

Planning Commission Resolution

BEFORE THE PLANNING COMMISSION
COUNTY OF KERN, STATE OF CALIFORNIA

In the matter of:

RESOLUTION NO. 103-15

APPLICATION FOR REVISIONS TO THE KERN COUNTY ZONING ORDINANCE – 2015 (C)

Countywide

Kern County Planning and Community Development Department;
Western State Petroleum Association (WSPA); California Independent Producers Association; (CIPA); Independent Oil Producers Agency (IOPA)

FINDINGS AND DETERMINATION

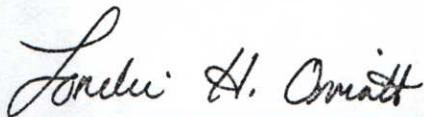
I, Lorelei H. Oviatt, Secretary of the Planning Commission of the County of Kern, State of California, do hereby certify that the following resolution, proposed by Mr. Louie, seconded by Mr. Babcock, was duly passed and adopted by said Planning Commission at an official meeting hereof this **5th** day of **October, 2015**, by the following vote, to wit:

AYES: Babcock, Garcia, Louie, Sprague

NOES: None

ABSTAINED: None

ABSENT: Poole



**SECRETARY OF THE PLANNING COMMISSION
COUNTY OF KERN, STATE OF CALIFORNIA**

R E S O L U T I O N

SECTION 1. WHEREAS:

(a) Pursuant to the California Government Code, Title 7, Section 65000, et seq. (known as the Planning and Zoning Law), the Kern County Board of Supervisors has adopted the Official Land Use and Zoning Ordinance for the County of Kern (Ordinance Code of Kern County, Chapter 19.02, et seq.), herein called the Zoning Ordinance; and

(b) The Zoning Ordinance establishes various classes of zones, prescribes land uses and regulations for the various zones, and adopts zoning maps for the purposes of dividing the County into zones and showing the zone boundaries; and

(c) The Zoning Ordinance regulates the use of buildings, structures, and land, as between agriculture, industry, business, residence, and other purposes, and other uses more specifically set forth in Section 65850 of said Government Code; and

(d) The Kern County Planning and Community Development Department, acting on behalf of the Kern County Board of Supervisors, with technical assistance from Western State Petroleum Association (WSPA), California Independent Producers Association; (CIPA), and Independent Oil Producers Agency (IOPA) as applicants, initiated recommended changes in regulations and standards affecting the use of property in the manner prescribed by Chapter 19.112 of the Zoning Ordinance; and

(e) The Secretary of this Commission has caused notice to be duly given of a public hearing in this matter in accordance with law, as evidenced by the affidavit of publication and the affidavit of mailing on file with the Secretary of this Commission; and

(f) Said Notice of hearing stated that an Environmental Impact Report has been prepared for this project; and

(g) Said public hearing has been duly and timely conducted, during which the proposal was explained by a representative of the Planning and Community Development Department and all persons so desiring were duly heard; and

(h) Before making any findings on said EIR or any consideration of the proposal on its merits, this Commission called for any objections or comments on said EIR; and The Director of the Planning and Community Development Department has furnished to this Commission, and the Commission has incorporated into the record of this matter, a document setting forth the significant environmental effects identified in said Environmental Impact Report, with proposed findings and consideration by this Commission in relation to said significant effects for the purposes of Section 21081 of the Public Resources Code and Section 15091 of the State CEQA Guidelines, and setting forth evidence in support of the proposed findings; and a member of the Planning and Community Development Department Staff appeared before the Commission and gave additional testimony in support of the proposed findings; and

During said hearing, this Commission duly considered the adequacy and scope of said Environmental Impact Report and thereafter reviewed and considered the information therein contained with respect to the merits of the matters under consideration; and

(i) This Commission has considered the recommendation of the Planning and Community Development Department and all the testimony presented during said public hearing, after which said public hearing was concluded.

SECTION 2. NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the County of Kern, as follows:

(a) This Commission finds that the facts recited above are true and that this Commission has jurisdiction to consider the subject of this resolution; and

(b) This Commission has fully reviewed and considered the information in said Environmental Impact Report and Mitigation Measure Monitoring Program and hereby recommends it to be certified in relation to the subject of this resolution and, after careful consideration of all facts and evidence as presented at said hearing, it is the decision of the Planning Commission that the application herein described be, and hereby, recommends the Board of Supervisors C E R T I F Y said Environmental Impact Report and A D O P T Mitigation Measure Monitoring Program (Exhibit D) and A P P R O V E, as recommended by Staff, the application for the reasons specified in this Resolution; and

(c) The findings of this Commission upon which its decision is based are as follows:

(1) This project is recommended for approval despite the existence of certain significant environmental effects identified in said Environmental Impact Report, and the Planning Commission makes and adopts the findings with respect to each thereof set forth in Exhibit B, appended hereto and made a part hereof by reference, pursuant to Section 15091 of the State CEQA Guidelines (Title 14, Administrative Code) and Section 21081 of the Public Resources Code and declares that it considered the evidence described in connection with each such finding in Exhibit B and that such evidence is substantial and supports such finding.

This Commission acknowledges that approval of this project will produce certain environmental impacts which cannot be mitigated and, in accordance with Section 15093 of the State CEQA Guidelines (Title 14, Administrative Code) hereby recommends the Board of Supervisors adopt a Statement of Overriding Considerations set forth in Exhibit C, appended hereto, and made a part hereof, which summarizes the reasons why this project, despite certain environmental impacts, has been approved.

Said Environmental Impact Report is complete and adequate in scope and has been completed in compliance with the California Environmental Quality Act and with the State CEQA Guidelines and the Kern County Guidelines for implementation thereof.

- (2) Approval of this project shall not be considered operative, vested, or final until such time as the required verification from the Office of the County Clerk is submitted, attesting that payment of fees for the filing of a "Notice of Determination" for the benefit of the California Department of Fish and Game, as required by AB 3158 (Section 10005 Public Resources Code) have been paid.
- (3) Adoption of the Zoning Ordinance text changes (Exhibit A) and recommended changes to Section 19.98.145 by Staff in the Addendum Staff Report (10/05/2015) is necessary to promote the public health, safety and welfare of Kern County's residents and communities while providing permit streamlining for Oil and Gas Activities in the County.
- (4) Adoption of the Zoning Ordinance text changes include additional procedures and compliance standards that address changes in laws and regulations by other agencies, and technological advancements within the oil and gas industry, for the purpose of reducing or eliminating potential significant adverse environmental impacts, to the extent feasible, of future oil and gas activities, and thereby ensure that current County ordinances reflect the County's interest in protecting the health, safety, and general welfare of residents and visitors.
- (5) The changes implement the Board of Supervisor's policy direction to encourage ongoing economic development by the oil and gas industry that creates quality, high paying jobs and the promotion of capital investment in Kern County, which enables the County to invest in capital improvement projects and social programs, which benefit County residents, retail businesses, and capital industries which ensures the County's fiscal stability.
- (6) Adoption of the Zoning Ordinance text changes continue Kern County's ongoing commitment to consult and cooperate with federal, state, regional, and local agencies by periodically reviewing adopted regulations to ensure the long-term viability of Kern County's resources.
- (7) Adoption of the Zoning Ordinance text changes will continue to improve and streamline current energy regulations and support efficient permitting at the State and Federal level for Oil and Gas activities. Protect areas of important mineral, petroleum, and agricultural resource potential for future use by promoting sustainability and encouraging best management practices, which are mutually beneficial, through strategic short- and long-range planning. Ensure the protection of environmental resources by emphasizing the conservation of productive agricultural lands, the encouragement of planned urban growth, the promotion of clean air strategies to address existing air quality issues, and the promotion of long term water conservation strategies which will ensure the quality and adequacy of surface and groundwater supplies for future growth of all of Kern County's industries.
- (8) Adoption of the Zoning Ordinance text changes will contain new development within an area large enough to meet generous projections of foreseeable need, but in locations that will not impair the economic strength derived from residential developments, agriculture, rangeland, mineral resources, or diminish the other amenities that exist in Kern County; and

(d) The Secretary of this Commission shall cause copies of this resolution to be transmitted to the following:

Kern County Planning and Community Development Department; (applicant) (1)

State of California Department of Conservation/Division of Oil, Gas, and Geothermal Resources (1)
State of California California Regional Water Quality Control Board (1)
State of California Department of Fish and Wildlife (1)
San Joaquin Valley Air Pollution Control District (1)
Western State Petroleum Association (WSPA); (applicant) (1)
California Independent Producers Association; (CIPA); (applicant) (1)
Independent Oil Producers Agency (IOPA) (applicant) (1)
File (3)

jvc

**SUMMARY OF PROCEEDINGS
KERN COUNTY PLANNING COMMISSION**

Chambers of the Board of Supervisors
Kern County Administrative Center
1115 Truxtun Avenue
Bakersfield, California

Regular Meeting

Monday, **October 5, 2015** - 5:00 p.m.

COMMISSION CONVENED

4 Present
1 Ab/Po

Both Present

Advisory Members: Hall, Deputy County Counsel
Oviatt, Director, Planning and Community Development Department

NOTE: Ba, Ga, Lo, Po, and Sp are abbreviations for Commissioners Babcock, Garcia, Louie, Poole, and Sprague, respectively. For example, Ba/Sp denotes Commissioner Babcock made the motion and Commissioner Edwards seconded it. The abbreviation "Ab" means absent and "Abd" abstained.

CA-CONSENT AGENDA: Items Approved by Roll Call Vote on One Motion

COMMISSION MEMBER ANNOUNCEMENT OR REPORTS: None

APPROVAL OF MINUTES: None

PUBLIC HEARINGS:

NEW CASE:

Lo/Ba
4 Ayes
1 Ab/Po

Res. #103-15

1. (1) Zoning Ordinance Revisions - 2015 C - (1) Revisions to the Kern County Zoning Ordinance – 2015(C). Proposed text amendments to various Chapters of Title 19 (Kern County Zoning Ordinance) to implement a new land use approval process for oil and gas exploration, extraction, operations, and production activities. Proposed revisions include, but not limited to, new site development standards and review processes through the following: (a) Recinding the “Unrestricted Drilling” Section in Chapter 19.98 and amending the “Drilling by Ministerial Permit” and “Drilling by Conditional Use Permit” Sections; (b) Adding new “Tier Area” maps to identify scope of existing and future oil and gas activities and type of permit required; (c) Adding an Oil and Gas Conformity Review and Minor Activity Review, as part of the “Drilling by Ministerial Permit” Section, to ensure compliance with new proposed Implementation Standards and Conditions; (d) Adding new Implementation Standards and Conditions Section; (e) Adding requirement for property owner signature on plans with split estate ownership; and (f) Revising various Chapters within the Zoning Ordinance to ensure consistency with proposed requirements of Chapter 19.98. These Chapters include:

- 19.08 - Interpretations and General Standards;
- 19.48 - Drilling Island (DI) District;
- 19.50 - Floodplain Primary District;
- 19.66 - Petroleum Extraction (PE) Combining District;

- 19.81 - Outdoor Lighting (Dark Skies Ordinance);
- 19.88 - Hillside Development;
- 19.102 - Permit Procedures; and
- 19.108 - Nonconforming Uses, Structures, and Lots;

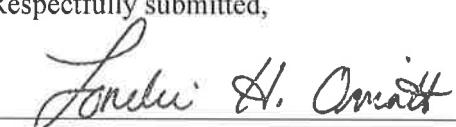
(2) Several sites within the Project Area are listed by CalEPA on the Cortese List, as identified in the DEIR. Draft Environmental Impact Report (<http://pcd.kerndsa.com/planning/oil-gas-zoning-amendment>) - Countywide - STAFF RECOMMENDATION: RECOMMEND THE BOARD OF SUPERVISORS CERTIFY THE ENVIRONMENTAL IMPACT REPORT; ADOPT SECTION 15091 FINDINGS AND SECTION 15093 STATEMENT OF OVERRIDING CONSIDERATIONS; ADOPT MITIGATION MEASURE MONITORING PROGRAM; ADOPT REVISED AMENDED ZONING ORDINANCE (10/05/2015) TO TITLE 19 OF THE KERN COUNTY ORDINANCE, AS RECOMMENDED BY STAFF - Environmental Review: Environmental Impact Report - (SD #All Districts) - Kern County Planning and Community Development Department; Western State Petroleum Association (WSPA); California Independent Producers Association; (CIPA); Independent Oil Producers Agency (IOPA) LORELEI H. OVIATT, AICP, DIRECTOR INTRODUCED CHRIS MYNK, SUPERVISING STAFF PLANNER, SHAWN BEYELER, STAFF PLANNER, AND JENNIFER HERNANDEZ WITH HOLLAND AND KNIGHT, OUTSIDE COUNSEL FOR THE COUNTY AND NOTED THAT AN ADDENDUM HAD BEEN PROVIDED WITH A REVISED RECOMMENDATION. MS. OVIATT THEN PROVIDED STAFF'S PRESENTATION. JENNIFER HERNANDEZ ADDRESSED THE QUESTIONS REGARDING A SIGNATURE REQUIREMENT AS WELL AS THE SIGNATURE REQUIREMENT COUPLED WITH A CONDITIONAL USE PERMIT (CUP). SUZANNE NOBLE, REPRESENTING WESTERN STATE PETROLEUM ASSOCIATION (WSPA), CALIFORNIA INDEPENDENT PRODUCERS ASSOCIATION; (CIPA), AND INDEPENDENT OIL PRODUCERS AGENCY (IOPA), THE APPLICANTS, MADE AN OPENING STATEMENT AND REQUESTED THAT THE PLANNING COMMISSION RECOMMEND APPROVAL TO THE BOARD OF SUPERVISORS. THE FOLLOWING INDIVIDUALS SPOKE IN OPPOSITION OF THE PROJECT: CHRIS MOI, DAMON NAGAMI, JAMES AND VICTORIA GOLDEN, SOPHIA PARINO, ROSA LOPEZ, GORDON NIPP, ARTHUR RODRIGUEZ, TIM HOLTERMANN, HOLLY KING, KURT BLAIR, TOM FRANTZ AND MIKE TURNIPSEED. THESE INDIVIDUALS IN OPPOSITION VOICED THEIR CONCERNS REGARDING EASEMENTS, MITIGATION FOR GRAZING LANDS, IDLE WELLS, CEQA REVIEW, INADEQUATE SETBACK REQUIREMENTS, DAMAGING FARMLAND, AIR QUALITY, WATER QUALITY, NOISE CONTROL, ENVIRONMENTAL HEALTH AND SAFETY CONCERNS, PROVIDING DOCUMENTS IN SPANISH, REDUCING THE USE OF PETROLEUM, AND REQUIRING A CONDITIONAL USE PERMIT OR SIGNATURE FROM THE SURFACE OWNER. IT WAS ALSO STATED THAT THE STAFF REPORT FOR THIS PROJECT HAD NOT BEEN POSTED ON THE WEBSITE FOR THE PUBLIC TO REVIEW. THE FOLLOWING INDIVIDUALS SPOKE IN SUPPORT OF THE PROJECT: HUGH MCMAHON, BEATRIS SANDERS, JULIE BELL, RUSSELL JOHNSON, NATHAN AHLE, RICHARD CHAPMAN, TOMEKA POWELL, ROBIN BRASSFIELD-COOPER, JOE SMITH, JOHN SPAULDING, CHRISTINE ZIMMERMAN, BLODGIE RODRIGUEZ, MARK WOODWARD, RON JAMES, LAUREN GENTILE, DEBBIE RODRIGUEZ, MERYL DIBBLE, GREG ROGERS, TODD TURLEY, KEITH PICKETT, DERRICK ROBINSON, JAIME BIRCENO, JIM ELROD, ED HAZARD, BRIDGET BEARD, LES CLARK, DJ YOHN, BLAIR KNOX, AND NICK GOODMAN. THESE INDIVIDUALS SPOKE IN SUPPORT OF THE PROJECT AND BELIEVE THIS EIR WILL ENSURE THAT ENVIRONMENTALLY

RESPONSIBLE OIL AND GAS PRODUCTION CAN CONTINUE HERE IN KERN COUNTY AND THAT THE OIL AND GAS INDUSTRY WILL BE ABLE TO CONTINUE TO PROVIDE FOR THE COMMUNITY. MS. OVIATT PROVIDED THE FOLLOWING ADDITIONAL INFORMATION IN RESPONSE TO PUBLIC COMMENT: THE BOARD OF SUPERVISORS DOES NOT REQUIRE THAT DOCUMENTS BE PROVIDED IN SPANISH, THE STAFF REPORT WAS PLACED ON THE WEBSITE ON WEDNESDAY, 9/30/15 AND PROVIDED THE LINK, THE EIR HAS DELINEATED PROPOSED WELLS IN TIER 2, BASED ON HISTORICAL PRACTICES, THE PROJECTION OF WHERE PROJECT EXTRACTION WILL HAPPEN, WHETHER THE MONTEREY SHALE HAPPENS OR NOT, IS IRRELEVANT BECAUSE THE NUMBER OF PERMITTED WELLS WILL BE CAPPED AND THE OIL INDUSTRY HAS NOT YET DEVELOPED TECHNOLOGY TO EXTRACT FROM THE MONTEREY SHALE, THE 88 MITIGATION MEASURES WILL KEEP CURRENT WELL PRACTICES FROM HAPPENING IN THE FUTURE, MITIGATION REQUIRES THAT IMPACTED PRIME FARMLAND MUST BE REPLACED AT A ONE TO ONE RATIO WHICH WILL PROVIDE AN INCENTIVE FOR THE OIL COMPANIES TO CLUSTER THEIR PROJECTS SINCE IT WILL COST THEM MONEY THAT THEY WOULD NOT HAVE HAD TO SPEND IN THE PAST, IF INDIVIDUAL PROPERTY OWNERS WANT TO NEGOTIATE THAT IS SOMETHING THEY CAN DO, THIS IS A PERMITTING PROCESS THAT THE COUNTY HAS NEVER DONE AND COMPLAINTS BEING MADE ARE FROM ISSUES THAT HAVE HAPPENED IN THE PAST, IT IS NOT REASONABLE TO EXPECT THE PLANNING COMMISSION TO PROCESS OVER 100 CUP'S PER YEAR, MINOR ACTIVITY REVIEW DOES NOT REQUIRE A SIGNATURE BUT DOES REQUIRE NOTIFICATION, REGARDING CHEMICALS, MITIGATION MEASURE 4.8-16 WILL BE IMPOSED BY THE EIR TO CONFIRM THAT THE WELL STIMULATION FLUID IS NOT TOXIC, A CONVERSATION BETWEEN THE SURFACE OWNER AND THE MINERAL OWNER CAN'T BE REQUIRED BECAUSE IT COULD DEPRIVE A MINERAL OWNER OF THEIR RIGHT TO MOVE FORWARD, MITIGATION MEASURE 4.2-1, THE REMOVAL OF IDLE WELLS WILL BE VOLUNTARY BECAUSE IT IS CONSIDERED A LEGAL NON-CONFORMING USE AND WE DO NOT HAVE THE AUTHORITY TO REQUIRE THE REMOVAL OF THE WELL, THERE IS NO LEGISLATION TO REDUCE PETROLEUM USE BY 50 PERCENT AND THERE IS NO TRANSITION PLAN TO REDUCE THE USE OF PETROLEUM. JENNIFER HERNANDEZ ALSO RESPONDED TO COMMENTS RECEIVED AND STATED THAT THE EIR HAS AN APPENDIX WHICH LOOKS AT HYDRAULIC FRACTURING ACTIVITIES ACROSS THE COUNTRY AND COMPARES THEM TO ACTIVITY HERE IN KERN COUNTY AND THE FINAL EIR HAS A SET OF COMPREHENSIVE RESPONSES THAT REFLECT THE TECHNOLOGY AND SCIENTIFIC RECOMMENDATIONS OF CCST. COMMISSIONER BABCOCK COMPLIMENTED STAFF AND THE APPLICANTS FOR THE TIME THAT WAS PUT INTO THIS PROJECT AND BELIEVES IT IS A WONDERFUL STEP FORWARD FOR THE OIL AND GAS INDUSTRY, HE ALSO STATED THAT THIS WILL SET A PRECEDENT TO BE HEARD THROUGHOUT THE STATE OF CALIFORNIA. COMMISSIONER LOUIE QUESTIONED WHETHER THIS EIR WAS MORE COMPREHENSIVE COMPARED TO AN EIR THAT WOULD HAVE BEEN DONE ON AN INDIVIDUAL CUP. MS. HERNANDEZ PROVIDED A RESPONSE STATING THAT THIS EIR WAS MUCH MORE COMPREHENSIVE AND PROVIDES A MUCH MORE COHERENT FRAMEWORK FOR PROTECTING BIOLOGICAL RESOURCES AS THE SCALE OF THE INDUSTRY. COMMISSIONER LOUIE THEN ASKED IF BOTH THE SURFACE AND MINERAL OWNERS ARE NOTIFIED THAT THE MINERAL ESTATE IS THE DOMINATE ESTATE. MS. HERNANDEZ CONFIRMED THAT BOTH OWNERS ARE NOTIFIED BUT THAT THEY MAY NOT ALWAYS

UNDERSTAND WHAT IT MEANS UNLESS THEY REQUEST MORE INFORMATION. COMMISSIONER LOUIE STATED HE BELIEVES THAT THIS PROJECT IS COMPREHENSIVE AND DOES AN EXCELLENT JOB IN BALANCING THE NEED FOR CERTAINTY IN THE OIL AND GAS INDUSTRY WITH THE RIGHTS OF THE SURFACE ESTATE AND ALSO BALANCES THE OIL AND GAS INDUSTRY CERTAINTY WITH ENHANCED ENVIRONMENTAL PROTECTIONS. COMMISSIONER GARCIA STATED THAT SHE RECOGNIZES THE DIFFICULTIES THAT ARISE WITH A SPLIT ESTATE AND WITHOUT THIS EIR'S IMPLEMENTATION THE ONLY AVENUE TO TAKE IS THE AVENUE THAT HASN'T BEEN TAKEN AWAY WHICH IS ACCESS TO THE COURTS, AND ALSO STATED THAT THE EIR IS CONCISE AND WELL PUT TOGETHER AND BELIEVES THAT THIS PROPOSAL ENCOURAGES THE CONVERSATION BETWEEN THE MINERAL AND SURFACE OWNER THAT RESIDENTS ARE ASKING FOR AND IS COMFORTABLE WITH SUPPORTING THE PROJECT. COMMISSIONER SPRAGUE STATED THAT HE BELIEVES THAT THIS EIR COULD SOLVE SOME OF THE ISSUES BETWEEN THE MINERAL AND SURFACE OWNERS BUT BELIEVES THAT THE SETBACK REQUIREMENT SHOULD BE AT LEAST 500 FEET INSTEAD OF THE REQUESTED 210 FEET AND WOULD ALSO LIKE TO SEE DESIGNATED DRILL AREAS ON A SITE PLAN IN AGREEMENT FORM BETWEEN THE SURFACE AND MINERAL RIGHT HOLDERS AND AREAS NOT TO DISTURB OR INTERFERE WITH IRRIGATION PUMPS AND PIPELINES. COMMISSIONER SPRAGUE ALSO VOICED HIS CONCERN WITH BLOCKING ACCESS TO FARM ROADS AND ACCESSIBILITY TO FARMLANDS AS WELL AS THE CONTAMINATION OF FARMLAND SOIL. A MOTION WAS MADE BY COMMISSIONER LOUIE AND A SECOND BY COMMISSIONER BABCOCK RECOMMENDING THE BOARD OF SUPERVISORS CERTIFY THE ENVIRONMENTAL IMPACT REPORT; ADOPT SECTION 15091 FINDINGS AND SECTION 15093 STATEMENT OF OVERRIDING CONSIDERATIONS; ADOPT MITIGATION MEASURE MONITORING PROGRAM; ADOPT REVISED AMENDED ZONING ORDINANCE (10/05/2015) TO TITLE 19 OF THE KERN COUNTY ORDINANCE, AS RECOMMENDED BY STAFF SHOWN IN UNDERLINE AND STRIKETHROUGH IN THE EXHIBIT A OF THE OCTOBER 5, 2015 STAFF REPORT WITH THE RECOMMENDED CHANGES TO SECTION 19.98.145 IDLE WELLS AS PRESENTED IN THE ADDENDUM STAFF REPORT. THE MOTION CARRIED.

MEETING ADJOURNED AT 9:05 p.m.

Respectfully submitted,



LORELEI H. OVIATT, Secretary
KERN COUNTY PLANNING COMMISSION

Attest:



RON SPRAGUE, Chairman

jvc