

New Developments Affecting Ventura County Oil & Gas Activities

Throughout 2019-2020, Ventura County (“County”) has been considering significant changes to its General Plan and Non-Coastal Zoning Ordinance in an effort to limit oil and gas activities in the County. Earlier this week, the County Board of Supervisors (“Board”) adopted an updated General Plan, referred to as the “2040 General Plan,” with policies and plans that will negatively impact current and future oil and gas activities in unincorporated areas of the County. The Board also announced a new date for a “de-novo” public hearing (November 10, 2020) to consider changes to permitting requirements for oil and gas activities under the County’s Non-Coastal Zoning Ordinance. Both of these developments are discussed further below.

Other jurisdictions seeking to limit or eliminate oil and gas operations surely will closely watch how things develop in response to the actions taken by Ventura County. The oil and gas industry as a whole should be concerned because the actions taken by Ventura County may set precedent for whether actions like this are lawful.

General Plan Update Seeks to Stop Oil & Gas Projects

On September 15, 2020 with a 3 to 2 vote, the Board adopted the 2040 General Plan to establish new County-wide policies and plans related to land uses including oil and gas activities.¹ Specifically, the 2040 General Plan includes a policy “to reduce dependency on petroleum-based energy sources.”

(Policy COS-8.1). Consistent with this policy, the 2040 General Plan contains the following policies and plans that will impact oil and gas activities in the County:

- **Setback Requirement.** The 2040 General Plan establishes a 1,500-foot setback from residential dwellings and a 2,500-foot setback from schools for new wells. (Policy COS 7.2). The Board also considered requiring a larger setback from residential dwellings. Instead of imposing a larger setback at this time, the 2040 General Plan now requires the County to study a 2,500-foot setback by 2022 for a potential future General Plan amendment. (Program COS-NN).

Legal Challenges to the 2040 General Plan

The County’s adoption of the 2040 General Plan arguably violates CEQA on several grounds. For example, the policies would significantly impact access to mineral resources within the County. The County, however, did not adopt mitigation measures or consider alternatives to lessen this significant impact as required by CEQA. Further, the County did not provide any data or other scientific basis to establish the setback distance.¹

The setback requirement arguably could also be an unconstitutional taking because the requirement may completely preclude the development of minerals in certain situations. Mineral owners and lessees have a constitutionally protected property right to develop their minerals. Accordingly, the County may be required to compensate mineral owners and lessees if the County prevents access to mineral rights.

¹ “2040 General Plan,” Conservation and Open Space Element, Section 6.6 Oil and Gas Resources, available through the Board Sept. 15, 2020 [Agenda](#). See also “2040 General Plan CEQA Findings and Statement of Overriding Considerations”, pp. 54-59, available through the Board Sept. 15, 2020 [Agenda](#), for the County’s findings related to CEQA compliance and impacts on mineral resources.

- **No Trucking of Oil and Produced Water.** For new wells, the 2040 General Plan requires the use of pipelines to convey oil and produced water. Trucking of oil and produced water from new wells will be prohibited even if the use of pipelines is not feasible. (Policy COS 7.7).
- **Flaring/Venting Prohibition.** The 2040 General Plan prohibits flaring or venting of natural gas on new wells, except for emergencies and testing purposes. (Policy COS 7.8).
- **Taxes.** The original proposed 2040 General Plan required the County to evaluate the feasibility of establishing a local tax on new oil and gas operations in the unincorporated County. The Board extended this feasibility study to a local tax on all (i.e. existing and new) oil and gas operations located in the unincorporated County. (Program COS-M: Oil and Gas Tax).

Oil and gas operators should expect to see the development of additional policies and plans that seek to restrict oil and gas operations in Ventura County given the County's overall goal of reducing dependency on petroleum-based energy. These policies and plans may be adopted in future General Plan amendments or, as discussed further below, through zoning ordinance amendments.

Zoning Ordinance Amendments Target Vested Permit Holders

In addition to using the General Plan to stop oil and gas activities, the County has been reviewing a proposal to amend its Non-Coastal Zoning Ordinance. The proposal would add new permitting

Written Comment Deadline:

Nov. 9, 2020 at 3:30 p.m.

Public Hearing Date: Nov. 10, 2020

Subject to change; consult the [Board website](#) for hearing date changes and the process for submitting written comments

requirements for oil and gas activities currently operating under County permits issued prior to the 1960s. The Board recently changed the “de-novo” public hearing date for this proposal to November 10, 2020.² The deadline for submitting written comments is 3:30 p.m. on November 9, 2020. The Planning Commission has already recommended adoption of the proposal at a July 30, 2020 Commission meeting.³ By conducting a “de-novo” hearing, however, the Board will consider the amendments

anew and is not bound by the Commission's decision.

From the County's perspective, “the County's zoning ordinances do not clearly establish the process and permitting mechanism for operators' requests to conduct new or expanded oil and gas development” under these existing permits.⁴ The County has historically processed a request for new activities under these permits through a ministerial zoning clearance process.⁵ This ministerial process does not include any exercise of discretion by the County and does not require environmental review.⁶

² “Future Items to Be Scheduled” as disclosed on the September 22, 2020 Draft Board Agenda, available [here](#).

³ See *Archived RMA Planning Commission Videos, July 30, 2020*, available [here](#).

⁴ See *Ventura County Planning Commission Staff Report for PL20-0052, pp. 2-3*, available [here](#).

⁵ *Id.*

⁶ *Id.* at p. 5.

The proposed zoning amendments seek to change this existing approach by:

1. Requiring discretionary approval of a new conditional use permit or a discretionary permit adjustment for new oil and gas development regardless of the age of the underlying permit;
2. Requiring environmental review of the proposed new development, even though the underlying permit may not have been subject to environmental review; and
3. Requiring that all new development must meet the County's general permit approval standards.

Legal Challenges to the Zoning Ordinance Amendments

These proposed amendments would significantly broaden the County's authority to regulate activities subject to permits that were already validly issued by the County. This broader authority violates the permit holders' vested and constitutionally protected right to operate under those permits, which the County has previously recognized in a memorandum from its former County's Counsel's office.

The approval process for the Non-Coastal Zoning Ordinance amendments could also potentially be challenged because the County did not prepare any environmental review of the amendments as required by CEQA. Instead, the County has argued that the proposed amendments are exempt from CEQA review because the County views the amendments as protecting the environment.⁷ This argument, however, fails to recognize that CEQA defines the "environment" to include mineral resources. Consequently, CEQA requires the County to review the amendments' potential impact on mineral resources.

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⁷ See the Staff Report described in Footnote No. 4 for the County's position on environmental review.