



April 28, 2015

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

RE: County Counsel Opinion on Antiquated Oil and Gas Conditional Use Permits

Dear Honorable Supervisors:

On behalf of Central Coast Alliance United for a Sustainable Economy (“CAUSE”), Citizens for Responsible Oil and Gas (“CFROG”), Sierra Club, Los Padres Chapter, and Ventura Audubon Society, I am writing regarding Ventura County Counsel’s recent legal opinion that the County of Ventura is generally prohibited by the vested rights doctrine from imposing new conditions on “antiquated” oilfield Conditional Use Permits (“CUPs”), commonly issued in the 1950s or 1960s. Under this opinion, the vast majority of oilfield operations in the County are considered exempt from County ordinances enacted subsequent to issuance of these CUPs, as well as the California Environmental Quality Act (“CEQA”) and other modern environmental and public health laws. As addressed in detail in this letter, we believe that the opinion dramatically overstates the scope of vested rights held by the oil companies, and unlawfully prevents Ventura County from exercising its duty under the state Constitution to protect the public health, safety, and welfare of its local residents. To remedy this situation, this letter concludes with several legal and policy recommendations.

BACKGROUND

I. Ventura County Board of Supervisors Hearings and Action on Hydraulic Fracturing and Acid Well Stimulation

On December 11, 2012 the Ventura County Board of Supervisors voted to direct the County CEO and County Counsel to provide a report back to the Board regarding hydraulic fracturing (*aka*, “fracking”) of oil and gas wells in the County. *See Staff Report: Hydraulic Fracturing of Oil and Gas Wells—Request for Report Back from CEO and County Counsel and Letter from Chair to State Legislative Delegation* (December 11, 2012) (“December 11, 2012 Staff Report”). The Board cited several specific reasons for requesting the report, including: the lack of disclosure of fracking locations, fracking chemicals, potable water usage, and wastewater disposal methods; potential consumption of large amounts of potable water; potential generation of large volumes of contaminated wastewater, and the possibility that disposal of this wastewater

could contaminate land or water supplies, or induce earthquakes; risks to drinking water and agricultural aquifers from fracking chemicals; and an increase in well drilling that may not be adequately regulated to protect public health and local residents.

Subsequent to this initial vote, the Board returned to the issue of fracking on three occasions in 2013 (April 9, May 21, and December 17), while broadening its focus to also address acid well stimulation. On December 17, 2013 the Board culminated its hearing process by directing the Resource Management Agency (“RMA”) to revise the CUP Application/Questionnaire for Oil and Gas Exploration and Production to include additional questions regarding fracking and acid well stimulation treatments, use of hazardous materials, identification of water supply, and identification of liquid waste disposal methods. *See Staff Report: 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 CUP Application/Questionnaire for Oil & Gas Exploration and Production Permits* (December 17, 2013) (“December 17, 2013 Staff Report”).

II. County Counsel Opinion Regarding Antiquated CUPs and Vested Rights

The Board’s modest actions to revise the oil and gas CUP process were a welcome first step towards ushering in greater public transparency and more robust local governmental action to protect Ventura County’s natural environment and the public health and safety of local residents in the face of a potential modern day oil boom driven by fracking and acid well stimulation. The Board’s process also revealed, however, an arcane question of land use law that has enormous implications for the County’s oversight of all oil and gas operations: whether the County’s actions apply to operations governed by “antiquated” CUPs.

Although the term “antiquated CUPs” is not defined under County ordinance, Supervisors Bennett and Parks have characterized antiquated CUPs as oilfield permits issued “in the 1950s and 1960s that give carte blanche to any and all drilling and operations without any further County review, sometimes for eternity.” *Letter From Supervisors Bennett and Parks Regarding Direction to CEO and Resource Management Agency Director and Request for Legal Analysis From County Counsel Regarding Hydraulic Fracturing and Old Oilfield Conditional Use Permits.* (May 21, 2013)(“May 21, 2013 Letter”). County Counsel has provided further clarification that antiquated CUPs “do not require discretionary review for new drilling, and/or do not incorporate current ordinance requirements, and/or do not provide time limits.” December 17, 2013 Staff Report.

The Board first discussed antiquated CUPs at its April 9, 2013 hearing, where in response to questioning from Supervisor Bennett, County Counsel stated that these decades-old permits may provide oil company permittees with vested rights limiting the ability of County staff to address fracking and acid well stimulation. In an effort to better understand the issue of antiquated CUPs and vested rights, the Board directed County Counsel to provide the Board with a confidential legal analysis of options available to address those permits.

County Counsel’s opinion in response to that request (discussed in detail below) concludes that the County “has only a limited ability to address” these permits “due to the vested

rights doctrine and constitutional takings and due process principles.” *County of Ventura County Counsel Memorandum: Legal Analysis of Antiquated Conditional Use Permits* (Undated).

Under the opinion, the recent changes made to the CUP application/questionnaire to provide the public and decisionmakers with basic information concerning fracking and acid well stimulation cannot be applied to proposed drilling or redrilling within the boundaries of antiquated CUPs. Indeed, County Counsel’s opinion precludes the application of any local ordinances, or modern environmental laws such as CEQA, enacted subsequent to the issuance of a CUP considered “antiquated.” In essence, the laws governing oil and gas operations within antiquated CUPs are frozen at the time the permits were initially issued, in some cases more than a half century ago.

III. Antiquated CUPs Govern the Vast Majority of Oil and Gas Operations in Ventura County

Although County Counsel’s opinion concludes that antiquated CUPs provide sweeping vested rights to oil companies, it does not provide any specific information or details regarding the permits. In an effort to remedy the dearth of information regarding the prevalence and location of antiquated CUPs in Ventura County, EDC researched recent state well records issued by the state Division of Oil, Gas & Geothermal Resources (“DOGGR”).

Specifically, EDC reviewed monthly DOGGR well records during the two-year time period from April 2012 to April 2014. This time period was chosen to coincide with the scope of analysis contained in Planning Director Kim Prillhart’s April 29, 2014 memorandum to Supervisor Bennett entitled *Discussion of Permit Processing of Oil and Gas Projects*, which lists all oil and gas discretionary permits granted by the County during that time period. According to the Director’s memorandum, the County approved one CUP, three CUP modifications, and five Permit Adjustments (PAJs) or Site Plan Adjustments (SPAJs) during this time. **In total, Ventura County RMA staff exercised discretionary review and authorization of 23 new or redrilled oil wells from April 2012 to April 2014.**

In marked contrast, according to our review of DOGGR monthly records, that state agency issued permits for 430 new or redrilled oil wells in Ventura County during the same April 2012 to April 2014 timeframe. Accordingly, due to the policy outlined in the County Counsel opinion that no discretionary authority can be exerted over antiquated CUPs, **only five percent of wells drilled within Ventura County during the same two year period underwent discretionary review by the County. Nearly 95% of wells drilled or redrilled—more than 400 in a two year period—were approved without discretionary County review or adherence to the requirements of modern zoning ordinances, or the recently enacted well stimulation public notification and information requirements.** Indeed, the overwhelming scope of the antiquated CUP doctrine as applied by County Counsel is largely rendering local ordinances meaningless in relation to oil and gas development.

DOGGR’s well permit records reflect that the 430 permits have been issued in 19 oil fields within Ventura County. *See* Attachment 1 (Table). We have further organized these 19 oil fields into seven general regions. *See* Attachments 2 (Table) and 3 (maps)¹. These seven regions

¹ All maps created by Vickie Peters.

are: (1) the Santa Clara River Valley; (2) adjacent to the Ventura River and residential areas bordering Ventura Avenue; (3) in the upper Ojai Valley; (4) coastal areas in the northern portion of the County and at Ventura Harbor; (5) in the Oxnard Plain; (6) in the Simi Valley Region; and (7) in the Sespe-Piru region, largely surrounded by Los Padres National Forest lands. These fields are located in geographically distinct and socially diverse regions, from highly urbanized neighborhoods to remote and largely undisturbed natural areas, with numerous fields located in both coastal and inland regions. Accordingly, the effects of oil production generally, and hydraulic fracturing and acid well stimulation in particular, potentially impact Ventura County's most precious and vital natural habitats, as well as many of its human communities, most notably those bordering and interspersed with the Ventura and Oxnard oil fields, two of the County's three most active oil fields. These communities are predominantly lower income with majority Latino populations, raising significant environmental justice concerns.

LEGAL ANALYSIS AND DISCUSSION

County Counsel's legal analysis regarding antiquated CUPs has been made partially available to the public. *See County of Ventura County Counsel Memorandum: Legal Analysis of Antiquated Conditional Use Permits.* That opinion concludes that the County's "ability to impose new conditions on antiquated oilfield permits is very limited" due to the vested rights doctrine and associated procedural and substantive due process protections. Specifically, the analysis concludes that "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."

County Counsel's opinion simultaneously provides an unduly broad interpretation of the vested rights doctrine and an overly narrow interpretation of the County's duty and responsibility to exercise its police powers as provided for by the California Constitution. Under the opinion, oil and gas companies are being provided exemptions to local laws and ordinances that are breathtaking in scope, and perpetual in application. Contrary to County Counsel's opinion, the vested rights doctrine does not serve as a monolithic, blanket prohibition to changes in the CUPs that govern oil and gas operations in the County.

I. Under County Counsel's Opinion, Ventura County Oil and Gas Operations are Largely Exempt from Modern Land Use Ordinances and Laws Enacted to Protect Public Health and the Environment

Under County Counsel's opinion, oil operations within the boundaries of antiquated CUPs are essentially frozen in time, governed by World War II-era local ordinances that are exceedingly general and vague, and that predate most modern land use enactments by several decades. Indeed, as it appears that most of the antiquated CUPs were issued in the 1950s and 1960s, they are largely governed by the original Ventura County Zoning Ordinance, enacted on March 18, 1947. According to the County's own characterization, this initial Zoning Ordinance "provided little regulation . . . bears little resemblance to modern-day zoning ordinances, and has undergone numerous amendments since 1947." Ventura County Non-Coastal Zoning Ordinance (VNCZO), at iii (Background and History).

Ordinance amendments specifically addressing the regulation of oil and gas exploration and production were not promulgated in detail until nearly 30 years later, during the 1970s.² This era witnessed a powerful groundswell of environmental legislation at the state and federal levels, in response to increasing public concern for environmental issues and catalyzed by disasters such as the 1969 Santa Barbara oil spill. As noted by the County, these laws as well as new laws governing General Plans and other elements of local land use planning “led to further expansions of the Ordinance.” *Id.*

In the 1980s, the Zoning Ordinance was further amended to strengthen “the County’s ability to regulate oil and mining activities.” *Id.* The purpose of this amendment was “to establish reasonable and uniform limitations, safeguards, and controls for oil and gas exploration and production facilities and operations within the County which will allow for the reasonable use of an important County resource.” VNCZO, Sec. 8107-5.1. The amendment was further intended to “ensure that development activities will be conducted in harmony with other uses of the land within the County and that the rights of surface and mineral owners are balanced.” *Id.*

To this end, the code includes oil development guidelines crafted to “help ensure that oil development projects generate minimal negative physical impacts on the environment,” VNCZO, Sec. 8107-5.5, and oil development standards providing “minimum standards and requirements” in relation to setbacks, waste handling, creeks and other water courses, noise and visual standards, site restoration, and other requirements. VNCZO, Sec. 8107-5.6.

All of these Zoning Ordinance amendments reflect modern land use planning principles and requirements intended to protect the public’s interests, property, and overall health and safety from the impacts of oil exploration and development. Under County Counsel’s antiquated CUP legal opinion they are, and will remain, inapplicable to nearly all oil development that occurs in the County.

County Counsel’s expansive interpretation of vested rights also impacts the application of modern state and federal environmental laws. For example, by concluding that oil companies can operate within the boundaries of CUPs in perpetuity without additional discretionary approvals, the County is eliminating environmental review and analysis triggered by such approvals under CEQA, the California Coastal Act, and other laws. EDC’s review of documents provided by the state Office of Planning and Research, for example, demonstrates that Ventura County has only rarely (in three instances) prepared an Environmental Impact Report (“EIR”) under CEQA for proposed oil and gas projects. Almost without exception, the environmental and public health impacts and risks of oil and gas drilling in Ventura County have never been carefully considered under CEQA.

² Oil and gas exploration and production is defined under the Zoning Ordinance as the “drilling, extraction, and transportation of subterranean fossil gas and petroleum, and necessary attendant uses and structures, but excluding refining, processing or manufacturing thereof.” VNCZO, Sec. 8102-0.

The County's failure to exert its police power authority also has potential implications under federal environmental law. The Endangered Species Act ("ESA"), for example, was enacted in 1973 to protect and recover imperiled wildlife and plants, placing strong limitations on individual and governmental actions that imperil or kill threatened and endangered species. Ventura County oil fields lie within and adjacent to occupied habitat for numerous species listed under the ESA, including the California condor, Southern California steelhead, and least Bell's vireo. Under the ESA's stringent protections, local governments have been held liable for the "take" of endangered species where local ordinances allowed behavior that in turn harmed endangered species. *Loggerhead Turtle v. County Council of Volusia County, Florida*, 148 F.3d 1231 (11th Cir. 1998). By abandoning its police power authority to regulate oil and gas operations, Ventura County is leaving itself vulnerable to claims that its ordinances are "harmfully" inadequate under the ESA.

II. County Counsel's Application of the Vested Rights Doctrine is Unlawfully Broad

In the state's seminal vested rights case *Avco Community Developers, Inc. v. South Coast Regional Comm.* (1976) 17 Cal. 3d 785, 791, the California Supreme Court held that a property owner who has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit or other governmental approval can be exempted from subsequent changes in law governing use of the property.³ While affirming the existence of the vested rights doctrine in California, the *Avco* decision also expressly recognized that providing such protections to private economic interests inherently comes at a cost to the broader public interest. *Id.* at 797-98 (noting that doctrine could result in "serious impairment of the government's right to control land use policy . . . [and result in] an exemption of indeterminate duration from the requirements of any future zoning laws.").

Accordingly, subsequent judicial decisions have consistently held that the vested rights doctrine may only be invoked in "extraordinary circumstances," and even in those cases must be applied as narrowly as possible so as not to undermine the vital role of local police powers in protecting the local environment and public health and safety. *Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal. App. 3d 965, 975 (vested rights doctrine may only "be applied against the government where justice and fairness require it"); *Smith v. County of Santa Barbara* (1992) 7 Cal. App. 4th 770, 775 (estoppel of vested rights doctrine can be invoked only in "the most extraordinary case where the injustice is great and the precedent set by the estoppel is narrow"); *Bib'le v. Committee of Bar Examiners* (1980) 26 Cal. 3d 548, 553 (courts will not apply vested rights doctrine if a significant public policy would thereby be overridden); *Toigo v. Town of Ross* (1998) 70 Cal. App. 4th 309, 321 ("We note at the outset that Toigo faces daunting odds in establishing estoppel against a governmental entity in a land use case. Courts have severely limited the application of estoppel in this context by expressly balancing the injustice

³ The California Legislature enacted two vesting rights statutes in the wake of the *Avco decision*, neither of which is applicable in this case. Gov't Code §§ 66498.1-666498.9 (vesting tentative map); Gov't Code §§ 65864-65869 (development agreement). Accordingly, the application of vested rights to Ventura County oil and gas CUPs is governed by common law.

done to the private person with the public policy that would be supervened by invoking estoppel to grant development rights outside of the normal planning and review process.”).

County Counsel’s opinion, which concludes without qualification that the vested rights doctrine prohibits any modification of antiquated CUPs, is in contravention of the Supreme Court’s *Avco* holding and subsequent cases in several specific respects, as detailed below.

A. The Vested Rights Doctrine May Only Be Applied to Specific CUPs on a Case-by-Case Basis

At its most fundamental level, County Counsel’s opinion turns the narrow application of vested rights doctrine on its head by essentially directing Ventura County RMA to provide oil and gas permittees with a *de facto, perpetual* exemption from discretionary review or application of modern County land use ordinances. This violation of vested rights doctrine is illustrated by a more detailed analysis of the state Supreme Court’s analysis and holding in *Avco*.

In *Avco*, the Court considered a developer’s claims that it had vested rights to construct a residential project based on a grading permit and final tract map, and thus was exempt from additional requirements under the subsequently enacted state Coastal Act. The Court concluded that the developer did not have vested rights where the tract map “fail[ed] to disclose the number and size of the buildings to be constructed on the tract.” *Avco*, 17 Cal. 3d at 794. Instead, the map “merely designate[d] certain areas for multiple residential use,” with applicable regulations “stated in the most general terms,” and no reference “to any identifiable buildings to be constructed on any specific lots.” *Id.* As a result, “the county did not know, much less had it approved, plans indicating such matters as the placement of the buildings to be built on the tract, the size of the proposed buildings, the number of apartments of specified size, or how high the buildings would rise . . . Indeed, it was not even clear how many units would be built on the tract.” *Id.* Due to this lack of specificity, the Court rejected the vested right claim, noting that the doctrine can only apply to building permits “to construct a specific type of building” and that without such specificity, “it would be impossible to determine the precise scope of any purported vested right.” *Id.*; *see also Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal. 3d 858, 866 (“[I]t is well established that the rights which may ‘vest’ through reliance on a government permit are no greater than those specifically granted by the permit itself.”).

In direct contravention of the *Avco* decision, County Counsel’s opinion provides no information concerning specific CUPs that are considered antiquated, the specific vested rights granted by those permits, or how those specific rights would be impaired by County ordinances enacted subsequent to the permit’s issuance. In order to properly determine the applicability of vested rights, those rights must be specifically considered and identified on a case-by-case basis. County Counsel’s opinion, in contrast, speaks only in the broadest of generalities.

B. Ventura County Oil and Gas Antiquated CUPs Are Too General to Provide Any Vested Rights

EDC’s review of the language of typical Ventura County “antiquated CUPs” indicates that their terms are far too general to meaningfully provide any vested rights under *Avco*’s rule of

specificity. Instead, these decades-old permits commonly granted permission for oil production operations in sweeping and vague language. CUP 18, for example, was issued on March 1, 1948 and authorized “the production of oil and gas on one parcel of land about five miles northwest of the City of Ventura near Dulah” (site of today’s Rincon Grubb coastal oil field). The permit further states that it authorizes “drilling for, and extraction of, oil, gas, and other hydrocarbon substances and using buildings, equipment, and other appurtenances accessory thereto including pipe lines . . .” Like the building permit at issue in *Avco*, CUP 18 contains only “the most general terms,” and does not specify well the location of wells to be drilled, building infrastructure, or oil conveyance mechanisms such as pipelines. Notably, CUP 18 and other antiquated permits are completely silent with respect to the risks and impacts posed by oil and gas operations generally, and fracking and acid well stimulation specifically, including extraction methods, chemical used, water demands, and waste generation and disposal, among others. EDC’s review of additional antiquated CUPs confirms that this lack of specificity is the rule, rather than the exception. Thus, the oil companies operating under the permits have obtained no specific vested rights to conduct new operations under the Supreme Court’s *Avco* decision.

C. County Counsel’s Opinion Improperly Applies the Vested Rights Doctrine to All Potential Governmental Action

County Counsel’s opinion further errs by ostensibly applying the vested rights doctrine to any potential governmental action taken by Ventura County, no matter how modest. As discussed above, the opinion arose in the context of the Board’s consideration of specifically regulating fracking and acid well stimulation. The County’s ultimate action in relation to well stimulation was a limited first step revision of its CUP application/questionnaire. The Board did not place any new substantive requirements or limitations on well stimulation practices, but instead merely required applicants to provide greater detail regarding their proposed operations. Nonetheless, under County Counsel’s vested rights policy, even this extremely modest measure is not being applied to more than 9 of 10 oil wells being drilled within the County. This reliance on the vested rights doctrine to bar application of this action is at odds with clear judicial precedent under *Avco* and subsequent cases that in order to protect the broader public interest, the vested rights doctrine may only be applied in extraordinary circumstances, and in as narrow a fashion as possible.

D. Vested Rights in Oil and Gas Operations Are Only Triggered by Governmental Action that Terminates the Business

The narrow application of the vested rights doctrine is particularly important in the regulation of dangerous land uses such as oil and gas development. Accordingly, courts have further narrowed the circumstances in which private interests trump the public interest within this specific context. California courts have repeatedly affirmed that in the context of oil and gas operations, vested rights are not abridged unless the governmental action *terminates or shuts down the business*. *Mobil Oil Corp. v. Superior Court* (1976) 59 Cal. App. 3d 293, 305 (“We are not presented with the enforcement of a rule which effectively drives the oil companies out of business. At most it puts an economic burden on them increasing the cost of doing business. In weighing the relative importance to individuals in the life situation, it is manifest the Oil Companies’ right to continue releasing gasoline vapors into the atmosphere is neither

fundamental nor vested.”); *Standard Oil Co. v. Feldstein* (1980) 105 Cal. App. 3d 590, 604-05 (“There is no contention that Standard will be driven to financial ruin [by the requirement to shut down one of four existing units at an oil refinery]”); *Hardesty v. Sacramento Air Quality Mgmt. Dist.* (2011) 202 Cal. App. 4th 404, 417 (“The decision of the District’s hearing board [to require an air quality permit] does not amount to the loss of Hardesty’s right to continue in business. Hardesty must first secure a permit from the District in order to do so . . . in this case, there is nothing in the administrative record to indicate that Hardesty will be driven out of business by the requirement that it secure a permit from the District.”).⁴

Application of modern land use ordinances, and policies such as the County’s revised CUP questionnaire/application, would clearly not result in the termination of any oil production, and the minimal private interest in avoiding new requirements is plainly outweighed by the public interest in disclosure of proposed oil activities and thorough analysis of public health and environmental impacts of such activities. The financial impact of these ordinances would often be nominal. In any event, finally applying County ordinances to oil companies that already apply to every other conditional use permittee in the County certainly does not raise any issues of justice or fairness. The application of the vested rights doctrine in this circumstance is a significant distortion of the doctrine’s intent and proper applicability.

III. Under County Counsel’s Opinion, Ventura County Has Unconstitutionally Delegated Its Police Power

Under County Counsel’s opinion, Ventura County is unlawfully delegating its Constitutional police powers to the oil industry. The California Constitution, Article XI, §7, provides that a “county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” This “police power” is “the power of sovereignty or power to govern,” and includes the authority and duty to protect public health, and safety of its residents. *Cotta v. City & County of San Francisco* (2007) 157 Cal. App. 4th 1550, 1557. Perhaps the most fundamental basis for all land use regulation, the police power endows governments with the authority to enact laws and regulations that reflect the ever evolving values and needs of a “modern, enlightened, and progressive community.” *Rancho La Costa v. County of San Diego* (1980) 111 Cal. App. 3d 54, 60.

Under a long line of California cases, a governmental entity may not bargain or contract away “its rights to exercise the police power in the future.” *108 Holdings v. City of Rohnert Park* (2006) 136 Cal. App. 4th 186, 194; *County Mobilehome Positive Action Comm. v. County*

⁴ It is arguable whether the vested rights doctrine even applies at all to oil and gas CUPs. Under “well-established authority,” vested rights do not attach in California “until a valid building permit, or its functional equivalent, has been issued and the developer has performed substantial work and incurred substantial liabilities in good faith reliance on the permit.” *Toigo*, 70 Cal. App. 4th at 321 (emphasis added). Ventura County oil and gas CUPs cannot qualify as a “functional equivalent” of a building permit, which is very specific and typically the last stage of local permitting. These CUPs, in contrast, are broad in scope and are followed by additional permit requirements, including County zoning clearances and state drilling (or redrilling) permits issued by DOGGR.

of San Diego (1998) 62 Cal. App. 4th 727, 736-37; *Avco*, 17 Cal. 3d at 800. The “controlling consideration” of whether the police power has been unlawfully delegated is whether the entity has surrendered its “control of a police power or municipal function.” *County Mobilehome, supra*, 62 Cal.App.4th at 738; *accord 108 Holdings*, 136 Cal.App.4th at 195.

The nondelegation of police powers doctrine most commonly arises in circumstances where the local government has purported to limit its police powers under a contractual agreement such as a legal settlement or memorandum of understanding. In this circumstance, however, the County has developed an unlawful policy under which it is applying blanket exemptions to oil operations within the boundaries of antiquated CUPs, and thus is “surrendering” its police powers to oil company permittees in similar fashion. While the terms of the CUP do not inherently delegate the County’s police powers, the County’s flawed application of the vested rights doctrine to those CUPs is in fact resulting in an unlawful pattern and practice of unlawful delegation of those powers to the oil industry.

Specifically, under County Counsel’s expansive interpretation of “vested rights,” Ventura County has ceded its police powers in relation to the vast majority of oil development occurring in the County. In the past two years alone, more than 400 wells, many presumably utilizing hydraulic fracturing or acid well stimulation have been drilled without any discretionary review or environmental analysis. County Counsel’s opinion precludes County staff from applying, in perpetuity, any modern land use ordinances or other policies to the vast majority of all oil activity, resulting in an enormous vacuum of local oversight and regulation, and an unconstitutional abdication of its police power authority. As expressly noted by County staff, additional oversight is needed to protect the local environment, and the health and safety of local residents, from an increase in oil drilling driven by fracking and acid well stimulation. *See* December 11, 2012 Staff Report. As stated by Supervisors Bennett and Parks, in “the twenty-first century, it is unacceptable to be saddled with antiquated and inadequate disclosure and regulatory oversight of new oil well drilling and construction, much less allow this situation to persist for eternity.” May 21, 2013 Letter.

POLICY RECOMMENDATIONS

The sweeping scope of legal exemptions provided to oil companies, and associated crippling restrictions on the County’s authority to apply modern land use enactments to oil field operations, comes at a critical and historic juncture in the County’s oversight of oil production. Oil companies are targeting previously inaccessible oil reserves within the Monterey Shale and other geologic formations utilizing new or modified forms of extreme well stimulation techniques including fracking and acid well stimulation. The breadth and scope of environmental and public health impacts and risks from a Monterey Shale oil boom driven by extreme oil techniques is poorly understood. As recently recognized by the California Legislature, “[i]nsufficient information is available to fully assess the science of the practice of hydraulic fracturing and other well stimulation treatment technologies in California, including environmental, occupational and public health hazards and risks.” Stats. 2013, c. 313 (S.B. 4, § 1(b)). This dearth of information continues today, as evidenced by recent independent scientific studies conducted by the California Council on Science and Technology for the federal Bureau

of Land Management (an agency with the U.S. Department of the Interior) and the state Department of Conservation, pursuant to S.B. 4.

As a matter of law, policy, and good government, the Board of Supervisors must begin asserting its inherent authority and responsibility under the police power in order to protect the local environment, and public health and safety. EDC offers the following policy and legal recommendations for the Board to achieve this goal:

- 1) Rescind the Antiquated CUP Policy: As detailed in this letter, County Counsel's blanket application of vested rights to antiquated CUPs is fundamentally flawed. The opinion should be withdrawn, and replaced with County policy that instead treats all ordinances as applicable to oil and gas CUPs unless the permittee has affirmatively shown a vested right specific to the proposed development.
- 2) Develop a Process for Claiming Vested Rights: The County should establish a specific and detailed process whereby oil companies can claim a vested right under a specific CUP, on a case-by-case basis.
- 3) Apply Current Ordinance Requirements to All Drilling and Redrilling Proposals: The County should immediately begin applying all applicable ordinances to all drilling and redrilling proposals.
- 4) Develop Schedule for CEQA analysis: Once the County begins applying applicable ordinances and treating well drilling applications as discretionary actions, other legal requirements including CEQA will also apply. As the County has generally not conducted CEQA for oil and gas operations, it will likely need to prepare several site specific Environmental Impact Reports. In order to process these analyses in a comprehensive and efficient manner, the County should develop a schedule for oil and gas CEQA analysis.
- 5) Consult with Appropriate State and Federal Agencies to Ensure Compliance with Modern Environmental Laws: The County's longstanding failure to oversee oil operations within boundaries of antiquated CUPs has also circumvented compliance with other state and federal laws. The County should consult with appropriate agencies to ensure that oil operations are in legal compliance with environmental laws. These consultations include, but are not limited to: 1) U.S. Fish and Wildlife Service and National Marine Fisheries Service (federal Endangered Species Act); 2) California Department of Fish and Wildlife (state wildlife and stream protection laws); 3) California Coastal Commission (California Coastal Act); and 4) State Water Resources Control Board, and Los Angeles Regional Water Quality Control Board (Clean Water Act and state water quality laws).

CONCLUSION

Thank you for your careful consideration of this letter and recommended policy and legal actions. We respectfully request that your Board of Supervisors initiate the appropriate

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proceedings to implement these recommendations as quickly as possible. Although we hope to resolve our disagreement regarding the application of the vested rights doctrine to oil and gas CUPs in the cooperative spirit in which this letter is provided, we will seek judicial recourse if Ventura County continues to exempt oil and gas operations from the application of modern environmental laws and ordinances intended to protect Ventura County's local environmental and the health and safety of its local residents.

Sincerely Yours,

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

Brian Segee
Senior Attorney

Attachment 1
Regions and Oil Fields Contained Within
Antiquated CUPs

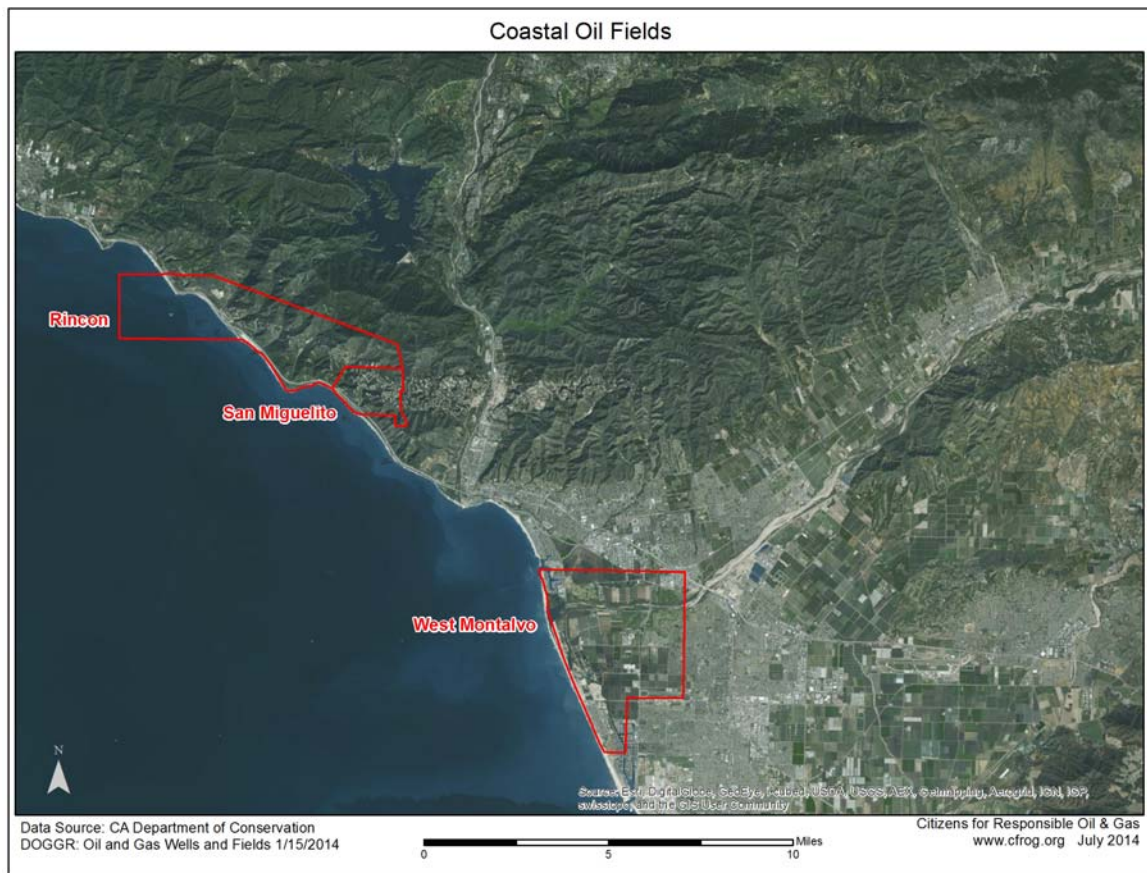
- 1) Coastal Oil Fields (3): Rincon, San Miguelito, West Montalvo
- 2) Ojai Valley Oil Field (1): Ojai
- 3) Oxnard Plains Oil Field (1): Oxnard
- 4) Santa Clara River Valley Fields (8): Bardsdale, Fillmore, Oakridge, Saticoy, Shiells Canyon, South Mountain, Torrey Canyon, West Mountain
- 5) Sespe/Piru Oil Fields (4): Hopper Canyon, Piru Creek, Sespe, Temescal
- 6) Simi Valley Region Oil Field (1): Oak Park
- 7) Ventura River Valley Field (1): Ventura

Attachment 2
DOGGR Permits Issued for Ventura County Oil Drilling, April 2012-April 2014
Organized by Oil Field

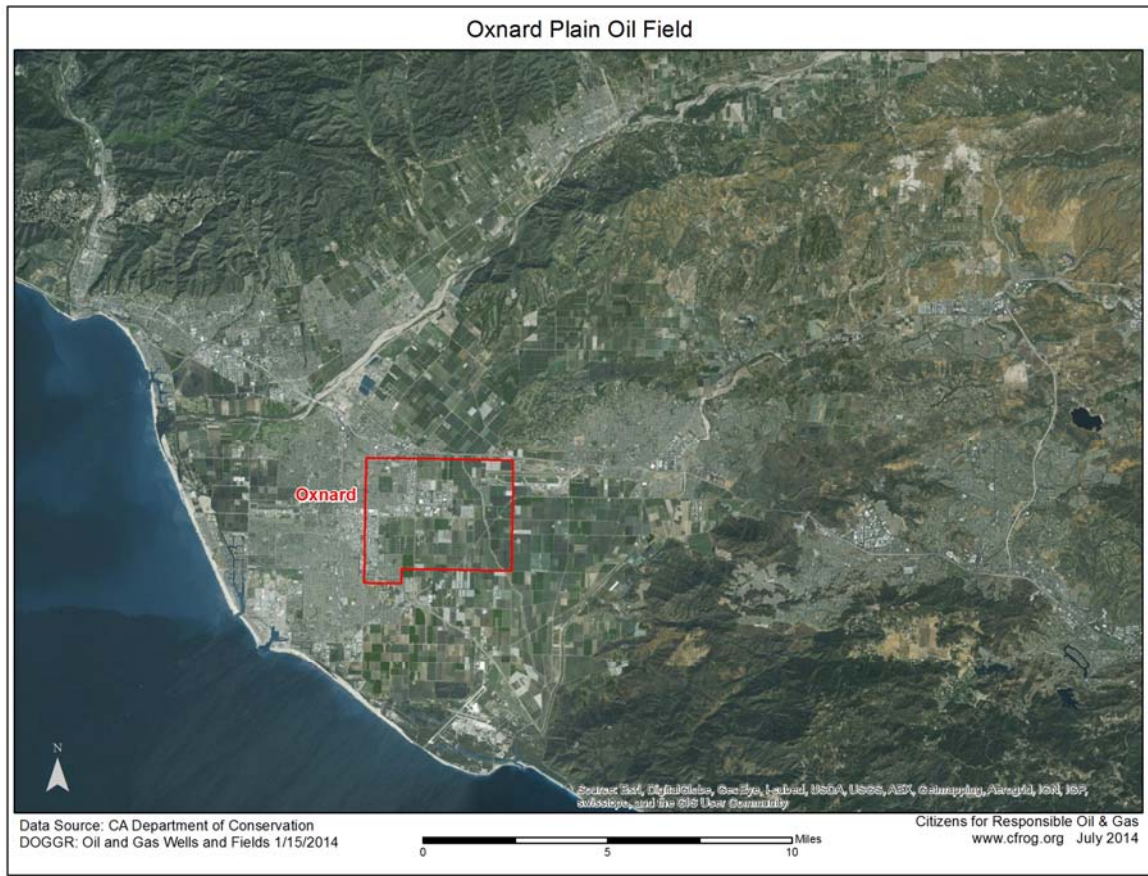
Oil Field	Number of DOGGR permitted wells
Bardsdale	15
Fillmore	3
Hopper Canyon	3
Oak Park	3
Oakridge	10
Ojai	11
Oxnard	40
Piru Creek	1
Rincon	30
San Miguelito	36
Saticoy	2
Sespe	23
Shiells Canyon	7
South Mountain	47
Temescal	13
Torrey Canyon	6
Ventura	166
West Montalvo	13
West Mountain	1

Attachment 3 Maps

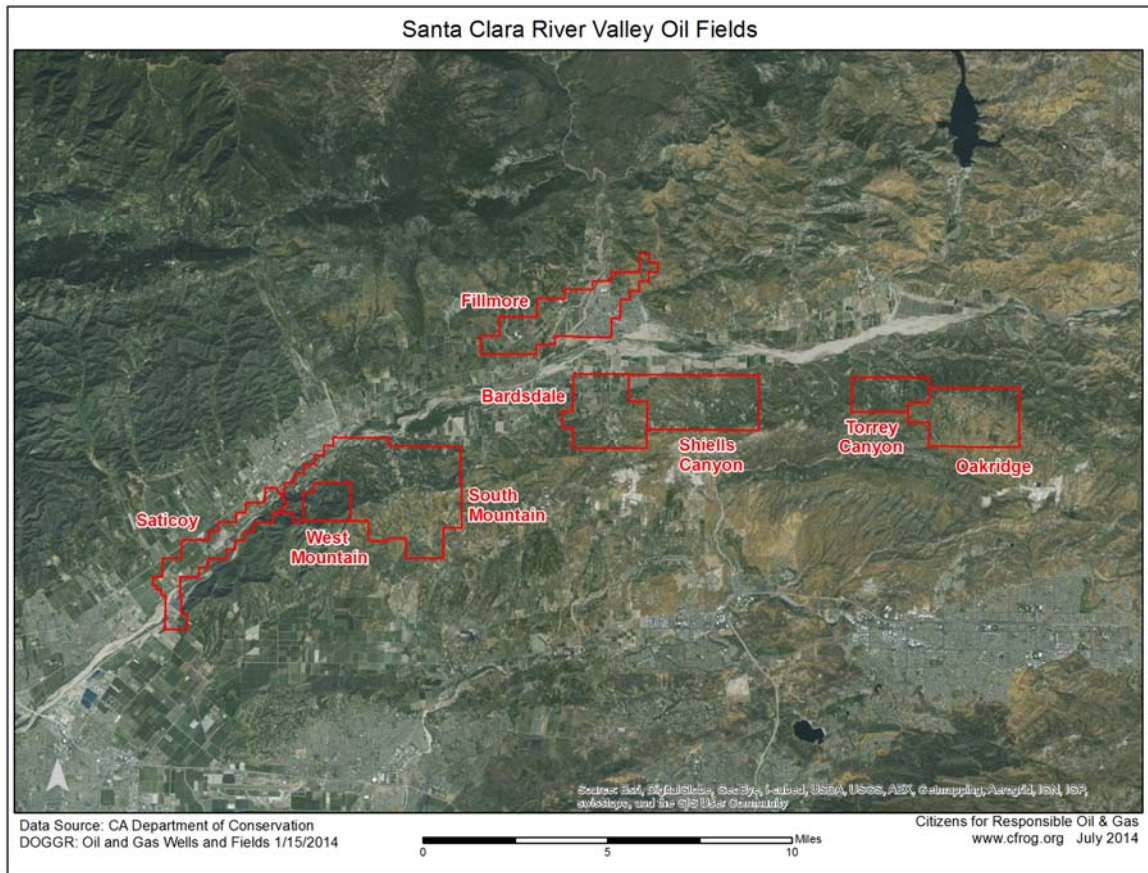
Map 1



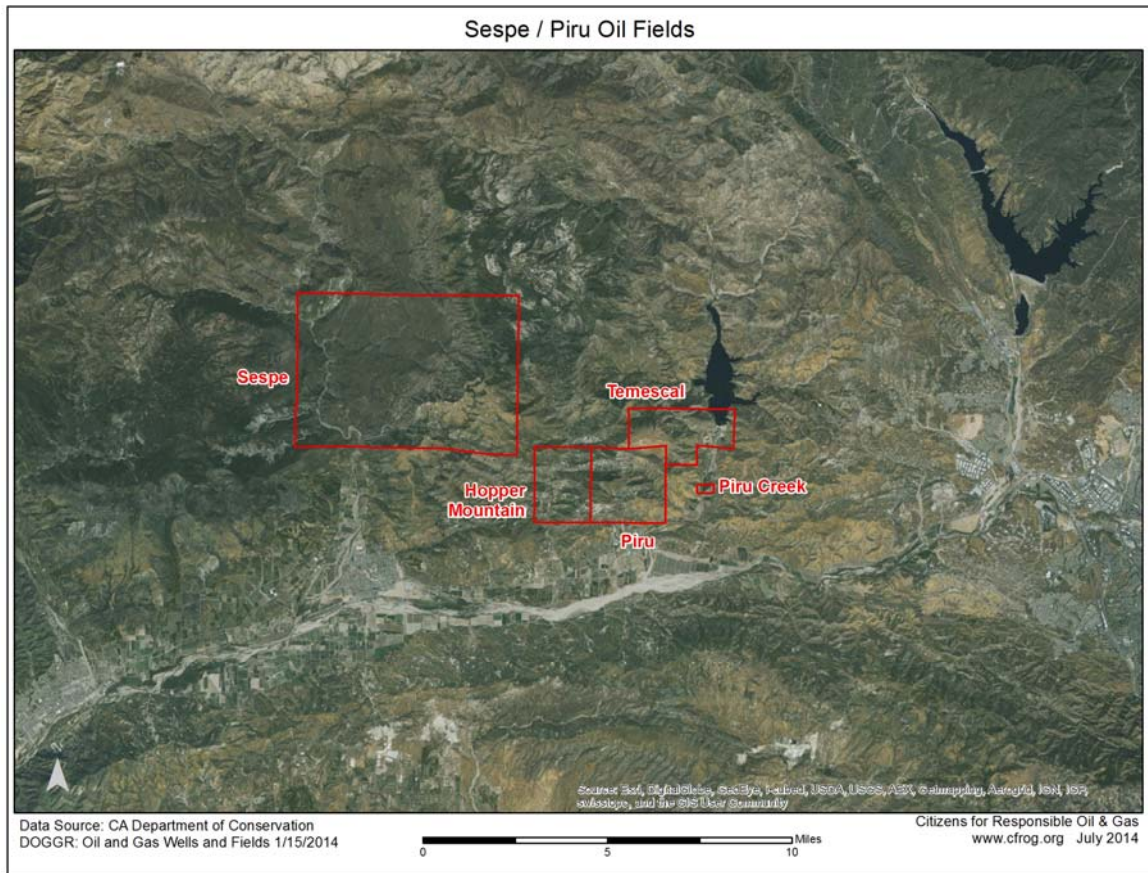
Map 3



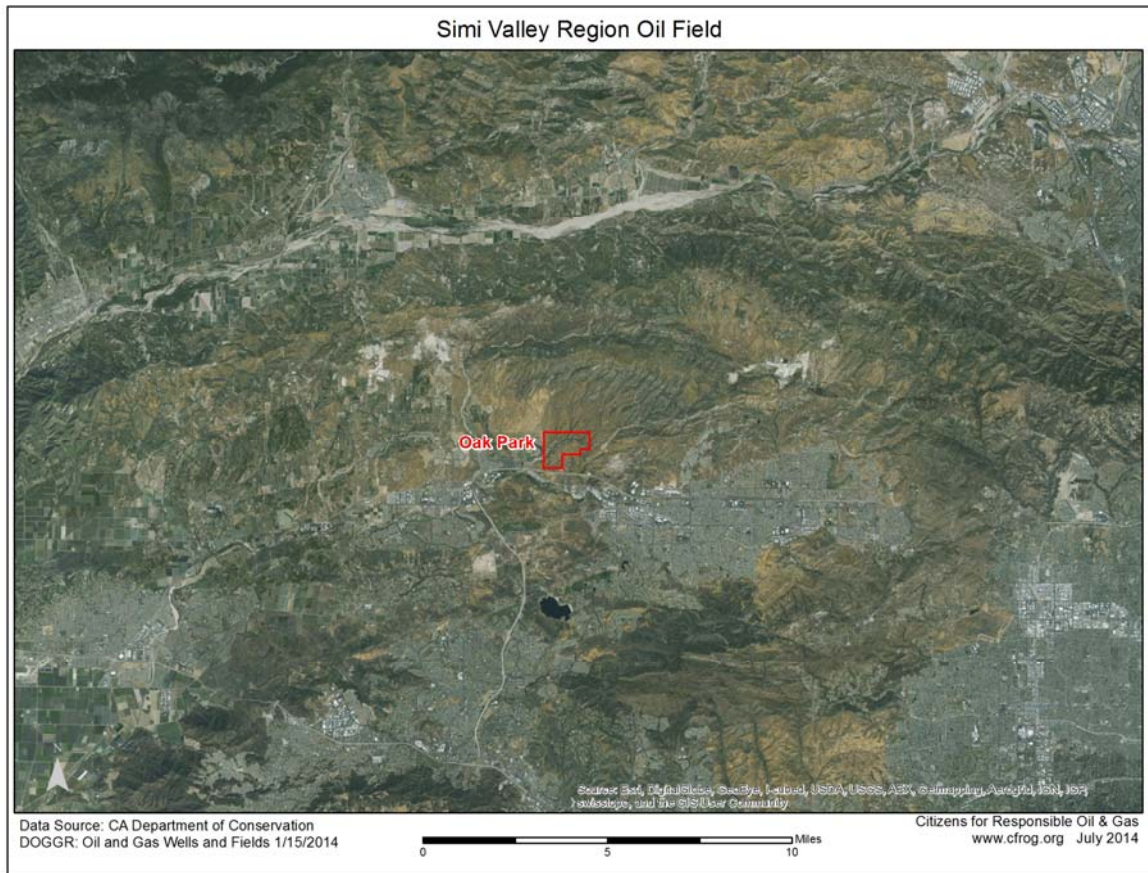
Map 4



Map 5



Map 6



Map 7

