wise development of oil and gas resources,” (*see e.g.*, Pub. Resources Code, § 3106(d)), California’s robust system of statutes and regulations for oil and gas operations, which the state is exclusively authorized to enforce, are accompanied by laws and regulations from multiple federal, state, and local government agencies that ensure safe operations and the protection of human health, air, water, and environmental quality for the County.

Aera has operated in the County safely for decades and is so heavily regulated by the state that historic approvals under its existing County permits have, by nature, only required ministerial processes. The Proposed Amendments would subject these operations to an indefinite number discretionary approvals arbitrarily ignore this regulatory reality. Consequently, the County’s unjustified attempts to interfere with Aera’s exercise of its vested rights constitute an abuse of discretion unsupported in the manner required by law.

**6. The Proposed Amendments Violate Aera’s Fundamental Due Process Guarantees.**

The Proposed Amendments will completely alter the process by which Aera exercises its existing vested rights in the County by eliminating existing ministerial permitting processes and replacing them with utterly vague and ambiguous discretionary permitting processes. In practical effect, the Proposed Amendments would modify Aera’s existing permits in violation of procedural and substantive due process guarantees. Further, the County’s decision to conceal and cloak these processes via the indistinct Proposed Amendments renders the Proposed Amendments impermissibly vague, again contrary to Aera’s fundamental due process guarantees.

Under the California Constitution, a person may not be deprived of life, liberty, or property without due process of law. (Cal. Const., art. I, § 7, subd. (a).) Similarly, the federal Constitution provides that “no State shall ... deprive any person of life, liberty, or property, without due process of law.” (U.S. Const., amend. XIV, § 1.) The federal provision guarantees certain substantive rights in addition to due process. As Ventura County Counsel itself recognized in 2014, the County’s “ability to impose new conditions on antiquated oilfield permits is very limited” due to both the vested rights doctrine and associated procedural and substantive due process protections. The proposed amendments appear to be arbitrarily and discriminatorily focused on eliminating oil and gas operations in the County and are not reasonably related to any legitimate government purpose in violation of Aera’s due process rights.

In its effort to rush through these Proposed Amendments that would fundamentally alter existing permits, the County has proposed permitting processes that are effectively unknown and hidden from the regulated community. Aera has no means of understanding of what will actually

be required or how the County would exercise its seemingly unlimited oversight. “Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.” (*BMW of N. Am., Inc. v. Gore* (1996) 517 U.S. 559, 574.) “A statute is void for vagueness if persons of common intelligence must guess as to its meaning and differ as to its applications.” (*People v. iMERGENT, Inc.* (2009) 170 Cal.App.4th 333, 339.) The Proposed Amendments represent a clear violation of due process and lead to other concerning violations of Aera’s constitutional rights.

**7. Adopting the Proposed Amendments would constitute an abuse of discretion, as no evidence supports any finding that the Proposed Amendments address a “menace” to public health and safety.**

The Staff Report implies that the need for the proposed amendments arises out of USGS *preliminary* report that petroleum-related gases were migrating into the Fox Canyon aquifer system in the vicinity of existing oil wells. However, as discussed herein, the County falls far short of showing that the proposed amendments are sufficiently necessary to the public welfare to justify any impairment of vested rights. (See *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 648-649.) The County’s burden here is heavy—an agency seeking to disturb vested rights must show that “the use authorized or conducted thereunder constitutes a menace to the public health and safety or a public nuisance.” (*Highland Development Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 169, 186, emphasis added.) An agency must also show how the legislation at issue “was appropriately tailored and limited to the situation necessitating its enactment.” (*Davidson, supra*, at p. 649, citing to *Donlan v. Weaver* (1981) 118 Cal.App.3d 675, 682.) Because the County has not, and cannot, make such findings, adopting the proposed amendments would result in the County committing an abuse of discretion.

Here, the County’s staff report fails to show either that there is an impending “menace” to the public health and safety, or that the proposed amendments were specifically and appropriately tailored to target such a menace. The County relies on a February 25, 2019, USGS report for “indications that petroleum-related gases are migrating into the Fox Canyon aquifer system.” But the USGS report did not go on to conclude that oil field activity was the cause of the gas migration. The County provides no evidence that the gases are not naturally-occurring, or that the levels of gases exceed state drinking water standards. There is absolutely no substantial evidence provided—and none available—supporting any conclusion that any existing gases in the Fox Canyon aquifer system constitute any type of health risk, are caused by any oil field development activities, and, most importantly, result in any imminent “menace” to public



health or any other type of public nuisance. In fact, other evidence indicates that no public drinking water supplies in Ventura County have been impacted by oil and gas production.<sup>6</sup>

Because the County has provided no substantial evidence that oil and gas projects pose a “menace” to public health and safety within the County, the County can also not show that the proposed amendments are necessary to avoid the same. Further, even if the County did carry its burden as to showing a menacing public nuisance, affecting public health and safety, there is absolutely no connection made between that alleged nuisance and the proposed amendments.

As addressed elsewhere in this letter, oil and gas development is already subject to a robust statutory and regulatory scheme; CalGEM is the regulatory body with authority over oil and gas projects. The County fails to explain why the existing scheme is inadequate to protect the County’s public health and safety, and why instead the County’s proposed amendments will do what adherence to existing regulations cannot. Because the County has failed to provide any substantial evidence showing that the proposed amendments are sufficiently necessary to the public welfare the County cannot adopt them and impair vested rights. (*See Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 648-649.)

**E. THE COUNTY’S PROPOSED CODE AMENDMENTS ARE NOT EXEMPT FROM ENVIRONMENTAL REVIEW UNDER CEQA**

The proposed amendments to Section 8107-5 and Section 8175-5.7 are not exempt from environmental review under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). The County’s staff report concedes, correctly, that the Proposed Amendments constitute a “project” for purposes of CEQA. However, the County’s conclusion that this project is nonetheless exempt from environmental review under State CEQA Guidelines, section 15308, is not supported by substantial evidence. Further, even if the project was exempt under section 15308, exceptions barring the applicability of this exemption would apply.

The Class 8 exemption in State CEQA Guidelines, section 15308, only exempts actions by regulatory agencies, as authorized by state law or local ordinance, to ensure the maintenance, restoration, enhancement, or protection of the environment. This exemption can also only apply where the regulatory process assures protection of the environment. A categorical exemption can be relied upon only if a factual evaluation of the agency’s proposed activity reveals that it applies. (*Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4<sup>th</sup> 372, 386.) The agency invoking the Class 8 exemption bears the burden of demonstrating with substantial evidence that the project constitutes an action to assure the maintenance, restoration, or enhancement of the environment. (*Ibid*; see also *Save Our Big Trees v. City of Santa Cruz*

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<sup>6</sup> See <https://www.energyindependencceca.com/wp-content/uploads/2018/09/Ventura-GW-Quality-OG-Production-Final-9-7-18.pdf>

(2015) 241 Cal.App.4<sup>th</sup> 694, 710 [the question is not whether the project will have a significant effect on the environment but whether substantial evidence supports the determination that it will assure the maintenance, restoration, or enhancement of the environment].) An example of the type of action that qualifies for the Class 8 exemption is the issuance of a cease-and-desist order by a regional water quality control board, ordering compliance with waste discharge requirements. (See, e.g., *Pacific Water Conditioning Association, Inc. v. City Council of the City of Riverside* (1977) 73 Cal.App.3d 546, 555-556.) In this example, the cease-and-desist order constitutes a regulatory action, authorized by state law (i.e., the Porter-Cologne Act), to assure the protection of the environment through enforcement of previously-adopted waste discharge requirements.

Here, the County's proposed amendments fail to qualify for the Class 8 exemption for several reasons. First, the proposed amendments are not regulatory actions, akin to a cease-and-desist order implementing a previously adopted regulatory scheme—they are legislative decisions. Further, despite the County's generic and unsupported claim in the staff report that "[o]il and gas development can result in potentially significant adverse impacts to a number of important resource issue areas," the proposed amendments do not "assure the maintenance, restoration, enhancement or protection" of the environment in any tangible way. (Staff Report, p. 10.) The only support presented in the staff report for a conclusion that the proposed amendments "assure the maintenance, restoration, enhancement or protection" of the environment is a declaration that subjecting additional types of development to a discretionary, as opposed to ministerial, approval process would "achieve the five major objectives of CEQA." (Staff Report, p. 10.) But the question of whether the Class 8 applies does not turn on whether a project "achieve[s] the five major objectives of CEQA." The question is whether the project assures the maintenance, restoration, enhancement or protection of the environment.

The County's Proposed Amendments attempt to redefine what types of activities require a conditional use permit from the County, expand the County's discretion in levying (undefined) conditions on future activities, and extend the application of standards, such as those pertaining to grading, pad size, and setbacks, to activities that currently are not subject to such standards. Nothing in the County's proposed amendments addresses "maintenance," "restoration," or "enhancement" of the environment. If the County believes that its legislative changes to the zoning code "assure" the "protection of the environment," such a belief is not supported by facts. The amendments require discretionary approvals for development actions that are currently approved via ministerial permits, and expands the applicability of "current" development guidelines and standards to development actions that are currently not subject to these guidelines and standards.<sup>7</sup> But this alone is not evidence that the amendments assure the protection of the

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<sup>7</sup> See also, Section E, below, regarding improper piecemealing. Along with these proposed amendments, the County is simultaneously proposing new policies applicable to oil and gas development through its General Plan Update. By analyzing the zoning code amendments that will expand applicability of these new standards on their own, as



environment. Under a discretionary approval, any number of conditions may or may not be applied to a development project. Such discretionary conditions could result in being more protective of the environment than the ministerial permit process, or they could result in being less protective—there is no way to know based only on the text of the proposed amendments. Furthermore, some discretionary conditions that the County may choose to levy on a future project could result in being more protective of one aspect of the environment, while in turn causing its own adverse environmental impacts on other resource areas—again, there is no way to know based on the proposed amendments alone. However, one thing here is clear: the County’s goal is, at least in part, to preclude additional oil and gas development by way of the Proposed Developments. However, CEQA recognizes limitations on access to mineral resources to be an environmental impact. Given that the Proposed Amendments will necessarily result in limiting access to mineral resources, it cannot be said that the Proposed Amendments provide blanket “assurance” that the environment—which includes mineral resources—will be only protected, and not at all impacted.

In determining that the Proposed Amendments “assure” protection of the environment, the County seems to rely upon the fact that future discretionary decisions made under the proposed amendments would trigger their own CEQA review. But this circular logic does not address whether the action proposed by the County *today* qualifies for the Class 8 exemption. If future applicability of CEQA alone proved that a project would “assure protection of the environment,” literally any zoning code amendment implementing or affecting any discretionary permitting process would qualify. For example, under the County’s logic, a zoning code amendment conditionally permitting heavy industrial uses within a district currently limited to residential uses would qualify for the Class 8 exemption simply because industrial uses will need a (discretionary) conditional use permit in the future. Here, there is no connection between any specific impact on the environment that the County alleges will occur, or is occurring currently, and the text of the Proposed Amendments. As just one example, the County seems to contemplate the Proposed Amendments as imposing setbacks on oil and gas activities that are currently not imposed in some instances. But there is no locally-collected data that show how or why the imposition of such setbacks on additional categories of oil and gas activities will benefit the environment, let alone “assure... protection of the environment.” And, as discussed above, the imposition of setbacks will reduce access to mineral resources, which CEQA expressly considers an environmental impact until itself.

The County likely believes that a general intent to restrict oil and gas development activities more than such activities are restricted today is enough to qualify for the Class 8 exemption. Case law clearly shows this is not so. For example, in *Dunn-Edwards Corp. v. Bay Area Air Quality Management District* (1992) 9 Cal.App.4<sup>th</sup> 644, 657, an air district sought to restrict emissions from architectural coatings to a greater extent than was done under the

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opposed to in conjunction with the General Plan Update, the County is attempting to push these amendments through without environmental review, in violation of CEQA.



district's existing regulations. The district adopted tighter controls on coatings and claimed that because the tighter controls would reduce emissions of volatile organic compounds ("VOC"), the regulatory amendments were exempted from environmental review under the Class 8 exemption. The building and architectural coating industries disagreed, alleging that the district failed to consider the possibility that the new regulations would result in users applying *more* coatings to mitigate the lower quality of coatings that complied with the new regulations. The court agreed. Similarly, in *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4<sup>th</sup> 694, a city amended its heritage tree protection regulations to better preserve native heritage trees, while permitting some removal of invasive, non-native trees. The city ignored evidence that the removal of even *invasive* tree species could result in impacts to environmental resources, affecting nests, butterfly habitat, stormwater runoff, carbon sequestration, and energy consumption. The city argued that such impacts were not actually foreseeable or likely, given that the amendment did not *encourage* the removal of invasive trees. The court disagreed. Even if the code amendment protected native trees, which was its purpose, the amendment had the potential, no matter how slight, to impact the environment, which precluded reliance on the Class 8 exemption. Per the Court, "Even assuming the amendment Heritage Tree Removal Resolution will not actually result in additional tree removals (despite allowing for them), that does not render it an action to assure the maintenance, restoration, or enhancement of the environment." (*Id.* at p. 710.)

Here, the County's Proposed Amendments are akin to those proposed in *Dunn-Edwards Corp.* and *Save Our Big Trees*. In both of those cases, the agency argued that its desire to restrict one adverse impact (i.e., the amount of VOCs emitted by a single coating, or the removal of native heritage trees) should permit reliance on the Class 8 exemption. Yet, in both of those cases, the court disagreed, finding that neither agency provided enough substantial evidence to support a finding that the agencies actions "assure[d] the maintenance, restoration, enhancement, or protection of the environment." Here, the County's Proposed Amendments are nothing like the cease-and-desist order found by the court to actually qualify for the Class 8 exemption in *Pacific Water Conditioning Association, Inc. v. City Council of the City of Riverside* (1977) 73 Cal.App.3d 546, 555-556, given that the County is not taking a regulatory action, and is not enforcing an existing state or local law adopted to assure the maintenance, restoration, or enhancement of the environment. Instead, just as in *Dunn-Edwards Corp.* and *Save Our Big Trees*, there is a strong possibility that the conditions levied by the County on future conditional use permits may present their own impacts, which are not considered at all in the County's determination that the Class 8 exemption applies. For example, the Proposed Amendments could result in pushing oil and gas development out of the region, and to areas where oil and gas recovery is less regulated, or more labor intensive, and as a result, greater emissions and other impacts could result than would occur within Ventura County. Even if oil and gas development remained in the County, future conditions requiring trucking of water or fuels and prohibiting pipeline transportation of the same could result in greater trucking emissions and energy use. Conditions requiring reseeding or revegetation in areas where top soil has been removed could



result in impacts associated with trucking in new top soil, or high levels of water use necessary to establish vegetation where none is currently present. The Proposed Amendments do not opine on what types of conditions would be considered or levied. While the County may believe it is unlikely to levy conditions with their own environmental impacts, the court in *Save Our Big Trees* opined that even if such an outcome were unlikely, the possibility alone indicates that the Class 8 exemption cannot apply.

Finally, despite the County's assertions to the contrary, the unusual circumstances exception of State CEQA Guidelines, section 15300.2, bars application of the Class 8 exemption. The unusual circumstances exception requires an agency to consider whether the project at issue is similar enough to those types of projects typically exempted under the chosen categorical exemption. Here, the County's Proposed Amendments are nothing like the types of actions typically exempted under State CEQA Guidelines, section 15308. As discussed above, the County is not taking a regulatory action, but a legislative one; the County is not enforcing an existing regulatory scheme authorized by state or local law, but trying to fashion a new one; and the County is engaging in circular logic by pointing to future CEQA review as evidence the "regulatory process" at issue includes "procedures for protection of the environment" exempting it from CEQA review *today*. Thus, even if the project could qualify for the Class 8 exemption—or any other categorical exemption under CEQA—the unusual circumstances exception to the exemption would nonetheless require environmental review before the County's proposed amendments can be adopted.

**F.     PIECEMEALING THESE PROPOSED AMENDMENTS FROM THE COUNTY'S ENVIRONMENTAL REVIEW OF THE PROPOSED GENERAL PLAN UPDATE VIOLATES CEQA**

While the County proposes these amendments to the zoning code, it is simultaneously considering an update to the County General Plan. These actions are so indivisibly related that the County cannot separate one from the other, especially given that the County asserts that the zoning code amendments, alone, are not subject to environmental review. CEQA is clear that public agencies must analyze the "whole of an action" that may result in a direct or reasonably foreseeable indirect impact. (State CEQA Guidelines, § 15378(a); see also *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214.) A public agency may not divide a single project into smaller individual subprojects to avoid responsibility for considering the environmental impact of the project as a whole. (*Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.)

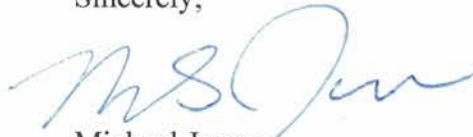
As part of the 2040 General Plan Update, the County is contemplating the adoption of myriad policies that would affect existing, ongoing, and new oil and gas development activities. These policies include things such as setbacks, which would be implemented (and made applicable to a broader range of development activities) by the proposed amendments. The

County's staff report describes the proposed amendments as making "the County's current oil development design guidelines and operational standards uniformly apply to all oil and gas exploration and production operations." (Staff Report, p. 8.) Yet the staff report makes absolutely no mention of the changes to those current guidelines and standards that are simultaneously being considered by way of the General Plan Amendment. Any County argument that the proposed amendments merely extend *existing* guidelines and standards to new activities is disingenuous. By segmenting the proposed amendments from the General Plan Update, the effects of applying the General Plan Update's *new* policies to *new* activities is completely overlooked, in violation of CEQA's clear mandate that environmental review consider the "whole of the action." This is so even if a part of the whole could be broken off and, on its own, qualify for an exemption from environmental review (and, again, as described above, the proposed amendments do not qualify for an exemption).

**G. THE PROPOSED AMENDMENTS WILL TRIGGER COSTLY LITIGATION**

Should the County elect to proceed with the adoption of the Proposed Amendments, industry stakeholders will be left with no choice but to seek judicial recourse to protect their property rights. Even if the County ultimately prevails in court, defending multiple judicial actions will cost the County hundreds of thousands of dollars at a time when the County will still be recovering from the fiscal impacts of the COVID-19 pandemic. If the County does not ultimately prevail, the County will incur costs that that will easily exceed several hundred million dollars. A reviewing court will closely consider all decisional law relating to vested rights, in particular decisions that concern mineral extraction. A reviewing court will consider the fact that the County's legal advisor has issued two reports on the doctrine of vested rights that patently conflict with one-another. Finally, a reviewing court will necessarily examine the whole of the record in this matter and note that a just one use classification, oil and gas extraction and production, was singled out for disparate, adverse treatment as compared to other, similar uses within the County's jurisdiction.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael James".

Michael James  
Senior Counsel  
Aera Energy LLC

Enclosures:

*Lynch v. State Board of Equalization* (1985) 164 Cal.App.3d. 94  
Energy For California By Californians 2019 Annual Report Excerpts  
Ventura County 2040 General Plan Final Environmental Impact Report Excerpts

**ENCLOSURE 1**

***Lynch v. State Board of Equalization* (1985) 164 Cal.App.3d 94**





KeyCite Yellow Flag - Negative Treatment

Distinguished by [Central Cal. Power Agency No. 1 v. County of Sonoma](#), Cal.App. 1 Dist., October 14, 2004

164 Cal.App.3d 94, 210 Cal.Rptr. 335

WILLIAM C. LYNCH, as Assessor,  
etc., Plaintiff and Appellant,

v.

STATE BOARD OF EQUALIZATION, Defendant  
and Respondent; CALIFORNIA INDEPENDENT  
PRODUCERS ASSOCIATION et al., Interveners and

Appellants; \* † ALEXANDER POPE, as Assessor,

etc., et al., Interveners and Respondents. †† ]]

CALIFORNIA INDEPENDENT PRODUCERS

ASSOCIATION et al., Plaintiffs,

Cross-defendants and Appellants, \*

v.

HERBERT E. ROBERTS, as Assessor,  
etc., Defendant, Cross-complainant and  
Appellant; COUNTY OF KERN, Defendant,  
Cross-complainant and Respondent.

Civ. No. 21862.

Court of Appeal, Third District, California.

Jan 25, 1985.

### SUMMARY

In coordinated proceedings concerning the meaning and validity of Cal. Const., art. XIII A (Prop. 13) as it applies to the assessment of oil and gas properties, the trial court upheld the validity of a rule for their taxation ([Cal. Admin. Code, tit. 18, § 468](#)), adopted by the State Board of Equalization. The rule treated additions to proved reserves due to changed physical or economic conditions as additions to the real property interest, and valued those reserves as of the time they first became proved reserves, after which they were frozen in value subject only to the 2 percent inflationary increase permitted by art. XIII A. In practice, at each annual reassessment the value of the oil and gas interest was reduced by depletions from the prior year's production, adjusted for the 2 percent inflationary increase, and increased \*95 by the current value of new proved reserves. (Superior Court of Sacramento County, No. 289796; Superior Court of Kern County, No. 168264, William A. White, Judge.)

The Court of Appeal affirmed. The court first rejected the contention that art. XIII A did not apply to oil and gas properties, and it also rejected the contention of oil producers that the board's rule violated the constitutional provision by permitting an increase in taxable value of an oil and gas property based on changed economic circumstances in excess of the 2 percent per year limitation. Noting that art. XIII A converted California from a current-value method of real property taxation to an acquisition-value system of taxation, the court stated that an acquisition-value method of taxation is, at a minimum, problematical in relation to oil and gas interests, and held, after review of all the factors presented, that the rule was an appropriate interpretation of art. XIII A as it related to oil and gas interests, which have no real parallel with other types of real property. The court also held that the board properly determined that existing proved reserves may not be increased in value more than 2 percent per year, and that oil and gas producers may be allowed reductions in value of the existing proved reserves due to depletion from production. The court further held that art. XIII A and Cal. Admin. Code, tit. 18, § 468 did not unlawfully discriminate either for or against oil and gas producers. (Opinion by Sparks, J., with Carr, Acting P. J., and Sims, J., concurring.)

### HEADNOTES

#### Classified to California Digest of Official Reports

(1)

Oil and Gas § 2--Definitions and Distinctions--Nature of Ownership.

The owner of land does not have title to the oil and gas which may underlie his property; instead, he has the exclusive right on his premises to drill for oil and gas and to retain as his property all substances brought to the surface; when this interest is transferred to the lessee the lessee obtains a *profit à prendre*, which is an incorporeal hereditament, that is, a right to take something from the land of another.

[See [Cal.Jur.3d](#), Oil and Gas, § 4; [Am.Jur.2d](#), Gas and Oil, § 6.]

(2)

Oil and Gas § 2--Definitions and Distinctions--Oil and Gas Interests.

The definitions of the interests involved in oil and gas leases are subject to legislative and judicial refinement. A definition

employed for one purpose is not necessarily controlling in respect to another purpose. \*96

(3)

Property Taxes § 15--Subjects of Taxation--Real Property--Leaseholds-- Oil and Gas.

Although the interests of a lessee under an oil and gas lease are difficult to define, they are interests in real property and are subject to real property taxation.

(4)

Property Taxes § 7.5--Constitutional Provisions--Real Property Tax Limitation--Application to Oil and Gas Properties.

Cal. Const., art. XIII A, imposing limitations on the assessment and taxation of real property, is applicable to oil and gas properties and interests. The electorate knew and intended the measure to apply to commercial real property and, in view of the treatment of oil and gas interests as taxable real property, it could not be said that the voters in some unexpressed way sought to exempt those interests from the tax relief provided.

(5)

Property Taxes § 7.5--Constitutional Provisions--Real Property Tax Limitation--Effects.

Cal. Const., art. XIII A, imposing limitations on the assessment and taxation of real property, converts California from a current-value method of real property taxation to an acquisition-value system of taxation.

(6)

Statutes § 30--Construction--Language--Literal Interpretation.

Although enactments must ordinarily be construed in accordance with the plain and ordinary meaning of their words, the literal language of the measure may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers.

(7)

Statutes § 44--Construction--Aids--Contemporaneous Administrative Construction.

Enactments are subject to legislative and administrative interpretation and those interpretations are entitled to great weight from the courts.

(8)

Property Taxes § 42--Assessment--Valuation--Oil and Gas Interests-- Effect of Constitutional Limitation.

The rule adopted by the Board of Equalization ([Cal. Admin. Code, tit. 18, § 468](#)) to establish valuation principles for taxation of oil and gas reserves, was a proper interpretation of Cal. Const., art. XIII A, imposing limitations on real property assessment and taxation, as applied to oil and gas properties. The rule treats additions to proved reserves due to changed physical or economic conditions as additions to the real property interests. Those reserves are valued as of the time they first became proved reserves, and are thereafter "frozen" in value, subject only to the 2 percent inflationary increase permitted by art. XIII A. The rule does not violate art. XIII A by permitting the taxable value of oil and gas \*97 properties to be increased due to additions to the proved reserves. However, proved reserves may not be increased in value more than 2 percent per year. Since oil and gas interests generally have no value when initially acquired before development, it would be absurd to value them as of the acquisition date or according to the 1975 assessment, as such a procedure would violate [Cal. Const., art. XIII, § 1](#), subd. (a), which provides that all property is taxable.

(9)

Property Taxes § 42--Assessment--Valuation--Oil and Gas Properties-- Constitutional Tax Limitation--Reductions-- Depletion From Production.

In the taxation of oil and gas properties pursuant to Cal. Const., art. XIII A, which imposes limitations on the assessment and taxation of real property, oil and gas producers are allowed reductions in value of the existing proved reserves due to depletion from production in order to reflect substantial damage, destruction, or other factors causing a decline in value. ([Art. XIII A, § 2](#), subd. (b).)

(10)

Property Taxes § 9--Uniformity and Equality--Oil and Gas Properties-- Equal Protection.

States have large leeway in making distinctions and drawing lines in order to produce what is, in their judgment, a reasonable system of taxation. A state tax law is not arbitrary although it discriminates in favor of a certain class if the discrimination is founded on a reasonable distinction or a difference in state policy. Accordingly, the unique nature of oil and gas interests not only permits but compels that they be treated differently than other forms of property for taxation purposes, and Cal. Const., art. XIII A, imposing limitations on

the assessment and taxation of real property, and [Cal. Admin. Code, tit. 18, § 468](#), implementing art. XIII A as applied to oil and gas properties, by treating additions to proved reserves due to changed physical or economic conditions as additions to the real property interest, do not unlawfully discriminate either for or against oil and gas producers.

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#### SPARKS, J.

This coordinated proceeding concerns the meaning and validity of article XIII A of the California Constitution, adopted by the electorate as Proposition 13 at the June 1978 primary election, as it applies to the assessment of oil and gas properties. Although there are numerous parties to this proceeding, they fall into three main groups. First, the oil and gas interests insist that article XIII A is fully applicable to oil and gas properties, and that such properties have been consistently overvalued since the adoption of article XIII A. Second, a number of county government interests assert that article XIII A does not apply to oil and gas properties, and that these properties have been consistently undervalued since the adoption of article XIII A. Third, the California State Board of Equalization (Board) and other respondents

contend that the Board's rule ([Cal. Admin. Code, tit. 18, § 468](#)), which might be termed an intermediate position, is the proper interpretation of article XIII A as it applies to oil and gas properties. The trial court upheld the Board's rule and the parties asserting each of the other positions appeal. We agree with the trial court and therefore shall affirm the judgment.

#### Facts

If precedent teaches anything it is that oil and gas interests are truly *sui generis*. (See generally Colby, *The Law of Oil and Gas* (1943) 31 Cal.L.Rev. 357.) \*99 These interests first became economically significant at a time when our basic notions of property had already crystallized. ([Callahan v. Martin](#) (1935) 3 Cal.2d 110, 115 [43 P.2d 788, 101 A.L.R. 871].) At that time the ultimate world importance of petroleum could not have been remotely anticipated. (Colby, *op. cit.*, *supra*. at p. 373, fn. 47.) The courts attempted to fashion rules of law by analogies drawn from other fields of law which were often inapt for comparison. ([Railroad Commission v. Oil Co.](#) (1940) 310 U.S. 573, 579 [84 L.Ed. 1368, 1372, 60 S.Ct. 1021]; see also Glassmire, *Oil and Gas Leases and Royalties* (2d ed. 1938) § 1, pp. 1-2.) But oil and gas interests are by their very nature unique, and the attempt to classify them in legal terms presents "as thorny a problem as has challenged the ingenuity and wisdom of legislatures [and courts]." ([Railroad Commission v. Oil Co.](#), *supra*., 310 U.S. at p. 579 [84 L.Ed. at p. 1372].) As a consequence those who dealt in oil and gas interests had difficulty in describing the interests transferred and ambiguous and uncertain instruments were presented to courts for analysis. ([Dabney-Johnston Oil Corp. v. Walden](#) (1935) 4 Cal.2d 637, 651 [52 P.2d 237].) With respect to these interests the California Supreme Court has lamented: "Their nature is far from certain or definite. They are obscure to say the least." ([Delaney v. Lowery](#) (1944) 25 Cal.2d 561, 569 [154 P.2d 674].) Thus, "the nature of the interests which may exist in oil and gas, is complex, partly because of the inexactness of the terminology which is available to describe them." (1 Williams & Meyers, *Oil and Gas Law* (1983) § 201, p. 17.)

In order to understand the nature of the property interests in oil and gas producing properties it will be necessary to describe briefly the physical occurrence of oil and gas. Although the witnesses at trial and the commentators agree that no two deposits of oil and gas are exactly alike, there is no dispute as to the general physical characteristics of an oil and gas producing property. Oil and gas deposits generally occur in sedimentary beds of sandstone, shale and limestone. (See Colby, *op.cit.*, *supra*. 31 Cal.L.Rev. at p. 358.) The oil and



gas exist in the interstices of the rock occupying certain strata, referred to as "oil sands." (*Ibid.*) Within a reservoir fluids are trapped under pressure, the amount of which is dependent largely upon the depth of the deposit. (*Ibid.*) This pressure is referred to as "reservoir energy" and may be utilized in the initial extraction process. (*Ibid.*)

Oil and gas deposits, due to their fluid nature, are capable of migration through the rock interstices in which they exist. (Colby, *op. cit.*, *supra.* at p. 360.) In the course of time oil and gas deposits have become trapped in the most favorable location and there is little if any migration in the absence of a disturbance of the deposit's equilibrium. (*Ibid.*) However, when this equilibrium is disturbed, such as by penetration by a well bore, the pressure \*100 differential can cause the oil and gas to migrate. This aspect of the nature of oil and gas has caused them to be referred to as "fugacious minerals" (see Glassmire, *op. cit.*, aa § 1, p. 1), which implies that they are not fixed in a certain place, but are wandering. (See Webster's Third New Internat. Dict. (1971) p. 918, "fugacious," def. 2.)

Recoverable gas deposits often exist where there is no recoverable oil. The wells which produce gas only are referred to as "dry gas wells." Most oil wells also produce some associated gas. In such a deposit the force of gravity has generally caused the gas and oil to separate with the lighter gas existing in the upper strata and the heavier oil existing in the lower strata of the formation. There is generally some water associated with the deposit which, because of its heavier nature, exists below the oil bearing strata. The total oil and gas within a deposit is referred to as the oil in place or the gas in place. Although it is generally accepted that *all of the oil and gas ever created* and not yet recovered is in place, no one knows or can accurately estimate the extent of such deposits.

There are three separate phases in the life of an oil and gas producing property. These are discovery, development, and production. Discovery is a function of geological effort wherein geophysicists and geologists determine the optimum place to drill a new well. When oil and gas is discovered very little is known about the amount of oil and gas in place and the potential recovery. During the development process wells are drilled and petroleum engineers and technical staff constantly evaluate the field in order to make knowledgeable decisions regarding how the field can best be produced. The primary development phase ends when the total field has been delineated.

The production phase of an oil and gas producing property may be subdivided into a primary phase and a secondary (and even tertiary) phase in which augmented recovery programs are utilized. Primary recovery utilizes the natural reservoir energy (pressure) and pumping or lifting to extract the hydrocarbon substances. The proportion of the original oil in place which can be recovered through primary recovery methods varies with the particular property, but is typically very low. In *People v. Associated Oil Co.* (1930) 211 Cal. 93, at page 106 [294 P. 717], the Supreme Court took judicial notice that only 10 to 25 percent of the oil in place was ultimately recovered. Advancements in technology may have improved that ratio, but it was estimated at trial that as low as 8 percent of the oil in place may be recoverable from primary production methods in some fields. The primary production phase may last for an extended time (20 or more years) and typically the amount of oil and gas produced declines over time. The primary production phase comes to an end when, based upon existing economics \*101 and technology, it is more profitable to cease production or to commence an augmented recovery program.

Under existing technology there are numerous secondary methods for augmented recovery of oil and gas.<sup>1</sup> Primarily these methods operate by reducing the viscosity of the oil in place, or by increasing the pressure in the reservoir, or both. These methods include steam injection, gas injection, and water injection into the reservoir. Other methods either are available or may become available through new advances in technology.<sup>2</sup> The particular type of augmented recovery program which is to be utilized must be tailored to the oil and gas field being produced. These augmented recovery methods can greatly increase the percentage of the oil in place which is recoverable, but two facts must be noted: First, whether an augmented recovery method is employed depends upon a variety of factors, not the least of which is economics; in short, an oil producer will not employ an augmented recovery technique if the technique costs more than the price at which the oil to be recovered can be marketed. Second, even though these techniques can greatly increase the percentage of oil in place which is recoverable, no technique currently available results in total recovery, leaving significant portions of oil presently unrecoverable. Thus, while vast amounts of petroleum products may lie "awaiting the demands and ingenuity of man," (Glassmire, *op. cit.*, *supra.*, § 1, p. 5), whether and when such products will be recovered depends upon price and technology.

The primary means for exploitation of an oil and gas producing property is through an oil and gas lease. Under such leases the landowner conveys to the producing company the exclusive right to drill and produce the oil and gas which may be underlying the land. Such leases may be for a fixed term with an option for renewal, but typically provide for a fixed term with a provision for continuance for so long thereafter as the lessee is able to produce oil and/or gas in “paying quantities.”<sup>3</sup> “Paying quantities” means at a profit, and when the lessee can no longer produce hydrocarbons at a profit the lease typically terminates and the rights revert back to the landowner. The parties stipulated that the vast majority of all oil and gas producing properties in California are operated under oil and gas leases. It was \*102 established that such rights rarely undergo a change of ownership, and when a change of ownership does occur it is usually a marginal property that is involved.

The precise nature of the interest conveyed under an oil and gas lease has troubled the courts throughout the history of such properties. It was early held that the landowner had absolute title to the oil and gas underlying his land and that he conveyed to the producer such absolute title, but that title was defeasible if the oil and gas should migrate to the land of another. (See *Colby, op. cit., supra.*, 31 Cal.L.Rev. pp. 374-379.) There is language in early California decisions which would indicate that California adopted an “ownership in place” theory. (See *Isom v. Rex Crude Oil Co.* (1905) 147 Cal. 659, 661 [82 P. 317].) Eventually, however, California took the position that ownership of oil and gas was inchoate, and the doctrine of “potential possession” arose. (See *Western Oil etc. Co. v. Venago Oil Corp.* (1933) 218 Cal. 733, 739 [24 P.2d 971, 88 A.L.R. 1271]; *Brookshire Oil Co. v. Casmalia etc. Co.* (1909) 156 Cal. 211, 215 [103 P. 927].) This doctrine was ultimately rejected. ( *Callahan v. Martin, supra.*, 3 Cal.2d at p. 128.) Finally, the Supreme Court took the position in *Callahan* that the lessee under an oil and gas lease “has an interest or estate in real property in the nature of a *profit a prendre*, which is an incorporeal hereditament ....”<sup>4</sup> ( *Id.*, at p. 118.) (1) In essence, the courts now recognize that the owner of land does not have title to the oil and gas which may underlie his property; instead he has the exclusive right on his premises to drill for oil and gas and to retain as his property all substances brought to the surface. (See *Atlantic Oil Co. v. County of Los Angeles* (1968) 69 Cal.2d 585, 594 [72 Cal.Rptr. 886, 446 P.2d 1006].) When this interest is transferred to a lessee the lessee obtains a *profit a prendre*. (*Ibid.*)

While the courts have employed various terminologies to resolve issues presented with respect to oil and gas properties, they have never insisted that such terminology is either totally descriptive or totally definitive of the rights involved. We find in the decisions frequent expressions of frustration at the task of applying existing rules of law to these unique interests. (See *Graciosa Oil Co. v. Santa Barbara* (1909) 155 Cal. 140, 144-145 [99 P. 483], material differences between oil and gas lease and an ordinary lease; *Mohawk Oil Co. v. Hopkins* (1925) 196 Cal. 148, 152-153 [236 P. 133], same; *Callahan v. Martin, supra.*, 3 Cal.2d at p. 115, difficult to define; \*103 *Delaney v. Lowery, supra.*, 25 Cal.2d at p. 569, obscure.) It has been recognized that the definitions of the interests involved are subject to legislative and judicial refinement. ( *People v. Associated Oil Co., supra.*, 211 Cal. at p. 105. See also *Delaney v. Lowery, supra.*, 25 Cal.2d at p. 569.) And a definition employed for one purpose is not necessarily controlling in respect to another purpose. ( *Atlantic Oil Co. v. County of Los Angeles, supra.*, 69 Cal.2d at pp. 594-595.)

(3) While the interests of a lessee under an oil and gas lease are difficult to define, it has long been recognized that they are interests in real property and are subject to real property taxation. In *Graciosa Oil Co. v. Santa Barbara, supra.*, 155 Cal. at pages 144 to 146, it was contended that the assessment of land to the landowner included all interests, including the interest of an oil and gas lessee, and that the interest under the oil and gas lease could not be separately assessed. The Supreme Court rejected this contention and held that the mining rights and privileges of the lessee should be separately assessed to the lessee. (See also *Atlantic Oil Co. v. County of Los Angeles, supra.*, 69 Cal.2d at p. 595.) And, unlike other taxable possessory interests in land, oil and gas interests are by statute placed on the secured rather than the unsecured property roll. (Rev. & Tax. Code, § 107;<sup>5</sup> see also *Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 860 [167 Cal.Rptr. 820, 616 P.2d 802].)

With the establishment of the rule that oil and gas interests are taxable real property interests, the next major difficulty was in the valuation of such interests for tax purposes. Valuation is especially difficult in oil and gas interests because, as we have seen, the interests are unique. As the United States Supreme Court said in the early case of *Twin-Lick Oil Co. v. Marbury* (1876) 91 U.S. 587, at pages 592 and 593 [23 L.Ed. 328, at page 331], oil and gas properties are “subject to the most rapid, frequent and violent fluctuations in the value of anything known as property ....” Even at that time “[p]roperty worth thousands to-day is worth nothing to-morrow; and that

which would to-day sell for \$1,000 as its fair value, may, by the natural changes of a week or the energy and courage of desperate enterprise, in the same time be made to yield that much every day.” California courts also recognized the fluctuating value of oil and gas interests. In *Acme Oil and Mining Co. v. Williams* (1903) 140 Cal. 681, at pages 684 and 685 [74 P. 296], the court said: “These leases are only valuable on development, and \*104 are then only valuable to both parties, to the extent that the product may be secured and disposed of ....” Moreover, “when the flow is penetrated, he who operates his well most diligently obtains the greatest benefit, and this advantage is increased in proportion as his neighbor similarly situated neglects his opportunity.” In *Graciosa Oil Co. v. Santa Barbara, supra.*, 155 Cal. at page 145, the court said: “It is well known that such leasehold estates or interests in oil strata, after the discovery of oil, often command large prices in the market, all out of proportion to the value of the interest of the landowner receiving only the royalty and enjoying the use only for other purposes.” Yet, as the court recognized in *Mohawk Oil Co. v. Hopkins, supra.* 196 Cal. at page 152: “The failure to find the oil or other mineral content of the soil strata, or the failure of the well to hold up to its original outflow may render the lease and the structures used in the operation of the well or wells under its terms practically valueless ....”

Ultimately a modified capitalization-of-income method of valuation became the most commonly accepted valuation technique with regard to oil and gas properties. (See *Atlantic Oil Co. v. County of Los Angeles, supra.*, 69 Cal.2d at p. 592.) This approach was adopted by the Assessment Standards Division of the Property Tax Department of the California State Board of Equalization when it published, in 1966, a manual (AH 566) entitled Valuation of Oil and Gas Producing Properties. The manual was the product of a committee appointed by the chairman of the Standards Committee of the State Association of County Assessors to study the matter with a view towards promoting uniformity in assessment practices. The committee worked with industry representatives to design the manual, and the manual was jointly approved by the committee and an industry committee.

The capitalization method of valuation utilizes the concept of “proved reserves,” for which purpose the definition of the American Petroleum Institute was adopted. Under this definition, proved reserves “are the volumes of crude oil and natural gas which geological and engineering information indicate, beyond a reasonable doubt, to be recoverable in the future from oil and gas reservoirs under existing economic

and operating conditions. They represent strictly technical judgments and are not knowingly influenced by policies of conservatism or optimism. They are limited only by the definition of the term ” proved.“ They do not include what are commonly referred to as ”probable“ or ”possible“ reserves.” It is apparent that “proved reserves” are not synonymous with the oil in place. It must further be noted that proved reserves do not include amounts of oil known to be recoverable under existing technology. This is because the determination of proved reserves is based upon *existing* economic and operating conditions. Thus, unless current prices would justify an augmented recovery program, oil and gas recoverable with such methods are not considered to \*105 be proved reserves.<sup>6</sup> Moreover, even if prices may justify an augmented recovery program, recoverable oil and gas will be included within proved reserves only when successful testing of a pilot project or the operation of an installed program in the reservoir provides support for the engineering analysis upon which the program was based.

Proved reserves are not all immediately recoverable. In fact, some primary production periods may extend over lengthy periods of time. Typically the annual production from a field declines over this time. The valuation of an oil and gas producing property is achieved by determining an expected schedule of future production. Future income is determined from this schedule through the application of existing price and cost ratios. This future income schedule is then capitalized to reduce it to present value, and the total present value of expected future income is considered the taxable value of the oil and gas interest.

Numerous factors may cause the modified capitalization-of-income method of valuation to produce an inaccurate value. It is based upon an estimate of the oil and gas in place and the percentage thereof which is recoverable under existing economic and operating conditions. Typically when these estimates are originally made the engineers and assessors have the least amount of information with which to make the estimates. As experience is gained through the operation of a particular field the estimate can become more and more accurate, but no one can ever know for certain how much oil will be recovered from a particular property until it is abandoned. Moreover, these estimates ignore possible and probable technological advances and economic changes. Accordingly, estimates of proved reserves are subject to correction for, among other things, discovery that the field is geographically larger than believed, the successful installation of improved recovery techniques,

and revisions based upon the difference between estimated production and actual production for the previous years. Changes in price and technology may also increase the amount of oil and gas which is deemed recoverable, and may extend the expected productive life of an oil and gas field.

Prior to the adoption of article XIII A, tax assessors typically placed either a zero or a nominal value on oil and gas properties during the discovery \*106 and development stages of the field's life.<sup>7</sup> As we have noted, this is the period in which the least information is available for estimating the value of the interest and thus is the period in which the value of the interest is subject to the most speculation. A value was assigned to the interest for the first time when "paying quantity" production was achieved. Thereafter annual reassessments were made to reflect changes in proved reserves attributable to any of the varied factors which determine proved reserves, including depletion due to the prior year's production.

This system of valuation, which was acceptable to both assessors and the industry, provided benefits to both. It promoted uniformity and avoided speculation in assessment practices, and yet it did not irremediably bind assessors with a valuation which would ultimately prove unrealistically low. But the method of valuation was as dependent upon annual reassessment as it was upon the concept of proved reserves. This is illustrated by facts derived from the Conservation Committee of California Oil Producers 1979 Annual Review of California Oil and Gas Production. With respect to oil that report indicates that on January 1, 1941, estimated reserves in California were 3.2 billion barrels.<sup>8</sup> From January 1, 1941, through December 31, 1979, California production totaled approximately 12.9 billion barrels. On that date estimated reserves totaled 3.6 billion barrels. Thus, the January 1, 1941, estimate of proved reserves underestimated future production by over 13 billion barrels. This is not to say that the 1941 estimate of proved reserves was inaccurate; it merely illustrates that the proved reserve concept deliberately understates future production in favor of capture through reassessment when probable or possible production becomes proven beyond a reasonable doubt.

During the last 20 years the value of California oil and gas properties have been affected by a number of external influences unrelated to those which normally affect real property values. In the 1960's there was tremendous technological advancement. During this time most of the potential oil and gas producing properties were "snapped

up" by the industry. Companies are rarely, if ever, willing to part with significant oil and gas producing properties, with the result that there is virtually no market for such property interests. This eliminates a comparable sales method of valuation from having \*107 any relevance in assessing these unique property interests. Moreover, since the production of oil and gas is essentially an extraction process rather than a construction process, the cost of reproduction method of assessment is unavailing.

In addition to technological advances, the oil and gas industry has been affected by economic influences unrelated to general inflationary trends. Primarily these influences consisted of the cost of foreign oil and governmental regulations. In the early 1970's foreign oil was less costly than domestic oil and there were mandatory import controls to prevent the price of foreign oil from affecting domestic prices. This system of regulation became inoperative in 1973 when domestic oil production "peaked out." In that year federal price controls went into effect and the price of oil was regulated from then until 1981 when it became fully deregulated. During this period the world price of oil was affected by two international incidents. The first was the 1973 Arab oil embargo. This caused the world oil price to rise sharply. The second was the 1978 Iranian revolution, coincident with a Saudi Arabian production cutback. The world oil price nearly tripled in that year. United States oil prices increased more slowly during this time due to federal price controls. With the deregulation of oil prices, however, domestic oil prices have approached world oil prices.

The influences these events had on the price of oil may be illustrated. In the early 1970's the average price of domestic oil was \$3 to \$4 a barrel, and California oil was considerably less, under \$3 a barrel. From 1973 to 1975 the average cost of imported oil rose from \$4.65 to \$11.38 per barrel. The world price was relatively stable from 1975 to 1978, but from 1978 to 1980 the price rose from \$12.46 to \$35.63 per barrel, and in March 1981 was approximately \$38 per barrel. From 1973 to 1975, the average cost of domestic oil increased from \$3.89 to \$7.67 per barrel. That price rose to about \$9 by 1978, and from 1978 to 1980 rose to \$25.80 per barrel. In March 1981 the price was approximately \$33.50. California oil followed similar trends. The price rose from \$3.11 in 1973 to \$6.03 per barrel in 1975. From 1978 to 1980 the price rose from \$7.22 to \$26.02 per barrel, and was approximately \$33.50 in March, 1981.



These price increases in oil and gas affect the value of an oil and gas property in two ways. First, since valuation is based upon existing price and cost ratios, when prices increase at a faster rate than costs the value of existing proved reserves increases. Second, increasing prices increase the proved reserve. This also occurs in two ways. First, it will be profitable to operate a well for a longer period even though production has fallen off, \*108 and thus the life of the property as an oil and gas producer is increased.<sup>9</sup> Second, many secondary and tertiary methods of production which were not economically feasible become feasible when the price increases. Until 1978 the annual reassessment of oil and gas properties reflected these changes.

In the June 1978 primary election the voters added article XIII A to the state Constitution by passing Proposition 13. This measure imposed important limitations upon the assessment and taxing powers of state and local governments. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 218 [149 Cal.Rptr. 239, 583 P.2d 1281].) Among these limitations is a maximum 1 percent tax rate upon the full cash value of real property, except where necessary to pay prior indebtedness approved by the voters. (Art. XIII A, § 1.)<sup>10</sup>

There are two aspects of article XIII A which are involved in this dispute. The first is the so-called “rollback” provision of section 2, subdivision (a). That subdivision provides, in relevant part: “The full cash value means the county assessor's valuation of real property as shown on the 1975-1976 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-1976 full cash value may be reassessed to reflect that valuation.” The second restriction of article XIII A involved here is that of section 2, subdivision (b). It provides: “The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.”

In *Amador Valley*, the Supreme Court noted that although article XIII A is imprecise and ambiguous in a number of particulars, it nevertheless was not so vague and uncertain in its essential terms as to render it void and inoperable. (22 Cal.3d at pp. 245-247.) For instance, the article was subject

to legislative and administrative construction with regard to its implementation which could resolve the ambiguities in the measure. (*Ibid.*) The court made note of the implementing regulations of the State Board of Equalization (Cal. Admin. Code, tit. 18, § 460-471), but did not consider the validity of any particular regulation. Among these implementing regulations \*109 is rule 468 pertaining to the assessment of oil and gas interests, which the parties have stipulated was adopted in procedural compliance with the Administrative Procedures Act.

As we have just noted, the State Board of Equalization, following the passage of Proposition 13, adopted rule 468 to establish valuation principles for taxation of oil and gas reserves. (See *Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770, 799 [195 Cal.Rptr. 393].) Rule 468, which is set out in full in the margin,<sup>11</sup> retains a capitalization-of-income system of valuation \*110 based upon proved reserves. However, it modifies the prior practice in important aspects. Essentially the rule treats additions to proved reserves due to changed physical or economic conditions as additions to the real property interest. These reserves are valued as of the time they first become proved reserves, and are thereafter “frozen” in value, subject only to the two percent inflationary increase permitted by article XIII A. In practice, at each annual reassessment the value of the oil and gas interest is reduced by depletions from the prior year's production, adjusted for the 2 percent inflationary increase, and increased by the current value of new proved reserves. The additions to the proved reserves are thereafter “frozen” in value pursuant to article XIII A.

This coordinated proceeding is the result of lawsuits filed in different counties. On June 30, 1980, William C. Lynch, the Assessor for the County of Sacramento, commenced a Sacramento County action against the State Board of Equalization. On August 8, 1980, in the Superior Court of Kern County, California Independent Oil Producers (CIPA) a nonprofit mutual benefit association, and a number of independent oil producers, commenced an action against Herbert E. Roberts, the Assessor of Kern County; the County of Kern; and the State Board of Equalization. It is unnecessary to set forth the numerous cross-complaints and complaints in intervention which were filed in each action. Eventually the actions were coordinated pursuant to California Rules of Court, rule 1501 et seq. After trial the coordination trial judge entered a judgment holding that rule 468 is constitutional, valid, and enforceable in all respects and for all years to which it applies. Numerous parties filed notices of appeal.

Although there are differences in the theories presented, the parties to this appeal fall into three general categories. The oil and gas interests consist of \*111 CIPA and the independent oil producers it represents; the Western Oil and Gas Association (WOGA) and the major oil and gas companies it represents; and Amerada Hess Corporation. These parties contend that rule 468 violates article XIII A of the Constitution in that it permits an increase in taxable value of an oil and gas property based upon changed economic circumstances in excess of the 2 percent per year limitation. They point out that since California has rejected the ownership-in-place theory of oil and gas rights, what is being taxed is the right to drill for and produce oil and gas, and they argue that additions to the proved reserve should not be allowed to increase the taxable value of the right. According to this argument, county assessors must consider the taxable value of an oil and gas interest to be the 1975 assessment with a 2 percent adjustment, regardless of how valuable the interest may actually become. It was shown at trial that if this position is accepted and the producers are allowed depletion for production, then by 1985 the entire 1975 proved reserve will be consumed and there will be no tax on oil and gas interests in the absence of a change of ownership, which we have seen seldom, if ever, occurs. The oil and gas interests counter this point by conceding that they should not be allowed depletion for production unless the actual value of the interest falls below the taxable value based upon the 1975 assessment.

A second group of appellants consists of the Assessors of Sacramento County (Lynch); Kern County (Roberts); and Ventura County (Waterman); and the Counties of Ventura and Solano. These parties contend that the voters did not intend article XIII A to apply to oil and gas interests, the production of oil and gas should be considered continuous construction or acquisition so that annual reassessment is proper, and that if article XIII A applies to oil and gas interests then depletion should not be allowed.

The respondents, of course, urge that we uphold rule 468 as the proper application of article XIII A to oil and gas properties. These parties consist of the State Board of Equalization, the Assessor of Los Angeles County (Alexander Pope), the County of Kern, the County of Monterey and its Assessor (Donald P. Stewart), and a number of Kern County school interests.

Before we proceed with consideration of the contentions on appeal, the significance of this case may be put in perspective by reference to some facts and figures presented to the trial court. As of the 1980 lien date there were 1,293 oil and gas producing properties in Los Angeles County. On the 1980 lien date those properties had a cumulative rule 468 value in excess of \$2.5 billion. Under the prearticle XIII A method of valuation those interests would have been valued in excess of \$7 billion. If the position of the appellant oil and gas interests were accepted those properties would have \*112 been valued at less than \$1.1 billion without an allowance for depletion, and at under \$700 million if depletion were allowed. Even with a 1 percent maximum tax rate these differences in valuation translate into millions of dollars of annual tax liabilities and revenues. Further, it was shown that in the years 1978 through 1980 Kern County's tax revenues were in excess of \$68 million more under rule 468 than they would have been if the appellant oil and gas interests' position were accepted.

## Discussion

### *I. Does Article XIII A Apply to Oil and Gas Properties?*

(4)The appellant assessors contend that article XIII A does not apply to oil and gas properties. This contention is based upon the already judicially noted ambiguities in article XIII A ( *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, *supra.*, 22 Cal.3d at pp. 244-245), and the research and supporting testimony of Mr. William H. Keller, an attorney who specializes in legislative history and intent. Mr. Keller conducted a search for preelection documents relating to Proposition 13, and ultimately collected 1,032 such documents. He analyzed the documents and discovered thousands of references to such terms as "home," "house," "renters," and words related to business, industry and commerce. He found only six references to oil and gas. From this relatively low incidence of the mention of oil and gas interests, and the content of the various preelection documents collected, Keller formed the opinion that the average voter would have believed Proposition 13 would apply to surface uses of property, meaning land and buildings, and not to mineral rights. On appeal the assessors argue that due to the unique nature of the interests involved and the latent and patent ambiguities in article XIII A, the measure should not be construed to include those interests.

We must reject this contention. We concede that Mr. Keller conducted a thorough search for indications of the intent behind Proposition 13, but his research establishes only

that oil and gas interests were not the subject of much of the preelection discussion. Significantly absent from those materials is any indication that the measure would not apply to oil and gas interests. Arguments cannot supply what is missing from the language of the measure, and this court is not at liberty to add provisions to the Constitution. (*Pugh v. City of Sacramento* (1981) 119 Cal.App.3d 485, 491 [174 Cal.Rptr. 119]; *Metropolitan Water District v. Dorff* (1979) 98 Cal.App.3d 109, 115 [159 Cal.Rptr. 211].) However wise we may believe such an exception to be, we cannot carve it out from article XIII A unless there is an affirmative indication of voter intent or language in the measure itself which is reasonably susceptible of such a meaning. Here we find neither. Article XIII A \*113 applies to “real property,” and the ballot arguments submitted to the voters focused on the fact that the relief provided would apply to commercial, industrial, and business property. (Ballot Pamp., Primary Elec., (June 6, 1978) pp. 57-59.) Under these circumstances it is clear that the electorate knew and intended the measure to apply to commercial real property and, in view of the time-honored treatment in this state of oil and gas interests as taxable real property, we cannot hold that the voters in some unexpressed way sought to exempt these interests from the tax relief provided in article XIII A.

Article XIII A was intended to provide broad real property tax relief to owners of commercial and business properties as well as to homeowners. In the absence of some affirmative indication that such relief was intended to be denied to owners of oil and gas interests, we are unable to exclude them from the relief provided. Accordingly we hold that article XIII A applies to oil and gas interests.

## II. Is Rule 468 a Correct Interpretation of Article XIII A as Applied to Oil and Gas Properties?

(5) Article XIII A converts California from a current-value method of taxation to an acquisition-value system of taxation. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, *supra.*, 22 Cal.3d at p. 236.) All real property is valued when it is purchased, newly constructed, or a change of ownership occurs, and thereafter the taxable value may be increased no more than 2 percent per year. For implementation purposes all persons who acquired property prior to 1975 are deemed to have purchased it in 1975. (*Ibid.*) “This ‘acquisition value’ approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an

unforeseen, perhaps unduly inflated, current value.” (*Id.*, at p. 235.) Upon this basis article XIII A survived attack on equal protection principles. (*Ibid.*)

It should be apparent to anyone who has read this far that an acquisition-value method of taxation is, at a minimum, problematical in relation to oil and gas interests. In *Amador*, the Supreme Court cited a typical example of an acquisition value basis: “For example, a taxpayer who acquired his property for \$40,000 in 1975 henceforth will be assessed and taxed on the basis of that cost (assuming it represented the then fair market value). This result is fair and equitable in that his future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control. On the other \*114 hand, a person who paid \$80,000 for similar property in 1977 is henceforth assessed and taxed at a higher level which reflects, again, the price he was willing and able to pay for that property. Seen in this light, and contrary to petitioners’ assumption, [section 2](#) does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis predicated on the owner’s free and voluntary acts of purchase.” (*Id.*, at p. 235.)

The typical home buyer, or for that matter the buyer of commercial real property, agrees to pay a lump sum amount based upon existing market values. In contrast, the vast majority of oil and gas interests are created through leases under which the lessee agrees to pay an annual royalty based upon production rather than a lump sum amount. “It may be stated in passing that ... the full consideration to the lessor is ... the royalties in the lease.” (*Jones v. Interstate Oil Corp.* (1931) 115 Cal.App. 302, 311 [1 P.2d 1051].) These royalties are in the nature of rent and are a part of the purchase price of the lease. (*Atlantic Oil Co. v. County of Los Angeles*, *supra.*, 69 Cal.2d at pp. 600-601; see also Comment, *The Oil and Gas Lease in California: Still a Landlord-Tenant Relationship?* (1982) 13 Pacific L.J. 485.) The value of the interests of the lessor and the lessee are directly dependent upon production, and due to the fugacious nature of the minerals involved, the leases are subject to forfeiture for failure of the lessee to work the property diligently. (*Acme Oil and Mining Co. v. Williams*, *supra.*, 140 Cal. at pp. 685-686.) From this perspective oil and gas interests might be said to be subject to continuous acquisition, and full value of the acquisition price, like the

ultimate total recovery of oil and gas, cannot be known for certain until abandonment of the property.

It is apparent that the disjointed application of article XIII A to oil and gas interests is one of the imprecise and ambiguous particulars of the measure referred to by the court in *Amador*, *supra.*, 22 Cal.3d at page 245. Because of that misfit, article XIII A must be construed in a liberal, practical, and common sense manner to meet changed conditions and the growing needs of the people. (22 Cal.3d at p. 245.) (6) Although enactments must ordinarily be construed in accordance with the plain and ordinary meaning of their words, the literal language of the measure may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers. (*Ibid.*) (7) And, importantly, it is subject to legislative and administrative interpretation and those interpretations are entitled to great weight from the courts. (*Id.*, at p. 246.)

(8) Our review of all of the factors presented leads us to conclude that rule 468 is an appropriate interpretation of article XIII A as it relates to oil \*115 and gas interests. Such interests simply have no real parallel with other types of real property. (See *Graciosa Oil Co. v. Santa Barbara*, *supra.*, 155 Cal. at p. 145.) The typical “acquisition cost” of such an interest is nothing but a promise for a future payment, and if contingent, of an undertermined amount. (*Id.*, at pp. 144-145.) The typical initial “acquisition value” is nothing, for value is dependent upon continuous, diligent, and successful development and production. (*Acme Oil and Mining Co. v. Williams*, *supra.*, 140 Cal. at p. 684.) In establishing an acquisition-value system of taxation the People expressly provided for reassessment at full value when property is purchased, newly constructed, or a change of ownership has occurred. (art. XIII A, § 2, subd. (a).) There are aspects of each of these exceptions continuously present in the operation of an oil and gas lease. As oil and gas are extracted the right to remove them must be “purchased” by payment of the royalty; the oil and gas previously at large undergo a “change of ownership” when they are reduced to the personal property of the producer; and the derivation of value from the property requires continuous work which is similar to “new construction.”<sup>12</sup> While the operation of an oil and gas lease may not come within the literal language of section 2, subdivision (a), it is clearly within the penumbra of intent established through the use of those qualifiers.

The acceptance of the position of the oil and gas appellants in this case would lead to manifestly absurd and unintended results. Since these interests generally have no value when

initially acquired and are typically assessed at a zero or nominal value during the discovery and development process, the application of article XIII A in the manner sought by the oil and gas interests would preclude real property taxation on any oil and gas interest created after the 1975 assessment, as well as on any interest which had not been developed to “paying quantities” prior to that year.<sup>13</sup> \*116

Moreover, even the oil and gas interests “grandfathered” into the property tax system due to their having reached paying quantity production by 1975 must ultimately cease to be subject to real property taxation. This is because the very nature and value of the interest lies in a use which is calculated to deplete and ultimately destroy the value of the interest. This would occur by the year 1985 if depletion were allowed from the 1975 proved reserves, and even if the concession of the oil and gas appellants (that such depletion is to be allowed only when current value drops below the 1975 adjusted base value of the interest) were accepted, the oil and gas industry must ultimately obtain total property tax exemption on these valuable property interests. We find nothing in the language of article XIII A, or in the preelection discussions, which would support such an interpretation of article XIII A. The measure was intended to provide broad property tax relief, but it was not intended to exempt particular taxpayers from property tax.

Article XIII A, as the oil and gas appellants would have us construe it, would be inconsistent with article XIII, section 1, subdivision (a), which provides that unless otherwise provided by the state Constitution or the laws of the United States, “[a]ll property is taxable.” Nothing in the language or history of article XIII A indicates that it was intended as an exemption measure, and we think the framers could have spoken in clear and unambiguous language had that been their intent. If the measure were construed as the oil and gas appellants would have it, then it must operate as an implied repeal of article XIII, section 1, subdivision (a). But “neither the language nor the circumstances surrounding the passage of [Proposition] 13 rebuts the established presumption of constitutional construction disfavoring a repeal by implication.” (*State Bd. of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 822 [164 Cal.Rptr. 739]; citation omitted.) Consequently, “Proposition 13 did not repeal or in any way alter the provisions of article XIII, which presently contains 33 separate sections. Thus, article XIII, section 1, must be given effect.” (*Ibid.*) Rule 468 recognizes the essential nature of an oil and gas interest. The holder of such an interest has the right to remove oil and gas in paying quantities, and paying quantities are defined and limited by



the concept of proved reserves. Additions to proved reserves are additions to the property right. (See *Chandler v. Hart* (1911) 161 Cal. 405, 414 [119 P. 516].) The rule values the proved reserves when they are included within the property interest and thereafter gives the taxpayer the benefit of [article XIII A](#), but does not blindly ignore the fact that additions to the proved reserves are additions to the property right. In doing so the rule gives oil and gas producers the benefits of the tax relief [article XIII A](#) was enacted to provide without reaching the absurd results we have described. Consequently we reject the arguments of the oil and gas appellants that rule 468 violates [article XIII A](#) because it permits \*117 the taxable value of oil and gas properties to be increased due to additions to the proved reserves.

We must also reject the arguments of the appellant assessors that annual reassessment is required for the entire interest. The precise nature of the property interest in uncaptured oil and gas beneath the surface has never been clearly defined and is subject to refinement. ( *People v. Associated Oil Co.*, *supra.*, 211 Cal. at p. 105.) So long as California had a current-value system of property taxation it was unnecessary to define for taxation purposes the nature of the taxable interest, but when the voters enacted an acquisition system of taxation it became necessary to define more clearly the taxable interest in an oil and gas property. Rule 468 does that by recognizing that the value of an oil and gas property lies in the proved reserves. Additions to the proved reserves constitute additions to the property right, but to permit reassessment of the existing proved reserve when it becomes more valuable due to inflation would violate the terms of [article XIII A](#). The Board thus properly determined that existing proved reserves may not be increased in value more than 2 percent per year.

(9)We also reject the contention of the appellant assessors that oil and gas producers may not be allowed reductions in value of the existing proved reserves due to depletion from production. This argument is based upon [Revenue and Taxation Code section 51](#) which provides that for each lien date the taxable value of real property is the lesser of its base year value compounded for inflation not to exceed 2 percent, or its full cash value taking into consideration a decline in value due to damage, destruction, depreciation, obsolescence or other factors. This section implements [article XIII A, section 2](#), subdivision (b), which expressly provides for reassessment “to reflect substantial damage, destruction or other factors causing a decline in value.” Under [section 51](#) real property is treated as a taxable unit, and the statute recognizes that the market value of a taxable unit may increase despite

damage or destruction. But we have already held that, due to the unique nature of oil and gas interests, those property rights cannot be treated in a manner identical to other types of property. The Board has elected to measure the value of an oil and gas interest by the value of the proved reserves and to treat additions to the proved reserves as additions to the property right. It was proper for the Board to consider reductions from the proved reserves due to depletion as reductions from the taxable property right.

In summary, we agree with the trial court that rule 468 is a valid and enforceable implementation of [article XIII A](#) as it applies to oil and gas interests. \*118

### III. Due Process and Equal Protection.

We finally address and reject contentions that [article XIII A](#) and rule 468 violate principles of due process and equal protection. In *Amador*, the Supreme Court rejected contentions that [article XIII A](#) unlawfully discriminates between different taxpayers. (22 Cal.3d at pp. 232-237.) The appellant assessor of Kern County contends that the holding of *Amador* does not apply to oil and gas interests due to the potential of vast increases in value of such properties, and the fact that the terms “purchase,” “newly constructed,” and “change of ownership” are not likely to trigger reassessment of such properties. Amerada Hess contends that rule 468 treats oil and gas interests differently than other types of property, and that such treatment “makes no sense,” and is “indefensible.”

(10)As the *Amador* court noted, the states have large leeway in making distinctions and drawing lines in order to produce what is, in their judgment, a reasonable system of taxation. ( *Id.*, at pp. 233-234.) A state tax law is not arbitrary although it discriminates in favor of a certain class if the discrimination is founded upon a reasonable distinction or a difference in state policy. (*Ibid.*) To resolve the issues presented here it is sufficient that we note that the unique nature of oil and gas interests not only permits but compels that they be treated differently than other forms of property for taxation purposes. We are satisfied therefore that [article XIII A](#), as implemented by rule 468, does not unlawfully discriminate either for or against oil and gas producers.

Respondents State Board of Equalization and the Assessor of Los Angeles County are awarded their costs of appeal. All other parties shall bear their own costs.

The judgment is affirmed.

Carr, Acting P. J., and Sims, J., concurred. \*119

#### Footnotes

- \* Throughout the proceedings California Independent Producers Association has proceeded jointly with McFarland Energy, Inc., Seaboard Oil & Gas Co.; Santa Fe Energy Company; W. K. Barker & Associates; Daniel J. Pickerell; Callon Petroleum Company; M. H. Whittier Corporation; and Drilling & Production Co., Inc.
- † Throughout the proceedings Western Oil & Gas Association has proceeded jointly with Atlantic Oil Company; Exxon Corporation; Kernridge Oil Company; Mobil Oil Corporation; Shell Oil Company; and Union Oil Company of California.
- †† Throughout the proceedings Richardson has proceeded jointly with Earl D. Cornwell as Superintendent of the Schools of the County of San Luis Obispo; Kern High School District; Taft Union High School District; Elk Hills School District; Belridge School District; Midway School District; and McKittrick School District.
- \* Throughout the proceedings California Independent Producers Association has proceeded jointly with McFarland Energy, Inc., Seaboard Oil & Gas Co.; Santa Fe Energy Company; W. K. Barker & Associates; Daniel J. Pickerell; Callon Petroleum Company; M. H. Whittier Corporation; and Drilling & Production Co., Inc.
- 1 Most of these methods are employed in an oil field from which there is also an associated gas recovery. There are very few, if any, enhanced recovery methods available for dry gas fields.
- 2 An example noted at trial is a project in Southern California in which diatomaceous earth which is impregnated with oil is actually mined and processed to remove the oil.
- 3 [Civil Code section 718f](#) limits the duration of some oil and gas leases to 99 years. That section reads: "A lease of land for the purpose of effecting the production of minerals, oil, gas, or other hydrocarbon substances from other lands may be made for a period certain or determinable by any future event prescribed by the parties but no such lease shall be enforceable after 99 years from the commencement of the term thereof."
- 4 Hereditament means any kind of property that can be inherited. The French phrase "*profit a prendre*" literally means profit to take. Thus, "[a]n incorporeal hereditament is a right stemming from a corporeal thing. ... It may relate to land, in which case it constitutes 'a limited interest or estate in land ....' [¶] A *profit a prendre* is an incorporeal hereditament; it is a right to take something from the land of another." ( *Gerhard v. Stephens* (1968) 68 Cal.2d 864, 878, fn. 7 [69 Cal.Rptr. 612, 442 P.2d 692]; citations omitted.)
- 5 [Revenue and Taxation Code section 107](#) provides in relevant part: "Leasehold estates for the production of gas, petroleum and other hydrocarbons substances from beneath the surface of the earth, and other rights relating to such substances which constitute incorporeal hereditaments or profits a prendre, are sufficient security for the payment of taxes levied thereon. Such estates and rights shall not be classified as possessory interests, but shall be placed on the secured roll."
- 6 In the absence of future development of alternative sources economic principles of supply and demand and the lessons of the immediate past would certainly indicate that the price of oil and gas will, in time, increase sufficiently that all oil and gas which is technologically recoverable will be economically recoverable. Nevertheless, the definition of proved reserves does not include such recoverable oil and gas reserves. This "most conservative estimate" of reserves was accepted in the interest of uniformity and to avoid speculation in the valuation of oil and gas properties.
- 7 Whether a zero or nominal value was given to the oil and gas interest appears to have been dependent upon the company's desires. Some companies desired a nominal value for their interest so that in the event the freehold estate were sold for nonpayment of taxes it could not be contended that the oil and gas interest was included in the sale since they would have clearly been separately assessed.
- 8 A barrel is the standard United States measure for oil and is equal to 42 gallons. In international trade oil is measured in metric tons, and in Canada oil is measured by the cubic meter.
- 9 This factor was built into the federal price control system during the 1970's. A well which produced less than 10 barrels per day was considered a "stripper" and was not subject to price controls. Moreover, a producer could apply for discretionary relief from price controls for marginally producing properties.
- 10 [Article XIII A](#) has been subsequently amended. The amendments do not affect the issues tendered here.
- 11 [Title 18, California Administrative Code, section 468](#) provides: "(a) The right to remove petroleum and natural gas from the earth is a taxable real property interest. Increases in recoverable amounts of minerals caused by changed physical or economic conditions constitute additions to such a property interest. Reduction in recoverable amounts of minerals caused by production or changes in the expectation of future production capabilities constitute a reduction in the interest.

Whether or not physical changes to the system employed in recovering such minerals qualify as new construction shall be determined by reference to Section 463(a).

"(b) The market value of an oil and gas mineral property interest is determined by estimating the value of the volumes of proved reserves. Proved reserves are those reserves which geological and engineering information indicate with reasonable certainty to be recoverable in the future, taking into account reasonably projected physical and economic operating conditions. Present and projected economic conditions shall be determined by reference to all economic factors considered by knowledgeable and informed persons engaged in the operation and buying or selling of such properties, e.g., capitalization rates, product prices and operation expenses.

"(c) The unique nature of oil and gas property interests requires the application of specialized appraisal techniques designed to satisfy the requirements of [Article XIII, Section 1](#), and [Article XIII A, Section 2, of the California Constitution](#). To this end, the valuation of such properties and other real property associated therewith shall be pursuant to the following principles and procedures:

"(1) A base year value (market value) of the property shall be estimated as of lien date 1975 in accordance with Section 460.1 or as of the date a change in ownership occurs subsequent to lien date 1975. Newly constructed improvements and additions in reserves shall be valued as of the lien date of the year for which the roll is being prepared. Improvements removed from the site shall be deducted from taxable value. Base year values shall be determined using factual market data such as prices and expenses ordinarily considered by knowledgeable and informed persons engaged in the operation, buying and selling of oil, gas and other mineral-producing properties and the production therefrom. Once determined, a base year value may be increased no more than two percent per year.

"(2) Base year reserve values must be adjusted annually for the value of depleted reserves caused by production or changes in the expectation of future production.

"(3) Additions to reserves established in a given year by discovery, construction of improvements, or changes in economic conditions shall be quantified and appraised at market value.

"(4) The current year's lien date taxable value of mineral reserves shall be calculated as follows:

"(A) The total unit market value and the volume of reserves using current market data shall be estimated.

"(B) The current value of taxable reserves is determined by segregating the value of wells, casings, and parts thereof, land (other than mineral rights) and improvements from the property unit value by an allocation based on the value of such properties.

"(C) The volume of new reserves shall be determined by subtracting the prior year's reserves, less depletions, from the estimated current total reserves.

"(D) The value of removed reserves shall be calculated by multiplying the volume of the reserves removed in the prior year by the weighted average value, for reserves only, per unit of minerals for all prior base years. The prior year's taxable value of the reserves remaining from prior years shall be found by subtracting the value of removed reserves from the prior year's taxable value.

"(E) The new reserves are valued by multiplying the new volume by the current market value per unit of the total reserves.

"(F) The current taxable value for reserves only is the sum of the value of the prior year's reserves, net of depletions as calculated in (D) above, factored by the appropriate percentage change in the Consumer Price Index (CPI) added to the value of the new reserves, as calculated in (E) above.

"(5) Valuation of land (other than mineral reserves) and improvements.

"(A) A base year value (market value) of land (including wells, casings and parts thereof) and improvements shall be estimated as of lien date 1975 in accordance with Section 460.1, the date of new construction after 1975, or the date a change of ownership occurs subsequent to lien date 1975.

"(B) The value of land (wells, casings and parts thereof) and improvements shall remain at their factored base year value except as provided in (6) below.

"(6) Value declines shall be recognized when the market value of the appraisal unit, i.e., land, improvements and reserves, is less than the current taxable value base of the same unit."

12 In fact, the operation of an oil and gas lease is the opposite of "construction." Construction means to make or form by combining parts; to build. (Webster's New Collegiate Dict. (1977 G. & C. Merriam Co.) "construct" p. 243.) The operation of an oil and gas lease is an extraction process, and extraction means to draw forth; to withdraw; or to separate. (Webster's, *op. cit. supra*, "extract" p. 406.) Although the end result of the processes may differ, their nature is the same with regards to the purposes of [article XIII A](#), since each use physical force (work) to rearrange the physical nature of the properties for the purpose of enhancing the value of the property right. Thus the operation of an oil and gas property is similar to construction, although that is not a word which is often used in reference to oil and gas interests.

- 13 A typical example of this latter result is Kern County property number 183-210-10 (West Petroleum), owned by McFarland Energy, Inc. The 1975 assessment gave that oil and gas interest a nominal value of \$400. By 1979 the property had reached paying quantity production and the rule 468 value was \$24,620, and the 1980 rule 468 value was \$174,304. Nevertheless, McFarland insists that through a literal application of [article XIII A](#) it is entitled to be taxed as though the property's full cash value was \$416 in 1979, and \$424 in 1980.

**ENCLOSURE 2**

**Energy For California By Californians 2019 Annual Report Excerpts**



**2019**  
ANNUAL REPORT

# ENERGY FOR CALIFORNIA BY CALIFORNIANS





- ***Largest mineral acreage position in a world-class oil and natural gas province.***

Our operations are located exclusively in California, which is one of the most prolific oil and natural gas producing regions in the world and is currently the seventh largest oil producing state in the nation. According to information through 2018 from the California Department of Conservation Geologic Energy Management Division (CalGEM), formerly the Division of Oil, Gas, and Geothermal Resources, cumulative California production from all four basins in which we operate is 36 billion barrels of oil equivalent (BBoe), including approximately 20 BBoe in the San Joaquin basin, 11 BBoe in the Los Angeles basin, 3 BBoe in the Ventura basin and 2 BBoe in the Sacramento basin. Additionally, Kern County, located in the San Joaquin basin, is the fifth largest oil producing county in the lower 48 states. California is also the nation's largest state economy, and the world's fifth largest, with energy demands that significantly exceed local supply. Our large mineral acreage position and diverse development portfolio enable us to pursue the appropriate production strategy for the relevant commodity-price environment without the need to acquire new mineral acreage. We also seek to quickly deploy the knowledge we gain in our existing operations, together with our seismic data, to other areas within our portfolio.

- ***Extensive drilling and workover portfolio focused on lower-risk conventional oil opportunities.***

Our drilling inventory at December 31, 2019 consisted of approximately 32,280 gross (24,350 net) identified well locations, of which approximately 95% target oil. In addition, we continue to maintain our available workover projects that typically deliver high returns. Our inventory of predominantly lower-risk conventional development opportunities has increased more than our unconventional opportunities. In a sustained favorable oil and natural gas price environment, we believe we can achieve further long-term production growth through the development of unconventional reservoirs. In addition, our large conventional and unconventional portfolio can provide attractive joint venture opportunities.

- ***Proven operational management and technical teams with extensive experience operating in California.***

The members of our operational management and technical teams have an average of over 26 years of experience in the oil and natural gas industry, with an average of over 17 years focused on our California oil and natural gas operations through different price cycles. Our teams have a proven track record of applying modern technologies and operating methods to develop our assets and improve their operating efficiencies.

## Operations

The following table highlights key information about our operations in the four California oil and natural gas basins in which we operate as of and for the year ended December 31, 2019:

	San Joaquin Basin	Los Angeles Basin	Ventura Basin	Sacramento Basin	Total Operations
<b>Mineral Acreage:</b>					
Net mineral acreage (thousands)	1,390	30	232	512	2,164
Average net mineral acreage held in fee (%)	67%	46%	79%	37%	61%
<b>Number of fields</b>	48	8	27	53	136
<b>Average net revenue interest (%)<sup>(a)</sup></b>	92%	72%	84%	76%	86%
<b>Average drilling rigs<sup>(b)</sup></b>	7	1	—	—	8
<b>Net wells drilled and completed</b>	117.8	25.2	2.0	2.4	147.4
<b>Proved reserves:</b>					
Oil (MMBbl)	280	168	35	—	483
NGLs (MMBbl)	49	—	3	—	52
Natural gas (Bcf)	525	13	26	90	654
Total (MMBoe)	417	170	42	15	644
Oil percentage of proved reserves	67%	99%	83%	—%	75%
<b>Production:</b>					
Total production (MMBoe)	34	9	2	2	47
Average daily production (MBoe/d)	94	24	5	5	128
Oil percentage of production	55%	100%	80%	—%	63%
<b>Reserves to production ratio (years)<sup>(c)</sup></b>	12.3	18.9	21.0	7.5	13.7

Note: MMBbl refers to millions of barrels; Bcf refers to billions of cubic feet; MMBoe refers to millions of barrels of oil equivalent; and MBoe/d refers to thousands of barrels of oil equivalent (Boe) per day. Natural gas volumes have been converted to Boe based on the equivalence of energy content of six thousand cubic feet of natural gas to one barrel of oil. Barrels of oil equivalence does not necessarily result in price equivalence.

- (a) The average net revenue interest represents our interest in production after considering royalties and similar burdens and third-party working interests.
- (b) Includes one internally funded rig and seven JV rigs.
- (c) Calculated as total proved reserves as of December 31, 2019 divided by total production for the year ended December 31, 2019.

### San Joaquin Basin

The San Joaquin basin contains some of the largest oil fields in the United States based on cumulative production and proved reserves. Commercial petroleum development in the basin began in the 1800s. The basin contains multiple stacked formations throughout its areal extent, and we believe that the San Joaquin basin provides appealing opportunities for field re-development of existing wells, as well as new discoveries and unconventional play potential. The complex geology in the San Joaquin basin has allowed continuing discoveries of stratigraphic and structural traps. Approximately 75% of California's total daily oil production for 2018 was produced in the San Joaquin basin, according to CalGEM.

We hold substantially all the working, surface and mineral interests in the Elk Hills field, our largest producing asset and one of the largest fields in the continental U.S. based on proved reserves.

At Elk Hills we also operate efficient natural gas processing facilities, including a state-of-the-art cryogenic gas plant, with a combined gas processing capacity of over 520 MMcf/d. Additionally, the Elk Hills power plant generates sufficient electricity to operate the field, and sells excess power to the grid and to a utility. Our operations at Elk Hills also include an advanced central control facility and remote automation control on over 95% of our producing wells.

We believe our extensive 3D seismic library, which covers over 850,000 acres in the San Joaquin basin, or approximately 50% of our gross mineral acreage in this basin, gives us a competitive advantage in field development and further exploration. We have a large ownership interest in several of the largest existing oil fields in the San Joaquin basin, including Elk Hills, Buena Vista and Kettleman North Dome. We have also been successfully developing steamfloods in our Kern Front operations.

### ***Los Angeles Basin***

This basin is a northwest-trending plain about 50 miles long and 20 miles wide. Most of the significant discoveries in the Los Angeles basin date back to the 1920s. The Los Angeles basin has one of the highest concentrations per acre of crude oil in the world with 68 fields in an area of about 0.3 million acres. The basin contains multiple stacked formations throughout its depths, and we believe that the Los Angeles basin provides a considerable inventory of existing field re-development opportunities as well as new play discovery potential. Large active oil fields include the Wilmington and Huntington Beach fields, where we have significant operations.

The Wilmington field has been one of the largest fields in the continental U.S. based on proved reserves. Most of our Wilmington production is subject to a set of contracts similar to production-sharing contracts (PSCs) under which we recover the capital and operating costs we incur on behalf of the state and the city of Long Beach and receive our share of profits.

### ***Ventura Basin***

The Ventura Basin is the oldest operating oil basin in California extending from northern Los Angeles County to the coastal area of Ventura. The earliest discoveries were mines dug into hillsides to mine active oil seeps. The first commercial oil well started in 1866. The entire sedimentary section is productive at various locations, and most reservoirs are sandstones with favorable porosity and permeability. As of December 31, 2019, we operated more than 20 oil fields in this historic and prolific basin. The basin contains multiple stacked formations and provides an appealing inventory of existing field re-development opportunities, as well as new exploration potential. We continue to explore over 10,000 feet of proven stacked oil reservoirs throughout the basin.

### ***Sacramento Basin***

The Sacramento basin is a deep, thick sequence of sedimentary deposits within an elongated northwest-trending structural feature covering about 7.7 million acres. Exploration and development in the basin began in 1918. Our significant mineral acreage position in the Sacramento basin gives us the option for future development and rapid production growth in an attractive natural gas price environment.

## Mineral Acreage

The following table sets forth certain information regarding the total developed and undeveloped mineral acreage in which we held an interest as of December 31, 2019. Approximately 60% of our total net mineral interest position is held in fee, approximately 17% is held by production and the remainder is subject to term leases.

	San Joaquin Basin	Los Angeles Basin	Ventura Basin	Sacramento Basin	Total
			(in thousands)		
Developed <sup>(a)</sup>					
Gross <sup>(b)</sup>	426	21	63	266	776
Net <sup>(c)</sup>	349	16	61	247	673
Undeveloped <sup>(d)</sup>					
Gross <sup>(b)</sup>	1,275	17	204	348	1,844
Net <sup>(c)</sup>	1,041	14	171	265	1,491
Total					
Gross <sup>(b)</sup>	1,701	38	267	614	2,620
Net <sup>(c)</sup>	1,390	30	232	512	2,164

(a) Mineral acres spaced or assigned to productive wells.

(b) Total number of mineral acres in which interests are owned.

(c) Net mineral acreage includes acreage reduced to our fractional ownership interest and interests under PSC-type contracts.

(d) Mineral acres on which wells have not been drilled or completed to a point that would permit the production of commercial quantities of oil and natural gas, regardless of whether the mineral acreage contains proved reserves.

Our oil and natural gas leases have primary terms ranging from one to ten years. Once production commences, leases are extended on the producing acreage through the end of their producing life.

Work programs are designed to ensure that the exploration potential of any leased property is evaluated before expiration. In some instances, we may relinquish leased acreage in advance of the contractual expiration date if the evaluation process is complete and there is no longer a commercial reason for leasing that acreage. In cases where we determine we want to take the additional time required to fully evaluate undeveloped acreage, we have generally been successful in obtaining extensions. The combined net acreage covered by leases expiring in the next three years represented approximately 15% of our total net undeveloped acreage at December 31, 2019 and these expirations, should they occur, would not have a material adverse impact on us. Historically, we have not dedicated any significant portion of our capital program to prevent lease expirations and do not expect we will need to do so in the future.



Our production costs include variable costs that fluctuate with production levels, and fixed costs that typically do not vary with changes in production levels or well counts, especially in the short term. The substantial majority of our near-term fixed costs become variable over the longer term because we manage them based on the field's stage of life and operating characteristics. For example, portions of labor and material costs, energy, workovers and maintenance expenditures correlate to well count, production and activity levels. Portions of these same costs can be relatively fixed over the near term; however, they are managed down as fields mature in a manner that correlates to production and commodity price levels. A certain amount of costs for facilities, surface support, surveillance and related maintenance can be regarded as fixed in the early phases of a program. However, as the production from a certain area matures, well count increases and daily per well production drops, such support costs can be reduced and consolidated over a larger number of wells, reducing costs per operating well. Further, many of our other costs, such as property taxes and oilfield services, are variable and will respond to activity levels and tend to correlate with commodity prices. Overall, we believe approximately one-third of our operating costs are fixed over the life cycle of our fields. We actively manage our fields to optimize production and minimize costs. When we see growth in a field, we increase capacities and, similarly, when a field nears the end of its economic life, we manage the costs while it remains economically viable to produce.

Our share of production and reserves from operations in the Wilmington field is subject to contractual arrangements similar to PSC-type contracts that are in effect through the economic life of the assets. Under such contracts we are obligated to fund all capital and production costs. We record a share of production and reserves to recover a portion of such capital and production costs and an additional share for profit. Our portion of the production represents volumes: (i) to recover our partners' share of capital and production costs that we incur on their behalf, (ii) for our share of contractually defined base production, and (iii) for our share of remaining production thereafter. We generate returns through our defined share of production from (ii) and (iii) above. These contracts do not transfer any right of ownership to us and reserves reported from these arrangements are based on our economic interest as defined in the contracts. Our share of production and reserves from these contracts decreases when product prices rise and increases when prices decline, assuming comparable capital investment and production costs. However, our net economic benefit is greater when product prices are higher. These PSC-type contracts represented 15% of our production for the year ended December 31, 2019.

In addition, in line with industry practice for reporting PSC-type contracts, we report 100% of operating costs under such contracts in production costs on our consolidated statements of operations as opposed to reporting only our share of those costs. We report the proceeds from production designed to recover our partners' share of such costs (cost recovery) in our revenues. Our reported production volumes reflect only our share of the total volumes produced, including cost recovery, which is less than the total volumes produced under the PSC-type contracts. This difference in reporting full operating costs but only our net share of production equally inflates our revenue and operating costs per barrel and has no effect on our net results.

## **Reserves**

Volatility in oil prices may materially affect the quantities of oil and natural gas reserves we can economically produce over the longer term. At December 31, 2019, our total estimated proved reserves were 644 million barrels of oil equivalent (MMBoe), a decrease of 68 MMBoe from 712 MMBoe at December 31, 2018. During 2019, proved crude oil reserves decreased by 47 million barrels (MMBbl), proved NGL reserves decreased by 8 MMBbl and proved natural gas reserves decreased by 80 billion cubic feet or 13 MMBoe, in each case from December 31, 2018.

The information with respect to our estimated reserves presented below has been prepared in accordance with the rules and regulations of the United States Securities and Exchange Commission (SEC).

Proved oil, NGLs and natural gas reserves were estimated using the unweighted arithmetic average of the first-day-of-the-month price for each month within the year (SEC Prices), unless prices were defined by contractual arrangements. Oil, NGLs and natural gas prices used for this purpose were based on spot prices, adjusted for price differentials to account for gravity, quality and transportation costs. For our 2019 reserves estimates, the average benchmark Brent oil price was \$63.15 per barrel and the average NYMEX gas price was \$2.58 per MMBtu. The average realized prices used for our 2019 reserves were \$63.50 per barrel for oil, \$30.91 per barrel for NGLs and \$2.88 per Mcf for natural gas.

The following table sets forth our net operating and non-operating interests in quantities of proved developed and undeveloped reserves of oil (including condensate), natural gas liquids (NGLs) and natural gas as of December 31, 2019. Estimated reserves include our economic interests under arrangements similar to PSCs at our Wilmington field in Long Beach.

As of December 31, 2019					
	San Joaquin Basin	Los Angeles Basin	Ventura Basin	Sacramento Basin	Total
<b>Proved developed reserves:</b>					
Oil (MMBbl)	212	121	24	—	357
NGLs (MMBbl)	43	—	2	—	45
Natural Gas (Bcf)	444	10	19	70	543
Total (MMBoe) <sup>(a)(b)</sup>	329	123	29	12	493
<b>Proved undeveloped reserves:</b>					
Oil (MMBbl)	68	47	11	—	126
NGLs (MMBbl)	6	—	1	—	7
Natural Gas (Bcf)	81	3	7	20	111
Total (MMBoe) <sup>(b)</sup>	88	47	13	3	151
<b>Total proved reserves:</b>					
Oil (MMBbl)	280	168	35	—	483
NGLs (MMBbl)	49	—	3	—	52
Natural Gas (Bcf)	525	13	26	90	654
Total (MMBoe) <sup>(b)</sup>	417	170	42	15	644

(a) As of December 31, 2019, approximately 24% of proved developed oil reserves, 11% of proved developed NGLs reserves, 13% of proved developed natural gas reserves and, overall, 21% of total proved developed reserves are non-producing. A majority of our non-producing reserves relate to steamfloods and waterfloods where full peak production response has not yet occurred due to the nature of such projects.

(b) Natural gas volumes have been converted to Boe based on the equivalence of energy content of six thousand cubic feet of gas to one barrel of oil. Barrels of oil equivalence does not necessarily result in price equivalence.

## Changes to Proved Reserves

The components of the changes to our proved reserves during the year ended December 31, 2019 were as follows:

	San Joaquin Basin	Los Angeles Basin <sup>(a)</sup>	Ventura Basin	Sacramento Basin	Total
			(in MMBoe)		
<b>Balance at December 31, 2018</b>	478	175	48	11	712
Revisions related to price	(8)	(11)	(1)	—	(20)
Revisions related to performance	4	11	(3)	4	16
Removal of PUDs	(41)	(2)	—	—	(43)
Extensions and discoveries	25	6	—	2	33
Improved recovery	3	—	—	—	3
Divestitures	(10)	—	—	—	(10)
Production	(34)	(9)	(2)	(2)	(47)
<b>Balance at December 31, 2019</b>	<b>417</b>	<b>170</b>	<b>42</b>	<b>15</b>	<b>644</b>

Note: Natural gas volumes have been converted to Boe based on the equivalence of energy content of six thousand cubic feet of natural gas and one barrel of oil. Barrels of oil equivalence does not necessarily result in price equivalence.

(a) Includes proved reserves related to PSC-type contracts of 125 MMBoe and 131 MMBoe at December 31, 2019 and 2018, respectively.

*Price-related revisions* – We had negative price-related revisions of 20 MMBoe primarily resulting from a lower commodity-price environment in 2019 compared to 2018.

*Performance-related revisions* – We had 16 MMBoe of net positive performance-related revisions. We added 23 MMBoe primarily related to better-than-expected performance in the San Joaquin and Los Angeles basins and 18 MMBoe that had been previously removed due to budgeting and development timing. These volumes were brought back into our reserves based on re-evaluation of the applicable areas and management's plans. These positive revisions were partially offset by 25 MMBoe in negative performance-related revisions primarily related to delayed responses in certain waterflood and steamflood projects.

*Removal of PUDs* – We removed 43 MMBoe of PUD reserves, of which 19 MMBoe related to expired projects not developed within the five-year window as the result of lower-than-anticipated product prices. The remaining 24 MMBoe had not yet expired but were no longer prioritized in our development plans in the current commodity price environment. The majority of these PUDs that were downgraded at management's discretion are located in the San Joaquin basin, meet economic investment criteria at current prices and are anticipated to be developed in the future.

*Extensions and discoveries* – We added 33 MMBoe from extensions and discoveries, primarily resulting from successful drilling in the San Joaquin and Los Angeles basins.

*Improved recovery* – We also added 3 MMBoe from improved recovery through Improved Oil Recovery (IOR) and Enhanced Oil Recovery (EOR) methods, which were associated with the continued development of steamflood and waterflood properties in the San Joaquin basin.

*Divestitures* – We had a reduction of 10 MMBoe in connection with the Lost Hills divestiture and the Alpine JV entered into during the year. See *Part II, Item 7 Management's Discussion and Analysis, Acquisitions and Divestitures* for more on the Lost Hills divestiture and *Part II, Item 7 Management's Discussion and Analysis, Joint Ventures* for more on the Alpine JV.

We achieved an organic reserve replacement ratio of 111% from our capital program of \$455 million, including 16 MMBoe of net positive performance-related revisions. For further information on our organic reserve replacement ratio, see the *PV-10, Standardized Measure and Reserve Replacement Ratio* section below.

### ***Proved Undeveloped Reserves***

The total changes to our PUDs during the year ended December 31, 2019 were as follows:

	San Joaquin Basin	Los Angeles Basin	Ventura Basin	Sacramento Basin	Total
			(in MMBoe)		
<b>Balance at December 31, 2018</b>	123	43	15	1	182
Revisions related to price	(1)	(5)	—	—	(6)
Revisions related to performance	8	9	(2)	1	16
Removal of PUDs	(41)	(2)	—	—	(43)
Extensions and discoveries	18	5	—	1	24
Improved recovery	2	—	—	—	2
Divestitures	(6)	—	—	—	(6)
Transfers to proved developed reserves	(15)	(3)	—	—	(18)
<b>Balance at December 31, 2019</b>	<u>88</u>	<u>47</u>	<u>13</u>	<u>3</u>	<u>151</u>

Note: Natural gas volumes have been converted to Boe based on the equivalence of energy content of six thousand cubic feet of natural gas and one barrel of oil. Barrels of oil equivalence does not necessarily result in price equivalence.

*Price-related revisions* – We had negative price-related revisions of 6 MMBoe primarily resulting from a lower commodity-price environment in 2019 compared to 2018.

*Performance-related revisions* – We had 16 MMBoe of net positive performance-related revisions. We added 21 MMBoe that were previously removed due to budgeting and development timing. These volumes were brought back into our reserves based on re-evaluation of the applicable areas and management's plans. These positive revisions were partially offset by 5 MMBoe in negative performance-related revisions primarily related to a waterflood in the Ventura basin.

*Removal of PUDs* – We removed a total of 43 MMBoe of PUD reserves in 2019, of which 19 MMBoe related to expired projects not developed within the five-year window as the result of lower-than-anticipated oil prices. The remaining 24 MMBoe had not yet expired but were no longer prioritized in our development plans at lower-than-anticipated prices. The majority of these PUDs that were downgraded at management's discretion are located in the San Joaquin basin, meet economic investment criteria at current prices and are anticipated to be developed in the future.

*Extensions and discoveries* – We added 24 MMBoe of PUDs through extensions and discoveries, primarily resulting from successful drilling efforts in the San Joaquin and Los Angeles basins.

*Improved recovery* – We added proved reserves of 2 MMBoe from improved recovery through IOR and EOR methods. The improved recovery additions were associated with the continued development of steamflood and waterflood properties in the San Joaquin basin. Approximately 77% of the PUD additions from extensions and discoveries and improved recovery were crude oil.

*Divestitures* – We had a reduction of 6 MMBoe in connection with the Lost Hills divestiture and the Alpine JV entered into during the year. See *Part II, Item 7 Management's Discussion and Analysis, Acquisitions and Divestitures* for more on the Lost Hills divestiture and *Part II, Item 7 Management's Discussion and Analysis, Joint Ventures* for more on the Alpine JV.



## ***Reserves Evaluation and Review Process***

Our estimates of proved reserves and associated discounted future net cash flows as of December 31, 2019 were made by our technical personnel, such as reservoir engineers and geoscientists, with the assistance of operational and financial personnel and are the responsibility of management. The estimation of proved reserves is based on the requirement of reasonable certainty of economic producibility and management's funding commitments to develop the reserves. Reserves volumes are estimated by forecasts of production rates, operating costs and capital investments. Price differentials between specified benchmark prices and realized prices and specifics of each operating agreement are then applied against the SEC Price to estimate the net reserves. Production rate forecasts are derived using a number of methods, including estimates from decline-curve analysis, type-curve analysis, material balance calculations, which consider the volumes of substances replacing the volumes produced and associated reservoir pressure changes, seismic analysis and computer simulations of reservoir performance. These field-tested technologies have demonstrated reasonably certain results with consistency and repeatability in the formations being evaluated or in analogous formations. Operating and capital costs are forecast using the current cost environment (without accounting for possible cost changes) applied to expectations of future operating and development activities related to the proved reserves.

Proved developed reserves are those volumes that are expected to be recovered through existing wells with existing equipment and operating methods, for which the incremental cost of any additional required investment is relatively minor. Proved undeveloped reserves are those volumes that are expected to be recovered from new wells on undrilled acreage, or from existing wells where a relatively major expenditure is required.

Our Vice President, Reserves and Corporate Development has primary responsibility for overseeing the preparation of our reserves estimates. She has over 15 years of experience as an energy sector engineer including as a Senior Reservoir Engineer with Ryder Scott Company, L.P. (Ryder Scott). She is a member of the Society of Petroleum Engineers (SPE) for which she served as past chair of the U.S. Registration Committee. She holds a Master of Business Administration from the Massachusetts Institute of Technology, a Master of Engineering in Petroleum Engineering from the University of Houston and a Bachelor of Science from the University of Florida. She is also a registered Professional Engineer in the state of Texas.

We have an Oil and Gas Reserves Review Committee (Reserves Committee), consisting of senior corporate officers, which reviewed and approved our oil and natural gas reserves for 2019. The Reserves Committee annually reports its findings to the Audit Committee.

## ***Audits of Reserves Estimates***

Ryder Scott and Netherland, Sewell & Associates, Inc. (NSAI) were engaged to provide independent audits of our reserves estimates for our fields. Ryder Scott audited 42% of our total proved reserves, all of which were in Elk Hills. NSAI audited 38% of our total proved reserves, all from fields excluding Elk Hills. Over 95% of our total 2019 proved reserves were audited by independent auditors at some time during 2015 through 2019.

NSAI was retained by us in 2019 to audit proved reserves from our fields other than in Elk Hills due to their extensive California experience. Additionally, NSAI already performs audits on behalf of several of our partners. Engaging NSAI to audit the fields they are already familiar with provides efficiencies and facilitates interactions with our partners.

Our independent reserve engineers examined the assumptions underlying our reserves estimates, adequacy and quality of our work product, and estimates of future production rates, net revenues, and the present value of such net revenues. They also examined the appropriateness of the methodologies employed to estimate our reserves as well as their categorization, using the definitions set forth by the SEC, and found them to be appropriate. As part of their process, they developed their own independent estimates of reserves for those fields that they audited. When compared on a field-by-field basis, some of our estimates were greater and some were less than the estimates of our independent reserve engineers. Given the inherent uncertainties and judgments in estimating proved reserves, differences between our estimates and those of our independent reserve engineers are to be expected. The aggregate difference between our estimates and those of the independent auditors was less than 10%, which was within SPE's acceptable tolerance.

In the conduct of the reserves audits, our independent auditors did not independently verify the accuracy and completeness of information and data furnished by us with respect to ownership interests, crude oil and natural gas production, well test data, historical costs of operation and development, product prices, or any agreements relating to current and future operations of the fields and sales of production. However, if anything came to the attention of our independent auditors that brought into question the validity or sufficiency of any such information or data, they would not rely on such information or data until it had resolved its questions relating thereto or had independently verified such information or data. Our independent auditors determined that our estimates of reserves have been prepared in accordance with the definitions and regulations of the SEC as well as the Standards Pertaining to the Estimating and Auditing of Oil and Gas Reserves Information promulgated by the SPE, including the criteria of "reasonable certainty," as it pertains to expectations about the recoverability of reserves in future years, under existing economic and operating conditions. Both of our independent reserve engineers issued an unqualified audit opinion on our proved reserves as of December 31, 2019, which are attached as an exhibit to this Form 10-K.

*Ryder Scott qualifications* – The primary technical engineer responsible for our audit has 42 years of petroleum engineering experience, the majority of which has been in the estimation and evaluation of reserves. He serves on the Ryder Scott Board of Directors and is a registered Professional Engineer in the state of Texas.

*NSAI qualifications* – The two technical persons primarily responsible for our audit have over 18 years and 40 years of petroleum engineering experience, respectively. Both individuals have the education, training and experience to perform oil and gas reservoir studies and reserves evaluations.

**ENCLOSURE 3**

**Ventura County 2040 General Plan Final Environmental Impact Report Excerpts**

Commenters also claim the County is preempted from adopting land use regulations that prohibit or discourage the use of flares to dispose of gas produced during oil production based on the fact the Ventura County Air Pollution Control District regulates flares that are installed in accordance with a County land use entitlement. This claim lacks merit. The County has for decades discouraged the use of flares under the authority of its constitutional police powers. (See, e.g., Ventura County Non-Coastal Zoning Ordinance, § 8107-5.5.7.) The fact that a regulatory agency, such as VCAPCD, regulates equipment, such as flares, installed at an oil production facility does not preempt the County's authority to prohibit or discourage the equipment's installation and use in the first instance.

Based on the foregoing, in general, and subject to the vested rights and takings issues that are addressed separately below, the County has the legal authority to: (a) determine whether and where to authorize oil and gas development to occur; and (b) regulate surface (but not subsurface) aspects of oil and gas operations to the extent not preempted by State or federal law. The County has legal authority to adopt and implement General Plan Policies COS-7.2, COS-7.7, and COS-7.8, all of which regulate surface aspects of new oil and gas operations in regulatory areas that are not preempted by State or federal law.

#### **MR-4.B      ANTIQUATED PERMITS AND TAKINGS**

Comments ask about the County's legal authority to adopt and apply new general plan policies related to oil and gas operations conducted pursuant to "antiquated" County oil and gas permits. Comments also suggest that the County's application of 2040 General Plan Policies COS-7.2, COS-7.7, and COS-7.8 would impair vested rights and constitute takings of private property without just compensation in violation of the U.S. Constitution. These issues are addressed below.

The oil and gas exploration and production land use has been subject to a discretionary permitting requirement since adoption of the County's first zoning ordinance in 1947. Over time, the County's zoning ordinances and standard permits have become more stringent and detailed in their regulation of this land use. From 1947 through approximately 1966, the County granted discretionary "special use permits" (the predecessor to the County's current "conditional use permits") authorizing oil and gas exploration and production. The oil and gas permits granted by the County during this era are referred to as "antiquated permits." Antiquated permits typically describe in very general terms the oil and gas-related activities and structures that are authorized within permit areas that are often large. The permits typically do not state the maximum number or exact location of allowable wells or other structures, nor do they contain expiration dates (i.e., dates by which the land use must end unless extended by the County). Because antiquated permits were granted before enactment of the California Environmental Quality Act (CEQA) in 1970, none of the projects underwent CEQA review prior to initial permitting.

Vested rights, which constitute a property interest, are based on a permittee's reasonable reliance on a government permit or approval describing a specific development project. Once a permittee has obtained the permit or approval and has performed substantial work on the development, the government is estopped (i.e., prohibited) from preventing completion of the work pursuant to subsequently enacted legislation. The seminal California case on vested rights is *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785. A permittee has the legal burden of establishing the existence and scope of vested



rights. If a permittee establishes a vested right, the government may not, by virtue of a change in the laws, prohibit or impair the construction or use that is specifically authorized by the permit or approval, unless the development presents a threat of harm, danger, menace or nuisance. (*Davidson v. County of San Diego* (1996) 49 Cal.App.3d 639; *Stewart Enterprises, Inc. v City of Oakland* (2016) 248 Cal.App.4th 410.)

Holders of typical County antiquated permits generally do not have vested rights to engage in new oil and gas development based solely on the original antiquated permits. This is because of the typical antiquated permits' lack of specificity regarding the scope and composition of the authorized development. In addition, given that the antiquated permits were granted between approximately 53 and 72 years ago, permittees have had decades to build out the oil and gas projects under the initial approvals. To the extent antiquated permits confer any vested rights to construct new development, which the County disputes, such vested rights have likely lapsed through an unreasonable delay in their holders' completing the initially approved projects. (See *Lakeview Development Corp. v. City of South Lake Tahoe* (9th Cir. 1990) 915 F.2d 1290, 1298-1299.)

Even where a permittee possesses vested rights to develop and operate oil and gas facilities pursuant to a County permit, antiquated or otherwise, the County possesses constitutional land use authority to regulate the subject development and operations (subject to State and federal preemption), including by requiring compliance with General Plan policies and other County land use standards, so long as the vested rights in the permit are not impaired. (*Donlan v. Weaver* (1981) 118 Cal.App.3d 675, 684.) In general, a vested right is impaired if the new governmental regulation would prevent the completion of construction or use of facilities that are specifically described and authorized in an existing County permit. Vested rights claims are fact-specific and determined on a case-by-case basis.

2040 General Plan Policies COS-7.2, COS-7.7, and COS-7.8 would likely not implicate vested rights at all, let alone impair them, because the policies would only apply to new discretionary oil and gas wells, as opposed to existing wells, and thus the policies would not prevent the completion of construction or use of facilities that are specifically authorized by an existing County permit. If a vested right to construct new wells were nonetheless established by a permittee, and if any of the proposed 2040 General Plan policies were found to impair those vested rights, the 2040 General Plan policy or policies could not be applied to the new wells; the 2040 General Plan policy or policies, however, would remain in place. Property owners could potentially claim that 2040 General Plan Policy COS-7.2, COS-7.7, or COS-7.8, when applied to a specific project, constitutes a "regulatory taking" in violation of the Fifth Amendment to the U.S. Constitution. A regulatory taking occurs when a government regulation becomes so onerous that it has the practical effect of a direct appropriation of private property without just compensation. (*Lingle v. Chevron U.S.A.* (2005) 544 U.S. 528, 538.) A complex set of factors is applied on a case-by-case basis to determine whether a regulatory taking has occurred including the regulation's economic effect on the property owner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. (*Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 124.)

The Fifth Amendment is often misconstrued as a prohibition against any regulation that decreases property value or interferes with an owner's preferred land use. But as the Second District Court of Appeal, Division Six, has stated, the "Fifth Amendment is not a panacea for less-than-perfect investment or business opportunities." (*Long Beach Equities, Inc. v. County of Ventura* (1991) 231 Cal.App.3d 1016, 1040; see also *Pennsylvania Coal Co. v. Mahon*

(1922) 260 U.S. 393, 413 [“Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law”].) A takings claim, which would seek monetary compensation from the County, would be decided based on the specific facts presented. Regardless of the outcome of any such claim, the 2040 General Plan policies themselves would remain in place.

One commenter asserts that General Plan Policies COS-7.7 and COS-7.8 are “infeasible” and “unconstitutional” based on language contained in a County Counsel memorandum from 2014 entitled “Legal Analysis on Antiquated Oilfield Conditional Use Permits.” County Counsel disagrees. The County’s position regarding antiquated permits and vested rights is summarized above, and is further addressed in the following County Counsel report that was publicly provided to the Board on September 10, 2019 (Ventura County 2019).

#### MR-4.C UNDERLYING MOTIVES OF THE PROPOSED OIL AND GAS POLICIES

Several commenters questioned the underlying motives of the proposed oil and gas policies in the 2040 General Plan. The 2040 General Plan does not ban new oil and gas activity or phase out existing oil and gas activity in the unincorporated county. Policies COS-7.2, COS-7.7, and COS-7.8 would reduce emissions of criteria air pollutants, toxic air contaminants, greenhouse-gas compounds, and decrease traffic safety risks associated with the transportation of oil and produced water. 2040 General Plan Policy COS-7.2 would require that new oil and gas wells be located a minimum of 1,500 feet from residential dwellings and 2,500 feet from any school. The draft EIR concluded that as proposed, Policy COS-7.2 would reduce the potential for sensitive receptors at residential dwellings and schools to be exposed to air pollutants including toxic air contaminants associated with new oil and gas wells (page 4.3-19). Policy COS-7.7 requires new discretionary oil wells to use pipelines to convey oil and produced water; oil and produced water shall not be allowed to be trucked for new discretionary oil wells. The draft EIR concluded that as proposed, Policy COS-7.7 would avoid air pollutant emissions that would otherwise result from trucking of oil and produced water from new discretionary oil wells (page 4.3-18). Additionally, COS-7.7 would result in the reduction of trucking of crude oil and produced water which could result in a potential reduction of Vehicle Miles Travelled (VMT) in the unincorporated county (page 4.16-23). The draft EIR also noted that greenhouse gas (GHG) emissions from vehicles are one of the largest sources of GHG emissions in the General Plan area (36 percent) (page 4.16-23). Finally, COS-7.8 requires that gases emitted from all new discretionary oil and gas wells shall be collected and used or removed for sale or proper disposal and flaring or venting of such gases shall not be allowed except in cases of emergency or for testing purposes. The draft EIR concluded that as proposed, Policy COS-7.8 would lessen air pollutant emissions that would otherwise result from flaring at new discretionary oil and gas wells (page 4.3-19). The draft EIR also concluded that these policies support attainment of the following 2040 General Plan Guiding Principles (page 4.12-23):

- **Hazards and Safety:** Minimize health and safety impacts to residents, businesses and visitors from human-caused hazards such as hazardous materials, noise, air, sea level rise, and water pollution, as well as managing lands to reduce the impacts of natural hazards such as flooding, wildland fires, and geologic events.
- **Climate Change and Resilience:** Reduce greenhouse gas emissions to achieve all adopted targets, proactively anticipate and mitigate the impacts of climate change,

promote employment opportunities in renewable energy and reducing greenhouse gases, and increase resilience to the effects of climate change.

- **Environmental Justice:** Commit to the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies, protect disadvantaged communities from a disproportionate burden posed by toxic exposure and risk, and continue to promote civil engagement in the public decision-making process.

#### MR-4.D MITIGATION MEASURES AND THE ROLE OF THE BOARD OF SUPERVISORS

Some commenters disagree with the inclusion of mitigation measures related to the impacts of Policies COS-7.7 (pipelines) and COS-7.8 (flaring) in the draft EIR (refer to Impact 4.12-4 starting at page 4.12-22). However, CEQA requires that before a project that will cause significant environmental impacts can be approved, a lead agency must find that all feasible mitigation measures that would reduce or eliminate a project's impacts have been adopted. (CEQA Guidelines, §§ 15092(b), 15043.) The analysis concluded that there would be potentially significant impacts from the loss of availability of known petroleum resources of value to the region and residents of the State resulting from the implementation of these policies. The draft EIR identified potentially feasible mitigation, Mitigation Measures PR-2 and PR-3 (page 4.12-31), which the draft EIR concludes would reduce the potentially significant impact to loss of availability of a known petroleum resource that would be of value to the region and residents of the State to less than significant (page 4.12-32).

The draft EIR (page 1-7) describes the requirements of State CEQA Guidelines Section 15091, which state that when approving a project, for each significant impact of the project identified in the EIR, the lead or responsible agency must find, based on substantial evidence, that either: (a) the project has been changed to avoid or substantially reduce the magnitude of the impact; (b) changes to the project are within another agency's jurisdiction and such changes have or should be adopted; or (c) specific economic, social, or other considerations make the mitigation measures or project alternatives infeasible. Per Public Resources Code Section 21061.1, feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account, economic, environmental, legal, social, and technological factors. The ultimate decisions as to whether an environmental impact is significant and, separately, whether to adopt a proposed mitigation measure or a proposed project alternative included in a draft EIR to address a significant impact, are made by the decision-making body of the public agency conducting the CEQA review based on substantial evidence in the record. The public agency is not required to adopt every potential mitigation measure or alternative included in a draft EIR and may instead reject a mitigation measure or alternative if it is found to be infeasible based on substantial evidence in the record.

If a mitigation measure or alternative is rejected as infeasible, and a significant environmental impact would occur, the public agency may still approve the project by adopting a statement of overriding considerations based on a finding that the project's overall benefits outweigh the project's significant environmental impacts. The written statement of overriding considerations sets forth the specific social, economic, or other reasons supporting the agency's decision and explains why the project's benefits outweigh the significant environmental effects (State CEQA Guidelines Section 15093).

Here, the draft EIR includes County staff's determinations that Policy COS-7.2 would result in a potentially significant impact by hampering or precluding access to petroleum (Impact 4.12-3, starting at page 4.12-11), and that implementation of proposed Policies COS-7.7 and COS-7.8 would result in a potentially significant impact by resulting in the loss of availability of known petroleum resources that would be of value to the region and State (Impact 4.12-4). As a result of these significance determinations, and pursuant to the requirements of State CEQA Guidelines Section 15126.4, the draft EIR proposes Mitigation Measures PR-1 for Impact 4.12-3 (page 4.12-18), and Mitigation Measures PR-2 and PR-3 for Impact 4.12-4 (page 4.12-31) to minimize significant adverse impacts. Because the proposed project consists of the Board-proposed 2040 General Plan, including the subject oil and gas-related policies, County staff's proposed mitigation measures consist of potential revisions to the policies themselves in accordance with State CEQA Guidelines sections 15097(b) and 15126.4(a)(2). As explained above, in proposing that these policies may be revised to mitigate the potentially significant impact of the policies, County staff did not legislatively amend the draft policies themselves, but rather fulfilled CEQA's requirement to minimize significant adverse impacts. The ultimate decisions as to whether the environmental impacts of these policies are significant, and separately, whether to revise the policies in order to mitigate any potentially significant impacts, will be made by the Board based on substantial evidence in the record.

In this regard, the Board may conclude that any or all of the policy revisions/mitigations measures set forth in the draft EIR are infeasible and adopt a statement of overriding considerations concluding that the benefits of adopting the policies, as originally proposed by the Board, would outweigh any significant environmental impacts that would result from the policies. In particular, the Board may conclude that on balance, the environmental benefits of the Board-proposed policies – such as avoidance or mitigation of air pollutants and greenhouse gas emissions, health risks, hazards, traffic safety issues, biological impacts, and the existence of other environmental, social and/or economic factors – outweigh the policies' potential for hampering or precluding access to, or resulting in a loss of availability of, known petroleum resources.

The basic purposes of CEQA and the County's draft EIR are, in part, to inform the public and the County's decision-makers about the potential, significant environmental effects of the proposed 2040 General Plan and identify the ways that environmental damage can be avoided or significantly reduced (State CEQA Guidelines Section 15002(a)). The draft EIR does not make any legislative changes to the Board-proposed General Plan policies analyzed in the EIR.

#### **MR-4.E      APPLICABILITY OF REFERENCE STUDIES FOR OIL AND GAS OPERATIONS**

Some commenters were concerned about the applicability of the studies relied upon for the analysis of the impacts of Policy COS-7.2 (Well Distance Criteria), and that these studies did not meet the informational requirements of CEQA. The draft EIR relies on many cited sources, but for Policy COS-7.2 Well Distance Criteria, the draft EIR relied on analyses contained in the statewide publication of the California Council on Science and Technology (CCST), *Independent Scientific Assessment of Well Stimulation in California* (CCST 2015) required by SB-4 (Oil and Gas: Well Stimulation); *Public Health and Safety Risks of Oil and Gas Facilities in Los Angeles County*, (2018) prepared at the request of the Los Angeles County Board of Supervisors; and *Oil and Gas Health Report* (2019) prepared at the request of the Los Angeles



Some commenters imply that the setbacks may reduce or curtail existing oil and gas production operations, but Policy COS-7.2 applies only to new discretionary oil and gas wells; there is no proposed change to setbacks for existing operations. Other commenters object to Policy COS-7.2's setback requirement of 2,500 feet from schools. Note that Mitigation Measure PR-1 (page 4.12-18) would expand the list of sensitive uses requiring a setback but would reduce the setback distance from 2,500 to 1,500 feet, including for schools.

Some commenters request that Mitigation Measure PR-1 be revised to increase setback requirements to 2,500 feet from residences. The analysis of setback distances in the draft EIR was based on the best information available at the time, which is limited in terms of quantifying health risks, and subject to disagreement among experts. Mitigation Measure PR-1 is consistent with the setback distance recommended for new discretionary oil and gas operations to the City of Los Angeles by their then-Oil Administrator, now the State Oil and Gas Supervisor leading CalGEM. The County Board of Supervisors will ultimately decide whether to adopt, perhaps as modified, Mitigation Measure PR-1 or Policy COS-7.2, as described above in the section titled *Mitigation Measures and the role of the Board of Supervisors in considering their feasibility*.

Some commenters noted that Policy COS-7.2 lacks setback requirements applicable to new sensitive land uses, such as dwellings, being proposed for development near existing oil and gas facilities. The commenter also states that the draft EIR does not explain why the 2040 General Plan does not include a "similar prohibition" regarding location of new residential land uses adjacent to existing or likely future land dedicated to oil and gas use. Policies which require setbacks to new sensitive land uses near existing oil and gas facilities are not a component of the project under evaluation (i.e., the 2040 General Plan). CEQA requires evaluation of the environmental effects of a project; consequently, potential policies that are not a component of the project under evaluation are not required to be evaluated in the EIR.

#### **MR-4.I      DIRECTIONAL DRILLING**

A comment regarding Mitigation Measure PR-1 states that directional drilling could not be utilized at all potential drilling sites in the unincorporated county, although it could be utilized in many cases. This comment is consistent with the analysis of Policy COS-7.2 in the draft EIR. Note that Mitigation Measure PR-1 does not rely on directional drilling as a means of mitigating the significant impact identified with the implementation of Policy COS-7.2. Rather, the mitigation measure would expand the sensitive land uses subject to a standard 1,500-foot setback, while removing the 2,500-foot setback for schools. The draft EIR acknowledges that, even with the adoption of Mitigation Measure PR-1, the impact of Policy COS-7.2 would be significant and unavoidable based on its hampering or precluding access to subsurface petroleum resources.

#### **MR-4.J      POTENTIAL TO STOP ISSUING PERMITS FOR NEW WELLS (PHASE OUT OIL AND GAS OPERATIONS)**

Some commenters have requested mitigation measures in the form of new 2040 General Plan policies and programs to phase out existing oil and gas production facilities. As noted by the commenters, policies and programs which phase out existing oil and gas facilities would need to occur over an extended time period sufficient to amortize the vested rights that operators

have in their existing permitted operations, and also presumably to address the economic and social dislocation that the phase out could entail. Policies and programs requiring a phase out of existing oil and gas facilities are not a component of the project under evaluation (i.e., the 2040 General Plan). The existence of these facilities are part of the baseline as considered in the evaluation of environmental impacts in the draft EIR. Impacts resulting from the change that implementation of the 2040 General Plan would have on baseline conditions are evaluated in the draft EIR with corresponding mitigation measures to lessen significant environmental impacts, where applicable.

#### MR-4.K EFFECTS OUTSIDE THE STUDY AREA

Some commenters have questioned the environmental effects of oil importation from outside of the study area (e.g. the 2040 General Plan unincorporated area boundary). In the analysis of the potential impact of Policy COS-7.2 (and the potential impacts of Policies COS-7.7 and COS-7.8, if not mitigated), the draft EIR (page 4.12-22) explains that even if the potential impacts of this policy are mitigated, it could, in certain situations, hamper or preclude access to local oil and gas resources which, in turn, could increase the State's and county's reliance on foreign imports from outside of the 2040 General Plan area. The draft EIR clearly discloses the supply/demand outlook that led to this conclusion, the likely location from where increased exports could come, and the likelihood that such imports would be delivered by marine tankers. The analysis was supported by citations to work conducted by the City of Los Angeles in the 2019 *Oil and Gas Health Report*, the California Energy Commission, and the U.S. Energy Information Administration. The draft EIR then discloses that the increase in oil imports could have indirect environmental impacts such as those associated with transporting the oil and gas from outside of Ventura County (page 4.12-21).

Based in part on this analysis of impacts outside the 2040 General Plan project area, the draft EIR concludes that implementation of Policy COS-7.2 (and implementation of Policies COS-7.7 and COS-7.8, if their impacts are not mitigated) would have significant and unavoidable impacts.

The comments argue that this life cycle analysis should have been completed and a greater amount of quantification applied to the effects outside the 2040 General Plan project area. State CEQA Guidelines Section 15145 requires an EIR to clearly identify and describe the direct and indirect significant effects of proposed projects, giving due consideration to both the short-term and long-term effects. On the other hand, EIRs should not engage in speculation. Thus, an EIR must analyze reasonably foreseeable indirect physical changes, which are defined as a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. Although the County considered reasonably foreseeable indirect effects, it did not attempt to undertake a "life cycle" analysis of the effects from potentially increased import or export of oil and gas that could possibly occur from implementation of the proposed project. Any such analysis would be speculative and would not change the impact determination of significant and unavoidable.

# **EXHIBIT 1**

**[CRC's Comment Ltr to Agenda Item PL-20-0052,  
July 30, 2020 Planning Commission Hearing]**

April 8, 2019

Board of Supervisors  
County of Ventura  
800 S. Victoria Avenue  
Ventura, CA 93009

SUBJECT: April 9, 2019 Board Item 46

Honorable Board of Supervisors:

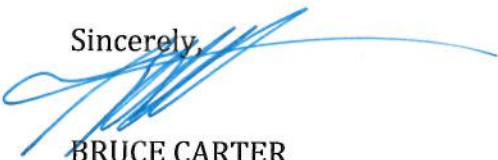
We appreciate the opportunity to provide comments regarding the Board's consideration of a proposed interim ordinance to temporarily ban new oil and gas wells and re-drilling of existing wells that will utilize steam injection in the vicinity of potable groundwater aquifers and to study potential amendments to the County's zoning ordinances to require discretionary approval of new development under long term oil and gas permits. These are issues that have already been addressed by the County. We urge that your Board to deny both recommendations.

There are three clear cases where the County of Ventura at both the Planning Commission level (2-19-15) and the Board of Supervisors (12-17-13 & 12-15-15) has correctly approved County Counsel's legal analysis that the vested rights doctrine applies to long term conditional use permits. In addition, CEQA Section 15261(b) provides that a private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 1973. These three examples are spelled out on the following pages.

Recent similar attempts to ban oil and gas operations by other Counties have been unsuccessful. For example, Monterey County attempted to institute a ban on oil and gas operations with their Measure Z in 2016. In 2017 this Measure was invalidated in court as being preempted by State law and found to be an unlawful taking of the property of numerous mineral rights owners. Voters in the County of San Luis Obispo defeated Measure G in November 2018, disapproving another attempt to stop oil and gas operations.

We therefore urge you to deny the two recommended actions.

Sincerely,



BRUCE CARTER  
Sr. Regulatory Advisor

Att: 1) County Action on Vested Rights  
2) 12-17-13 Board of Supervisors Board Letter  
3) 2-18-19 & 2-19-19 Planning Commission Letters  
4) 12-15-15 Board of Supervisors Board Letter



**J. Matthew Carroll**  
Assistant County Executive Officer

**Paul Derse**  
Assistant County Executive Officer/  
Chief Financial Officer

**Catherine Rodriguez**  
Assistant County Executive Officer/  
Labor Relations & Strategic Development

**Kelly Shirk**  
Director Human Resources

December 17, 2013

Board of Supervisors  
County of Ventura  
800 South Victoria Avenue  
Ventura, CA 93009

**SUBJECT:**            **Receive Presentation and Report Back in Response to May 21, 2013 Board Direction Regarding the Hydraulic Fracturing of Oil and Gas Wells in Ventura County; and Direct Revisions be Made to the Conditional Use Permit Application/Questionnaire for Oil & Gas Exploration and Production Permits**

**RECOMMENDATIONS:**

It is recommended the Board:

1. Receive and file a presentation by County staff responding to the direction provided by the Board at its May 21, 2013 meeting regarding hydraulic fracturing of oil and gas wells in Ventura County.
2. Direct the Resource Management Agency to revise the Conditional Use Permit Application/Questionnaire for Oil and Gas Exploration and Production to include the following questions:
  - 1) Will hydraulic fracturing or acidization well stimulation treatments be performed? If yes,
  - 2) What hazardous materials will be used?
  - 3) What water supply will be used?
  - 4) Where will the liquid wastes be disposed?

**FISCAL/MANDATES IMPACT:**

Mandatory:	No
Source of Funding:	N/A

Funding Match: None  
Impact on other Departments: None

### **DISCUSSION:**

At your May 21, 2013 meeting, the Board of Supervisors directed the County Executive Officer, County Counsel, and the Resource Management Agency return to the Board with a number of items regarding the hydraulic fracturing and acidization of oil and gas wells in unincorporated Ventura County. The specific items were recommendations for a revision to the Conditional Use Permit Application Form/Questionnaire and legal analysis of: 1) the options available to address antiquated oil & gas permits, 2) potential for restrictions on the use of fresh water in oilfield operations, and 3) the County's ability to require the use of non- or least-toxic fracking chemicals. Each of these items is addressed below. However, it is important to note that a significant amount of activity took place in Sacramento after May 21, 2013, and it profoundly altered the regulatory and legal environment surrounding hydraulic fracturing, acidization, and other well stimulation treatments. The culmination of this State activity was the passage of Senate Bill 4 (Pavley – Chapter 313 – Statutes 2013) (SB 4). A copy of SB 4 is attached as Exhibit 1.

Before responding specifically to the Board's May 21, 2013 direction, it would be valuable to provide a brief summary of SB 4. Beginning on January 1, 2015, SB 4 requires that a permit from the Division of Oil, Gas and Geothermal Resources (DOGGR) be obtained prior to conducting hydraulic fracturing or other well stimulation treatments. The DOGGR permit application is required to include a significant amount of information, including but not limited to: 1) detailed information about the well location; 2) a description of the fluids to be used; 3) a groundwater monitoring plan; and 4) a water management plan. Moreover, copies of any approved permit must be sent to neighboring property owners and tenants, and water well testing must be provided upon request. Much of this information directly addresses the concerns raised by the Board, and this will be discussed in more detail below. Also, included as Exhibit 2 and Exhibit 3 are the "Senate Bill 4 Implementation Plan" and a "Frequently Asked Questions" document prepared by the Department of Conservation.

### **Revisions to the CUP Application Form/Questionnaire**

On May 21, 2013, the Board of Supervisors directed the Resource Management Agency return to the Board with revisions to the Conditional Use Permit (CUP) application form that would address a number of questions related to hydraulic fracturing as a well stimulation treatment conducted in newly permitted wells located in the county's unincorporated area. It is recommended in the Board letter presented at the May 21, 2013 hearing that four specific questions be included in the application form, as follows:

- 1) Will hydraulic fracturing be performed?

- 2) What hazardous materials will be used?
- 3) What water supply will be used?
- 4) Where will the liquid wastes be disposed?

At the May hearing, the Board further directed that these questions be broadened to include well stimulation by acidization.

On September 20, 2013, Governor Brown signed SB 4, which established a regulatory framework for well stimulation treatment activities, including hydraulic fracturing and acidization. The directives outlined in SB 4 in some manner address all of the issues raised by the Board in its May 21, 2013 action, and it requires DOGGR to have rules and regulations in place by January 1, 2015. In addition, DOGGR is required to work in concert with other entities to complete a scientific study of well stimulation treatments by January 1, 2015. And finally, DOGGR is required to complete an environmental impact report that assesses the environmental impacts of oil and gas well stimulation treatments in the state by July 1, 2015.

SB 4 also includes provisions which address well stimulation treatment activities which might take place between January 1, 2014, when the law goes into effect, and January 1, 2015 when the new DOGGR permitting process is required to be in place. These "interim" provisions (referred to by DOGGR as "emergency regulations") require certain information be provided and actions taken by oil and gas well operators if well stimulation treatment activities are to take place prior to January 1, 2015. The required information and actions largely address the items identified by the Board in May 2013.

DOGGR has announced it will have its emergency regulations in place by January 1, 2014, to address the requirements of SB 4 during this interim period. These emergency regulations are expected to be released after the preparation of this Board letter, on December 13, 2013. Should the emergency regulations be released on that date, a copy will be provided to the Board and posted on the County web page with this Board letter.

The Public Resources Code sections being added by SB 4 are summarized here under the four specific issue areas raised by the Board:

## 1. Will hydraulic fracturing or acidization be performed?

*§3160 (d) (1) "...prior to performing a well stimulation treatment on a well, the operator shall apply for a permit to perform a well stimulation treatment with the supervisor or district deputy."*

While the formal permitting process is not required to be in place until January 1, 2015, the law requires that operators notify and provide substantial information to

DOGGR prior to engaging in well stimulation treatment activities between January 1, 2014 and December 31, 2014.

## 2. What hazardous materials will be used?

*§3160 (b) (1) (A) "....The rules and regulations shall include.... full disclosure of the composition and disposition of well stimulation fluids, including, but not limited to, hydraulic fracturing fluids, acid well stimulation fluids, and flowback fluids."*

*§3160 (b) (2) "Full disclosure of the composition and disposition of well stimulation fluids, including, but not limited to, hydraulic fracturing fluids and acid stimulation treatment fluids, shall, at a minimum, include:*

*(B) A complete list of the names, Chemical Abstract Service (CAS) numbers, and maximum concentration, in percent by mass, of each and every chemical constituent of the well stimulation treatment fluids used. If a CAS number does not exist for a chemical constituent, the well owner or operator may provide another unique identifier, if available.*

*(C) The trade name, the supplier, concentration, and a brief description of the intended purpose of each additive contained in the well stimulation treatment fluid."*

Beginning January 1, 2014, operators are required to provide all of the above information to DOGGR prior to engaging in well stimulation treatment activities.

## 3. What water supply will be used?

*§3160 (b) (2) "Full disclosure of the composition and disposition of well stimulation fluids, including, but not limited to, hydraulic fracturing fluids and acid stimulation treatment fluids, shall, at a minimum, include:*

*(D) The total volume of base fluid used during the well stimulation treatment, and the identification of whether the base fluid is water suitable for irrigation or domestic purposes, water not suitable for irrigation or domestic purposes, or a fluid other than water.*

*§3160 (d) (1) (C) "....The information provided in the well stimulation treatment permit application shall include....A water management plan that shall include:*

*(i) An estimate of the amount of water to be used in the treatment. Estimates of water that is to be recycled or that could be recycled following the well stimulation treatment may be included.*

*(ii) The anticipated source of the water to be used in the treatment.*

The requirement to prepare a Water Management Plan, including the identification of the source and quality of the water used in the well stimulation treatment process, goes into effect on January 1, 2014.



#### 4. Where will liquid wastes be disposed of?

*§3160 (d) (1) (C) “....The information provided in the well stimulation treatment permit application shall include....A water management plan that shall include:*

*(iii) The disposal method identified for the recovered water in the flowback fluid from the treatment that is not produced water....”*

*§3160 (b) (2) (E) “....The information provided in the well stimulation treatment permit application shall include....the disposition of all water, including, but not limited to, all water used as base fluid during the well stimulation treatment and recovered from the well following the well stimulation treatment that is not otherwise reported as produced water..... Any repeated reuse of treated or untreated water for well stimulation treatments and well stimulation treatment-related activities shall be identified.”*

*§3160 (b) (2) (F) “....The information provided in the well stimulation treatment permit application shall include.... the specific composition and disposition of all well stimulation treatment fluids, including waste fluids.....”*

The information requirements related to the composition and disposition of well stimulation treatment fluids also become operative on January 1, 2014.

Given the above provisions of State law, it appears that beginning January 1, 2014 all of the information the Board action sought through future CUP applications will be required by DOGGR of all existing and proposed oil wells in Ventura County prior to conducting hydraulic fracturing, acidization, or other well stimulation treatment activities. Since July of this year, DOGGR staff has been providing copies of each “Notice of Intent” filed by oil and gas operators for the drilling or modification of oil and gas wells located in Ventura County to the Resources Management Agency, Planning Division. These Notices have been provided to the County within a day of submittal to DOGGR. County staff has reviewed these notices to ensure that the proposed action is consistent with the conditions of approval of any applicable CUP (there is currently only one CUP which prohibits hydraulic fracturing within its 11 wells). This process provides the Planning Division a timely opportunity to notify DOGGR of activities (such as hydraulic fracturing) that are not authorized by the Conditional Use Permit (CUP) governing the well in question.

However, SB 4 does not require this information be provided to the County or DOGGR as part of an application for a CUP to install new oil wells. Thus, it would be reasonable and appropriate at this time for the County to include these four questions in its Oil and Gas Permit Application Form. Gathering this information as part of the application will not only provide information for public noticing purposes prior to the CUP hearing, but also provide information needed for the County to conduct the required environmental review under the California Environmental Quality Act (CEQA) utilizing the *Water Resources* and *Hazardous Materials/Waste* sections of the County’s Initial Study Checklist.

Until DOGGR develops the permitting process and regulations, it is not possible to know for certain what County CUP conditions should contain or address. For example, the County is preempted from adopting its own regulations with respect to well casings and well stimulation treatment fluids, but DOGGR may delineate notice duties for the County that can be implemented through permit conditions. In addition, until DOGGR completes the associated environmental impact report required under SB 4, there will be a question regarding the appropriate environmental review of hydraulic fracturing and acidization well stimulation treatments that might need to be prepared by the County to address proposed discretionary oil and gas projects. Therefore, it may be necessary to re-evaluate the County's CUP application questions in 2015 after the implementation of the new DOGGR permitting process mandated under SB 4.

Finally, the Board may be interested in the current status of oil permitting activities in the County. Since the Board's May 21, 2013 action, three CUP applications for new oil and gas wells have been submitted. This brings to five the number of oil and gas projects, involving a total of 40 wells, currently under review by the Planning Division. Although not yet part of the formal CUP application packet, the Planning Division has asked the applicants to indicate whether or not they intend to utilize hydraulic fracturing stimulation treatments in their operations. All four of the applicants have indicated that their projects do not include hydraulic fracturing well stimulation. However, one of these applicants has indicated that hydraulic fracturing may be considered in the future once the new State regulations are in place. The Planning Division did not initially ask for information related to acidization as there was a lack of clarity at the State as to what level of acidization constituted well stimulation as defined in SB 4. DOGGR has recently released information in its draft regulations which addresses this issue and Planning staff now intends to request the information from these applicants.

#### **Confidential Legal Analysis of Antiquated Permits, Water, and Chemical Toxicity**

At the May 21, 2013 meeting, the Board also directed the County Counsel to provide the Board with a confidential legal analysis of three questions regarding the County's ability to regulate oil and gas operations including aspects of hydraulic fracturing and other well stimulation treatments. County Counsel has provided the Board with memoranda addressing these questions which are recommended to remain confidential. The Board's questions are set forth below along with the County Counsel's conclusions regarding each.

1. What options are available to the County to address antiquated oilfield CUPs that do not require discretionary review for new drilling, and/or do not incorporate current ordinance requirements, and/or do not provide time limits?

Conclusion: The County has only a limited ability to address antiquated oilfield permits due to the vested rights doctrine and constitutional takings and due process principles. The County's options to modify antiquated oilfield permits consist of imposing: 1) permit changes that are reasonably related to a permittee's request for modification of an existing permit; 2) limited permit changes based on the establishment by the County of harm, danger or nuisance caused by a permitted activity; 3) limited permit changes based on the establishment by the County of a permittee's significant violations of law or permit conditions; and 4) specific permit changes contemplated by existing conditions in the permit. In addition, a permit could be revoked if its operations constitute a nuisance and imposition of conditions to eliminate the nuisance is not feasible.

2. May the County restrict the use of fresh water or require the use of non-fresh water when discretionary permits are issued for oil and gas well drilling or operation?

Conclusion: No. Restricting the use of fresh water or requiring the use of non-fresh water, to the extent it was applied to an operator's well stimulation treatments such as hydraulic fracturing, would likely conflict with extensive State law providing DOGGR, together with other State agencies including the State Water Resources Control Board, exclusive jurisdiction over the down-hole/subsurface aspects of oil and gas operations and over the surface and subsurface aspects of the composition of well stimulation treatment fluids under SB 4.

3. May the County require the use of non-toxic or least-toxic hydraulic fracturing chemicals?

Conclusion: No. Because of State law preemption resulting from existing State law and SB 4, the County is precluded from requiring the use of non-toxic and least-toxic well stimulation treatment fluids, including hydraulic fracturing fluids, since well stimulation treatments and the fluids used for the treatments are within the exclusive jurisdiction of DOGGR and other State agencies.

### **Conclusion/Summary**

Since the Board action on May 21, 2013, directing staff to return with the analysis and information in this Board letter, the legislature passed and Governor Brown signed SB 4, which establishes a comprehensive regulatory and permitting framework for well stimulation activities. These regulations, being developed by DOGGR, will be among the most protective in the nation. The requirements within SB 4 fundamentally address the technical issues raised by the Board in May. They also address the notification and monitoring issues previously discussed by the Board and raised by county residents.

The legal analysis provided by County Counsel indicates that the County is largely preempted from actively regulating well stimulation treatment activities at both new and existing wells. However, the County is required under CEQA to assess and address the potential environmental impacts from such activities requiring a discretionary County



approval at proposed new well sites. Therefore, it is recommended that the Board direct the Resource Management Agency to add the following four questions to the CUP application questionnaire for proposed new Oil and Gas Exploration and Production permits:

- 1) Will hydraulic fracturing or acidization well stimulation treatments be performed?
- 2) What hazardous materials will be used?
- 3) What water supply will be used?
- 4) Where will the liquid wastes be disposed?

This item has been reviewed by the County Executive Office, County Counsel, and the Resource Management Agency. If you have questions concerning this item, please contact Sue Hughes, Deputy Executive Officer, at (805) 654-3836 or Chris Stephens, Director, Resource Management Agency at (805) 654-2661.

Sincerely,



Sue Hughes  
Deputy Executive Officer



Chris Stephens  
Resource Management Agency Director



Leroy Smith  
County Counsel

- Exhibit 1: SB 4 (Pavley – Chapter 313 – Statutes 2013)  
Exhibit 2: Senate Bill 4 Implementation Plan  
Exhibit 3: Frequently Asked Questions





# Memorandum

County of Ventura • Resource Management Agency • Planning Division  
800 S. Victoria Avenue, Ventura, CA 93009-1740 • (805) 654-2478 • [ventura.org/rma/planning](http://ventura.org/rma/planning)

**DATE:** February 18, 2015

**TO:** The Honorable Planning Commission

**FROM:** Brian R. Baca, Manager *BRB*  
Commercial and Industrial Permits

**SUBJECT:** DCOR Zoning Clearance Appeals, PL14-0124, PL14-0146:  
Response to Citizens for Responsible Oil and Gas appeal comments

## INTRODUCTION

At the February 19, 2015 public hearing, the Planning Commission will consider two appeals filed for the issuance of zoning clearances issued by the Planning Director to initiate the installation and operation of new oil and gas wells as authorized by conditional use permits (CUPs) previously granted by the County of Ventura. These CUPs include:

- CUP 488 (Granted on May 29, 1956)
- CUP LU09-0073 (Granted on November 16, 2010)

On February 15, 2015, the Citizens for Responsible Oil and Gas (CFROG) submitted comments for consideration by your Commission at the February 19, 2015 hearing. Provided below are staff responses to each of the submitted comments, numbered in correspondence with the attached marked copy of the CFROG comments.

## RESPONSES TO COMMENTS

1. There is no limit specified in CUP 488 (including condition of approval #3) in the number of oil wells that can be installed and operated within the permit area. Condition #3 specifically states:

***"That other wells may be drilled within the limits for which this permit is issued subject to only the following conditions."*** [emphasis added]

The clear language of Condition #3 indicates that additional wells may be drilled subject only to the following conditions. None of the following conditions limits the number of wells. As pointed out by the commenter, dozens of wells have been drilled under the authority of CUP 488 since 1956.

Zoning Clearance ZC14-0965 under consideration by your Commission at the February 19, 2015 hearing involves 5 new wells proposed to be installed at an existing drillsite located on a hilltop approximately 2,400 feet west of Lake Piru. The drilling of oil wells in the area south of the San Felicia Dam is not before your Commission in the current proceeding.

2. Condition of Approval #2 of CUP 488 allows one well to be drilled approximately 1,000 feet south of the San Felicia Dam that must be setback 200 feet from the existing channel of Piru Creek. Conditions #3 and #4 allow other wells to be drilled in the CUP 488 area provided that they are located at least 500 feet from the channel of Piru Creek. Thus, Condition #2 only limits the number of wells that are allowed to be located less than 500 feet from Piru Creek. Zoning Clearance ZC08-0958 initiated the drilling of two wells south of the San Felicia Dam that are both located more than 500 feet from Piru Creek. The location of these wells is in conformance with the conditions of approval of CUP 488.

3. The issuance of a Zoning Clearance is a ministerial action that is not subject to discretionary review. Thus, no new environmental review under CEQA can be required and no new "conditions of approval" can be imposed as part of a Zoning Clearance. Condition of Approval #7 does not require further discretionary review of the permitted oil and gas project but instead requires conformance with any changes in State or local laws applicable to ministerial permits. For example, the operation of oil wells are subject to the ministerial permits issued by the Ventura County Air Pollution Control District (i.e. Permit to Operate, Authority to Construct). The VCAPCD permits implement current State laws that pertain to emissions from oil and gas operations. Similarly, the installation of new oil wells are subject to any applicable provision of the current California Building Code. Finally, the drilling of new oil wells, and the ongoing operations of existing oil and gas facilities, are subject to recently-enacted State laws implemented by the California Division of Oil and Gas and Geothermal Resources (DOGGR). These laws include AB 1960. This law was passed in 2008 and implementing regulations were adopted in 2010. AB 1960 establishes minimum standards for the maintenance and possible replacement of all above ground oil field facilities (pumping units, tanks, pipelines, etc.) and any buried pipelines at each oil and gas facility in the State. Each oil operator is required to submit an "AB 1960 Compliance Plan" to DOGGR for each oil field facility. According to DOGGR (Bruce Hesson, Pers. Comm., 2-17-15), DCOR is in compliance with AB 1960 requirements for the Temescal Oil Field.

CUP 488 authorizes the following uses:

*"Drilling for and extraction of oil, gas, and other hydrocarbon substances and installing and using buildings, equipment, and other appurtenances accessory thereto, including pipelines, but **specifically excluding** processing, refining and packaging, bulk storage or **any other use**"*

*specified in Division 8, Ventura County Ordinance Code, **requiring review and Special Use Permit**, and subject to the following conditions:"*  
*[emphasis added]*

According to the above language, CUP 488 (formerly SUP 488) authorizes oil and gas drilling and extraction operations but does not authorize other uses "requiring review and Special Use Permit." The phrase "requiring review and Special Use Permit" refers to uses subject to discretionary review. Thus, the conditions of approval of CUP 488 (including Condition #7) do not require discretionary review for the drilling of oil wells.

The use of the terms "nuisance or annoyance" in Condition #7 allows the County to address any complaints regarding the operation of the oil production facilities as a matter of condition compliance. Should a complaint be filed regarding some perceived "nuisance" caused by the ongoing permitted operation, the County could investigate and take action within the context of current legal standards pertaining to a public nuisance. This would not include new discretionary review of the installation and operation of new oil wells.

In any case, the comment does not provide any evidence of a dust, noise, vibration, or odor issue associated with the 5 wells that are the subject of the Zoning Clearance under appeal. CUP #488 (including Condition #7) does not prohibit or limit the use of any specific well stimulation or production technique.

4. The "San Benito case" (*Center for Biological Diversity vs. County of San Benito*) referenced by the commenter involved a determination by the Court that the potential buildout of an oil field had to be analyzed in a CEQA document for a substantially smaller discretionary oil and gas project. The evaluation of the oil field buildout was found to require a EIR. The "San Benito" case is not relevant to the issuance of ministerial zoning clearances for additional wells in an already-permitted oil and gas operation in an existing oil field.
5. Any flaring done by DCOR in the operation of its facilities in the Temescal Oil Field will be done under permit from the Ventura County Air Pollution Control District (VCAPCD). Flaring is a standard technique required by the VCAPCD to reduce potential pollution from hydrocarbon emissions where there is no pipeline available. Oil and gas facilities are not required to build pipelines for each oil and gas production facility. Condition #7 requires that oil operations be conducted using "best accepted practices" that are "practicable" and "economically feasible." It has not been demonstrated by the commenter that a pipeline is "practicable" or "economically feasible." The term "best accepted practices" is addressed by conformance with VCAPCD and DOGGR regulations.

The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the issue of the environmental effects

of GHG emissions is not relevant to the issuance of a Zoning Clearance and is not before your Commission.

6. The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the environmental issues listed by the commenter are not relevant to the requested zoning clearances under consideration by your Commission.

7. The comment refers to abandoned wells in the Temescal Oil Field and a 1962 document from the Regional Water Control Board pertaining to water discharge into Lime Creek. These issues do not relate to the issuance of the requested zoning clearances under consideration by your Commission.

8. The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the analysis of environmental effects (project-specific and cumulative) is not required or under consideration by the County in the determination of whether to issue the requested zoning clearance.

9. The history of the drilling and abandonment of the Temescal #33 well is not relevant to the issuance of the requested zoning clearance for 5 new wells at the Temescal Oil Field. This comment provides no evidence that the proposed wells are inconsistent with the terms and conditions of CUP 488.

10. Refer to response to comment #3 above. There is nothing in CUP 488 that states or implies that "a discretionary action is required each time a new well is proposed" as asserted by the commenter. To the contrary, Condition of Approval #3 specifically allows for the drilling of "other wells."

11. Refer to responses to comment #3 and #10 above.

12. The site of the proposed 5 new wells at the Temescal Oil Field are accessed by paved roads that extend from the community of Piru to the drillsite. Thus, there are not "miles of dirt roads" that will be used to access the site of the proposed wells. In any case, the wells and operations are subject to the air quality regulations enforced by the VCAPCD. This comment does not provide any evidence that the proposed wells would be installed in a manner or at a location inconsistent with CUP 488.

13. Refer to response to comments #3 and #10 above.

14. The granting of a permit adjustment in 1996 is not relevant to the issuance of the requested zoning clearance for 5 new wells at the Temescal Oil Field. The permit adjustment in question was granted by the County with the determination that the action was exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines. The decision to grant the permit adjustment and the determination



that the action was exempt from environmental review was made in 1996 and not subject to a timely challenge. It is nearly 20 years too late to challenge that permit action or CEQA determination. In any case, the 1996 permit adjustment is not relevant to the requested issuance of a zoning clearance for new wells pursuant to CUP 488. This comment does not provide any evidence that the requested zoning clearance is inconsistent with the terms and conditions of CUP 488.

15. Refer to the responses to comments #1 through #14 above. There is no basis to require a cessation of drilling or the preparation of an EIR prior to the issuance of the requested zoning clearance. Section 8111-1.1.1.b of the County NCZO states that a "Zoning Clearance shall be issued" if certain standards are met. As indicated on pages 10 and 11 of the Planning Commission staff report for the February 19, 2015 hearing, staff has found that the required standards have been met. Absent a contrary finding by your Commission, the County is obligated to issue the requested zoning clearance.

Attachment:

Citizens for Responsible Oil and Gas,  
Appeal comments at the Planning Commission hearing, February 19, 2015. (Marked)

**CUP 488**  
**Citizens for Responsible Oil and Gas**  
**Appeal Comments at Planning Commission Hearing**  
**February 19, 2015**

In 1959, the Board of Supervisors issued CUP 488. It was a very different time then. The CUP was actually first written in 1956 for a period of less than one year. It permitted Tidewater Oil Company to drill one exploratory well above Piru in a vague and overly broad description of land. As the time period was coming to an end and Tidewater had not begun drilling the well, the company went back to the Board and asked for more time and permission to drill 5 more wells if the first well were to be successful. In response to that request, the original CUP was modified to reword numbers 2 and 3.

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Condition Number 3. That other wells may be drilled within the limits for which this permit is issued subject only to the following conditions:

The term in the modified conditions, "other wells", has been used to authorize dozens of wells for the past 58 years with no restrictions or environmental review except the otherwise conditioned 200' buffer for Piru Creek. It is doubtful that was the true intent of the 1959 Board of Supervisors.

Condition Number 2 states:

"That one well may be drilled at a location approximately one thousand feet (1,000') south of Santa Felicia Dam, ..." Within the past 5 years, DCOR has been given zoning clearances to drill many wells south of Santa Felicia Dam. The closest well is Temescal 50-3 drilled in the last year approximately 1000 – 1200' feet south of Santa Felicia Dam. However, Temescal 50-3 is somehow not considered by the Planning Department to be the one well specified in Condition number 2. The history of zoning clearances issued to DCOR in the staff

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report surprisingly does not include Temescal 50-3 (API-11121975). The well drilling records are still confidential, but DOGGR records indicate the well is new and identify its exact location.

The Planning Department has taken the position that any CUP issued prior to CEQA's implementation in 1970 cannot be modified, changed or otherwise conditioned. However, Condition #2 of the 1959 CUP can be interpreted to mean exactly what it says "one well may be drilled south of Santa Felicia Dam". It is unlikely that the Supervisors granting this CUP meant one well, but then as many more as you want. However, this is the interpretation of the current Planning Department.

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### **Long Ignored Condition #7**

While there were very few conditions placed upon Tidewater Oil Company in 1959, the Board of Supervisors clearly envisioned that technological advances would be found and our environment would need further protections in the future. Condition number 7 has been completely ignored by the Planning Department.

Condition 7 reads:

"7. That all oil drilling and production operations shall be conducted in such a manner as to eliminate, as far as practicable, dust, noise, vibration, or noxious odors, and shall be in accordance with the best accepted practices, incident to drilling for and the production of oil, gas, and other hydrocarbon substances. Where economically feasible and where generally accepted and used, proven technological improvements in drilling and production methods shall be adopted as they may become from time to time available, if capable of reducing factors of nuisance and annoyance." (CUP 488 page 3)

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Certainly the intent of this condition was to allow future lead

agencies or governmental decision making bodies the discretion to review any new drilling request and make provisions for the use of "proven technological improvements." It is clearly not within the conditions of the CUP to avoid all review of any issue and award non-conditioned zoning clearances for drilling in perpetuity. The Planning Department has issued no new conditions dealing with environmental issues such as fracking, acidizing, or any other extreme drilling techniques now in use by oil companies in Ventura County. Temescal 20 was originally drilled in 1969 and abandoned in 1994. It was converted to a cyclic steam injection well in 2014 by DCOR. As in the recent San Benito case where the judge found the potential of great environmental damage from steam injection and called for a full EIR, this practice must be fully environmentally reviewed in order to preserve and protect the natural resources of Ventura County.

Condition #7 requires that oil drilling and production operations shall be in accordance with best practices. Best practices are now widely recognized to include utilizing pipelines to transport oil, gas and produced water from the site. Gas should not be flared; it is a precious natural resource and should be considered as such. The 2008 Greenhouse Gas Emissions law AB 32 requires Lead Agencies to quantify GHG emissions and make plans for mitigating the new sources of emissions. Flaring is a very dirty way of getting rid of an unwanted by-product of oil production. It is the law that the new GHG emissions from this project should be studied and certainly that study would be considered "best accepted practices." CUP #488 is in violation of condition #7 for this and the following other reasons.

Among the many environmental resources in this area that have been denied protection from ongoing unregulated drilling on the Temescal Ranch over the past 58 years by ignoring Condition #7 are:

1. Endangered California Condor (no mitigation measures despite its extremely close proximity to the Condor Sanctuary and nesting and roosting sites).
2. Golden eagles nesting and feeding in the area
3. Other non-identified threatened and endangered wildlife



threatened by additional non-permitted grading as well as increased noise, vibration, dangerous and toxic chemicals, and increased human presence.

4. Proximity to Lake Piru and Piru Creek that is home to endangered species of both plant and aquatic life, including the endangered steelhead trout.
5. Migratory nesting birds that are not protected during mating season.
6. High potential for archeological resources that have never been studied or inventoried.
7. Wildlife Movement Corridor that has not been assessed or studied as it relates to this parcel of land.
8. Greenhouse gas emissions analysis in compliance with California State law.
9. Lake Piru Recreation Area and the visual degradation, noise, dust, and air pollution
10. Several of the wells that were abandoned in the early 1990's contained comments in the well records of leaking well bores at the surface (example: Temescal #6 #11104060). While continued leaking may have been abated with abandonment, there has been no environmental assessment to see what the baseline conditions of the land, surface water run-off, or water wells in the area might be.
11. Please see attached document of 1962 from the Regional Water Control Board to Getty Oil Company (operator of CUP 488 at the time) written in response to a concern about 21,000 gallons of water per day that was being discharged into Lime Canyon Creek just below the Santa Felicia Dam where it joins Lower Piru Creek. Sadly, the Water Control Board allowed permeable sumps next to the creek to continue to be used to settle the produced water prior to releasing it into Lime Canyon Creek.

Most importantly, there has been no study of the cumulative effects of oil drilling and production in this location to our environment. A full and comprehensive EIR would at least give us a baseline and allow for the implementation of "best practices and new technological advances."

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Temescal #33 (API #111-01436) was drilled in 1959 virtually in Piru Creek. It was discovered that the well was leaking oil and gas to the surface in 1974. In 1975 it was leaking gas to the surface according to a written comment in the well file, "1/28/76 Still slight gas leakage." When the well was first abandoned on 1/8/74 DOGGR did not approve the action because "Cement plug at surface not approved, well leaking gas to surface". Due to continued leaking the well was reabandoned in 1976. The well record indicates that when drilling commenced there was a problem and the following comment is in the file, "can't tell, only fresh water with minor traces of oil." The record also indicates that diesel oil was used in the drilling process. This is one of many oil well records on Temescal Ranch that indicate leaks to the surface, leaks in the casings, and oil spills. The public needs answers to their concerns about the quality of their water, air and soil on Temescal Ranch before any new drilling is permitted.

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The Planning Department's position that the Planning Commission cannot in any way condition the CUP is in error. First, the 1959 CUP envisions a time that the CUP will need to be reviewed and updated to meet current drilling standards. The wording is crystal clear, "proven technological improvements in drilling and production shall be adopted." In order to adopt a new proven technological improvement, the Lead Agency must review the proposed new development and make changes and recommendations. In order to comply with this condition of CUP 488, the action CANNOT be ministerial. Condition 7 requires a discretionary action each time a new well is proposed.

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**CEQA Guidelines define a ministerial action as follows:**

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be

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carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

A ministerial decision involves only the use of fixed standards or objective measurements. The 1959 Board of Supervisors not only conditioned the CUP on moving standards, but they also expected the measurements to be subjective. The very terms "best practices" and "technological improvements" define a moving target and subjective judgment.

#### **Section 15357. Discretionary Project.**

"Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. (CEQA Guidelines)

The applicant, DCOR, has submitted an application to drill new oil wells on an existing CUP with certain conditions of approval. Condition #7 requires that the lead agency exercise judgment and deliberation in order to approve or disapprove the project. It requires the lead agency to study and evaluate best practices and technological improvements and weigh those advances to determine if they are capable of reducing "nuisances and annoyance." (CUP 488 condition #7).

**Nuisance and annoyance** are very interesting words to find in a CUP written by a Board in 1959. Both of those words have taken on broad and significant meaning under CEQA. For example, according to the

Ventura County Air Quality Assessment Guidelines, oil and gas extraction activities can cause significant odors. Objectionable odors created by a facility or operation may cause a **nuisance or annoyance** to surrounding populations. Lake Piru and most of the Recreational Area are within CUP 488. As required by condition #7, odors should be monitored and best practices applied to the drilling and extraction operations in the area.

According to the Ventura County Air Quality Guidelines, "Fugitive dust refers to solid particulate matter that becomes airborne because of wind action and human activities.... Unpaved roadways also are a large source of fugitive dust."

"When fugitive dust particles are inhaled, they can travel easily to the deep parts of the lungs and may remain there, causing respiratory illness, lung damage, and even premature death in sensitive people. Fugitive dust may be a **nuisance** to those living and working nearby."Pg. 2-16

The miles of dirt roads used to access oil wells surrounding Lake Piru Recreational Area create a significant dust **annoyance** and best practices or modern technological advances must be applied to any new project authorizing the drilling of additional oil wells.

The Piru Area Plan specifically refers to the **nuisance** of the noise and vibrations of the dozens of heavy oil trucks carrying either crude oil or produced water from oil and gas operations that pass within feet of the front doors of residences on Main Street. The Board of Supervisors of 1959 envisioned such a future issue and provided for the application of new technology to mitigate the annoyance. Produced water carried by many of the largest trucks could be recycled at the production area being built by DCOR. Portable reverse osmosis (RO ) water recycling units are available and can be used to purify the produced water to such a degree that it could be sold to

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local ranchers for agricultural purposes in the immediate area, or allowed to seep back into our diminishing aquifers.

Condition #7 of CUP 488 begins,

"That all oil drilling and production shall be conducted in such a manner as to eliminate, as far as practicable, noise, vibration or noxious odors ..."

Fracking creates vibration. Condition #7 says that oil drilling and production SHALL BE CONDUCTED in such a manner as to ELIMINATE vibration. Of course it is practicable to eliminate fracking. It may not allow for as great a profit margin for DCOR, but it is perfectly practicable to eliminate fracking or any other well stimulation that would create surface vibration.

Condition #7 of CUP 488 requires a discretionary decision by any future reviewer of this CUP and therefore, this CUP is subject to full CEQA review prior to any future development, drilling, or well stimulation to evaluate all of the ways this unregulated CUP may have become a nuisance or annoyance.

### **1996 Revision of the Boundaries of CUP 488**

It is the contention of CFROG that this 1996 revision of 160 total acres of land in the CUP was done in violation of CEQA as it was a major modification at the least, or required a new CUP altogether. The Planning Department erred in its conclusion that "the conditions of CUP 488 were not altered by this action and the site of the currently proposed wells was not part of this land swap." (Pg. 7 staff report). Whether or not the new wells are to be located on this land swap is irrelevant to the issue at hand. The issue is whether a land swap of 160 acres into and out of the CUP boundaries required CEQA review. Seneca Oil Company wanted to change the boundaries of the CUP in 1996 in order to drill in a new area without CEQA review on the land. CUP 488 is considered by Ventura County Planning Department to be exempt from CEQA. So, in order to avoid CEQA

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review, a "land swap" was approved by the Planning Department and is being further sanctified by our current Planning Department.

This land swap was not a little thing. The land that was "swapped" for the new parcel had already been used for drilling oil wells as part of the existing CUP 488. The newly incorporated land was added for the express purpose of drilling new wells but it was never reviewed for any environmental purpose. New land was added to the CUP. This was not a ministerial lot line adjustment. No lot lines were changed. Rather the lines of the CUP were redrawn to add 80 new acres with no environmental review in 1996, 26 years after the enactment of CEQA. If it were possible for a entitlement holder of a CUP to simply keep moving the lines of the CUP by "swapping land", then CUP's could essentially become moving lines that would eventually incorporate thousands of acres of land some used in the past and some of it new land waiting to be used. All of this could be then permitted in the name of an "antiquated CUP" exempt from CEQA. All of the swapping in this CUP was done for one singular purpose – to avoid CEQA review.

The staff report says that the boundary revision did not alter the conditions of the CUP. However condition number one affirmatively states that the permit is issued **ONLY** "for that portion of land described in the application..." (CUP 488 pg. 2). Over the years the CUP lines were mapped and recorded in Ventura County Map books as well as kept in the CUP file. The conditions of approval did not allow a "land swap" or a change from that which was described in the initial application.

The rights to a CUP run with the land. Owners can change as we saw happen over the years in CUP 488, but the entitlement remains with the land. So, once a CUP is described and mapped, its limits are finite. Since this revision of boundaries was not ministerial act and thus required CEQA review, the CUP is in violation. The violation must be abated with a full EIR as part of the CEQA review prior to any ongoing or future use.

For the above reasons, CFROG requests a cessation of drilling until a full EIR is satisfactorily completed that will comprehensively study the environmental impacts of oil drilling and production on Temescal Ranch so that at a minimum best practices and technological improvements can be included in the conditions of approval.

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State of California  
Resources Agency  
REGIONAL WATER POLLUTION CONTROL BOARD NO. 4  
Los Angeles Region

RESOLUTION NO. 63-18

PRESCRIBING REQUIREMENTS FOR DISPOSAL OF OIL FIELD WASTES  
GETTY OIL COMPANY  
Temescal Oil Field, Ventura County, California  
(File 62-109)

WHEREAS, in compliance with Section 13054 of the Water Code of the State of California, GETTY OIL COMPANY has filed with this Regional Water Pollution Control Board a report on waste discharge (our Report No. 601) dated July 24, 1962, for the existing disposal of 500 barrels per day (21,000 gallons per day) of industrial wastes resulting from the production of oil in the Temescal Field, Ventura County, into Lime Canyon Creek in Section 4, T4N, R18W, one-half mile southwesterly from San Felicia Dam in Piru Canyon; and

WHEREAS, this Board has caused the following investigations to be made relative to this waste discharge:

1. Field investigations were conducted by the staff of this Board.
  2. In accordance with administrative procedures established by this Board, copies of the report on waste discharge were forwarded to interested governmental agencies and persons for comments, suggestions, and/or recommendations.
  3. Review was made of a report to the Board by the then Division of Water Resources, titled "Ventura County Oil Waste Investigation", dated June, 1954;
- and

WHEREAS, based upon these investigations the Board finds that:

1. This waste disposal site is located just north of the terminus of Lime Canyon Road at Piru Canyon Road, about three miles north of State Highway 126.
2. Oil field brines are separated from oil in a concrete-lined pond prior to discharge into Lime Canyon Creek. A series of unlined sumps adjacent to the concrete-lined sump apparently serves to retain any emergency overflow.

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when received.

Requirements  
Getty Oil Co.

File 62-109

3. This waste disposal site is situated in permeable alluvial formations which are water-bearing. Liquid wastes discharged at the site can readily percolate into the stream bed deposits in Lime Canyon and Piru Creeks. Surface and subsurface waters in these creeks recharge Piru Ground Water Basin in the Santa Clara River Valley.
4. Ground waters in the Piru Basin are beneficially used for domestic, municipal, irrigation, and stock-water purposes, and as a source of replenishment for the lower groundwater basins in the Santa Clara River Valley area. The mineral quality of the groundwaters in Piru Basin downstream from the point of disposal does not generally meet the recommended limits of the United States Public Health Service Drinking Water Standards. For irrigation purposes, these waters are considered Class 2.
5. Analyses of waste water discharged at this site yielded the following average data:

Total dissolved solids	8380 ppm
Sodium	2700 "
Chloride	92 "
Sulfate	60 "
Bicarbonate	5260 "
Boron	1.5 "
Sodium equivalent ratio	97%
pH	8.0

and

WHEREAS, on March 27, 1963, a letter transmitting a tentative draft of this resolution was forwarded to Getty Oil Company, and copies thereof sent to interested persons and governmental agencies with the advice that objections thereto would be considered by the Board if submitted in writing on or before April 16, 1963; and

WHEREAS, objections received have been reviewed and considered by the Board;

NOW THEREFORE, BE IT RESOLVED, that in order to prevent pollution of the receiving waters and to prevent creation of a nuisance, this Regional Water Pollution Control Board, in accordance with authority granted by Division 7 of the Water Code of the State of California, prescribes the following requirements with respect to this waste disposal by Getty Oil Company, subject to the provisions of Section 13054 of the Water Code, which reads in part that requirements may be revised from time to time:

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when received



Requirements  
Getty Oil Co.

File 62-109

1. Wastes discharged to the ground at this site shall at no time contain greater concentrations of the following mineral constituents than those listed herein:

<u>Constituent</u>	<u>Maximum Limit</u>
Total dissolved solids	2000 ppm
Chloride	250 "
Boron	1.5 "
Sodium equivalent ratio	60%

2. Wastes discharged at this site shall contain no substance in concentrations sufficient to impart tastes, odors, or other objectionable characteristics to usable receiving waters.
3. Wastes discharged shall contain no substance in concentrations toxic to human, animal or plant life.
4. The discharge of wastes at this site shall not create a condition of nuisance as defined in Section 13005 of the California Water Code.
5. Wastes which do not meet all of the foregoing requirements shall be held in impervious containers, and if transferred elsewhere, the final discharge shall be at a legal point of disposal. In this events, in accordance with the provisions of Section 13055 of the Water Code, Getty Oil Company shall submit to this Board, at quarterly intervals, a technical report containing the following requirements:
  - a) The name and address of the hauler of the wastes
  - b) The quantity of wastes hauled during this reporting period
  - c) The quality of wastes in storage at the end of the reporting period
  - d) The location of the ultimate disposal point of the wastes;

and

BE IT FURTHER RESOLVED, that in prescribing these requirements it is the intent of this Board to:

1. Preserve the quality of the receiving waters, insofar as they may be affected by the disposal of industrial wastes to the ground at this plant site, suitable for beneficial uses for which they may be utilized.

ERA MEMO:  
Legibility of writing, typing or  
printing UNSATISFACTORY  
in portions of the document

Requirements  
Getty Oil Co.

File 62-109

2. Prevent the creation of a nuisance as a result of this  
waste discharge;  
and

BE IT FURTHER RESOLVED, that the attention of Getty Oil Company be hereby directed to Section 13054.1 of the Water Code of the State of California, which reads in part "Any person discharging sewage or industrial waste within any region, other than into a community sewer system, shall file with the regional board of that region a report of any material change or proposed change in the character, location or volume of the discharge"; and

BE IT FURTHER RESOLVED, that Getty Oil Company be hereby directed to inform this Board of any change in ownership of this waste disposal facility; and

BE IT FURTHER RESOLVED, that the foregoing requirements do not authorize the commission of any act resulting in injury to the property of another; and

BE IT FURTHER RESOLVED, that Getty Oil Company be further advised that these requirements do not exempt the operator of this waste disposal facility from compliance with any other law which may be applicable. The requirements are not a permit; they do not legalize this waste disposal facility, and they leave unaffected any further restraints on the disposal of wastes at this site which may be contained in other statutes; and

BE IT FURTHER RESOLVED, that the Executive Officer of this Board be authorized, and he is hereby directed, to certify and submit copies of this resolution to Getty Oil Company, and to such individuals and agencies as may have need therefor, or as may request same.

ERA MEMO:

Legibility of writing, typing or  
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when received.

I, Linne C. Larson, Executive Officer of the Los Angeles Regional Water Pollution Control Board, State of California, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the Los Angeles Regional Water Pollution Control Board at the Board Meeting held on April 17, 1963.



LINNE C. LARSON  
Executive Officer

LAM:IF  
3-27-63



# Memorandum

County of Ventura • Resource Management Agency • Planning Division  
800 S. Victoria Avenue, Ventura, CA 93009-1740 • (805) 654-2478 • [ventura.org/rma/planning](http://ventura.org/rma/planning)

**DATE:** February 18, 2015

**TO:** The Honorable Planning Commission

**FROM:** Brian R. Baca, Manager *BRB*  
Commercial and Industrial Permits

**SUBJECT:** DCOR Zoning Clearance Appeals, PL14-0124, PL14-0146:  
Response to Citizens for Responsible Oil and Gas appeal comments

## INTRODUCTION

At the February 19, 2015 public hearing, the Planning Commission will consider two appeals filed for the issuance of zoning clearances issued by the Planning Director to initiate the installation and operation of new oil and gas wells as authorized by conditional use permits (CUPs) previously granted by the County of Ventura. These CUPs include:

- CUP 488 (Granted on May 29, 1956)
- CUP LU09-0073 (Granted on November 16, 2010)

On February 15, 2015, the Citizens for Responsible Oil and Gas (CFROG) submitted comments for consideration by your Commission at the February 19, 2015 hearing. Provided below are staff responses to each of the submitted comments, numbered in correspondence with the attached marked copy of the CFROG comments.

## RESPONSES TO COMMENTS

1. There is no limit specified in CUP 488 (including condition of approval #3) in the number of oil wells that can be installed and operated within the permit area. Condition #3 specifically states:

***"That other wells may be drilled within the limits for which this permit is issued subject to only the following conditions."*** [emphasis added]

The clear language of Condition #3 indicates that additional wells may be drilled subject only to the following conditions. None of the following conditions limits the number of wells. As pointed out by the commenter, dozens of wells have been drilled under the authority of CUP 488 since 1956.

Zoning Clearance ZC14-0965 under consideration by your Commission at the February 19, 2015 hearing involves 5 new wells proposed to be installed at an existing drillsite located on a hilltop approximately 2,400 feet west of Lake Piru. The drilling of oil wells in the area south of the San Felicia Dam is not before your Commission in the current proceeding.

2. Condition of Approval #2 of CUP 488 allows one well to be drilled approximately 1,000 feet south of the San Felicia Dam that must be setback 200 feet from the existing channel of Piru Creek. Conditions #3 and #4 allow other wells to be drilled in the CUP 488 area provided that they are located at least 500 feet from the channel of Piru Creek. Thus, Condition #2 only limits the number of wells that are allowed to be located less than 500 feet from Piru Creek. Zoning Clearance ZC08-0958 initiated the drilling of two wells south of the San Felicia Dam that are both located more than 500 feet from Piru Creek. The location of these wells is in conformance with the conditions of approval of CUP 488.
3. The issuance of a Zoning Clearance is a ministerial action that is not subject to discretionary review. Thus, no new environmental review under CEQA can be required and no new "conditions of approval" can be imposed as part of a Zoning Clearance. Condition of Approval #7 does not require further discretionary review of the permitted oil and gas project but instead requires conformance with any changes in State or local laws applicable to ministerial permits. For example, the operation of oil wells are subject to the ministerial permits issued by the Ventura County Air Pollution Control District (i.e. Permit to Operate, Authority to Construct). The VCAPCD permits implement current State laws that pertain to emissions from oil and gas operations. Similarly, the installation of new oil wells are subject to any applicable provision of the current California Building Code. Finally, the drilling of new oil wells, and the ongoing operations of existing oil and gas facilities, are subject to recently-enacted State laws implemented by the California Division of Oil and Gas and Geothermal Resources (DOGGR). These laws include AB 1960. This law was passed in 2008 and implementing regulations were adopted in 2010. AB 1960 establishes minimum standards for the maintenance and possible replacement of all above ground oil field facilities (pumping units, tanks, pipelines, etc.) and any buried pipelines at each oil and gas facility in the State. Each oil operator is required to submit an "AB 1960 Compliance Plan" to DOGGR for each oil field facility. According to DOGGR (Bruce Hesson, Pers. Comm., 2-17-15), DCOR is in compliance with AB 1960 requirements for the Temescal Oil Field.

CUP 488 authorizes the following uses:

*"Drilling for and extraction of oil, gas, and other hydrocarbon substances and installing and using buildings, equipment, and other appurtenances accessory thereto, including pipelines, but **specifically excluding** processing, refining and packaging, bulk storage or **any other use**"*

*specified in Division 8, Ventura County Ordinance Code, **requiring review and Special Use Permit**, and subject to the following conditions:"*  
*[emphasis added]*

According to the above language, CUP 488 (formerly SUP 488) authorizes oil and gas drilling and extraction operations but does not authorize other uses "requiring review and Special Use Permit." The phrase "requiring review and Special Use Permit" refers to uses subject to discretionary review. Thus, the conditions of approval of CUP 488 (including Condition #7) do not require discretionary review for the drilling of oil wells.

The use of the terms "nuisance or annoyance" in Condition #7 allows the County to address any complaints regarding the operation of the oil production facilities as a matter of condition compliance. Should a complaint be filed regarding some perceived "nuisance" caused by the ongoing permitted operation, the County could investigate and take action within the context of current legal standards pertaining to a public nuisance. This would not include new discretionary review of the installation and operation of new oil wells.

In any case, the comment does not provide any evidence of a dust, noise, vibration, or odor issue associated with the 5 wells that are the subject of the Zoning Clearance under appeal. CUP #488 (including Condition #7) does not prohibit or limit the use of any specific well stimulation or production technique.

4. The "San Benito case" (*Center for Biological Diversity vs. County of San Benito*) referenced by the commenter involved a determination by the Court that the potential buildout of an oil field had to be analyzed in a CEQA document for a substantially smaller discretionary oil and gas project. The evaluation of the oil field buildout was found to require a EIR. The "San Benito" case is not relevant to the issuance of ministerial zoning clearances for additional wells in an already-permitted oil and gas operation in an existing oil field.

5. Any flaring done by DCOR in the operation of its facilities in the Temescal Oil Field will be done under permit from the Ventura County Air Pollution Control District (VCAPCD). Flaring is a standard technique required by the VCAPCD to reduce potential pollution from hydrocarbon emissions where there is no pipeline available. Oil and gas facilities are not required to build pipelines for each oil and gas production facility. Condition #7 requires that oil operations be conducted using "best accepted practices" that are "practicable" and "economically feasible." It has not been demonstrated by the commenter that a pipeline is "practicable" or "economically feasible." The term "best accepted practices" is addressed by conformance with VCAPCD and DOGGR regulations.

The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the issue of the environmental effects



of GHG emissions is not relevant to the issuance of a Zoning Clearance and is not before your Commission.

6. The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the environmental issues listed by the commenter are not relevant to the requested zoning clearances under consideration by your Commission.

7. The comment refers to abandoned wells in the Temescal Oil Field and a 1962 document from the Regional Water Control Board pertaining to water discharge into Lime Creek. These issues do not relate to the issuance of the requested zoning clearances under consideration by your Commission.

8. The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the analysis of environmental effects (project-specific and cumulative) is not required or under consideration by the County in the determination of whether to issue the requested zoning clearance.

9. The history of the drilling and abandonment of the Temescal #33 well is not relevant to the issuance of the requested zoning clearance for 5 new wells at the Temescal Oil Field. This comment provides no evidence that the proposed wells are inconsistent with the terms and conditions of CUP 488.

10. Refer to response to comment #3 above. There is nothing in CUP 488 that states or implies that "a discretionary action is required each time a new well is proposed" as asserted by the commenter. To the contrary, Condition of Approval #3 specifically allows for the drilling of "other wells."

11. Refer to responses to comment #3 and #10 above.

12. The site of the proposed 5 new wells at the Temescal Oil Field are accessed by paved roads that extend from the community of Piru to the drillsite. Thus, there are not "miles of dirt roads" that will be used to access the site of the proposed wells. In any case, the wells and operations are subject to the air quality regulations enforced by the VCAPCD. This comment does not provide any evidence that the proposed wells would be installed in a manner or at a location inconsistent with CUP 488.

13. Refer to response to comments #3 and #10 above.

14. The granting of a permit adjustment in 1996 is not relevant to the issuance of the requested zoning clearance for 5 new wells at the Temescal Oil Field. The permit adjustment in question was granted by the County with the determination that the action was exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines. The decision to grant the permit adjustment and the determination

that the action was exempt from environmental review was made in 1996 and not subject to a timely challenge. It is nearly 20 years too late to challenge that permit action or CEQA determination. In any case, the 1996 permit adjustment is not relevant to the requested issuance of a zoning clearance for new wells pursuant to CUP 488. This comment does not provide any evidence that the requested zoning clearance is inconsistent with the terms and conditions of CUP 488.

15. Refer to the responses to comments #1 through #14 above. There is no basis to require a cessation of drilling or the preparation of an EIR prior to the issuance of the requested zoning clearance. Section 8111-1.1.1.b of the County NCZO states that a "Zoning Clearance shall be issued" if certain standards are met. As indicated on pages 10 and 11 of the Planning Commission staff report for the February 19, 2015 hearing, staff has found that the required standards have been met. Absent a contrary finding by your Commission, the County is obligated to issue the requested zoning clearance.

Attachment:

Citizens for Responsible Oil and Gas,  
Appeal comments at the Planning Commission hearing, February 19, 2015. (Marked)

**CUP 488**  
**Citizens for Responsible Oil and Gas**  
**Appeal Comments at Planning Commission Hearing**  
**February 19, 2015**

In 1959, the Board of Supervisors issued CUP 488. It was a very different time then. The CUP was actually first written in 1956 for a period of less than one year. It permitted Tidewater Oil Company to drill one exploratory well above Piru in a vague and overly broad description of land. As the time period was coming to an end and Tidewater had not begun drilling the well, the company went back to the Board and asked for more time and permission to drill 5 more wells if the first well were to be successful. In response to that request, the original CUP was modified to reword numbers 2 and 3.

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Condition Number 3. That other wells may be drilled within the limits for which this permit is issued subject only to the following conditions:

The term in the modified conditions, "other wells", has been used to authorize dozens of wells for the past 58 years with no restrictions or environmental review except the otherwise conditioned 200' buffer for Piru Creek. It is doubtful that was the true intent of the 1959 Board of Supervisors.

Condition Number 2 states:

"That one well may be drilled at a location approximately one thousand feet (1,000') south of Santa Felicia Dam, ..." Within the past 5 years, DCOR has been given zoning clearances to drill many wells south of Santa Felicia Dam. The closest well is Temescal 50-3 drilled in the last year approximately 1000 – 1200' feet south of Santa Felicia Dam. However, Temescal 50-3 is somehow not considered by the Planning Department to be the one well specified in Condition number 2. The history of zoning clearances issued to DCOR in the staff

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report surprisingly does not include Temescal 50-3 (API-11121975). The well drilling records are still confidential, but DOGGR records indicate the well is new and identify its exact location.

The Planning Department has taken the position that any CUP issued prior to CEQA's implementation in 1970 cannot be modified, changed or otherwise conditioned. However, Condition #2 of the 1959 CUP can be interpreted to mean exactly what it says "one well may be drilled south of Santa Felicia Dam". It is unlikely that the Supervisors granting this CUP meant one well, but then as many more as you want. However, this is the interpretation of the current Planning Department.

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### **Long Ignored Condition #7**

While there were very few conditions placed upon Tidewater Oil Company in 1959, the Board of Supervisors clearly envisioned that technological advances would be found and our environment would need further protections in the future. Condition number 7 has been completely ignored by the Planning Department.

Condition 7 reads:

"7. That all oil drilling and production operations shall be conducted in such a manner as to eliminate, as far as practicable, dust, noise, vibration, or noxious odors, and shall be in accordance with the best accepted practices, incident to drilling for and the production of oil, gas, and other hydrocarbon substances. Where economically feasible and where generally accepted and used, proven technological improvements in drilling and production methods shall be adopted as they may become from time to time available, if capable of reducing factors of nuisance and annoyance." (CUP 488 page 3)

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Certainly the intent of this condition was to allow future lead

agencies or governmental decision making bodies the discretion to review any new drilling request and make provisions for the use of "proven technological improvements." It is clearly not within the conditions of the CUP to avoid all review of any issue and award non-conditioned zoning clearances for drilling in perpetuity. The Planning Department has issued no new conditions dealing with environmental issues such as fracking, acidizing, or any other extreme drilling techniques now in use by oil companies in Ventura County. Temescal 20 was originally drilled in 1969 and abandoned in 1994. It was converted to a cyclic steam injection well in 2014 by DCOR. As in the recent San Benito case where the judge found the potential of great environmental damage from steam injection and called for a full EIR, this practice must be fully environmentally reviewed in order to preserve and protect the natural resources of Ventura County.

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Condition #7 requires that oil drilling and production operations shall be in accordance with best practices. Best practices are now widely recognized to include utilizing pipelines to transport oil, gas and produced water from the site. Gas should not be flared; it is a precious natural resource and should be considered as such. The 2008 Greenhouse Gas Emissions law AB 32 requires Lead Agencies to quantify GHG emissions and make plans for mitigating the new sources of emissions. Flaring is a very dirty way of getting rid of an unwanted by-product of oil production. It is the law that the new GHG emissions from this project should be studied and certainly that study would be considered "best accepted practices." CUP #488 is in violation of condition #7 for this and the following other reasons.

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Among the many environmental resources in this area that have been denied protection from ongoing unregulated drilling on the Temescal Ranch over the past 58 years by ignoring Condition #7 are:

1. Endangered California Condor (no mitigation measures despite its extremely close proximity to the Condor Sanctuary and nesting and roosting sites).
2. Golden eagles nesting and feeding in the area
3. Other non-identified threatened and endangered wildlife

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threatened by additional non-permitted grading as well as increased noise, vibration, dangerous and toxic chemicals, and increased human presence.

4. Proximity to Lake Piru and Piru Creek that is home to endangered species of both plant and aquatic life, including the endangered steelhead trout.
5. Migratory nesting birds that are not protected during mating season.
6. High potential for archeological resources that have never been studied or inventoried.
7. Wildlife Movement Corridor that has not been assessed or studied as it relates to this parcel of land.
8. Greenhouse gas emissions analysis in compliance with California State law.
9. Lake Piru Recreation Area and the visual degradation, noise, dust, and air pollution
10. Several of the wells that were abandoned in the early 1990's contained comments in the well records of leaking well bores at the surface (example: Temescal #6 #11104060). While continued leaking may have been abated with abandonment, there has been no environmental assessment to see what the baseline conditions of the land, surface water run-off, or water wells in the area might be.
11. Please see attached document of 1962 from the Regional Water Control Board to Getty Oil Company (operator of CUP 488 at the time) written in response to a concern about 21,000 gallons of water per day that was being discharged into Lime Canyon Creek just below the Santa Felicia Dam where it joins Lower Piru Creek. Sadly, the Water Control Board allowed permeable sumps next to the creek to continue to be used to settle the produced water prior to releasing it into Lime Canyon Creek.

Most importantly, there has been no study of the cumulative effects of oil drilling and production in this location to our environment. A full and comprehensive EIR would at least give us a baseline and allow for the implementation of "best practices and new technological advances."

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Temescal #33 (API #111-01436) was drilled in 1959 virtually in Piru Creek. It was discovered that the well was leaking oil and gas to the surface in 1974. In 1975 it was leaking gas to the surface according to a written comment in the well file, "1/28/76 Still slight gas leakage." When the well was first abandoned on 1/8/74 DOGGR did not approve the action because "Cement plug at surface not approved, well leaking gas to surface". Due to continued leaking the well was reabandoned in 1976. The well record indicates that when drilling commenced there was a problem and the following comment is in the file, "can't tell, only fresh water with minor traces of oil." The record also indicates that diesel oil was used in the drilling process. This is one of many oil well records on Temescal Ranch that indicate leaks to the surface, leaks in the casings, and oil spills. The public needs answers to their concerns about the quality of their water, air and soil on Temescal Ranch before any new drilling is permitted.

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The Planning Department's position that the Planning Commission cannot in any way condition the CUP is in error. First, the 1959 CUP envisions a time that the CUP will need to be reviewed and updated to meet current drilling standards. The wording is crystal clear, "proven technological improvements in drilling and production shall be adopted." In order to adopt a new proven technological improvement, the Lead Agency must review the proposed new development and make changes and recommendations. In order to comply with this condition of CUP 488, the action CANNOT be ministerial. Condition 7 requires a discretionary action each time a new well is proposed.

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**CEQA Guidelines define a ministerial action as follows:**

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be

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carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

A ministerial decision involves only the use of fixed standards or objective measurements. The 1959 Board of Supervisors not only conditioned the CUP on moving standards, but they also expected the measurements to be subjective. The very terms "best practices" and "technological improvements" define a moving target and subjective judgment.

#### **Section 15357. Discretionary Project.**

"Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. (CEQA Guidelines)

The applicant, DCOR, has submitted an application to drill new oil wells on an existing CUP with certain conditions of approval. Condition #7 requires that the lead agency exercise judgment and deliberation in order to approve or disapprove the project. It requires the lead agency to study and evaluate best practices and technological improvements and weigh those advances to determine if they are capable of reducing "nuisances and annoyance." (CUP 488 condition #7).

**Nuisance and annoyance** are very interesting words to find in a CUP written by a Board in 1959. Both of those words have taken on broad and significant meaning under CEQA. For example, according to the

Ventura County Air Quality Assessment Guidelines, oil and gas extraction activities can cause significant odors. Objectionable odors created by a facility or operation may cause a **nuisance or annoyance** to surrounding populations. Lake Piru and most of the Recreational Area are within CUP 488. As required by condition #7, odors should be monitored and best practices applied to the drilling and extraction operations in the area.

According to the Ventura County Air Quality Guidelines, "Fugitive dust refers to solid particulate matter that becomes airborne because of wind action and human activities.... Unpaved roadways also are a large source of fugitive dust."

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"When fugitive dust particles are inhaled, they can travel easily to the deep parts of the lungs and may remain there, causing respiratory illness, lung damage, and even premature death in sensitive people. Fugitive dust may be a **nuisance** to those living and working nearby."Pg. 2-16

The miles of dirt roads used to access oil wells surrounding Lake Piru Recreational Area create a significant dust **annoyance** and best practices or modern technological advances must be applied to any new project authorizing the drilling of additional oil wells.

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The Piru Area Plan specifically refers to the **nuisance** of the noise and vibrations of the dozens of heavy oil trucks carrying either crude oil or produced water from oil and gas operations that pass within feet of the front doors of residences on Main Street. The Board of Supervisors of 1959 envisioned such a future issue and provided for the application of new technology to mitigate the annoyance. Produced water carried by many of the largest trucks could be recycled at the production area being built by DCOR. Portable reverse osmosis (RO ) water recycling units are available and can be used to purify the produced water to such a degree that it could be sold to

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local ranchers for agricultural purposes in the immediate area, or allowed to seep back into our diminishing aquifers.

Condition #7 of CUP 488 begins,  
"That all oil drilling and production shall be conducted in such a manner as to eliminate, as far as practicable, noise, vibration or noxious odors ..."

Fracking creates vibration. Condition #7 says that oil drilling and production SHALL BE CONDUCTED in such a manner as to ELIMINATE vibration. Of course it is practicable to eliminate fracking. It may not allow for as great a profit margin for DCOR, but it is perfectly practicable to eliminate fracking or any other well stimulation that would create surface vibration.

Condition #7 of CUP 488 requires a discretionary decision by any future reviewer of this CUP and therefore, this CUP is subject to full CEQA review prior to any future development, drilling, or well stimulation to evaluate all of the ways this unregulated CUP may have become a nuisance or annoyance.

### **1996 Revision of the Boundaries of CUP 488**

It is the contention of CFROG that this 1996 revision of 160 total acres of land in the CUP was done in violation of CEQA as it was a major modification at the least, or required a new CUP altogether. The Planning Department erred in its conclusion that "the conditions of CUP 488 were not altered by this action and the site of the currently proposed wells was not part of this land swap." (Pg. 7 staff report). Whether or not the new wells are to be located on this land swap is irrelevant to the issue at hand. The issue is whether a land swap of 160 acres into and out of the CUP boundaries required CEQA review. Seneca Oil Company wanted to change the boundaries of the CUP in 1996 in order to drill in a new area without CEQA review on the land. CUP 488 is considered by Ventura County Planning Department to be exempt from CEQA. So, in order to avoid CEQA

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review, a "land swap" was approved by the Planning Department and is being further sanctified by our current Planning Department.

This land swap was not a little thing. The land that was "swapped" for the new parcel had already been used for drilling oil wells as part of the existing CUP 488. The newly incorporated land was added for the express purpose of drilling new wells but it was never reviewed for any environmental purpose. New land was added to the CUP. This was not a ministerial lot line adjustment. No lot lines were changed. Rather the lines of the CUP were redrawn to add 80 new acres with no environmental review in 1996, 26 years after the enactment of CEQA. If it were possible for a entitlement holder of a CUP to simply keep moving the lines of the CUP by "swapping land", then CUP's could essentially become moving lines that would eventually incorporate thousands of acres of land some used in the past and some of it new land waiting to be used. All of this could be then permitted in the name of an "antiquated CUP" exempt from CEQA. All of the swapping in this CUP was done for one singular purpose – to avoid CEQA review.

The staff report says that the boundary revision did not alter the conditions of the CUP. However condition number one affirmatively states that the permit is issued **ONLY** "for that portion of land described in the application..." (CUP 488 pg. 2). Over the years the CUP lines were mapped and recorded in Ventura County Map books as well as kept in the CUP file. The conditions of approval did not allow a "land swap" or a change from that which was described in the initial application.

The rights to a CUP run with the land. Owners can change as we saw happen over the years in CUP 488, but the entitlement remains with the land. So, once a CUP is described and mapped, its limits are finite. Since this revision of boundaries was not ministerial act and thus required CEQA review, the CUP is in violation. The violation must be abated with a full EIR as part of the CEQA review prior to any ongoing or future use.

For the above reasons, CFROG requests a cessation of drilling until a full EIR is satisfactorily completed that will comprehensively study the environmental impacts of oil drilling and production on Temescal Ranch so that at a minimum best practices and technological improvements can be included in the conditions of approval.

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State of California  
Resources Agency  
REGIONAL WATER POLLUTION CONTROL BOARD NO. 4  
Los Angeles Region

RESOLUTION NO. 63-18

PRESCRIBING REQUIREMENTS FOR DISPOSAL OF OIL FIELD WASTES  
GETTY OIL COMPANY  
Temescal Oil Field, Ventura County, California  
(File 62-109)

WHEREAS, in compliance with Section 13054 of the Water Code of the State of California, GETTY OIL COMPANY has filed with this Regional Water Pollution Control Board a report on waste discharge (our Report No. 601) dated July 24, 1962, for the existing disposal of 500 barrels per day (21,000 gallons per day) of industrial wastes resulting from the production of oil in the Temescal Field, Ventura County, into Lime Canyon Creek in Section 4, T4N, R18W, one-half mile southwesterly from San Felicia Dam in Piru Canyon; and

WHEREAS, this Board has caused the following investigations to be made relative to this waste discharge:

1. Field investigations were conducted by the staff of this Board.
  2. In accordance with administrative procedures established by this Board, copies of the report on waste discharge were forwarded to interested governmental agencies and persons for comments, suggestions, and/or recommendations.
  3. Review was made of a report to the Board by the then Division of Water Resources, titled "Ventura County Oil Waste Investigation", dated June, 1954;
- and

WHEREAS, based upon these investigations the Board finds that:

1. This waste disposal site is located just north of the terminus of Lime Canyon Road at Piru Canyon Road, about three miles north of State Highway 126.
2. Oil field brines are separated from oil in a concrete-lined pond prior to discharge into Lime Canyon Creek. A series of unlined sumps adjacent to the concrete-lined sump apparently serves to retain any emergency overflow.

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Requirements  
Getty Oil Co.

File 62-109

3. This waste disposal site is situated in permeable alluvial formations which are water-bearing. Liquid wastes discharged at the site can readily percolate into the stream bed deposits in Lime Canyon and Piru Creeks. Surface and subsurface waters in these creeks recharge Piru Ground Water Basin in the Santa Clara River Valley.
4. Ground waters in the Piru Basin are beneficially used for domestic, municipal, irrigation, and stock-water purposes, and as a source of replenishment for the lower groundwater basins in the Santa Clara River Valley area. The mineral quality of the groundwaters in Piru Basin downstream from the point of disposal does not generally meet the recommended limits of the United States Public Health Service Drinking Water Standards. For irrigation purposes, these waters are considered Class 2.
5. Analyses of waste water discharged at this site yielded the following average data:

Total dissolved solids	8380 ppm
Sodium	2700 "
Chloride	92 "
Sulfate	60 "
Bicarbonate	5260 "
Boron	1.5 "
Sodium equivalent ratio	97%
pH	8.0

and

WHEREAS, on March 27, 1963, a letter transmitting a tentative draft of this resolution was forwarded to Getty Oil Company, and copies thereof sent to interested persons and governmental agencies with the advice that objections thereto would be considered by the Board if submitted in writing on or before April 16, 1963; and

WHEREAS, objections received have been reviewed and considered by the Board;

NOW THEREFORE, BE IT RESOLVED, that in order to prevent pollution of the receiving waters and to prevent creation of a nuisance, this Regional Water Pollution Control Board, in accordance with authority granted by Division 7 of the Water Code of the State of California, prescribes the following requirements with respect to this waste disposal by Getty Oil Company, subject to the provisions of Section 13054 of the Water Code, which reads in part that requirements may be revised from time to time:

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Requirements  
Getty Oil Co.

File 62-109

1. Wastes discharged to the ground at this site shall at no time contain greater concentrations of the following mineral constituents than those listed herein:

<u>Constituent</u>	<u>Maximum Limit</u>
Total dissolved solids	2000 ppm
Chloride	250 "
Boron	1.5 "
Sodium equivalent ratio	60%

2. Wastes discharged at this site shall contain no substance in concentrations sufficient to impart tastes, odors, or other objectionable characteristics to usable receiving waters.
3. Wastes discharged shall contain no substance in concentrations toxic to human, animal or plant life.
4. The discharge of wastes at this site shall not create a condition of nuisance as defined in Section 13005 of the California Water Code.
5. Wastes which do not meet all of the foregoing requirements shall be held in impervious containers, and if transferred elsewhere, the final discharge shall be at a legal point of disposal. In this events, in accordance with the provisions of Section 13055 of the Water Code, Getty Oil Company shall submit to this Board, at quarterly intervals, a technical report containing the following requirements:
  - a) The name and address of the hauler of the wastes
  - b) The quantity of wastes hauled during this reporting period
  - c) The quality of wastes in storage at the end of the reporting period
  - d) The location of the ultimate disposal point of the wastes;

and

BE IT FURTHER RESOLVED, that in prescribing these requirements it is the intent of this Board to:

1. Preserve the quality of the receiving waters, insofar as they may be affected by the disposal of industrial wastes to the ground at this plant site, suitable for beneficial uses for which they may be utilized.

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Requirements  
 Getty Oil Co.

File 62-109

2. Prevent the creation of a nuisance as a result of this waste discharge;
- and

BE IT FURTHER RESOLVED, that the attention of Getty Oil Company be hereby directed to Section 13054.1 of the Water Code of the State of California, which reads in part "Any person discharging sewage or industrial waste within any region, other than into a community sewer system, shall file with the regional board of that region a report of any material change or proposed change in the character, location or volume of the discharge"; and

BE IT FURTHER RESOLVED, that Getty Oil Company be hereby directed to inform this Board of any change in ownership of this waste disposal facility; and

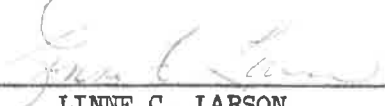
BE IT FURTHER RESOLVED, that the foregoing requirements do not authorize the commission of any act resulting in injury to the property of another; and

BE IT FURTHER RESOLVED, that Getty Oil Company be further advised that these requirements do not exempt the operator of this waste disposal facility from compliance with any other law which may be applicable. The requirements are not a permit; they do not legalize this waste disposal facility, and they leave unaffected any further restraints on the disposal of wastes at this site which may be contained in other statutes; and

BE IT FURTHER RESOLVED, that the Executive Officer of this Board be authorized, and he is hereby directed, to certify and submit copies of this resolution to Getty Oil Company, and to such individuals and agencies as may have need therefor, or as may request same.

ERA MEMO:  
 Legibility of writing, typing or  
 printing UNSATISFACTORY  
 in portions of the document  
 when received.

I, Linne C. Larson, Executive Officer of the Los Angeles Regional Water Pollution Control Board, State of California, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the Los Angeles Regional Water Pollution Control Board at the Board Meeting held on April 17, 1963.

  
 LINNE C. LARSON  
 Executive Officer

LAM:IF  
 3-27-63

December 15, 2015

Board of Supervisors  
County of Ventura  
800 South Victoria Avenue  
Ventura, CA 93009

**SUBJECT: Study Session Regarding Potential Impacts of Oil and Gas Operations on the California Condor and Potential Land Use Regulations, Including Permit Conditions, to Address Such Potential Impacts**

**RECOMMENDATIONS:**

1. **RECEIVE & FILE** agency and public presentations and testimony, and provide direction as appropriate, regarding potential impacts of oil and gas operations on the California condor and potential land use regulations, including permit conditions, to address such impacts.

**FISCAL/MANDATES IMPACT:**

There is no additional fiscal impact associated with this item. However, should the Board direct staff to prepare additional reports, ordinance amendments or permit actions, there may be fiscal impacts associated with that work.

**DISCUSSION:**

On June 2, 2015, your Board requested that staff schedule a public study session to discuss best management practices related to California condors with a specific focus on measures for the protection of the condors at oil and gas facilities located within Ventura County.

An initial meeting was held on October 15, 2015 and was facilitated by the County Executive Office and Resource Management Agency. The meeting was attended by 35 individuals from 18 organizations (Exhibit 1) and held at the Ventura County Government Center. During this meeting, U.S. Fish and Wildlife Service (USFWS) biologist Joseph Brandt provided background information on the southern California flock of California condors (Exhibit 2) including an overview of mortalities, threats, and changes in the distribution of California condors since protection efforts under the USFWS began in Ventura County. Following the introduction of wildlife information by the USFWS, Bruce Hesson of California's Division of Oil, Gas, and Geothermal Resources (DOGGR) presented the regulatory authority and framework that regulates oil and gas facilities in



Ventura County and throughout California as well as what DOGGR looks for during its oil well and facilities inspections. Jeff Kuyper of Los Padres Forest Watch and John Brooks of Citizens for Responsible Oil & Gas introduced issues of concern to each of their respective organizations as they pertained to protection measures for California condors and the responsible management of oil facilities in Ventura County. Following these presentations, participants discussed trends in condor populations, agency oversight, and responsibilities associated with California condors and oil and gas operations in Ventura County. A focus of discussion was placed on the California condor protection measures that were recommended to Ventura County by USFWS in 2013 (Exhibit 3) and to what extent those measures have been adopted and implemented by oil field operators.

To provide guidance during today's study session, County Counsel has prepared the following summary of the County's legal authority to address condor issues through the review and conditioning of County-issued conditional use permits pursuant to which oil and gas operations occur in unincorporated Ventura County:

The County's authority to add condor-related conditions to newly-issued conditional use permits, and to permits which the permit holder seeks to modify through a discretionary permitting process, is derived from the County's general land use authority. In general, this authority is subject to a permissive legal standard requiring only that the conditions be reasonably related to the project's potential effects on the public health, safety or welfare.

Many oil and gas facilities, however, operate pursuant to existing permits in which the permit holder possesses vested rights. The County's authority to modify these permits is limited by the vested rights doctrine. Rights in a permit "vest" (i.e., become protected) when the permit has been issued and the permit holder has invested substantial sums in the furtherance of the authorized uses. Once permit rights vest, the permit holder has a property right in the permit as approved that cannot be modified by the County – for instance, by adding new condor-related permit conditions – without satisfying constitutional due process requirements. Hence, vested rights in existing permits cannot be unilaterally impaired by the County under its general land use authority. Instead, vested rights can only be impaired if the impairment resulting from the new permit conditions is reasonably necessary to address a menace to the public health and safety or a public nuisance presented by the permitted use. Important factors to be considered in applying this standard are whether the nature and extent of the impairment to the vested rights is proportionate to the nature, importance, and urgency of the interest to be served by the new permit



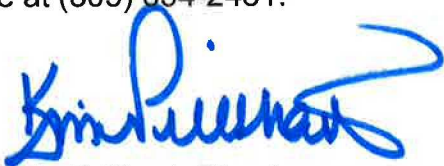
conditions, and whether the permit conditions are appropriately tailored and limited to the situation necessitating the action.

In the event the County sought to unilaterally modify existing conditional use permits to add condor-related conditions, the County would be required to meet the above-described standard for impairing the permit holder's vested rights in the permit. The standards must be met with respect to each specific permit the County sought to modify, and with respect to each specific condition sought to be added. Such permit modifications would require the provision of notice and a public hearing to each affected permit holder.

County Counsel intends to present this issue in more detail during the Study Session. Following their presentation, Steve Kirkland, U.S. Fish and Wildlife Service's California Condor Field Coordinator, will provide background information on the southern California flock of California condors including an overview of mortalities, threats, and changes in the distribution of California condors since protection efforts under the USFWS began in Ventura County. And finally, Jeff Kuyper, Executive Director of Los Padres Forest Watch, and Luke Faith, Operations Manager for Seneca Resources, will make presentations as stakeholders invested in the welfare of the California condor.

Following the series of presentations, the remainder of the study session will provide an opportunity for your Board, other interested parties and members of the public to discuss the information provided by the presenters.

This Board item was reviewed by County Counsel, the Auditor Controller's Office, and the County Executive Office. If you have any questions regarding this matter, please contact me at (805) 654-2481.



Kim L. Prillhart, Director  
Ventura County Planning Division

**EXHIBITS:**

- Exhibit 1 - List of October 15 2015 Meeting Attendees and Stakeholder Groups
- Exhibit 2 - October 15 2015 US Fish & Wildlife Presentation by Joseph Brandt
- Exhibit 3 - July 18 2013 Letter from United States Department of Fish & Wildlife by Roger Root

# **EXHIBIT 2**

**[CRC's Comment Ltr to Agenda Item PL-20-0052,  
July 30, 2020 Planning Commission Hearing]**



**MEMORANDUM  
COUNTY OF VENTURA  
COUNTY COUNSEL'S OFFICE**

**LEGAL ANALYSIS OF ANTIQUATED OILFIELD  
CONDITIONAL USE PERMITS**

The County of Ventura's ("County") ability to impose new conditions on antiquated oilfield permits is very limited. Because of the vested rights doctrine and constitutional protections afforded these permits, the County can impose new, narrowly tailored conditions on these permits only when a compelling public necessity, such as danger, harm or public nuisance, or significant violations exist, and not through an ordinary exercise of the police power for the general welfare.

If an antiquated oilfield permit contains open-ended conditions that allow for future requirements or modifications to the permit, the permit language might provide a limited basis for new conditions based on the terms of the permit. Older permits do not contain such language, and imposition of new conditions under this theory would require detailed analysis of each permit's terms and the conditions sought.

**ANALYSIS**

**A. BACKGROUND**

The drilling of wells for oil and gas production has been continuously subject to a permit from the County since the adoption of the County's first zoning ordinance in 1947. (Ventura Co. Ord. No. 412, §16 II.10., adopted March 18, 1947.)

Over time, the zoning ordinance has become more stringent in its regulation of oil and gas exploration and production and the conditions imposed on use permits have become more stringent. The language authorizing the oil and gas exploration and production use in permits, as well as conditions on the permits, vary greatly depending on when the use permit was first issued or later modified at the permittee's request.

The County's ordinance provisions for oil permits must be interpreted in a manner consistent with constitutional requirements, as analyzed below.

**B. VESTED RIGHTS AND PERMIT MODIFICATIONS**

A county may, under its police power, impose new requirements on an antiquated oilfield conditional use permit when a modification to the permit is sought by the

permittee. In such instances a county has broad powers to apply new modern conditions to a permittee-initiated request, subject to principles of reasonable relationship, essential nexus, rough proportionality and preemption. (See Gov. Code, § 65909; *Nollan v. California Coastal Com'n* (1987) 483 U.S. 825 [107 S.Ct. 3141]; *Dolan v. City of Tigard* (1994) 512 U.S. 374 [114 S.Ct. 2309]; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1618-1624.)

Vested rights limit the power of a county to impose new, more restrictive zoning regulations, new conditions and other use limitations on a property owner after a certain point in the approval process or after actual development has occurred. (See *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1179 [holding that zoning moratorium may operate retroactively to require denial of pending applications or nullify permits issued but not utilized, but may not operate retroactively to divest permittee of vested rights previously acquired].)

In *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, the California Supreme Court stated the vested rights doctrine as applied to land use as follows:

“[I]f a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. [Citations.] Once a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he relied.” (*Id.* at p. 791.)

The vested rights doctrine protects a permit holder's right not only to construct, but also to use the premises as authorized by the permit. (*County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 691.) Also, for purposes of analyzing the scope of a vested right to operate a business, a business cannot be broken down into components and vested rights recognized for less than the entire business operation. (See *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 565-566 [indicating there is “no authority for refusing to recognize a vested right to continue a component of a business that itself has a vested right to continue using the land on which it is located for operation of the business.”].)

The vested rights rule is grounded upon the constitutional principle that a vested right is a property right which may not be taken without due process of law or just

compensation. (*Urban Renewal Agency v. California Coastal Zone Conservation Com.* (1975) 15 Cal.3d 577, 583-584.) When a conditional use permit has been issued and then relied upon by the permittee, giving rise to a vested right, the permit becomes immunized from impairment or revocation by subsequent government action. This rule is subject to the qualification that such a vested right, while immune from divestment through ordinary police power regulations, may be impaired or revoked if the use authorized or conducted under the permit constitutes a menace to public health and safety or a public nuisance. (*Highland Development Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 169, 186.) Thus, a vested right creates a property right in the permit holder which cannot be terminated or impaired by the imposition of new conditions *at all*, unless constitutional requirements addressing the permittee's rights of due process are met. (See *Washington v. Glucksberg* (1997) 521 U.S. 702, 721-722 [117 S.Ct. 2258]; *Kerley Industries, Inc. v. Pima County* (9th Cir. 1986) 785 F.2d 1444, 1446.)

There are both procedural and substantive due process constitutional requirements that apply to governmental interference with such rights. The procedural requirements include notice to the permittee, a hearing on the termination of the permit or impairment of the permit through modified conditions, findings based on evidence received at the hearing and a decision based on the findings. (See *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal.App.2d 776, 797; *Topanga Assn. For a Scenic Community* (1974) 11 Cal.3d 506, 511.)<sup>1/</sup> The substantive due process requirements are that vested rights cannot be terminated or impaired by ordinary police power regulations, and can be revoked or impaired (such as by new conditions imposed by a county) *only* to serve a "compelling state interest," such as a harm, danger or menace to public health and safety or public nuisance, and that the government's interference with the vested right be

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<sup>1/</sup> "The fourteenth amendment to the constitution of the United States provides that no person shall be deprived of life, liberty, or property, without due process of law. Article I, Section 1, of the constitution of California, provides that all men have certain inalienable rights, among them being those of enjoying liberty and possessing and protecting property, and section 13 thereof provides that no person shall be deprived of life, liberty, or property, without due process of law. The deprivation of such right without due process of law would be a violation of these provisions. The meaning of this is that no one can be deprived thereof without notice and an opportunity for a hearing before some tribunal authorized to determine the question. . . ." (*Trans-Oceanic Oil Corp. v. Santa Barbara*, *supra*, 85 Cal.App.2d at p. 796.)

narrowly tailored to address the compelling interest and its magnitude. (See *Washington v. Glucksberg*, *supra*, 521 U.S. at p. 721.)

These principles are best explained by the two following cases.

In *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639 (“*Davidson*”), the court addressed an attempt by the county to impose a new 650-foot setback requirement on a property owner that had a vested right to a building permit for a crematorium without the new setback. The court explained that:

“Vested rights, of course, may be impaired ‘with due process of law’ . . .” (*Davidson*, *supra*, 49 Cal.App.4th at p. 648.)

“The vested rights doctrine in the land use context ‘is subject . . . to the qualification that such a vested right, *while immune from divestment through ordinary police power regulations, may be impaired or revoked if the use authorized or conducted thereunder constitutes a menace to the public health and safety or a public nuisance.* [Citations.]’ (*Highland Development Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 169, 186 [ ] (italics added), disapproved on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11 [ ].) Public welfare demands may even require the complete destruction of vested property rights. (*Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80 [ ].)” (*Davidson*, *supra*, at p. 649.)

“The constitutional question, on principle, therefore, would seem to be, not whether a vested right is impaired [by a change in the law], but whether such a change reasonably could be believed to be sufficiently necessary to the public welfare as to justify the impairment.” (*Davidson*, *supra*, at p. 649.)

“Probably the single most important factor to be considered in determining whether a particular impairment is constitutionally permissible is the nature and extent of the impairment. “The severity of the impairment measures the height of the hurdle the . . . legislation must clear.” ’ [Citations.] Other important factors to be considered are the nature, importance and urgency of the interest to be served by the challenged legislation; and whether the legislation was appropriately tailored and limited to the situation necessitating its enactment. [Citations.]” (*Davidson*, *supra*, at p. 649.)

The court concluded that, while the usual exercises of the police power in the land use context are not so directly related to danger or potential danger to the health and safety (such as down-zoning of uses, lot densities and height requirements) to be applied to the property owner's permit, it was conceivable that the 650-foot setback requirement could be applied to the crematorium project, but only if the county could demonstrate that such a setback was necessary to prevent the operation of the crematorium from being a danger or nuisance to the public. (*Davidson, supra*, at p. 650.)

Similarly, in *O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151, ("O'Hagen"), the court reviewed a city's revocation of a use permit for the operation of a drive-in restaurant for which the permittee held a vested right under an ordinance which allowed revocation of permits "for violation of conditions and other good cause upon notice and hearing." The court stated that:

"Once a use permit has been properly issued the power of a municipality to revoke it is limited. (*Trans-Oceanic Oil Corp. v. Santa Barbara* [*supra*,] 85 Cal.App.2d [at p.] 783 [ ].) Of course, if the permittee does nothing beyond obtaining the permit it may be revoked. (*Trans-Oceanic Oil Corp. v. Santa Barbara, supra*.) Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled. (*Trans-Oceanic Oil Corp. v. Santa Barbara, supra*, at pp. 784-787; *Dobbins v. Los Angeles* [(1904)] 195 U.S. 223, 239 [[ ] 25 S.Ct. 18]; *Jones v. City of Los Angeles* [(1930)] 211 Cal. 304, 309-312 [ ]; see *Brougher v. Board of Public Works* [(1928)] 205 Cal. 426, 433-434 [ ].) When a permittee has acquired such a vested right it may be revoked if the permittee fails to comply with reasonable terms or conditions expressed in the permit granted (*Trans-Oceanic Oil Corp. v. Santa Barbara, supra*, at p. 783; *Brougher v. Board of Public Works, supra*, at p. 433) or if there is a compelling public necessity. (*Jones v. City of Los Angeles, supra*, at p. 314; see *Lawton v. Steele* [(1894)] 152 U.S. 133, 137 [[ ] 14 S.Ct. 499].") (*O'Hagen, supra*, 19 Cal.App.3d at p. 158, italics added.)

The court further explained that procedurally:

"The constitutional requirements are met with respect to the right of revocation for good cause when notice is given to the licensee or permittee of the charges made against him and he has been given an opportunity to be heard in his defense." (*O'Hagen, supra*, at p. 160.)



And that substantively:

“[I]n order to justify the interference with the constitutional right to carry on a lawful business it must appear that the interests of the public generally require such interference and that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. (*Lawton v. Steele*, *supra*, 152 U.S. [at p.] 137 [ ].)

As observed in *Lawton*, ‘The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations.’ (At p. 137 [ ]; see *Dobbins v. Los Angeles*, *supra*, 195 U.S. [at p.] 236 [ ].)” (*O’Hagen*, *supra*, at p. 159.)

“In the present case we perceive that since plaintiff acquired a vested right in the use permit we must equate the term ‘good cause’ with ‘compelling public necessity.’ Such ‘compelling public necessity,’ in turn, must be viewed in the context of a public nuisance, i.e., whether the operation of plaintiff’s drive-in restaurant constituted a public nuisance in fact. If it did constitute a nuisance in fact, our inquiry is then directed to whether there was a compelling necessity warranting the revocation of the use permit.” (*O’Hagen*, *supra*, at p. 161.)

The court then indicated that conditions should be imposed on the permit to eliminate any public nuisance, if possible, rather than to prohibit the business operations by revocation of the permit. (*O’Hagen*, *supra*, at p. 165.)

Moreover, permits subject to vested rights are afforded special judicial protection by the courts when there is judicial review of the governmental decision to impair or revoke them. Longstanding vested rights under a use permit are generally treated as creating “fundamental vested rights” to use the property in the manner specified in the conditions for purposes of judicial review. This results in the court applying an “independent judgment” standard of review, rather than the more deferential “substantial evidence” standard of review ordinarily applied to land use decisions. (See *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 368-370; *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1526.) So, after affording the government’s findings a presumption of correctness, the court may, upon reviewing the record, exercise its own judgment in making its own findings and reach a different decision from that of the government. (See *Fukuda v. City of Angels* (1999)

20 Cal.App.4th 805, 819). Thus, these fundamental vested rights enjoy “heightened protection against government interference” under the due process clause. (*Washington v. Glucksberg*, *supra*, 521 U.S. at p. 720.)

Consistent with the above case law, a county must establish the facts and make its decision justifying any modification of conditions or revocation of an antiquated oilfield permit on the basis of harm, danger or menace to the public health and safety or public nuisance.

The vested right in a permit entitles a permit holder significant and heightened judicial protections from revocation, imposition of new regulations, and changes to the permit. To impose new conditions on antiquated permits, a public agency has to demonstrate that for each condition it imposed, there was a danger or menace to public health and safety or public nuisance causing public concern that was addressed by the new condition in a manner commensurate to the level of public concern. The vested rights doctrine and constitutional principles of due process prevent a county from a general exercise of its police power to add modern conditions to antiquated oilfield permits just for the sake of improving their operation for the general welfare.

In addition to the harm/nuisance qualification on the exercise of a vested right, there are other limitations to vested rights. The rights which may vest are no greater than those specifically granted by the permit and its conditions. (*Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 866; *Metropolitan Outdoor Advertising Corp. v. City of Santa Ana* (1994) 23 Cal.App.4th 1401, 1401-1404.) Accordingly, a vested right may be modified or revoked for cause if the permit holder fails to comply with the conditions in the permit. (*O’Hagen*, *supra*, at p. 158.)

While violation of conditions or laws do provide a basis for permit revocation or modification separate from the “danger to the public/public nuisance” basis, courts continue to apply the heightened scrutiny to the government’s actions revoking or impairing permits on the bases of noncompliance with conditions or violations of law. The court decisions indicate that where failure to comply is extensive and alternative remedies are not feasible, revocation of a permit can be justified. (See *Malibu Mountains Recreation, Inc. v. County of Los Angeles*, *supra*, 67 Cal.App.4th at p. 359 [involving longtime, multiple uses that violated underlying zoning ordinance and failure to engage in initially allowed use].) However, heightened scrutiny arising out of the vested right in the permit and its due process protections would require a county to “narrowly tailor” its action, and when alternative remedies can achieve compliance with permit conditions, the county would need to pursue such alternatives to revocation if feasible.

(See *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 391-393, fn. 5 [indicating that harsh remedy of revocation requires strictest adherence to principles of due process and that alternative remedies to revocation (such as additional conditions or controls) that achieve goal of eliminating violations ought to be pursued if feasible].)

Another qualification on the exercise of a vested right is the existence of open-ended conditions in a vested permit which contemplate future limitations. Such open-ended conditions may restrict the permit holder's vested right when those limitations are subsequently enacted.

For example, in *Russ Bldg. Partnership v. City and County of San Francisco* (1988) 44 Cal.3d 839, 846, a developer was ordered to pay a transit impact development fee enacted after the permit was issued and substantial construction had commenced, based on a permit condition that required future participation in some type of transportation funding. The post-permit issued transit development fee was found by the court to be within the scope of the condition originally imposed and was properly applied to the permittee on this basis.

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# **EXHIBIT 3**

**[CRC's Comment Ltr to Agenda Item PL-20-0052,  
July 30, 2020 Planning Commission Hearing]**



27200 TOURNEY ROAD, SUITE 200  
SANTA CLARITA, CALIFORNIA 91355

**VIA ELECTRONIC MAIL**

November 4, 2019

Chair Bennett and Members of the Board of Supervisors  
County of Ventura  
800 South Victoria Avenue  
Ventura, California 93009

Re: November 5, 2019 Agenda Item No. 45, Public Hearing Regarding Adoption of an Urgency Ordinance Pursuant to Government Code Section 65858 Extending for up to One Year the Board of Supervisors-Adopted Interim Urgency Ordinance No. 4542, as Previously Amended and Extended by Urgency Ordinance No. 4544, to Continue Prohibiting County Approval of New Wells, and Re-Drilling or Deepening of Existing Wells, for Oil Production that Will Utilize Steam Injection in the Vicinity of Potable Groundwater Aquifers While the County Studies Potential Regulations for This Land Use; Adoption and Issuance of Report; Determination of Urgency; and Determination of Exemption from the California Environmental Quality Act

Dear Chair Bennett & Members of the Board of Supervisors:

This comment letter is being submitted to the County of Ventura ("County") by California Resources Production Corporation ("CRC") in connection with November 5, 2019 Agenda Item No. 45, regarding the adoption of an urgency ordinance to extend a moratorium previously adopted pursuant to Government Code Section 65858. This urgency ordinance would continue the prohibition on new wells, and re-drilling or deepening of existing wells, for oil production that will utilize steam injection within the Fox Canyon aquifer. Based upon the Exhibit attached to the original urgency ordinance adopted on April 23, 2019, CRC currently has wells located within the area subject to this moratorium and, as is more pertinent here, holds vested rights to continue drilling new wells within this area.

CRC submits this comment letter to object to any extension of the moratorium, and further requests that, to the extent an extension is granted, the ordinance must be tailored to the land that is the subject of the County's findings (i.e., the land operated by Peak Operator) and exclude the land operated by CRC.

**Given the County's Inaction, an Extension of the Moratorium Is Not Warranted**

Section 65858 provides that an interim ordinance may issue to prohibit those uses that "may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or



intends to study *within a reasonable time.*" (Cal. Govt Code § 65858, subd. (a), emphasis added.) It has now been over 6 months since the urgency ordinance was first adopted in April 2019. Section 65858 may be used *only* to give the County time to move forward with a more formal action that would prohibit the development that is the subject of the moratorium. As there has been no indication of formal action being taken with respect to the County's purported concern over the presence of thermogenic gases in the Fox Canyon aquifer, an extension of the moratorium is not warranted.

#### **Federal and State Law Preempts the County's Moratorium**

The moratorium is intended to interfere with downhole oil operations that are exclusively regulated by the state under federal and state law.

In 1982, the state agency in charge of regulating oil and gas operations (DOGGR) was granted primacy under the federal Safe Drinking Water Act to administer the state's program on underground injection control, which includes steam injection. In addition, DOGGR has authority under state law to regulate the manner in which drilling operations are conducted. (Cal. Pub. Resources Code § 3106.) Accordingly, DOGGR "has exclusive legal jurisdiction over, and thus 'occupies the field' regarding, 'subsurface regulation.'" (DOGGR, Environmental Impact Report on Well Stimulation, at C.2-44, available at [http://www.conservation.ca.gov/dog/Pages/SB4\\_Final\\_EIR.aspx](http://www.conservation.ca.gov/dog/Pages/SB4_Final_EIR.aspx).) "This means that no other State or local agencies can impose regulations or mitigation on top of those imposed by DOGGR in that context." (*ibid.*)

The County cannot attempt to indirectly prohibit steam injection by imposing a ban on the drilling of new wells. In the seminal legal opinion on the scope of local regulations on drilling operations, the Attorney General concluded that a conflict will arise whenever local governments attempt to "exercise control over subsurface activities," whether "directly or indirectly." (59 Ops.Cal.Atty.Gen. 461, 478; see also *Desert Turf Club v. Bd. of Sup'rs of Riverside Cnty.* (1956) 141 Cal.App.2d 446, 452 [local entity "cannot under guise of doing one thing, accomplish a wholly disparate end"].) As the urgency ordinance is an indirect attempt to second-guess DOGGR's regulation of steam operations within the Oxnard field, it is preempted by federal and state law.

#### **The Moratorium Interferes with CRC's Vested Rights**

A moratorium under section 65858 may only stop a developer from obtaining a vested right in a project. *Cal. Charter Sch. Ass'n v. City of Huntington Park*, 35 Cal. App. 5th 362, 371, 247 Cal. Rptr. 3d 412, 419 (2019). It may not retract a right that already has been vested. (216 *Sutter Bay Assocs. v. Cty. of Sutter* (1997) 58 Cal. App. 4th 860, 871 [holding that a "local legislative body can rescind legislative acts at any time until the act is complete, provided that vested rights are not violated"].)

CRC currently holds rights to several conditional use permits within the area subject to the urgency ordinance. (See map attached as Exhibit A.) Although CRC has no plans to install additional wells at this time, these permits provide CRC with the right to drill new wells as needed for the continued extraction of the underlying mineral resource. The County has previously recognized that these "blanket" CUPs allow for the continued drilling of new wells on the property. (See 5/30/89 Ltr to Chase Production Co. re CUP Nos. 153, 167 and 186, attached as Exhibit B [noting that no permit modifications are needed for a proposed drilling program "based on the vested rights of the three 'blanket' Conditional Use Permits you currently hold"].)

CRC or its predecessor have drilled wells and installed equipment with the expectation that additional wells could be drilled. (Cf. *Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal. 4th 533, 553-554 ["The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of lands as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed." The County cannot use the procedure under section 65858 as an excuse to interfere with rights that have already vested, and the CRC requests clarification that this moratorium does not apply to the property governed by CUP Nos. 153, 167 and 186.<sup>1</sup> To the extent that this urgency ordinance is intended to prohibit CRC from drilling new wells, the County has violated CRC's vested rights.

#### **The County Must Analyze the Impacts of Its Ordinance under CEQA**

The County's actions in adopting the moratorium have not been adequately studied under the California Environmental Quality Act ("CEQA"). In its report to the Board, County Counsel states that the adoption of the urgency ordinance is exempt from CEQA under the following sections of the CEQA Guidelines: (1) Section 15378 (not a project); (2) Section 15061(b)(3) (the commonsense exemption as no possibility of a significant impact); and (3) Sections 15307 and 15308 (actions by regulatory agencies to protect the environment and natural resources). None of these exemptions are applicable here.

The County must take into account the effect that the drilling prohibitions will have on the continued demand for crude oil within the state. Reduced domestic drilling will result in

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<sup>1</sup> As CRC has no current plans to drill new wells at this site, the urgency ordinance should not apply to its property for the additional reason that there is no risk of an imminent approval justifying a moratorium. (*Bldg. Indus. Legal Def. Found. v. Superior Court* (1999) 72 Cal.App.4th 1410, 1418 [concluding that "[l]imiting the reach of an interim ordinance to those situations where actual approval of an entitlement for use is imminent is consistent with the purpose of interim controls."].)

greater imports of crude oil from out of state sources, primarily foreign countries.<sup>2</sup> The use of foreign crude oil is associated with substantial emissions associated with transportation as foreign crude oil needs to be transported from between 4,000 miles (Ecuador) and 13,000 miles (Saudi Arabia) one-way to get to California. This causes the greenhouse gas (GHG) lifecycle emissions associated with foreign crude oil to be higher than conventionally-recovered California crude oil as well as increasing the worldwide spill risks associated with tankering crude oil and the resulting impacts on marine biology.<sup>3</sup>

In considering a similar local prohibition on housing, the Supreme Court has held that a local agency "may reasonably anticipate that its placing a ban on development in one area of a jurisdiction may have the consequence, notwithstanding existing zoning or land use planning, of displacing development to other areas of the jurisdiction." (*Muzzy Ranch Co. v. Solano Cty. Airport Land Use Com.* (2007) 41 Cal.4th 372, 383.) On that reasoning alone, the court held that the agency's action might cause a reasonably foreseeable indirect physical change in the environment and therefore constituted a project. (*Ibid.*)

With respect to the commonsense exemption, the County has not satisfied its burden of producing evidence to support no possibility of a significant impact, particularly given the impacts discussed above. (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 117 ["conclud[ing] the agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision"].) Finally, sections 15307 and 15308 are inapplicable as they concern actions by a regulatory agency, not legislative actions by a legislative body handling issues of zoning.

#### **The Facts Do Not Support the County's Finding of a Threat to Public Health**

Since the initial urgency ordinance was adopted by this Board, it has become increasingly clear that the ordinance was passed without reliable evidence of an actual threat to the public. As described by the local media, "Scientists at the U.S. Geological Survey reported early this year that they had detected what are called thermogenic gases in two and

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<sup>2</sup> U.S. Energy Information Administration, *California gasoline prices increase following refinery outages and declining inventories* (May 23, 2019) available at <https://www.eia.gov/todayinenergy/detail.php?id=39592>

<sup>3</sup> See, e.g., National Energy Technology Laboratory, *An Evaluation of the Extraction, Transport and Refining of Imported Crude Oils and the Impact on Life Cycle Greenhouse Gas Emissions* (Mar. 27, 2009) <https://ethanolrfa.org/wp-content/uploads/2015/09/An-Evaluation-of-the-Extraction-Transport-and-Refining-of-Imported-Crude-Oils-and-the-Impact-on-Life-Cycle-Greenhouse-Gas-Emissions-.pdf> ["This analysis reveals that producing diesel fuel from imported crude oil results in WTT GHG emissions that are, on average, 59% higher than diesel from domestic crude oil (21.4 vs. 13.5 kg CO<sub>2</sub>E/MMBtu LHV<sub>2</sub>)."])

possibly three groundwater wells. But it's not clear whether that was caused by a natural process or a containment failure in the oil and gas production system, a USGS official said."<sup>4</sup> The County's initial urgency ordinance in April 2019 was adopted based on preliminary findings that were not final or official. The record lacks any scientific evidence concerning the source of any "thermogenic gases" or the potential health impacts of these "thermogenic gases." CRC refers the Board to the posted information describing the lack of any public threat from these preliminary findings.<sup>5</sup> As such, the required findings for a moratorium under section 60858 are not satisfied.

**The County Must Analyze the Economic Impact of Its Actions**

The County must analyze its continued support of Saudi Arabia and other foreign importers, to the detriment of local workers. CRC's facilities are maintained by a safe, highly qualified workforce pursuant to a Project Labor Agreement with the Tri-Counties Building and Construction Trades. The County's policies continually undermine support for local labor in favor of foreign workers. The County must analyze this impact.

For these reasons, CRC requests that the Board vote against the urgency ordinance and any extension of the current moratorium. To the extent that the moratorium is extended, CRC requests that the ordinance be modified to exclude the areas in which CRC holds existing rights to the continued production of oil.

Sincerely



Adam Smith  
Vice President, Regulatory Affairs

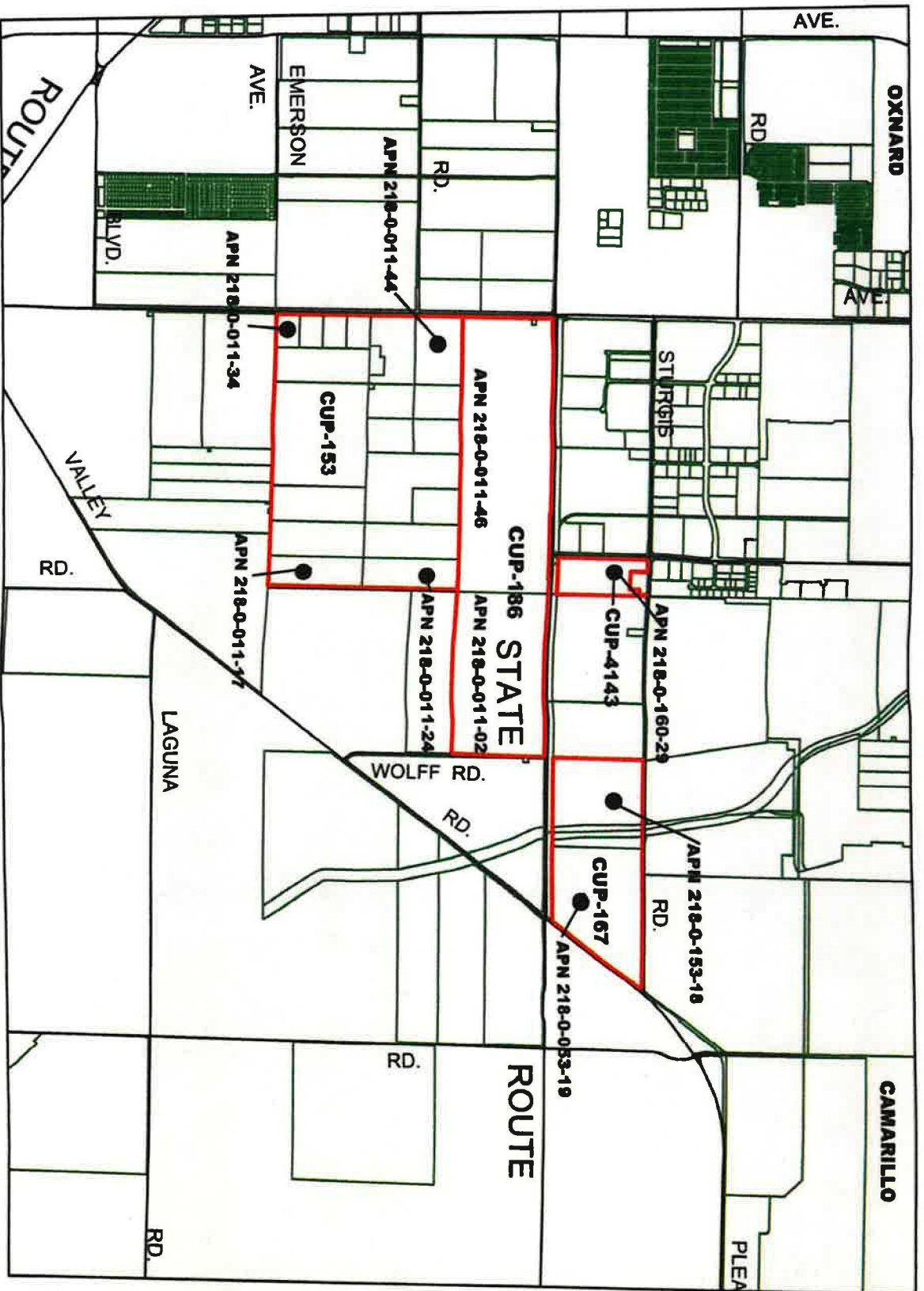
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<sup>4</sup> Ventura County Star, *With no answers, drilling moratorium extended six months* (June 6, 2019), available at <https://www.vcstar.com/story/news/politics/2019/06/06/ventura-county-moratorium-oil-drilling-extended-six-months-oxnard/3714331002/>.

<sup>5</sup> See, e.g., *Ventura County Water Supplies Are Safe*, available at <https://www.energyindependenceca.com/support-ventura-county/ventura-county-cfrog/>; *CFROG Blatantly Misrepresents USGS Findings in Oxnard*, available at <https://www.extractingfact.com/article/cfrog-blatantly-misrepresents-usgs-findings-in-oxnardactivists>

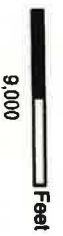
# **EXHIBIT A**





VENTURA COUNTY, CALIFORNIA  
RESOURCE MANAGEMENT AGENCY  
PLANNING DIVISION

CHASE PRODUCTION CO.  
CUP-153, 167, 186 & 4143.  
APN 218-0-011-17/2434/44/46  
OXNARD & CAMARILLO USGS QUAD  
JANUARY-2003



# **EXHIBIT B**

RESOURCE MANAGEMENT AGENCY  
**county of ventura**

Planning Division

Keith A. Turner  
Manager

May 30, 1989

Morley Chase  
Chase Production Company  
P. O. Box 258  
Oxnard, CA 93032

Subject: Drilling Program Information Request

Dear Mr. Chase:

In response to your request to review your proposed drilling program, consisting of approximately 170 wells to be located on existing Conditional Use Permits (Nos. 153, 167 and 186), the Planning Director has determined that no permit modifications will be required. This determination is based on the vested rights of the three "blanket" Conditional Use Permits you currently hold. Please be aware that if your request involves drilling activities on CUP 4143 (Oxnard-Chase Refinery) or on any other Conditional Use Permit, this determination may be re-evaluated.

In order to proceed with your drilling program, you will need to secure Zoning Clearances for the proposed wells. For each well pad area, a single Zoning Clearance may be secured. In addition, you are requested to contact the Public Works Agency to determine whether grading permits or exemptions need to be secured. Grading information and APCD Authority to Construct information will be required on each Zoning Clearance application. Please remember that Zoning Clearances are valid for only six months and new Zoning Clearances must be secured if drilling is not completed in that time frame.

If you have any further questions concerning this matter, please contact Byron Estes, Associate Planner, at (805) 654-2440.

Sincerely,



Robert K. Laughlin, Supervisor  
Commercial and Industrial Land Use Section

cc: Public Works Agency  
Division of Oil and Gas  
Air Pollution Control District  
Oil Enforcement Officer

be:Chasewells

address antiquated oilfield permits due to the vested rights doctrine and constitutional takings and due process principles.” (*Id.* at 12/17/13 Ltr. from County Staff to Bd. of Supervisors at p. 7.) “Rights in a permit ‘vest’ (i.e., become protected) when the permit has been issued and the permit holder has invested substantial sums in furtherance of the authorized uses.” (*Id.* at 12/15/15 Ltr. from County Planning Div. to Bd. of Supervisors at 2.) “Once permit rights vest, the permit holder has a property right in the permit as approved that cannot be modified by the County ... without satisfying constitutional due process requirements.” (*Id.*)

CRC has performed substantial work and incurred substantial liabilities in operating under these so-called “antiquated permits,” investing in and installing infrastructure and equipment for the oil-producing properties at issue. It undertook this work and incurred these liabilities with the understanding that the continued drilling of new wells and construction of other accessory appurtenances are authorized as a matter of right under the permit. As a result of CRC’s operations in implementing the permitted use of “[d]rilling for and extraction of oil, gas and other hydrocarbon substances,” CRC has acquired a vested right under these permits to continue the construction authorized by these permits.

In order to circumvent these fundamental rules governing property ownership, the County’s current staff report now asserts that “a vested 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.” (Staff Report for PL20-0052 at p. 8.) Based on this novel interpretation of the vested rights doctrine, the new staff report asserts that holders of the “antiquated permits” do not “typically” have vested rights for new oil and gas development because these permits do not specifically identify the new wells or other structures that will be allowed under the permit. (*Id.*)

The staff report mistakenly describes the state of the law. Rather, courts have recognized that conditional use permits may form the basis for a vested right so long as it is the final discretionary permit to be issued by the government agency. (*Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 552 (2001) [holding that “no right to develop vests until all final discretionary permits have been authorized and significant ‘hard costs’ have been expended in reliance on those permits—that is, until substantial construction has occurred in reliance on a building permit”].) As County staff previously stated, “the conditions of approval of [an ‘antiquated permit’] do not require discretionary review for the drilling of oil wells.” (Exhibit 1 [4/8/19 CRC Ltr.] at 2/18/15 County Staff Memo at p. 3.)

Where a permit allows for the continued drilling for and extraction of oil, the County has no basis to impose new discretionary permit requirements for certain components of the previously permitted activity. As recognized by County Counsel in its 2014 legal memorandum, “for purposes of analyzing the scope of a vested right to operate a business, a business cannot be broken down into components and vested rights

recognized for less than the entire business operation.” (Exhibit 2 [2014 Legal Memo, quoting *Hansen Bros. Enters. v. Bd. of Supervisors* (1996) 12 Cal.4th 533, 566 [indicating that there is “no authority for refusing to recognize a vested right to continue a component of a business that itself has a vested right to continue using the land on which it is located for operation of the business”].)

As recognized in *Hansen*, “[t]he very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed.” (*Hansen*, 12 Cal.4th at 553, citation omitted [holding that “progression of the mining or quarrying activity into other areas of the property is not necessarily a prohibited expansion or change of location of the nonconforming use”].) Similarly, a permit that grants a right to drill and extract oil within a specifically defined property necessarily contemplates the continued drilling of new wells as part of that grant of authority. (*Oceanic Cal., Inc. v North Cen. Coast Reg'l Comm'n* (1976) 63 Cal.App.3d 57, 67 [“the scope of the development which the developer has a right to complete ... is limited by the scope of the specific development theretofore approved and permitted”].) The proposed modification of these permits to require additional discretionary approvals is a clear violation of these vested rights.

### **The Requested Modification of Existing Permits Violates County Procedures and Procedural and Substantive Due Process**

The proposed amendments to the zoning ordinances have the direct effect of modifying existing permits. State and local law requires the County to provide proper notice and an opportunity to be heard prior to modifying a permit. (Cal. Gov't Code § 65905; NCZO § 8111-6.2; CZO § 8181-10.1(d).) The County previously recognized that “permit modifications would require the provision of notice and a public hearing to each affected permit holder.” (Exhibit 1 [4/8/19 CRC Ltr.] at 12/15/15 Ltr. at p. 3.) “[V]ested rights in existing permits cannot be unilaterally impaired by the County under its general land use authority.” (*Id.* at p. 2.) “Instead, vested rights can only be impaired if the impairment resulting from the new permit conditions is reasonably necessary to address a menace to the public health and safety or a public nuisance presented by the permitted use.” (*Id.*)

Here, there has been no attempt to provide proper notice to the permit holders, a quasi-judicial hearing for each affected permit holder, or any showing that these modifications are necessary to address a public nuisance or menace.

### **The Proposed Amendments Expose the County to Takings Liability.**

By violating the vested rights held by permit holders such as CRC, the proposed amendment would open the door to claims against the County for monetary liability for the taking of property rights without the payment of just compensation.



**The County Has Not Complied with CEQA**

The staff report also fails to properly examine the proposed action under the California Environmental Quality Act and the County's zoning ordinances. "[A]ny adjustments or modifications to permits ... issued without a previously approved environmental document shall be reviewed for its incremental impact on the environment, and subject to the appropriate process." (NCZO, § 8111-6.1.) As identified in CRC's prior letter of November 4, 2019, the County must analyze the potentially significant environmental impacts that will result from its actions to discourage domestic oil drilling, necessarily resulting in greater amounts of imported oil, primarily from foreign countries. (Exhibit 3 [11/4/19 CRC Ltr.].) Further, the intended effect of impairing the recovery of mineral resources would necessarily be potentially significant under CEQA and the County's CEQA Guidelines. The County may not simply "cut short its consideration of the project's environmental effects by concluding that the causal link between the adoption of the rule and a physical change in the environment was too remote." (*Cal. Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.* (2009) 178 Cal.App.4th 1225, 1243.) Given the lack of analysis into the reasonably foreseeable effects of the zoning amendments, the County cannot meet its burden of showing that its actions would "*assure* the maintenance, restoration, enhancement, or protection of the environment ... ." as required for the project to be exempt under Section 15308. (Cal. Code Regs., tit. 14, § 15308, emphasis added; *Cal. Unions*, 178 Cal.App.4th at 1245 [rejecting exemption under Section 15308 based on "the *absence* of evidence that the negative environmental effects of Rule 1406 would *not* be significant," emphasis in original].)

CRC also disputes the implication in the Staff Report that current or future operations under these permits are deficient due to a lack of CEQA review. As conceded in the Staff Report, ministerial approvals are exempt from CEQA. (Pub. Resources Code § 21080, subd. (b)(1).) Further, these projects are properly exempted from CEQA review under the "ongoing project" exemption. (*Id.* § 21169; Cal. Code Regs., tit. 14, § 15261.) As the drilling, re-drilling and deepening of wells (as well as any other component that may be subsequently targeted by the County) is "a normal, intrinsic part of the ongoing operation" of a project initiated prior to CEQA, such activities are exempt from further CEQA review. (*Nacimiento Reg'l Water Mgmt. Advisory Com. v. Monterey Cty. Water Res. Agency* (1993) 15 Cal.App.4th 200, 205.)

For these reasons, CRC requests that the Planning Commission deny the recommended action.

Sincerely,



Matthew Wickersham