



November 9, 2020

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*Director*

Ventura County Board of Supervisors  
800 S. Victoria Avenue, #L1740  
Ventura, CA 93009-1740

Re: **Agenda Item #47:** Amendments to Non-Coastal Zoning Ordinance and Coastal Zoning Ordinance to Modify Permitting Requirements for Oil and Gas Operations

Dear Chair Long and Honorable Members of the Board of Supervisors:

Thank you for the opportunity to provide comments on the proposed amendments to the County's Non-Coastal and Coastal Zoning Ordinance regarding permitting requirements for existing oil and gas operations in Ventura County.

This item raises many concerns, not the least of which is the continued misrepresentation and misinformation in County Counsel's analysis of whether vested rights are confirmed upon holders of active, existing conditional use permits and the legal application of exemptions under the California Environmental Quality Act (CEQA).

CoLAB submitted detailed comments to the Ventura County Planning Commission on July 30, 2020. Our letter included copies of all publicly disclosed County memoranda regarding oil and gas permit vested rights and a technical report refuting the County's unsubstantiated claim of groundwater contamination from oilfield activities. To date, the County has not addressed the concerns and issues outlined in our letter. We enclose a copy of our July 30, 2020 letter, with all attachments, to maintain a complete record of the unaddressed issues.

Of particular note, please see the December 17, 2013 memorandum (attached) issued to the Board from the County Executive Office (CEO). On pages 6 and 7 of the 2013 memorandum, CEO staff quote language from a "Confidential Legal Analysis of Antiquated Permits, Water, and Chemical Toxicity." Specifically, the CEO's memo states:

*"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...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 CUP's 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 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 violation of law or permit conditions; and 4) specific permit changes contemplated by existing conditions in the permit."*

On May 16, 2019 (revised October 2019), the Planning Division received a technical memorandum from Catalyst Environmental Solutions (attached). In the Technical Memorandum, Dr. Daniel Tormey stated "the USGS has initiated a study of groundwater quality in the Oxnard Plain, and has presented interim results. The results do not indicate that oil and gas operations have impacted groundwater quality...The hydrogeology study, USGS study, and consultation with DOGGR did not identify ongoing threats to groundwater quality."

During the April 21, 2020 Board hearing, County Planning staff identified Catalyst Environmental Solutions as the County's contracted oil and gas subject matter expert. Without evidence indicating an ongoing threat to groundwater, the proposed action is not aligned with any of the four specific limited circumstances in which an existing, active permit may be modified or amended without violating vested rights and triggering constitutional takings.

Furthermore, County Counsel's 2013 analysis restricts amendments and changes to existing permits at an individual level, based upon each individual permit holder's actions. The County does not have the legal evidence or data to support the carte blanche modification of the permit requirements for all existing, active permits.

In addition to the significant concerns regarding vested rights outlined above and in our July 30, 2020 letter to the Planning Commission, the County has erroneously asserted that this action is exempt from CEQA review and analysis under CEQA Guidelines section 15308. Section 15308 provides a categorical exemption for specific actions taken by an agency to protect the environment.

Under CEQA law, before applying any categorical exemption, the County must first provide substantial evidence that the action to be taken assures the protection of the environment and does not result in other environmental impacts. The County cannot apply the exemption in Section 15308 to actions that involve environmental "tradeoffs."

Section 21060.5 of CEQA defines "environment" as: "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." Section XII(a) of Appendix G of the CEQA Guidelines states that projects that result in "the loss of availability of a known mineral resource that would be of value to the region and the residents of the state" present a significant environmental impact to mineral resources. County staff has admitted on the record that the

proposed action will limit access to mineral resources. The County must conduct a CEQA environmental analysis on the proposed action's direct and indirect environmental impacts before moving forward.

Finally, the proposed action, combined with specific Policies and Programs in the recently adopted 2040 Ventura County General Plan, will significantly diminish or eliminate the value of mineral rights in Ventura County. The proposed action will raise costs for existing operators, prohibit specific activities on significant portions of oil lease properties, impose burdensome setbacks that exceed current state law requirements, and preempt the regulatory authority and jurisdiction of state agencies.

As pointed out in the attached 2013 memorandum to the Board of Supervisors, the County's ability to modify existing oil and gas conditional use permits is minimal. Moving forward with the proposed action will almost certainly result in substantial financial liabilities under the "takings" clause of the Fifth Amendment to the United States Constitution and comparable provisions of the California State Constitution. Even with the current market value for oil reserves in Ventura County, the takings liability for claims made by royalty owners would be substantial. Even if the County prevailed in some of the potentially dozens of separate claims, litigation costs would be significant. The County is currently struggling to recover from the recent and extended COVID-19 economic shutdown.

This shutdown has both impacted County revenues and placed additional demands on resources. Taking an action that will almost certainly create significant financial liability resulting in the direct loss of hundreds of jobs (and indirect loss of thousands of jobs) during the economic shutdown is unwise, at best.

There is simply no legal standing for the County to disregard the vested rights doctrine to modify the Zoning Ordinances. Furthermore, there is no legal standing for the County to exempt their action from CEQA review. CoLAB urges the Board to reject the proposed modification to the Zoning Ordinances.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Louise Lampara  
Executive Director



July 30, 2020

**Ventura County CoLAB  
Board of Directors & Officers**

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*Director*

Alex Teague, Limoneira  
*Director*

Andy Waters, Waters Family Farms  
*Director*

Ventura County Planning Commission  
Hall of Administration  
800 S. Victoria Ave., L#1740  
Ventura, CA 93009-1740

Re: **Agenda Item #7:** Amendment to NCZO/CZO regarding existing oil and gas conditional use permits

Dear Chair White and Honorable Members of the Planning Commission:

Thank you for the opportunity to provide comments on the proposed amendments to the County's Non-Coastal and Coastal Zoning Ordinances regarding permitting requirements for existing oil and gas conditional use permits.

This item raises many issues of concern, not the least of which is the pervasive misrepresentation and misinformation in County Counsel's Staff Report regarding whether vested rights are conferred upon holders of active, existing conditional use permits and the legal application of exemptions under the California Environmental Quality Act (CEQA).

County Counsel has issued numerous memoranda addressing the question whether oil and gas conditional use permits are subject to the vested rights doctrine and the limits of the County's authority and police powers to modify permit conditions and requirements. The conclusions of these previous memoranda have been grossly misrepresented, ignored, or mis-stated in the Staff Report. We have attached County Counsel's memoranda of 2013, 2014, and 2015, so this Commission may have factual and accurate information that was not provided in the Staff Report.

As the Staff Report fails to direct the Commissioners' attention to relevant information in the County's four previous legal memoranda regarding the vested rights doctrine in relation to oil and gas conditional use permits, we include the following citations from these memoranda:

In the County's December 17, 2013 memorandum, the County states

*"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...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."*

In the 2014 Memorandum from County Counsel's Office titled "Legal Analysis of Antiquated Oilfield Conditional Use Permits," the County states:

*Page 1: "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 a danger, harm or public nuisance, or significant violations existing, and not through an ordinary exercise of the police power for the general welfare."*

*Page 2: "Vested rights limit the power of a county to impose new, more restrictive zoning regulations, new conditional and other use limitations on a property owner after a certain point in the approval process or after actual development has occurred."*

*And: "The Vested Rights doctrine protects a permit holders right not only to construct, but also the use the premises as authorized by the permit. 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 operations."*

*Page 3: "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 and revocation by subsequent government action."*

*Page 7: "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."*

CoLAB understands that the effort to amend the Zoning Ordinances to deny oil and gas operations vested rights began with allegations of a potential threat to ground water in the Fox Canyon area. However, this concern has been conclusively proven false by the County itself. In

a Technical Memorandum, dated May 16, 2019, and revised October 29, 2019, Dan Tormey, of Catalyst Environmental Solutions, the County's expert consultant for oil and gas issues, stated that the USGS groundwater monitoring study results "do not indicate that oil and gas operations have impacted groundwater quality." And, furthermore, Catalyst "did not identify ongoing threats to the groundwater quality" from oil and gas activities. This expert report was submitted to the Commission for your review in association with Agenda Item 6 for the March 19, 2020 Planning Commission hearing, which has been postponed. The agenda and associated documents may be found here:

[https://ventura.granicus.com/GeneratedAgendaViewer.php?view\\_id=83&event\\_id=1330](https://ventura.granicus.com/GeneratedAgendaViewer.php?view_id=83&event_id=1330)

Without direct evidence of harm, danger or menace to public health, the County has no authority to exert their police powers to modify existing conditional use permits.

In the February 18, 2015, Staff Report to this Commission, in consideration of the specific question regarding the drilling of new wells under one particular oil and gas conditional use permit, the County states

*"There is no limit specified in [the] CUP...in the number of oil wells that can be installed and operated within the permit area...The clear language of [the permit condition] indicates that additional wells may be drilled subject to only the following conditions [outlined in the specific permit]."*

For clarification, the conditional use permit in question for the February 15, 2015, hearing was CUP 488, which consists of this language: *"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, reining and packaging, bulk storage or any other use specified in Division 8, Ventura County Ordinance Code, requiring new and Special Use Permit."* The Commission will note that this permit language is identical to the permit language in the "example conditional use permit" provided by County Counsel as Exhibit 7 for this hearing.

In the December 15, 2015 Staff Report to Board of Supervisors, the County states

*"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...without satisfying constitutional due process requirements. Hence, vested rights in existing permits cannot be unilaterally impaired by the County und its general land use authority."*



The 2013, 2014, and both 2015 memoranda indicate that the County fully understands and acknowledges that, once a permit has been issued, the permit holder has the right to develop the property pursuant to the terms of that permit, notwithstanding a zoning or regulatory change subsequent to the issuance of the permit. The issuance of a special use permit or conditional use permit, plus expenditures in reliance thereon, such as obtaining other permits or installing facilities, creates a vested right in the use approved by the permit.

In shocking contrast to the well-referenced conclusions in these previous memoranda, County Counsel's September 10, 2019, and July 30, 2020, Staff Reports are not supported by cited references to new legal determinations or decisions that would explain Counsel's sudden reversal of opinion. Rather than provide this Commission with an actual legal analysis of existing case law and applicable regulations, County Counsel instead has stated only that "a legal argument can be made" in regard to their abrupt about-face opinion. An unsupported opinion such as this would not be acceptable from a first-year law student and is shamefully irresponsible and professionally negligent coming from licensed Counsel.

In addition to the significant vested rights issues outlined above, the Staff Report has erroneously asserted that amendment of the Zoning Ordinances is exempt from CEQA review and analysis, under Section 15308. This is simply not true. Section 15308 provides exemptions to specific actions involving the maintenance, restoration, enhancement, or protection of the environment. However, in order to apply this exemption, the County must first provide substantial evidence that the action in question both assures the protection of the environment and does not cause other environmental impacts (i.e., the exemption only applies if an action is purely protective of the environment as a whole, and does not result in impacts to one area while attempting to minimize impacts to another).

The County fails on both requirements.

As provided above, and in the attached technical memorandum from Catalyst, the County itself, through its own expert consultant, has concluded that allegations of potential threats to ground water have been conclusively proven false. As these allegations are the sole basis for the effort to amend the Zoning Ordinances, there is no evidence, substantial or otherwise, that this action will protect the environment.

Furthermore, the County has failed to recognize, or disclose to this Commission, the very definition of "environment" under CEQA. Section 21060.5 of CEQA defines "environment" as: "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.

Under CEQA, each of the physical conditions listed above are part of the protected environment and CEQA has established “thresholds of significance” to determine whether an action would cause impacts to any of these physical conditions. CEQA Guidelines Appendix G requires that the County conduct a CEQA analysis on any project that would “result in the loss of availability of a known mineral resource” or would “result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan.”

In addition to the state’s CEQA Guidelines, the County has established its own local CEQA thresholds, which it calls the “Initial Study Assessment Guidelines” (ISAG). The ISAGs are used by the County to determine whether a project will have a potentially significant environmental impact and must undergo CEQA analysis and review. The County’s ISAGs define petroleum based mineral resources as oil and gas deposits and require any project that hampers or precludes the extraction of oil and gas deposits to undergo CEQA review and analysis to address this significant environmental impact.

The Staff Report admits that the amending the Zoning Ordinances will hamper the extraction of petroleum-based mineral resources. The Staff Report clearly states that the purpose of this action is to “provide the County with the ability to...decid[e] whether to approve new” oil extraction. We are shocked that the County has misinformed this Commission by failing to conduct the most basic standard of internal project review – a CEQA determination – on its proposed action prior to attempting to falsely assert that this action is exempt from CEQA. As the amendments to the Zoning Ordinances would result in significant environmental impacts, as defined by CEQA, the asserted CEQA exemption does not apply.

The Staff Report indicates that it is necessary for the County to modify the Zoning Ordinances as some oil and gas conditional use permits have not undergone CEQA review. CoLAB would like to inform the Commission with some additional CEQA language that was not referenced or provided in the Staff Report.

CEQA Section 15261(b) states: 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 5, 1973, subject to the following provisions:

(1) CEQA does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report under authority other than CEQA. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where a project was approved prior to December 5, 1972, and prior to that date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

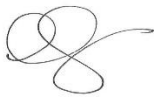


(3) Where a private project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

While CEQA exemptions cannot be applied to the County's proposed action, it must be noted that CEQA specifically provides exemptions for on-going projects and activities that pre-date the Act. This exemption applies to many on-going oil and gas activities and operations in Ventura County. Therefore, any argument that Zoning Ordinance modifications are "necessary" to meet CEQA requirements is false, as CEQA already specifically addresses projects that pre-date the Act.

There is simply no legal standing for the County to disregard the vested rights doctrine to modify the Zoning Ordinances. Furthermore, there is no legal standing for the County to exempt their action from CEQA review. CoLAB urges the Commission to reject the proposed modification to the Zoning Ordinances.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a trailing line, representing Louise Lampara.

Louise Lampara  
Executive Director

Encl.

# county of ventura

COUNTY EXECUTIVE OFFICE  
**MICHAEL POWERS**  
County Executive Officer

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

**Paul Dorse**  
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.

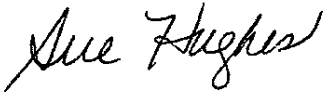
The legal analysis provided by County Counsel indicates that the County is largely pre-empted from actively regulating well stimulation treatment activities at both new and existing wells. However, the County is required under CEQA to assess and address the potential environmental impacts from such activities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

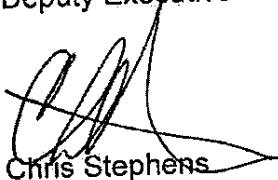
- 1) Will hydraulic fracturing or acidization well stimulation treatments be performed?
- 2) What hazardous materials will be used?
- 3) What water supply will be used?
- 4) Where will the liquid wastes be disposed?

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  
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>17</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>17</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.

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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Pocahontas  
Palmer



# 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)

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



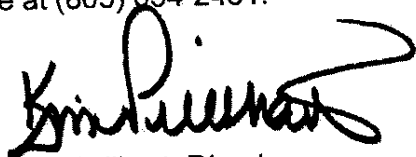
conditions, and whether the permit conditions are appropriately tailored and limited to the situation necessitating the action.

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

## Technical Memorandum

**Date:** May 16, 2019, Revised October 29, 2019

**To:** Mr. Brian McCarthy

**From:** Daniel Tormey, Ph.D., P.G.



**RE:** **Anterra Conditional Use Permit Continuation**

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Anterra is requesting a continuation of its Conditional Use Permit (PL18-0089) for its commercial Class II oil field produced water injection facility located at 1933 E Wooley Rd., Ventura County. The facility is a legal nonconforming use, and its permit expired in 2018. Anterra has requested that a continuation be granted, citing the following criteria:

“Nonconforming uses may be granted if both of the following standards are met. 1. Special circumstances apply to any such use or structure that do not generally apply to other uses and structures in the same vicinity and zone; and 2. The continuance is not detrimental to the public interest, health, safety, convenience, or welfare.”

The County requested that Dr. Dan Tormey of Catalyst Environmental Solutions review the application material, and coordinate consultation with the California Division of Oil, Gas and Geothermal Resources (DOGGR) regarding these criteria.

### Special Circumstances

There is some basis for considering that special circumstances apply to the facility. According to preliminary results from a recent study by the United States Geological Survey (USGS) of the potential effect of oil and gas activity on groundwater in the Oxnard Plain, Anterra accounts for 20 percent of produced water injection in Oxnard basin. The facility is an established use that the County’s oil and gas industry has come to depend upon.

The September 27, 2018 report prepared for Anterra by Krummrich Engineering Corporation, titled: *Initial Review of Offset Water Disposal Wells & Associated Reservoir & Geological Considerations*, makes further claims for special circumstances. The report states that the formation into which produced water is injected, the Topanga Volcanics, have unusually high permeability at this location. The report also states that the facility could support greater than 200 years of commercial injection.

Both of these claims were explored by independent review of the report, and consultation with DOGGR staff at the Ventura Field office who have reviewed and commented on the report.

With respect to these two items, DOGGR staff identified several other locations where the Topanga Volcanics are known to have very high permeability, and that the formation is ubiquitous in the area. DOGGR also recognizes volcanic formations such as the Topanga Volcanics as being heterogeneous, with potentially abrupt changes in permeability over short distances. They noted a lack of information to support an estimate of greater than 200 years of commercial injection.

In summary, a significant portion of oil and gas production operations conducted in Ventura county depend upon Anterra's commercial injection facility. However, there is little factual support for Anterra's claims that the Topanga Volcanics geologic formation underlying Anterra's facility is unique to the site or that the facility could support commercial injection for more than 200 years.

### **Detrimental to the Public Interest, Health, Safety, Convenience, or Welfare**

Catalyst evaluated two aspects of this criterion: whether injection well construction, testing, and oversight are compliant with current required DOGGR analyses, and whether injection is done in a manner that is protective of groundwater quality.

Regarding current DOGGR analyses, the agency has recently increased the level of data and analysis required in their review of Class II injection wells such as those used by Anterra. DOGGR reviews "zonal isolation", that is, would the injected produced water be contained in the zone of injection, with a high degree of rigor. Both horizontal and vertical zonal isolation must be considered, with adequate factors of safety provided by well casing, tubing, and concrete seals. The well is subject to required periodic testing during the life of injection. According to DOGGR, they are currently reviewing material submitted by Krummrich Engineering on behalf of Anterra to evaluate zonal isolation. DOGGR has requested supplemental information to conduct their review, and at the time of our consultation (March 20, 2019) they could not speculate on the potential outcome of their review. DOGGR noted that the wells could remain in operation until their review concluded positively, or until required periodic testing indicated a problem requiring shutdown to address.

In my opinion, if the County granted continuation, such approval should be conditioned on the outcome of DOGGRs review, which should be available before 2020.

The February 15, 2019 report prepared for Anterra by Hydrogeological Associates, titled: *Injection Well Construction and Injection Practices Review* in part addresses questions of potential impacts to groundwater quality from continued operations. The report uses a map prepared by United Water Conservation District on behalf of the County to state that the separation between the zone of injection and the Grimes Aquifer is 2,900 feet. The report then uses a significance criterion for Class I wells (hazardous waste injection) of less than the 2,640 feet for safe hazardous waste injection. However, review of the United Water Conservation District cross section indicates that the separation distance is 2,130 feet. While the Class I injection well separation distance is not relevant to consideration of a Class II injection well such as those at Anterra, it was put forth by the report as an objective criterion.

This question was explored further through consultation with DOGGR. DOGGR stated that they do not have a minimum separation distance requirement between the zone of injection and

groundwater that is used for water supply. The focus of the DOGGR analysis is well construction, zonal isolation, and layers of protection. They noted that the Vaca Tar Sands, also in the Oxnard Plain, are located at less than 2,000 feet depth and can be produced for oil and gas. DOGGRs principal concerns are horizontal zonal isolation, and that the well is constructed and monitored in such a way that it will not be a conduit for vertical migration. Their review of this question is ongoing.

Finally, the USGS has initiated study of groundwater quality in the Oxnard Plain, and has presented interim results. The results do not indicate that oil and gas operations have impacted groundwater quality. There were two results of groundwater containing low levels of methane that had been heated to levels consistent with oil and gas formations (that is, thermogenic methane). The wells were located in areas of shallow, natural oil and gas deposits (the Vaca Tar Sands), and the data could not distinguish between the natural source and upwards transport, from transport through wells.

In summary, these two factors of the “public interest” criterion do not indicate an ongoing threat. DOGGRs review of well integrity and zonal isolation are ongoing, but there were no data to indicate a problem. As noted above, I would recommend that if a continuation is granted, that it be conditioned upon the results of DOGGRs review. The hydrogeology study, USGS study, and consultation with DOGGR did not identify ongoing threats to groundwater quality. The separation between the zone of injection and water supply aquifers (Grimes Aquifer) do provide protection from potential impacts to groundwater quality, although not to the level of a hazardous waste injection well. Although Anterra’s report cited this as a standard of comparison, it is not a relevant standard for a Class II injection well.