



Planning Commission Staff Report – September 21, 2023

County of Ventura • Resource Management Agency • Planning Division

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SUBJECT: Public Hearing to Consider and Make Recommendations to the Board of Supervisors Regarding Amendments to the Non-Coastal Zoning Ordinance (PL21-0099) and Coastal Zoning Ordinance (PL21-0100) Related to Permit Terms, Surety and Insurance Requirements for Oil and Gas Operations.

A. PROJECT INFORMATION

1. **Applicant:** County of Ventura
2. **Location:** Countywide
3. **Request:** Planning Division staff requests that your Commission review this staff report and its attachments and adopt a resolution (Exhibit 1) recommending that the Board of Supervisors (Board) adopt the recommended actions set forth in the attached resolution for proposed amendments to the Non-Coastal Zoning Ordinance (NCZO, Sections 8107-5.4, 8107-5.6.5, 8107-5.6.11 and 8107-5.6.12) and the Coastal Zoning Ordinance (CZO, Sections 8175-5.7.5 and 8175-5.7.8) related to permit terms for new discretionary oil and gas operations, as well as surety and insurance requirements for oil and gas operations, including surety addressing Long-Term Idle Wells.
4. **Review /Decision-Making Authority:** Pursuant to State law and the County's zoning ordinances, your Commission is required to review, conduct a public hearing on, consider, and make recommendations to the Board regarding any proposed zoning ordinance amendments. Your Commission previously considered and provided recommendations on the same Board-initiated project relating to permit terms, surety and insurance requirements for the oil and gas land use in August 2022. However, Planning Division staff recommend various modifications to the previously considered zoning ordinance amendments, as set forth more fully below. Pursuant to Government Code section 65857, "any modification to the proposed ordinance...not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for report and recommendation...." As such, proposed modified zoning ordinance amendments are now before your Commission for review and recommendation. At a subsequent hearing, the Board will consider your Commission's recommendations and decide whether to adopt, not adopt, or adopt with modifications the proposed amendments.
5. **History and Background:** On November 10, 2020, the Board directed the Resource Management Agency (RMA) to return to the Board with proposed amendments to the NCZO and the CZO addressing three topic areas related to oil and gas land uses in the unincorporated area: (1) limit new discretionary permits for oil and gas operations

to 15 years; (2) increase the amount of compliance/site restoration surety and insurance from what is currently required by County ordinance; and (3) incorporate measures to assure the timely permanent plugging and restoration of oil and gas wells that have been idle for 15 years or more. The November 10, 2020 Board letter is attached as Exhibit 2.

On July 28, 2022, the Planning Division presented proposed ordinance amendments to the Planning Commission conforming to the Board's direction, which the Planning Commission recommended be approved by the Board by a vote of 3-2. (Exhibit 3 includes the July 28, 2022 staff report; exhibits to this staff report can be accessed using the link provided on the Exhibits list herein on page 21.) Due to the inadvertent omission of a small subset of public comments from the record¹, the Planning Director determined that the Planning Commission should hold a second hearing, which was thus held on August 18, 2022, on the entirety of the project. The Commissioners were informed that the action taken at the August hearing would become the Planning Commission's recommendation. (Exhibit 4 includes the August 18, 2022 staff report; exhibits to this staff report can be accessed using the link provided on the Exhibits list herein on page 22.)

By a vote of 5-0, the Planning Commission recommended that the Board approve the proposed ordinance amendments, which included the 15-year permit term limit, the three proposed sureties for surface restoration, well abandonment, and long-term idle wells, and updated insurance requirements. The Planning Commission also made the following additional recommendations to the Board and provided the following direction to Planning Division staff:

- Recommended that the Board fully consider the fiscal impacts to the County of adopting the proposed ordinances, with specific consideration given to:
 - Funding to support staff enforcement of the ordinances' provisions;
 - Funding to support legal defense of the ordinances' provisions; and
 - An analysis of expected costs to be incurred by the County associated with implementation of the ordinances' provisions.
- Directed staff to hold one engagement within 60 days with the public, oil and gas operators and environmental groups and provide notes to the Board;
- Directed staff to review insurance and bond requirements to ensure equity among operators, which may include establishing different tiers/groupings according to size, and research elimination of surety caps;

¹ Of the 309 public comments received for the July 28, 2022, Planning Commission hearing, 36 written public comments received by the submission deadline were inadvertently omitted but were provided at the subsequent hearing held on August 18, 2022.

- Directed staff to research issues related to cost, availability and collateral requirements for sureties and insurance specific to the Ventura County market; and
- Recommended that the Board send a strong message to the State Legislature and Governor that the California Energy Management Division (CalGEM) must be funded to maintain sufficient staff to conduct its mandated function, and adequate financial assurances must be collected from the petroleum industry to guarantee that the public does not bear the costs of formally abandoning wells.

As a result of the follow-up work and recommendations directed by the Planning Commission on August 18, 2022, Planning Division staff determined that some modifications were warranted to certain provisions that previously came before your Commission in July and August 2022. (Hereafter, when collectively citing to these hearings, staff will refer to them as the “2022 hearings.”) Due to the nature of the revisions, State law requires that they be considered by the Planning Commission before the ordinance amendments are presented to the Board of Supervisors. Specifically, Cal. Gov. Code Section 65857 requires that *“any modification of the proposed ordinance...not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for report and recommendation...”* Although State law only requires your Commission to make a recommendation regarding staff’s modifications to the ordinance amendments, for the sake of clarity and to avoid confusion, your Commission is asked to make a recommendation regarding the modified zoning amendments in their entirety. The extensive research and analysis conducted by Planning Division staff for this project continues to provide helpful context for the revised proposals discussed herein and is available for review as part of the July 28, 2022 Planning Commission staff report and exhibits.²

Planning Commission Direction for Staff to Hold Public Engagement Meeting

In accordance with Planning Commission direction, Planning Division staff held a public engagement meeting on November 9, 2022. The meeting was conducted on Zoom in both English and Spanish, and meeting recordings are available on the project website.³ The meeting was attended by 46 individuals. Staff did not impose any time limits on speakers and the meeting lasted over two hours. Much of the input provided was similar to that provided at the 2022 hearings and touched on the following major themes and assertions:

- Caps on surety amounts should be removed so that operators post sureties covering full estimated cost of well and site decommissioning;
- Surety and insurance amounts are not feasible for operators to obtain;

² <https://ventura.primegov.com/portal/item?id=239329>

³ Recordings available here: <https://vcrma.org/en/proposed-oil-and-gas-regulations>

- County is preempted by State law from requiring the proposed sureties;
- Recent State (CalGEM) actions make the County's proposals unnecessary and duplicative; and
- Surety proposal is not fair to small operators.

Written stakeholder comments submitted in advance of this outreach meeting are included in your meeting materials at Exhibit 11a. Consistent with the Planning Commission's direction, a meeting summary as well as the written stakeholder comments from that meeting will be provided to the Board of Supervisors at a future hearing on this matter.

Planning Commission Direction for Staff to Examine Surety and Insurance Details

The Planning Commission's recommendation for staff to more closely examine tiering, caps, and grouping for surety requirements is addressed more fully below. Planning Division staff also looked further into the availability of the required surety requirements, and have learned that the surety levels are generally commercially available to responsible operators, although costs and collateral requirements will vary depending on an individual operator's financial condition. Regardless, operators can avoid costs associated with procuring bonds by providing sureties in the form of a letter of credit or posting the funds directly with the County. Similarly, based on the input from operators, Planning Division staff propose lowering the insurance requirements to levels within the range of what some of the operators have represented are attainable. Finally, consistent with the Planning Commission's recommendations at the August 2022 hearing, staff will provide additional information related to fiscal impacts of project implementation to the Board at a future hearing.

6. **Project Description:** The following information related to this project will be discussed in this staff report:

- A brief description of the County's existing oil and gas regulatory requirements as relevant to these proposed amendments.
- A summary of staff's 2022 proposals to revise the County's maximum permit term for new discretionary oil and gas wells, as well as the surety and insurance requirements pursuant to the Board's direction in 2020.
- A summary of staff's revised 2023 proposals.
- Information related to current efforts by CalGEM to address oil and gas operator orphan and idle wells.

The proposed zoning ordinance amendments have been prepared in legislative format and are attached herein as Exhibits 5b and 6b, respectively. (Note that Exhibits 5a and 6a are clean versions of the NCZO and CZO respectively with legislative formatting removed.) The NCZO and CZO amendments are substantively identical. However, the CZO version includes non-substantive amendments to the "Average Noise Level" table on page 16 of Exhibit 6b to correct a typographical error in the existing CZO. Both also include some additional non-substantive "clean-up" edits. Furthermore, unlike the NCZO,

the CZO will also be subject to additional review and certification by the California Coastal Commission should the Board adopt the ordinance amendments.

Definitions for some key terms are also provided here to aid your Commission and the public in review of this staff report:

- **Wells** are all wells utilized for oil and gas exploration and production purposes, including but not limited to exploration, production, injection, and observation wells.
- **Active wells** are those that are drilled, completed, and in use.
- **Deserted wells** have been identified by CalGEM for operator failure to pay required idle wells fees or failure to respond to a plug and abandonment order.
- **Idle wells** have not produced oil or gas for 24 consecutive months or more.
- **Long-term idle wells** (LTIW) have been idle for eight years or more.
- **Orphan wells** have no financially viable operator of record either due to an operator's bankruptcy and/or decision to relinquish a lease without complying with the requirement to properly plug and abandon the well(s). Orphan wells must be formally identified by CalGEM.
- **Plugged and Abandoned wells** are those that have been permanently sealed and closed pursuant to regulatory standards.

Existing Relevant Regulatory Requirements

In approving new and modified Conditional Use Permits, the County has broad authority to set maximum permit terms. (See generally, NCZO § 8111-1.2, et seq.; see also CZO, § 8181 et seq.) At present, the County's zoning ordinances do not establish default maximum permit terms for any type of Conditional Use Permit. However, the County has broad legal authority to do so, including for CUPs authorizing the oil and gas exploration and production land use.

Both the existing NCZO and CZO include insurance and surety provisions. These existing requirements, as set forth below, were established 40 years ago and have never been adjusted.

- With respect to **surety requirements**, both the NCZO and CZO (Sections 8107-5.6.5 and 8175-5.7.8(e), respectively), currently state that *"...a bond or other security in the penal amount of not less than \$10,000.00 for each well that is drilled or to be drilled. Any operator may, in lieu of filing such a security for each well drilled, redrilled, produced or maintained, file a security in the penal amount of not less than \$10,000.00 to cover all operations conducted in the County of Ventura..."*
- Regarding **liability insurance requirements**, both the NCZO and CZO (Section 8107-5.6.12 and 8175-5.7.8(l), respectively), currently require that *"the permittee*

shall maintain for the life of the permit, liability insurance of not less than \$500,000 for one person and \$1,000,000 for all persons and \$2,000,000 for property damage. This requirement does not preclude the permittee from being self-insured.”

The discussions below summarize staff’s proposals from the 2022 hearings as well as staff’s updated 2023 proposals that are before your Planning Commission today.

2022 Proposals

15-Year Limit for New Discretionary Permits for Oil and Gas Operations

On November 10, 2020, the Board directed staff to revise the County’s zoning ordinances to limit the term of new discretionary permits and approvals for oil and gas exploration and development operations to 15 years except for permits and approvals issued for post-closure activities. Based on the Board’s direction, staff proposed amendments that limited such new discretionary permits to 15 years, and which allowed for subsequent 15-year CUP renewal terms at the end of the initial 15-year term.

Sureties

Planning Division staff proposed three different sureties during the 2022 hearings: a Surface Restoration Surety, a Well Abandonment Surety, and a Long-Term Idle Well Abandonment Supplement Surety. Each surety type is briefly discussed below, including the surety amounts that staff initially proposed at the 2022 hearings.

Surface Restoration Surety

The purpose of the proposed Surface Restoration Surety is to establish funds for surface demolition, removal of structures and equipment, and restoration/remediation of both well sites and related facilities if the operator does not fulfill these requirements at the end of its permitted operations as required under existing State and local law. Surface infrastructure associated with the oil and gas land use can include large pieces of equipment and significant development, including but not limited to storage tanks, water treatment systems, gas separation and treatment systems, waste storage areas, pipelines, and appurtenant infrastructure.

In 2022, staff previously proposed that the Surface Restoration Surety amount be based on the number of onshore wells, excluding properly abandoned wells, an operator has within unincorporated Ventura County, excluding federal lands. The basis for these surety tiers is set forth in more detail in the July 28, 2022 staff report, at pages 9-10. Table 1 shows the Surface Restoration Surety amounts staff proposed in the 2022 hearings.

Table 1 – 2022 Proposal for Surface Restoration Surety

Total Number of Active/Idle Wells per Operator	Number of Operators⁴	Proposed Surface Restoration Surety
1-5	8	\$100,000
6-10	4	\$185,000
11-20	4	\$300,000
21-50	5	\$500,000
51-100	1	\$1 million
101-200	0	\$3 million
201-400	0	\$5 million
≥401	3	\$10 million

Well Abandonment Surety

Planning Division staff also proposed a Well Abandonment Surety to address the negative impacts that orphaned wells pose to the environment, human health and safety, and the potential impairment of subsequent use or redevelopment of the affected land; and to reflect the likelihood that the State will lack adequate resources to properly and timely plug and abandon wells that are orphaned in unincorporated Ventura County. The Well Abandonment Surety amount proposed at the 2022 hearings was \$36,000 per well, not to exceed \$5 million for any individual operator. This amount reflected 25 percent of estimated abandonment costs of \$143,300 per well.⁵

Long-Term Idle Well Abandonment Supplement Surety

As part of the Board's direction in November 2020, staff was directed to "incorporate measures [into an ordinance] to assure the timely permanent plugging and restoration of oil and gas wells that have been idle for 15 years or more." To address the Board's direction within the scope of the County's legal authority, staff proposed a \$15,000 per well surety supplement for wells that have been idle for 15 years or more, not to exceed \$5 million for any single operator.

The most current information from CalGEM indicates that there are 920 such wells (15+ year idle wells) within unincorporated Ventura County. As noted in the July 28, 2022 Planning Commission staff report, idle wells pose increased risks to groundwater, air and the surface environment. For example, older wells may have degraded well casings that allow oil or gas to leak; idle wells may still have old equipment and contaminated soils from small spills or other wastes at the surface; and studies around the country show that

⁴ Number of operators was current as of June 2022 based on concurrent well count estimates.

⁵ See page 14 of the July 28, 2022, staff report for discussion of how this estimated amount was derived.

unplugged wells can leak methane into the environment.⁶ Furthermore, the longer a well remains idle, the more likely it is to be deserted by the operator.⁷

Insurance

The Board also directed Planning Division staff to recommend updated insurance requirements from their current requirements that have been unchanged for 40 years. Given the potential significant cost of an incident at an oil and gas facility, and understanding the types of insurance instruments often required for companies conducting oil and gas operations, Planning Division staff, in consultation with the CEO's Risk Management Office, recommended the following insurance instruments and coverage amounts in 2022:

- **General Liability for Oil & Gas Businesses** - Provides coverage for occurrences that cause bodily injury and property damage. General Liability, with at least \$2,000,000 each occurrence and \$4,000,000 general aggregate.
- **Environmental Impairment** – Typically covers property loss and liability from pollution or contamination incidents that a General Liability policy often excludes. Pollution Liability Policy with coverage not less than \$10,000,000.
- **Control of Well** – Typically covers costs related to well blowout, which is the accidental and uncontrolled release of oil or gas. Insurance helps pay costs to clean up pollution resulting from the blowout and redrill and restore the well. Coverage of a minimum of \$10,000,000 per occurrence.
- **Excess (or umbrella) Liability Insurance** – Provides coverage on top of other required insurances. Excess liability policies generally cover losses above the limits of the primary insurance policy and add a higher limit to the coverage level of the individual underlying policy; whereas Umbrella policies can encompass multiple underlying policies and types of claims, including general liability, control of well, and environmental impairment. Minimum limit of \$25,000,000.

2023 Surety and Insurance Proposals

15-Year Limit for New Discretionary Permits for Oil and Gas Operations

Planning Division staff is not proposing any changes to the provisions setting a 15-year maximum term limit on new discretionary permits for oil and gas operations, and the ordinance language remains identical to that reviewed by your Commission during the

⁶ American Geosciences Institute. 2018. Abandoned Wells.
<https://www.americangeosciences.org/geoscience-currents/abandoned-wells>

⁷ July 28, 2022 staff report, page 8.

2022 hearings. Please refer to the July 28, 2022 staff report, at pages 3-5, for further information on this permit term proposal.

Sureties

In the intervening period since the 2022 hearings and pursuant to Public Resource Code section 3205.7, CalGEM has worked with oil and gas operators to estimate costs to plug and abandon wells, decommission attendant production facilities, and complete site remediation. In support of this work, CalGEM has generated cost estimating templates, including unit costs for various operational components, (e.g., tanks, pipelines, pumps, etc.). As part of these efforts, CalGEM has also updated its “Average Total Liability Per Well” cost estimates for all CalGEM districts in the state.

The “Average Total Liability Per Well” calculation includes average costs for well plugging and abandonment, well site remediation, as well as surface production facility decommissioning and production facility site remediation, based on what CalGEM has paid contractors for this work between 2011 and 2022, adjusted for inflation. The per well amount for the applicable Northern District, in which Ventura County is located, is \$171,961.⁸ Based on this current CalGEM information, which includes work for both surface and subsurface restoration and remediation, the Planning Division has modified its proposed surety framework to combine the Surface Restoration Surety and the Well Abandonment Surety into a single “Surface Restoration and Well Abandonment Surety,” and to base the County’s surety amount on the State’s estimate.

Statewide, CalGEM has documented over 17,000 wells that have been idle for over 15 years⁹ and over 5,300 wells that are orphaned, deserted, or potentially deserted wells. As previously noted, the longer a well remains idle, the more likely it is to be deserted by the operator. Recent cost estimates to plug and abandon all orphan wells statewide is close to one billion dollars.¹⁰ At the time of the 2022 hearings, CalGEM had not officially identified any orphan wells in Ventura County. However, since then, CalGEM has identified 398 wells countywide (298 in the unincorporated area) as “likely orphaned.”¹¹

Table 2 shows the number of wells and their status within the unincorporated areas by Supervisorial District. Exhibit 7 is a collection of oil and gas maps for all Supervisorial Districts, identifying locations for oil and gas wells countywide (i.e., within both cities and unincorporated areas).

⁸ Email communication, July 21, 2023; CalGEM’s Operator Financial Responsibility Team (B. Turner, et al.)

⁹ <https://www.conservation.ca.gov/calgem/Pages/State-Abandonments.aspx>

¹⁰ California Geologic Energy Management (CalGEM) Final Orphan Well Screening and Prioritization Methodology. February 2023; cost estimate confirmed in email communication with C. Smith, Chief Deputy Director of Programs, CalGEM, September 5, 2023.

¹¹ Ibid.

Table 2 – Oil and Gas Wells in Unincorporated Areas by Supervisorial District

District	LTIW	Deserted	Likely Orphan	Idle	Plugged & Abandoned	Active	Total by District
1	694	21	79	334	1,591	1,033	3,752
2	54	-	7	47	159	55	322
3	358	45	204	343	1,855	556	3,361
4	8	1	6	15	136	22	188
5	-	1	2	-	25	1	29
	1,114	68	298	739	3,766	1,667	7,652

As in 2022, staff proposes to base the combined surety on 25 percent of the State's average total cost of closure per well and have revised this amount based on the State's latest cost estimates. Requiring a percentage of the total estimated costs ensures that the County's surety amounts will be economically feasible for responsible operators, while still bolstering total available financial assurance given that the amount required by the State does not come close to covering the estimated average total liability for decommissioning existing wells and production sites.

The County's proposed 25 percent share of the State's cost estimate is \$43,000 per well (\$171,961 x 0.25). This would be considered the "Default Amount." However, in lieu of submitting a surety based on the Default Amount, operators may submit a surety based on a "Site-Specific Plan and Cost Estimate," which would be based on an operator's site-specific operations, prepared by a qualified third party, and reviewed and approved by County staff. The County is also proposing to place a \$10 million cap on this surety amount for each operator, which is lower than the prior combined cap of \$15 million for the previously separate surety requirements for Surface Restoration and Well Abandonment (prior caps of \$10 million and \$5 million, respectively).

Planning Division staff is not proposing any modification to the LTIW Abandonment Supplement Surety of \$15,000 for each idle well that has been idle for 15 years or more. However, staff is now proposing to remove the \$5 million cap on this supplemental surety. Based on current information from the State, removal of the cap will impact only the County's largest operator, CalNRG, which has over 500 wells that have been idle for at least 15 years. Removal of the cap will increase CalNRG's total long-term idle well supplement surety to \$7,560,000, although its total combined County surety amount of \$17,560,000 is \$2,440,000 (12 percent) less than the total combined County surety amount that CalNRG would be responsible for under staff's 2022 proposal. Removal of the cap is intended to provide additional financial assurance that these riskiest wells will be properly plugged and abandoned.

The proposed modifications also include new provisions to ensure that even if the State significantly increases its existing surety requirements for Ventura County operators, there will be no duplication of State bonding requirements in terms of exceeding the actual estimated cost of decommissioning oil and gas facilities in the unincorporated area. At

the 2022 hearings, as well as during the November 2022 outreach meeting, several operators stated that the surety amounts they provide to the State should be considered sufficient, and that operators should not be required to pay “duplicative sureties” to the County. The proposed ordinance has been revised to allow for an operator’s surety to be reduced or eliminated if the operator can show that it maintains sureties with CalGEM in an amount that “meets or exceeds the full estimated costs of properly abandoning all of the operator’s wells and completing restoration of all of the operator’s oil and gas sites in unincorporated Ventura County.” If the operator makes this showing, the County sureties would be reduced to a combined amount which, when added to the amount of the State sureties, equals the operator’s estimated plugging and restoration costs. [See Exhibit 5 Sec. 8107-5.6.5(g)(4) and Exhibit 6 Sec. 8175-5.7.8(e)(6)(c).]

Operators have argued that there is already sufficient funding from the state and federal government to cover well abandonment liabilities statewide. However, these funding sources are largely focused on addressing orphan wells, for which it has already been established that there is no responsible operator. These funding sources are backward-looking and seek to remediate an existing problem of insufficiently abandoned oil wells for which there no longer exists an operator to pay to remediate. In contrast, these proposed County surety requirements are forward-looking and seek to prevent any further occurrence of orphaned wells for which there is no longer a responsible operator or funds to abandon the wells. The County’s proposed sureties will not cover the costs for currently orphaned wells but will instead help prevent additional wells from becoming orphaned with no available funding for decommissioning.

A recent report analyzed and estimated future oil and gas decommissioning liabilities in California.¹² As the report explains:

“...California’s energy regulator seemed to recognize the risk of unfunded liabilities when it began a rulemaking process to require operators to disclose their decommissioning liabilities according to a standardized formula [PRC section 3205.7]. This study picks up where the rulemaking left off, attempting to quantify the statewide retirement obligation of the industry and then to compare that against forecasts of those thinning cash flows.”

One of the report’s key findings is that based on CalGEM’s cost estimating methodology, all onshore decommissioning obligations (including both “downhole” and surface restoration) were estimated at \$13.2 billion. And when unquantified costs and inflation are added, the estimate increases to \$21.5 billion.¹³ In contrast, financial sureties thus far

¹² Exhibit 12 “*There will be blood:*” *Decommissioning California’s Oilfields*, D. Purvis, Carbon Tracker, May 2023;

¹³ *Ibid*, pg. 5

provided by industry for these decommissioning costs “is minimal, \$106 million for onshore operations, **which constitutes 0.8% of quantified costs**.”¹⁴ (emphasis added).

The report made a number of other notable findings. It found that “[a]s costs accumulate from deferred plugging, the ability to pay diminishes,” and that “[i]n California, as throughout the country, operators have been allowed to defer – and thus accumulate – individual well plugging costs also to the end of field life.”¹⁵ It also found that the substantial costs of decommissioning generally occur when an oil operator is least able to pay such costs. (“The slim cash flow preceding financial death is followed by the significant capital expense of decommissioning.”).¹⁶

It also found that current revenue projections for oil and gas operations are unlikely to be sufficient to fully cover all decommissioning costs in the State. (“[I]t is unlikely that the remaining production of over 100,000 wellbores and nearly 30,000 facilities operating today will suffice to pay for their own decommissioning even if all future profits are applied to the liabilities.”)¹⁷ Indeed, “[i]f all proceeds from upstream oil production in the state were redirected now to pay for decommissioning costs, the oil companies or taxpaying public would still need to come out of pocket to fund billions of dollars of clean-up.”¹⁸ It found that “projected cash flows [of oil and gas operations] would need to more than double in aggregate to match the minimal quantified decommissioning costs.”¹⁹ Despite this, it noted that “[n]otwithstanding the obvious maturity of the fields, current cash flows are not being deployed or saved by operators to retire their aging assets. If business as [u]sual continues, proceeds will instead continue to be distributed to owners, used to buy back shares, or in a few cases reinvested in less mature assets.”²⁰

This report underscores the need for operators to set aside funds now to ensure proper restoration and abandonment, before the actual need for decommissioning arises. This is especially true given the downward trend of oil and gas production in Ventura County, which was 15,659,398 barrels in 1987, down to 9,121,781 barrels in 2015²¹ (a 42 percent decrease), and down even further to 6,519,070 barrels in 2020²² (a 58 percent decrease). CalGEM data from 2022 indicates production in Ventura County continues to decrease and is now at approximately 4,904,000 barrels.²³ It is also especially important given the documented trend of larger operators divesting wells at the end of their productive

¹⁴ Ibid, pg. 5

¹⁵ Ibid, pg. 16

¹⁶ Ibid, pg. 16

¹⁷ Ibid, pg. 41

¹⁸ Ibid, pg. 8

¹⁹ Ibid, pg. 41

²⁰ Ibid, pg. 41

²¹ https://vc2040.org/images/Background_Report_-_September_2020/VCGPU_08_Adopted_Natural_Resources_September_2020.pdf, page 80.

²²

<https://www.conservation.ca.gov/calgem/Documents/Final%20CalGEM%20Supervisor%20Annual%20Report%202020%20-%202023.05.30.pdf>, page 46.

²³ CalGEM Wellstar Data Dashboard

lifespan to smaller, less solvent operators who are more likely to be unable to comply with their plugging and abandonment obligations.²⁴ Indeed, the need for operators both large and small to set aside funds for future well abandonment and restoration could not have been more clearly demonstrated by one County operator expressly admitting, in public comments submitted during the 2022 hearings, that it is unlikely to have sufficient funds to fulfill its required well abandonment and restoration obligations. (Aug. 7, 2022 letter from Ojai Oil Company, stating that “The income from all remaining wells may not cover the full field’s abandonment and clean-up costs in our remaining 18 years of our property’s proposed restoration.”)

As the Carbon Tracker report explains, not only does the State currently collect inadequate financial sureties from operators to cover costs of decommissioning, the State’s financial resources to address orphan wells statewide, as outlined below, are grossly inadequate to address the ongoing issues and costs associated with proper plugging and abandonment of the State’s substantial number of orphaned wells. After the November 2022 public engagement meeting, Planning Division staff once again contacted the State’s Oil and Gas Supervisor to verify State funding amounts for orphan wells. (See Exhibits 8 and 9.) In response, the Oil and Gas Supervisor provided the following details:

- For fiscal year 2022/23, the Oil, Gas, and Geothermal Administrative Fund (OGGA) is capped at \$5 million annually.
- As of December 2022, the current Hazardous and Idle-Deserted Well Abatement Fund (HIDWAF) balance is \$23.3 million.
- The California State Legislature appropriated \$50 million for fiscal year 2022/23 and \$50 million for fiscal year 2023/24 to plug and abandon orphan and deserted wells.
- California was awarded \$25 million in initial grant funding from the federal government to be used throughout the state.

Based on this information, the resources available to decommission orphan oil wells and sites **statewide** total \$153.3 million.²⁵ This can be compared with the State’s cost estimate of close to a billion dollars to plug and abandon approximately 5,356 currently known orphaned, deserted, and potentially deserted wells statewide.²⁶ It is noteworthy that the potential cost to properly plug and abandon Ventura County’s orphan wells alone

²⁴ <https://www.fracktracker.org/2023/05/assessment-of-oil-and-gas-well-ownership-transfers-in-ca/>

²⁵ This funding status was reconfirmed by CalGEM in July 2023.
https://www.conservation.ca.gov/calgem/Documents/state_abandonment_expenditure_plan_7-17-2023.pdf

²⁶ CalGem Powerpoint presentation, Oil and Gas Abandonment Planning, April 2022.

represents almost 45 percent of the funds available statewide. As explained above, based on current State cost estimates for the proper abandonment, decommissioning, and surface restoration, the estimated cost to address the 298 currently identified “likely orphan wells” in unincorporated Ventura County is over \$51 million (298 x \$171,961). Countywide, (including wells within cities) the estimate is over \$68 million (398 x \$171,961). In addition, approximately 65 percent of the State’s total (\$100 million) comes from State general fund appropriations that are not programmed beyond fiscal year 2023/2024, and there is no guarantee that additional state general fund appropriations will be forthcoming. Additional grant assistance from the federal Bipartisan Infrastructure Act may be forthcoming in future years.²⁷ Also notable is that of the \$153.3 million currently available to address orphan wells, over 80 percent is funded by taxpayers with less than 20 percent coming from oil and gas operators.²⁸

This information provides context to the funding that exists for plugging and abandoning orphan wells. But as explained above, this State funding does not address liabilities associated with decommissioning the thousands of existing, currently non-orphaned wells. That statewide cost, adjusted for inflation and contingencies, has been estimated at \$21.5 billion, while the State currently holds only \$106 million in sureties for decommissioning these existing wells and sites. The County’s proposed ordinances would require operators to set aside a modest percentage of the estimated cost to decommission their existing wells.

Wells that are not properly decommissioned are a source of greenhouse gas emissions, air pollution, potential soil and groundwater contamination, and they blight communities. Within the identified disadvantaged communities of Piru and El Rio/Del Norte, there are numerous active and long-term idle wells, which will require proper decommissioning at the end of production. The existence of orphaned wells will also likely hamper the local economy, and affect private property values, by prohibiting or delaying the redevelopment and use of former oil production sites. By requiring additional funding and insurance to address these issues, the amendments will not only help avoid potential harm to the environment, health and safety, and private property interests, they will also help facilitate the redevelopment and reuse of former oil and gas production sites upon cessation of oil production. This will help foster economic growth, job creation, potentially provide for development of new housing and recreational opportunities, and otherwise allow for the beneficial use of former oil facilities located in the unincorporated area.

Finally, the draft ordinances continue to allow operators to provide a “cash equivalent” surety, which may consist of a letter of credit, cashier’s check or certificate of deposit. Such instruments allow an operator to avoid the annual cost of maintaining a surety bond, which typically totals approximately two-to-four percent of the surety amount.

²⁷ <https://www.conservation.ca.gov/calgem/Pages/State-Abandonments.aspx> (Accessed July 7, 2023)

²⁸ Only the State OGGA and HIDWAF funds are funded by fees collected from oil and gas operators. According to the Carbon Tracker report, “86% of existing funds come from or through government entities and only 14% directly from industry.” (See *supra*, footnote 11, page 26.)

Estimated Operator Cost

To provide context regarding potential operator costs related to this updated surety proposal (i.e., the Surface Restoration and Well Abandonment Surety, plus the Long Term Idle Well Surety) see Table 3 below. The new combined surety proposal eliminates the tiers used for the 2022 proposals, thereby providing greater equity amongst operators, which was an issue raised by some operators and an item requested by the Planning Commission during the 2022 hearings for Planning staff to consider. This change also lowers the total surety amount for every operator, again in response to operator comments related to the purported difficulty in procuring larger surety bonds, while still providing for meaningful surety increases compared to the inadequate existing surety requirement of \$10,000 per operator for all of its wells.²⁹

Furthermore, where the prior separate sureties of Surface Restoration and Well Abandonment from the 2022 proposal had a combined cap of \$15 million (\$10 million and \$5 million respectively), the new combined surety now has a maximum total cap of \$10 million. For illustration, operators with one or two wells will see a 70 percent and 50 percent decrease of their surety obligations from the 2022 proposals, respectively. Operators with 11-20 wells will see an average decrease of 30 percent, and operators with 21-50 wells will see an average decrease of 22 percent. The County's three largest operators by well count, each with 500+ wells in the unincorporated area, will see an average decrease of their surety obligations of 12 percent (CalNRG), 26 percent (Aera), and 31 percent (Carbon) from the prior proposals.

Planning Division staff has learned that the practice of requiring oil and gas operators to post collateral (potentially up to 100 percent of the amount of the bond) is becoming more common. Generally, collateral is not necessary for the issuance of a surety bond, as the surety bonds are usually collateralized by the full faith and credit of the operator's company itself. However, collateral can be required if the underwriter has concerns about the individual operator being able to fulfill its obligations under the surety, making it more likely that the underwriter may have to pay out on the surety obligation.

²⁹ On September 27, 2022, the County of Los Angeles approved an ordinance setting bond amounts for oil and gas operations at \$152,000 per well. (See <https://file.lacounty.gov/SDSInter/bos/supdocs/172735.pdf>, page 27.) In addition, the City of Los Angeles has suggested that oil and gas bonds (currently set at \$10,000 surety bond per well or a blanket bond of \$50,000 for any number of wells, plus an additional \$5,000 to ensure compliance with zoning and conditions of approval), be increased to the "upper limit of potential costs (currently estimated at \$500,000) for each well that is active or inactive but not yet closed (abandoned), and this amount should be reviewed annually and increased appropriately" in order to "prevent taxpayers from having to pay for the costs of abandoning wells." (See https://clkrep.lacity.org/online/docs/2021/21-0065_rpt_cao_5-20-22.pdf, pages 8-9).

Table 3 – Estimated Operator Costs for All Sureties

No. of Wells (Active and Idle)	Number of Operators	Surety Range	Bond Cost @ 3%
1-10	18	\$43k - \$445k	\$1,290 - \$13,350
11 -20	7	\$518k - \$875k	\$15,540 - \$26,250
21 - 51	6	\$1.3M - \$2.2 M	\$39,150 - \$66,690
540-1,538*	3	\$11.3M - \$17.6M	\$339k - \$527k

*Currently, there is one operator with 51 wells and there are no operators with well numbers between 52-539.

Insurance

Planning Division staff engaged with the local oil and gas industry and considered input from operator comments made during both the 2022 hearings and the November 2022 public engagement meeting related to the purported difficulty in obtaining insurance coverage in the original amounts specified. As a direct result of this outreach and input provided by local oil and gas operators, and in fulfilling the objective of your Commission's direction for increased engagement with the oil industry, Planning Division staff has significantly decreased most of the proposed insurance coverage amounts, reducing most the required coverage levels by at least 50 percent, while still ensuring that the required coverage amounts are substantially greater than the current requirements last updated 40 years ago. Staff believes the proposed modifications strike an appropriate balance between requiring more reasonable insurance coverages while addressing operators' concerns over costs.

Staff continues to propose a requirement to obtain the coverage types specified. Notably, based on input provided by local oil and gas operators, these coverage levels are much closer and generally within the range of coverage levels that some smaller operators have indicated they already possess. Table 4 below shows the coverage amounts originally proposed in 2022 and the revised coverage amounts staff is now proposing.

Table 4 – Insurance Coverages for Oil and Gas Operations

Insurance Type	Original Proposal for Coverage Amounts (July/August 2022)	Revised Proposal for Coverage Amounts (Sept. 2023)
General Liability	\$2 million / \$4 million Each occurrence; Aggregate	\$2 million / \$4 million Each occurrence; Aggregate (<i>no change</i>)
Environmental Impairment (Sudden and Accidental)	\$10 million	\$5 million
Control of Well	\$10 million	\$5 million
Excess or Umbrella	\$25 million	\$10 million

7. Additional Updates

The July 28, 2022, Planning Commission staff report included a recommendation that the Board consider funding and directing the Planning Division to commission a professional evaluation to identify idle wells with “no reasonable expectation of being reactivated” that should be plugged and abandoned and to prioritize such wells for abandonment consistent with Public Resource Code section 3206.5 and other relevant state laws. This recommendation was unchanged in the August 18, 2022, staff report.

Shortly thereafter, in September 2022, CalGEM released a draft screening methodology for orphan well prioritization throughout the state. Based on extensive public comments, CalGEM released its final methodology in February 2023.³⁰ The methodology ranks and prioritizes the state’s 5,300 orphaned, deserted, and potentially deserted wells for potential state abandonments (i.e., use of state and federal funds to properly plug and abandon orphan wells). The prioritization criteria include, but are not limited to:

- whether the well is located in an area of known geologic hazard;
- whether the well is open to the atmosphere;
- whether the well has surface obstacles or other impediments to access;
- the age of the well; and
- if a well is located in a Disadvantaged Community.

Planning Division staff participated in the State’s 2022-2023 outreach events for both the draft and final screening methodologies and determined that the County’s goals of prioritizing wells for abandonment could be integrated into the ongoing state program.

On July 18, 2023, CalGEM released its State Abandonment Draft Expenditure Plan and held a public meeting. The draft plan included CalGEM’s initial list of orphan wells it proposed to permanently plug and abandon using state and federal funds. The list includes 47 orphan wells in Ventura County. (These wells are included in the orphan well counts in Table 2 on pg. 9.)

In addition to the state’s recent emphasis on orphan well plugging details, CalGEM has also articulated a broader vision of coordination with local governments and stakeholders. The 2021 Idle Well Program Report³¹ includes the following statements:

“...the state will engage state, local, and federal agencies, as well as other impacted stakeholders, to develop recommendations and actions, including on how to improve local agency involvement in not only the closure and abandonment

³⁰<https://www.conservation.ca.gov/calgem/Documents/Final%20Orphan%20Well%20Prioritization%20Methodology.pdf>

³¹

https://www.conservation.ca.gov/calgem/pubs_stats/Documents/Idle%20Well%20Program%20Report%202021_FINAL.pdf

of these sites, but also to support redevelopment in a way that protects people and prioritizes local benefits.” (pg. 33)

“These opportunities for engagement include coordinating responses to well incidents; prioritizing wells and facilities for abandonment; establishing notification requirements for abandonments; identifying opportunities for state-local cost sharing for plugging and abandonments; establishing well or lease site restoration criteria; and facilitating coordination on development activities for former oil extraction sites. It is especially important to address many of these issues in urban settings, particularly abandonment project planning, since local public works, public health, and first responders might need to be engaged during an abandonment effort.” (pg. 34)

Planning Division staff continues its ongoing coordination with CalGEM staff at both the local and headquarters level. Staff is recommending to the Board our continued coordination and participation in CalGEM's efforts to identify and plug and abandon orphan wells.

8. Local and State Authorities

Staff expects objections from the oil and gas industry that these ordinance amendments are duplicative, unnecessary, and premature in light of CalGEM's efforts. However, CalGEM's express solicitation to “improve local agency involvement” in the closure and abandonment of oil and well sites, as well as “identifying opportunities for state-local cost-sharing for plugging and abandonments” make clear that CalGEM sees an important collaborative role for local governments in the statewide effort to ensure adequate resources for the proper plugging and abandonment of oil and gas wells. During a teleconference with County staff on June 8, 2022, the State's Oil and Gas Supervisor commended the County's efforts to obtain local sureties and readily acknowledged CalGEM's lack of resources to adequately address the well decommissioning issue. CalGEM's support is consistent with the statute authorizing CalGEM to require additional bonding for purposes of well abandonment and decommissioning. This statute expressly directs CalGEM to account for the existence of local government bonds on those same wells. (See Pub. Res. Code, § 3205.3(c)(8)).

Notably, the County has already been requiring bonding for oil and gas operations for at least 40 years without issue or industry objection. Furthermore, CalGEM does not require that operators procure insurance for oil and gas operations, nor does it play any role in setting term limits on County-issued conditional use permits for oil and gas operations.

In sum, the County has legal authority to set maximum permit term limits and require increased insurance and financial security obligations on new and existing wells to help ensure permit compliance, proper site restoration, and proper plugging and abandonment.

B. ENVIRONMENTAL REVIEW PURSUANT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the requirements of the California Environmental Quality Act (Pub. Res. Code, §§ 21000-21178, “CEQA”), and State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000-15387), the proposed project was evaluated for compliance with CEQA. Staff’s full CEQA analysis and discussion can be reviewed in the July 28, 2022, staff report, which is equally applicable to the proposed amendments being presented today and is being expressly incorporated herein by reference. In summary, Planning Division staff has determined that the adoption of the proposed project is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) (i.e., the “common sense exemption”), section 15307, *Actions by Regulatory Agencies for Protection of Natural Resources*; and section 15308, *Actions by Regulatory Agencies for Protection of the Environment*. The adoption of the proposed project is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility the project may cause a significant effect on the environment. To the extent the proposed project indirectly affects the environment, the effect is expected to be beneficial. Moreover, because the project consists of regulations intended to benefit the environment, it is also exempt pursuant to CEQA Guidelines section 15307 and section 15308, which consist of actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of natural resources and the environment. Staff has further determined that no substantial evidence exists precluding the use of the above categorical exemptions based on the presence of unusual circumstances or any other exception set forth in CEQA Guidelines section 15300.2. (See Exhibit 10 for a thorough analysis supporting these exemption findings.)

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

C. ORDINANCE AMENDMENT FINDINGS

Both the NCZO and the CZO authorize the Board to amend these zoning ordinances “*whenever the public health, safety, or general welfare, good zoning practice, and consistency with the General Plan [or the Coastal Act, or Coastal Area Plan] justify such action...*” Pursuant to NCZO section 8115-0 and CZO section 8184-1, the Board must make certain findings in order to amend them. Staff’s discussion regarding ordinance amendment findings, including an analysis of General Plan consistency can be reviewed in the July 28, 2022, staff report and exhibits, and are expressly incorporated herein by reference.

D. PLANNING COMMISSION HEARING NOTICE and PUBLIC OUTREACH

The Planning Division provided a public notice regarding the Planning Commission hearing in accordance with Government Code section 65090, NCZO section 8111-3.1

and CZO section 8181-6.2.1. The Planning Division placed a legal advertisement providing notice of this public hearing in the *Ventura County Star* on September 8, 2023, and in Spanish in *Vida* on September 7, 2023.

A project web page (available in English and Spanish) was also available on September 1, 2023, which provided access to the proposed ordinances and a Frequently Asked Questions document, also available in English and Spanish. Staff also sent an email notification of the hearing to approximately 1,265 stakeholders on September 14, 2023. As of the date this staff report was made available to the public, staff has received one written comment, included as Exhibit 11b.

E. RECOMMENDED ACTIONS

Based upon the analysis and information provided above, as well as information provided in the July 28, 2022 and August 18, 2022 Planning Commission staff reports and exhibits thereto, Planning Division staff recommends that the Planning Commission take the following actions:


1. **CERTIFY** that the Commission has reviewed and considered this staff report and all exhibits hereto, and has considered all other materials and public comments received during the public comment and hearing processes; and
2. **ADOPT** a resolution (Exhibit 1) recommending that the Board of Supervisors take the actions set forth more fully therein regarding the proposed amendments to the Non-Coastal Zoning Ordinance and the Coastal Zoning Ordinance. Such actions generally include the following:
 - a. **FIND** that the adoption of the proposed ordinance amending the Ventura County Non-Coastal Zoning Ordinance (Exhibit 5a) is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility the project may cause a significant effect on the environment; **FIND** that because the project consists of regulations intended to benefit natural resources and the environment, it is also categorically exempt from CEQA pursuant to CEQA Guidelines sections 15307 and 15308; **FIND** that no substantial evidence exists precluding the use of the above categorical exemptions based on the presence of unusual circumstances or any other exception set forth in CEQA Guidelines section 15300.2; and **FIND** that adoption of the proposed ordinance amending the Ventura County Coastal Zoning Ordinance (Exhibit 6a) is statutorily exempt from CEQA pursuant to Public Resources Code section 21080.9 as an amendment to the County's Local Coastal Program;
 - b. **FIND** that the proposed ordinance amending the Ventura County Non-Coastal Zoning Ordinance (Exhibit 5a) is consistent with the goals, policies and programs

of the Ventura County General Plan and good planning practices and is in the interest of public health, safety and general welfare;

- c. **FIND** that the proposed ordinance amending the Ventura County Coastal Zoning Ordinance (Exhibit 6a) is consistent with the goals, policies and programs of the Ventura County General Plan, the Ventura County Coastal Area Plan, the Coastal Act and good planning practices, and is in the interest of public health, safety and general welfare;
 - d. **RECOMMEND**, as initially directed by the Planning Commission at its August 18, 2022 meeting, that the Board fully consider the fiscal impacts to the County of adopting the proposed ordinances, with specific consideration given to 1) funding to support staff enforcement of the ordinance provisions; 2) funding to support legal defense of the ordinance provisions; and 3) an analysis of expected costs to be incurred by the County associated with implementation of these ordinance provisions;
 - e. **ADOPT** the proposed ordinances amending the Ventura County Non-Coastal Zoning Ordinance (Exhibit 5a) and Coastal Zoning Ordinance (Exhibit 6a); and
3. **SPECIFY** the Clerk of the Board of Supervisors at 800 S. Victoria Avenue, Ventura, CA 93009 as the location and custodian of the documents and materials that constitute the record of proceedings upon which these decisions are based.

This staff report has been reviewed by County Counsel. If you have any questions concerning the information presented above, please contact me at (805) 654-2481, or Shelley Sussman at (805) 654-2493.

Prepared by:


Shelley Sussman, General Plan
Implementation Section Manager

Reviewed by:


Dave Ward, AICP
Planning Director

Exhibits

- Exhibit 1 Planning Commission Resolution to Board of Supervisors
- Exhibit 2 November 10, 2020, Board Letter
- Exhibit 3 July 28, 2022, Planning Commission Staff Report
<https://ventura.primegov.com/Portal/Meeting?meetingTemplateId=15663>

- Exhibit 4 August 18, 2022, Planning Commission Staff Report
<https://ventura.primegov.com/Portal/Meeting?meetingTemplateId=15748>
- Exhibit 5a Clean version of proposed ordinance amending the Non-Coastal Zoning Ordinance
- Exhibit 5b Legislative format of proposed ordinance amending the Non-Coastal Zoning Ordinance
- Exhibit 6a Clean version of proposed ordinance amending the Coastal Zoning Ordinance
- Exhibit 6b Legislative format of proposed ordinance amending the Coastal Zoning Ordinance
- Exhibit 7 Oil and Gas Well Maps for Supervisorial Districts 1-5
- Exhibit 8 Ventura County Letter to CalGEM – December 2, 2022
- Exhibit 9 CalGEM Response Letter to Ventura County – December 15, 2022
- Exhibit 10 Ventura County Non-Coastal Zoning Ordinance and Coastal Zoning Ordinance Amendments: Basis for Amendments and California Environmental Quality Act Categorical Exemption, September 14, 2023
- Exhibit 11a Public comments received for the November 9, 2022 Public Engagement Meeting
- Exhibit 11b Public comment received for Planning Commission hearing, September 21, 2023
- Exhibit 12 “There Will be Blood: Decommissioning California’s OilFields”; Carbon Tracker, D. Purvis, May 2023