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VIA E-MAIL (clerkoftheboard@ventura.org)

November 9, 2020

Ventura County Board of Supervisors
Attn: Rosa Gonzalez, Chief Deputy Clerk of the Board
Hall of Administration Building, Fourth Floor
800 S. Victoria Ave.
Ventura, CA 93009-1940

Re: **Lloyd Properties Comments on Proposed Amendments to County Zoning Ordinance Regarding Oil and Gas Development (November 10, 2020 Board Meeting, Agenda Item 47)**

Dear Members of the Ventura County Board of Supervisors:

This office represents Lloyd Properties, owner of certain mineral rights covering thousands of acres of property in Ventura County. We write to express our serious concerns regarding the County's proposed amendments to the Non-Coastal Zoning Ordinance ("NCZO") and Coastal Zoning Ordinance ("CZO") including its utter disregard for long-standing vested rights, and its repeated, unfounded, attacks on the local oil and gas industry.

Oil and gas production in the County has been an integral part of the local economy for over 150-years. The industry is made up of thousands of employees, including second chancers, grandparents, union members, single parents, immigrants, and veterans who provide a safe and affordable energy supply that fuels the local economy. The oil and gas industry provides approximately $56 million in critical tax revenue that supports essential public health and safety services. These services are needed now more than ever as the County grapples with a global pandemic, which has already claimed 167 lives in the County. Despite these significant contributions, and a record of full regulatory compliance, the County has turned a blind eye to the oil and gas industry, instead electing to adopt a series of laws and policies designed to regulate the industry out of existence.

On September 15, 2020, the Board of Supervisors adopted the Ventura County 2040 General Plan Update, which contains a series of unlawful Oil and Gas Policies that

abrogate our client's longstanding vested rights. The Board's adoption of the unlawful General Plan Update and certification of a woefully inadequate Environmental Impact Report triggered a series of recently filed lawsuits. Nevertheless, the County continues to press forward with its unjustified war on the oil and gas industry.

The Board is now considering proposed amendments to the Zoning Ordinances, which would require discretionary approvals for new oil and gas activities undertaken in reliance on so-called "antiquated permits." These are permits that were issued years ago, pursuant to which oil operations have been lawfully conducted for decades without any demonstrated adverse impacts. Like the General Plan Update, the proposed zoning amendments will substantially impair Lloyd's vested and constitutionally protected rights to operate under its lawfully issued and maintained Conditional Use Permits ("CUPs"). They will also have a devastating impact on an industry that has driven economic growth in the County for decades. The County itself has conceded that that the proposed zoning amendments will have a negative economic impact on the oil and gas industry and its employees:

> [T]he proposed zoning amendments could slow and/or reduce the potential expansion of new local oil and gas development, which in turn could have a ***negative economic impact on this economic sector and its employment base***, due to the increased permitting costs and uncertainty that would be associated with the proposed discretionary permitting and environmental review process that would be required for certain new oil and gas development.

(See Agenda Item 47, Nov. 10, 2020 Ventura County Resource Management Agency Letter to Board of Supervisors ("Board Letter"), emphasis added.)

We strongly urge the Board to vote against these economically disastrous amendments which, if approved, will open the floodgates to even further litigation as the holders of these permits defend their lawful, vested, rights.

Lloyd Properties Has Used its Oil and Gas Royalties to Make Substantial Contributions to the County.

The Lloyd family has owned property in Ventura for more than a hundred years and has been an active participant in the community during that time. The Lloyd family was an integral part of establishing the Arroyo Verde Park and the Poinsettia Pavilion in the City of Ventura. More recently in 2016, the Lloyds donated 860 acres of undeveloped land in Ventura County to the Rancho Ventura Conservation Trust. This land will be preserved as open space in perpetuity for the enjoyment of the Ventura community. In addition, the Lloyds have donated significant sums of money to dozens

of charitable organizations in Ventura County that support underprivileged families, education, the medical community, and the arts.

Lloyd and its predecessor affiliated companies have either extracted oil and gas or leased their rights to other operators who have extracted oil and gas, for more than a hundred years. Lloyd is the holder of two CUPs that would be impacted by the zoning amendments– one issued in 1948 and the other in 1949. Lloyd's oil and gas production activities long pre-date issuance of the CUPs, but subsequent to issuance of the CUPs, all operations have been conducted in accordance with their terms and all other applicable regulations.

The Proposed Amendments to the Zoning Codes Will Impair Lloyd's Vested Rights.

In direct contravention of Lloyd's long-standing and fully vested rights, the County proposes to unilaterally alter the terms of permits governing oil production *vis-à-vis* the proposed amendments to the Zoning Codes. For instance, the proposed amendments would require issuance of a new CUP, or approval of a discretionary permit adjustment or modification, to authorize all new oil and gas development, including activities already considered authorized under long-standing permits, unless the proposed development is already specifically described as being authorized under an existing CUP. So-called "new development" triggering the need for discretionary approval would include the installation of new wells, tanks and other oil field activities, and the re-drilling or deepening of existing wells, all activities associated with oil production that have been an on-going part of the oil field operations for more than a hundred years. These proposed amendments will substantially impair Lloyd's vested rights to the continued extraction of its mineral rights within the County.

The doctrine of vested rights seeks to protect property owners and developers who have substantially relied on past permits and proceeded accordingly with the government's acknowledgement. The doctrine protects a permit holder's rights not only to construct, but also to use the premises, as authorized by the permit. (*Cty. of San Diego v. McClurken* (1951) 37 Cal.2d 683, 691.)

Lloyd has a fully vested right in the continuation of oil and gas production in Ventura County, including a vested right to receive its royalty share of the oil and gas produced from its leased mineral properties. These vested rights are consistent with long-established plans, including Lloyd's vested rights in its CUPs, which Lloyd has relied on for decades and broadly authorize extraction activities on its mineral properties in perpetuity. Lloyd's reasonable, investment-based expectation was that its lessees would continue to produce and develop oil and gas until Lloyd's oil and gas producing properties were no longer capable of producing oil and gas in commercial quantities. (See *Hansen Bros. Enters v. Bd. of Supervisors* (1996) 12 Cal.4th 533, 553 ["[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"].) But the proposed amendments to the Zoning Codes would violate Lloyd's vested and constitutionally protected rights to operate under those permits by requiring the issuance of a new CUP, or approval of a discretionary permit adjustment or modification, to authorize all new oil and gas development, including development already proposed under its existing CUPs.

The law is crystal clear that where a permit allows for the continued drilling for and extraction of oil, like Lloyd's CUPs, the County has no basis to impose new discretionary permit requirements for certain components of the previously permitted activity. (See *Hansen*, *supra*, 12 Cal.4th at 566 [stating 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"].)

Furthermore, vested rights cannot be abridged absent due process and a finding of nuisance or payment of adequate compensation. (See *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal.App.2d 776, 789.) The County itself has recognized these controlling principles of law, as demonstrated by statements County Counsel made in a 2014 memorandum:

- "The County of Ventura's ("County") ability to impose new conditions on antiquated 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." (2014 County Counsel Legal Memorandum (attached as Exhibit 19 to Board Letter at p. 153 of PDF [Exhibit 2 to California Resource Corporation's July 29, 2020 Comment Letter], emphasis added.)

- "When a conditional use permit has been issued and relied upon by the permittee, giving rise to a vested right, the permit becomes ***immunized from impairment and revocation by subsequent government action***." (*Id*. at p. 155 of PDF, emphasis added.)

- "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***." (*Id*. at p. 159 of PDF, emphasis added.)

Because Lloyd's CUPs allow for the continued drilling for extraction of oil, it can rely on its vested rights without having to obtain a new CUP, which is consistent with applicable law and the County's own legal analysis. The County has no basis to impose new discretionary permit requirements for certain components of the previously permitted activity. And the County certainly cannot impose such requirements, thereby impairing Lloyd's vested rights, without a showing of danger, nuisance, or significant violations. (*Trans-Oceanic Oil*, *supra*, 85 Cal.App.2d at 789.) Unsurprisingly, the County has not even attempted to make such a showing (because no one can be made). To the contrary, the continued operations and drilling at Lloyd's properties have occurred in compliance with its permits and in a manner that does not create harm or a nuisance to local communities.

The County Unlawfully Piecemealed its Analysis in the EIR for the General Plan Update by Neglecting to Analyze Proposed Amendments to the Zoning Codes.

As Lloyd previously brought to the Board's attention, the County improperly piecemealed its analysis in the EIR for the General Plan Update by failing to analyze the proposed amendments to the Zoning Codes.

CEQA defines the term "project" broadly to encompass "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Cal. Code Regs., tit. 14, § 15378(a), (c).) This definition precludes "piecemeal review which results from 'chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.'" (*Rio Vista Farm Bureau Ctr. v. Cty. of Solano* (1992) 5 Cal.App.4th 351, 370, quoting *Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263, 283-84.)

The proposed zoning amendments are intended to implement the General Plan Update's Oil and Gas Policies. (Board Letter at p. 7 [stating that the "proposed zoning ordinance amendments are consistent with, and would help to implement, the General Plan's vision statement, guiding principles and numerous policies"].) Moreover, the proposed amendments are functionally intertwined with the County's General Plan. As the County recognized in its CEQA Findings for the General Plan Update, the Oil and Gas Policies will have significant and unavoidable impacts on petroleum resources in the County. (County CEQA Findings of Fact and Statement of Overriding Consideration for the 2040 General Plan Update, at pp. 54-59.) The Oil and Gas Policies will also impact greenhouse gas emissions by reducing production of local oil and increasing reliance on foreign oil, which is much more carbon intensive. (Draft EIR at p. 4.12-21; California Environmental Protection Agency, Air Resources Board, Calculation of 2019 Crude Average Carbon Intensity Value (June 15, 2020) at pp. 3-8.) By implementing the

General Plan Update, the zoning amendments work in tandem with the General Plan Update to exacerbate the significant environmental impacts of the Oil and Gas Policies, including impacts to petroleum resources, air quality, and greenhouse gas emissions, however the County never analyzed the additional incremental impacts of the zoning amendments. It was clear that at the time the EIR was certified, the County had already planned to adopt the specific zoning code amendments. But by ignoring the zoning code, the EIR could avoid disclosing the totality of the impacts from implementing the policy shift.

Because the zoning amendments will implement the General Plan Update's Oil and Gas Policies, the zoning amendments were a foreseeable consequence of the General Plan Update. (*Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1362 [failure to analyze the foreseeable consequences of a project violates CEQA's policy against piecemealing].) The County violated CEQA by failing to analyze the specific impacts of the proposed zoning amendments in the EIR for the General Plan Update. (*Id.*; *see also Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.)

The Proposed Amendments Will Modify Lloyd's CUPs and Violate its Due Process Rights.

The proposed amendments to the Zoning Codes will have the effect of modifying the terms of Lloyd's existing CUPs. Notice and an opportunity to be heard are due process prerequisites for modifying an existing permit. (Cal. Gov. Code § 69505; NCZO § 8111-6.2.) Several cases have held that to be adequate, "the notice must be such as would according to common experience be reasonably adequate to the purpose." (See, e.g., *Kennedy v. S. Coast Reg'l Comm'n* (1977) 68 Cal.App.3d 660, 668.) "[Common] sense and wise public policy . . . require an opportunity for property owners to be heard before ordinances which substantially affect their property rights are adopted . . ." (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 548-49.) Yet the County has failed to provide any notice whatsoever to Lloyd or an opportunity to be heard prior to the County adopting amendments to the Zoning Codes. By failing to provide the requisite notice and hearing, the County has stripped Lloyd of its substantive and procedural due process rights.

In addition, while the amendments to section 8107-5.2 of the NCZO state that the NCZO's oil and gas restrictions "shall apply to all oil and gas exploration and production operations," operators cannot ascertain the extent to which these restrictions would apply to *existing* operations or only future operations. For instance, it's impossible to determine whether existing operations must comply with the setback limitations, prohibitions on trucking oil, and restrictions on flaring. Accordingly, the

proposed amendments to section 8107-5.2 are unconstitutionally vague and violate Lloyd's due process rights under the Fourteenth Amendment. (See, e.g., *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308 ["Where the terms of a zoning ordinance are so vague as to not give sufficient notice of what precisely is permitted or prohibited, this vagueness is a violation of due process"]; *Concerned Dog Owners of Cal. v. City of L.A.* (2011) 194 Cal.App.4th 1219, 1231-32 ["[T]he Fourteenth Amendment due process guarantee against vagueness, which requires the laws to provide adequate notice to people of ordinary intelligence of the conduct that is prohibited . . ."].)

The Scheduled Board Meeting Violates the Brown Act

The Ralph M. Brown Act (Gov. Code §§ 54950-54964) is intended to provide public access to meetings of California local government agencies. Its purpose is described in the Act: "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." (Gov. Code. § 54950.) In order to achieve this objective, public agencies subject to the requirements of the Brown Act, like the Board of Supervisors, must provide public notice of their meetings, post agendas of the subjects to be discussed at those meetings, and provide public access to those meetings. (Gov. Code §§ 54954.2, 54953.) Public access to the meetings is mandatory unless the meeting is held in closed session under a specific exemption contained in the Act.

As you know, the County continues to grapple with the COVID-19 pandemic and has implemented procedures to limit public access to government buildings, including the Hall of Administration where Board of Supervisors meetings are normally held.[1] As a result, the upcoming Board of Supervisors meeting will be held virtually via Zoom. But thousands of Ventura County residents do not have access to any wired internet and will be unable to attend the November 10 meeting.[2] This deprivation constitutes a violation of the Brown Act, which specifically requires that all meetings of the Board of Supervisors be open and public, and all persons must be permitted to attend any such meeting. (Gov. Code § 54954.3(a).)

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[1] County of Ventura, Board of Supervisors Meeting Agendas, *available at*: https://www.ventura.org/board-of-supervisors/agendas-documents-and-broadcasts/ (last accessed: Nov. 4, 2020); County of Ventura, Public Comments for Board of Supervisors' Meetings, *available at*: https://www.ventura.org/board-of-supervisors/agendas-documents-and-broadcasts/public-comments/ (last accessed: Nov. 4, 2020).

[2] Broadbandnow, Internet Providers in Ventura, California, *available at*: https://broadbandnow.com/California/Ventura (last accessed: Nov. 4, 2020).

The Brown Act further prohibits requiring registration or any other condition on admission to attend a public meeting. (Gov. Code § 54953.3 ["A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register ***his or her name, to provide other information***, to complete a questionnaire, or ***otherwise to fulfill any condition precedent*** to his or her attendance" [emphasis added].). Perhaps unsurprisingly, the County has run afoul of this requirement by requiring members of the public to complete certain registration requirements in order to attend the November 10 meeting and provide public comment. For instance, to comment via Zoom, a participant is required to register online by providing his or her name, email address, and the phone number they will be calling in from.[3] According to the County, the participant will then receive an email with the Zoom meeting video link and password by 6:00 p.m. the day before the Board meeting. (*Id*.) Comments made while watching the livestream are only read at the "discretion of the chair," which is not an adequate substitute for full and open participation. (*Id*.) By requiring registration to attend the upcoming Board meeting, the County has committed further violations of the Brown Act. While Lloyd appreciates the opportunity to participate in the public process to consider adoption of the proposed amendments to the Zoning Codes, the public hearing should be postponed until after the hearing regarding these amendments can be held in-person.

Accordingly, Lloyd demands that the Board of Supervisors cure or correct the serious Brown Act violations identified above that will undermine the validity of the November 10, 2020 meeting. The County has 30-days to take corrective action under government Code section 54960.1. Please notify Lloyd of any intent to cure the Brown Act violations prior to the running of the 30-day period.

Sincerely,

Jeffrey Dintzer

[3] County of Ventura, Public Comments for Board of Supervisors' Meetings, *available at*: https://www.ventura.org/board-of-supervisors/agendas-documents-and-broadcasts/public-comments/ (last accessed: Nov. 4, 2020).