



California Independent Petroleum Association

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VIA ELECTRONIC MAIL

Ventura County Board of Supervisors
Hall of Administration
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RE: Item 47 Public Hearing to Consider Adoption of County-Initiated Amendments to Article 7, Section 8107-5 of the Ventura County Non-Coastal Zoning Ordinance and Article 5, Section 8175-5.7 of the Ventura County Coastal Zoning Ordinance to Modify Permitting Requirements for Certain New Oil and Gas Exploration and Production Operations and to Address the Applicability of the County's Oil Development Regulations.

Dear Members of the Ventura County Board of Supervisors,

On behalf of the California Independent Petroleum Association ("CIPA"), we wish to express serious legal and policy concerns regarding November 10, 2020 Board Agenda Item No. 47.

CIPA is a non-profit, non-partisan trade association representing approximately 350 independent oil and natural gas producers, royalty owners, and service and supply companies throughout the state of California and the County of Ventura. As such, we are both a resource of information to communities and, when needed, an industry advocate when local agencies propose regulations that overreach and are unsubstantiated.

We continue to vehemently oppose the proposed amendment of Ventura County's NCZO and CZO on the grounds that such amendment: (1) will expose the County to costly litigation; (2) violates oil and gas producers' vested property rights; and (3) constitutes an

unconstitutional taking. Each of these three reasons, explained in detail below, warrants denial of the proposed amendments.

Additionally, since the July 30, 2020 Planning Commission hearing on this item, there have been several new developments in the County that the County should carefully consider and which strengthen the case for rejecting the proposed amendments to the NCZO and CZO.

On September 15, 2020, the County adopted the 2040 General Plan, which went into effect October 15th. That action forced more than half a dozen groups to sue Ventura County. The leading lawsuit was brought by the Ventura County Coalition of Labor, Agriculture and Business (CoLAB), a group focused primarily on property rights and land use regulations, and the Ventura County Agricultural Association. Their claims range from preemption by state and federal law to the County's failure to disclose, evaluate and reduce environmental consequences of the 2040 General Plan. As set forth in the lawsuit, the County's failure to meet the basic standards for public review and engagement and failure to disclose and consider the environmental consequences of the 2040 General Plan unlawfully harms the agricultural industry, local businesses and vulnerable residents. The current lawsuits against the County are identified as follows: :

Case Number: 56-2020-00546174-CU-WM-VTA
Case Title: VC Coalition vs. County of Ventura

Case Number: 56-2020-00546187-CU-TT-VTA
Case Title: California Works vs. County of Ventura

Case Number: 56-2020-00546196-CU-WM-VTA
Case Title: Lloyd Properties vs. County of Ventura

Case Number: 56-2020-00546198-CU-WM-VTA
Case Title: Carbon California vs. County of Ventura

Case Number: 56-2020-00546180-CU-WM-VTA
Case Title: Aera Energy vs. County of Ventura

Case Number: 56-2020-00546189-CU-WM-VTA
Case Title: California Resources vs. County of Ventura

Case Number: 56-2020-00546193-CU-WM-VTA
Case Title: Western States vs. County of Ventura

The current litigation related the 2040 General Plan will easily cost the County over 2 million dollars in taxpayer money to defend. This amount does not even include the the cost associated with having to revise reissue a legally adequate EIR if the court finds that the County did not comply with CEQA. Nor does this amount include the hundreds of millions of dollars the County would owe the litigants if the court determined that the County's actions constituted a take of property.

The County must be transparent with respect to the financial risks it is taking, as such risks will necessarily flow to County tax payers. We request the County Board of Supervisors immediately agendaize an item on the Board's agenda to discuss the current litigation and the costs. It is important to understand how today's item may effect these current lawsuits and if adopting said policy will open the window for additional lawsuits.

It is irresponsible for the County to hide this from Ventura residents, especially during a time of such economic hardship with the unemployment rate in Ventura County reaching a record high of 13.9% in April 2020. Furthermore, the impact of COVID-19 on County budget has been significant - resulting in reductions in County revenues of approximately \$80 million in 2019-2020 and 2020-2021 combined, and of about \$100 million per year starting in 2021-22.

In contrast, Ventura County producers actively contribute to the County's economic base and are responsible for \$36 million in state taxes and \$20 million in local taxes annually in the County. They provide a myriad of local employment opportunities, providing more than 2,000 high paying jobs for a workforce that is ethnically and racially diverse.

In its own hearing report, Ventura County Planning staff concedes that "Oil and gas exploration ... established itself as one of the primary economic drivers behind the county's growth from the early 1900's onward."

We ask the Board to be honest with the public it serves and carefully consider the financial hardships the County is facing. We also ask the Board to be realistic on how much more litigation it can afford fighting against an industry that: (1) is duly regulated by more than 20 different state and federal agencies; (2) has operated safely and responsibly in the County for more than 50 years; and (#)continues to be the economic back bone of Ventura County.

THIS AMENDMENT PROPOSAL WILL RESULT IN ADDITIONAL LITIGATION

Should the County elect to proceed with this zoning amendment, property owners will be left with no choice but to seek judicial recourse to protect their property rights. Defending these additional lawsuits would cost the County hundreds of thousands, if not millions, of dollars. If the County does not ultimately prevail, the County would incur costs that that may threaten the economic viability of the County. Since it is not at all clear what problem the County is seeking to address with the proposed amendments, such serious consequences for the County and industry stakeholders should be carefully considered.

The proposed ordinance changes are part of an orchestrated effort to shut down all oil and gas operations in Ventura County. A direct consequence of such a shut-down is the elimination of a diverse, skilled workforce. The proposed changes to the oil and gas ordinances will unlawfully impair existing, vested rights, and will expose the County to expensive lawsuits. In 2016, Monterey County voters approved an initiative known as Measure Z following a deceptive and misleading political campaign. Royalty Owners and local producers sued Monterey County. The superior court overturned the Measure Z initiative after a costly and protracted legal battle.

We urge Ventura County to consider the financial consequences of litigation similar to that undertaken in Monterey County. The need for better fiscal responsibility at this time has dramatically increased due to the COVID-19 pandemic. At bottom, it would be fiscally irresponsible for Ventura County to proceed with yet another action that exposes it to additional litigation.

THE AMENDMENT PROPOSAL VIOLATES PRODUCERS' PROPERTY RIGHTS

Oil and gas producers operating in the County under existing use permits have a vested right to continue those operations. The County's amendment proposal would drastically impair producers' vested right to continue authorized operations and, as such, would constitute an unconstitutional taking under the law. We refer this Board to County Counsel's 2014 report on this very point. Moreover, the County's historic treatment of oil and gas operations within its jurisdiction clearly shows that the County has recognized that producers have a vested right to continue operations if they received a use permit authorizing such operations and have subsequently acted on that permit. The fact that a permit is "antiquated" is completely irrelevant; it still conveys a vested right to operate.

We disagree with the July 30, 2020 Staff Report's unsupported assertion that: *"holders of antiquated permits do not typically have vested rights to engage in new oil and gas development because of the lack of specificity regarding the scope and composition of the authorized development found in most antiquated permits. In addition, the holders of these permits have had over 50 years to build out the oil and gas projects authorized under the initial approvals. Any vested rights to construct additional new development are likely to have lapsed many years ago, as a delay of so many decades in a holders' completion of an initially approved development would be unreasonable"*.

While the County relies on the *Avco Community Developers, Inc. v. South Coast Regional Commission*, (1976) 17 Cal.3d 785 ("Avco") to the effect that vested rights only attach to specific development proposals, the correct legal analysis lies in *Hansen Brothers Enterprises v. Board of Supervisors*, (1996) 12 Cal.4th 533 ("*Hansen*"). The *Hansen* decision, not the *Avco* decision, governs vested rights in the context of mineral extraction. As the High Court explained in *Hansen*:

"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.4th at 553-554.

Finally, even if one were to ignore the foregoing legal precedent, County Counsel's argument continues to be flawed to the effect that vesting requires a permit with a specific scope and composition is extremely suspect 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.

CIPA is here to educate your team and the general public on issues associated with California's oil and gas production. As a member of Ventura County, it is also CIPA's goal to avoid the need for litigation. Accordingly, we encourage you to take advantage of our expertise in this area. Please do not hesitate to call me at 562-522-9596 or email me at jrivera@cipa.org if you have any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Rivera". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Rivera".

Jennifer Rivera
VP Public Affairs
California Independent Petroleum Association