

February 22, 2021

Via Email

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Kern County Planning Commission
Kern County Planning & Natural Resources Department
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Re: Planning Commission Hearing on “Revisions to Title 19-Kern County Zoning Ordinance (2020-A) Focused on Oil and Gas Local Permitting” – Conflicting Statements on the Duration and Scope of the Proposed Ordinance and SREIR

Dear Chairman Peters and Honorable Supervisors and Commissioners:

On February 11, 2021, the Planning Commission held a hearing on a project entitled “Revisions to the Kern County Zoning Ordinance – 2020(A), focused on Oil and Gas Local Permitting.” The staff report prepared for the hearing states that the proposed ordinance “has a cap of 2697 new wells annually and [a] 15 year (2036) use” of the Supplemental Recirculated Environmental Impact Report (SREIR) prepared for the proposed ordinance.¹ The staff report also states that the proposed ordinance “could result in 40,445 new wells.”² Lorelei Oviatt, Director of the Kern County Department of Planning and Natural Resources, likewise declared before the Planning Commission: “This is a 15-year program. So the remaining lifespan of this project-level SREIR is 15 years” with a maximum of “40,445 wells.”³

¹ Staff Report, Revisions to the Kern County Zoning Ordinance – 2020(A), focused on Oil and Gas Local Permitting, Feb. 11, 2021, at p. 59.

² *Ibid.*

³ Video Recording, Planning Commission Hearing, Feb. 11, 2021, at 0:37:07 to 0:38:00, available at https://www.youtube.com/watch?reload=9&v=0YZ6vpr_UVg. In her remarks, Director Oviatt also misspoke about the proposed ordinance’s annual cap—announcing it as 2,687 instead of 2,697. Further, the staff report misstates the cumulative well cap allowed under the 2015 Final EIR: it was 72,940 wells not 70,940. (*Compare* Staff Report, Feb. 11, 2021 at p. 59 *with* 2015 Final EIR at p. 7-109.)

These representations of the duration and scope of the proposed ordinance are nowhere to be found in the proposed ordinance itself.⁴ The proposed ordinance sets an annual cap of 2,697 new wells but does not specify that the proposed ordinance will sunset in 15 years. Nor does the proposed ordinance set a cumulative cap of 40,445 wells or require that further environmental review will be required in 15 years or upon issuance of permits for 40,445 wells.

The statements made in the staff report and by Director Oviatt also are directly contradicted by the text of the SREIR. The SREIR's Executive Summary and Project Description both state:

For analytical purposes, as described in Chapter 2, Introduction, this SREIR assumes that 2,697 new producing wells per year—a relatively high level of new oil and gas production activity—would be projected to occur each year for the next 20 years. In practice, annual activity levels would likely be lower. ***There is no scheduled expiration date for a Zoning Ordinance***, and the development standards and conditions specified in the Amended Zoning Ordinance would continue to apply unless and until the Zoning Ordinance is amended again. ***Further environmental review would not likely be needed*** for annual oil and gas activities that qualify for ministerial permits under the Conformity Review Process, ***as long as the annual projected activity level is not exceeded*** (e.g., no more than 2,697 new producing wells are drilled in a single calendar year) ***and the total projected activity level assumed to occur over the next 25 years is not exceeded*** (e.g., no more than 67,425 wells are drilled).⁵

This foregoing text initially appeared in the two Draft SREIRs circulated in 2020 and it was not changed in the Final SREIR issued on January 29, 2021.

The Project Description chapter in the Draft SREIRs also states at page 3-37: “Over the next 25 years, this SREIR conservatively assumes that an average of 2,697 new producing wells per year could be drilled in the Project Area.” This text was not changed by the Final SREIR.

Almost two dozen written comments submitted in response to the Draft SREIRs made note of the SREIR's 20-year or longer timeline and the SREIR's allowance of 67,000 or more wells cumulatively before any further environmental review.⁶ The Final SREIR acknowledged these comments and did not dispute them. Further, other sections of the Draft and Final SREIR discuss a 25-year time horizon or identify impacts through 2040.⁷

⁴ Staff Report, Revisions to the Kern County Zoning Ordinance – 2020(A), focused on Oil and Gas Local Permitting, Feb. 11, 2021, at Exhibit A - Proposed Draft Zoning Ordinance, Section 19.98.040.C.

⁵ SREIR at pp. 1-12, 3-35 (italics added).

⁶ See, e.g., Comments 0020, 0023, 0025, 0029, 0030, 0031, 0032, 0044, 0045, 0047, 0048, 0049, 0050, 0051, 0052, 0053, 0054, 0055, 0056, 0058, 0061.

⁷ See, e.g., Final SREIR at p. 4.2-28 [discussing farmland impacts for a “25-year period” with projections “from 2015 to 2040”]; 4.2-46 [analyzing “25-year total acres of impacts to grazing land”]; 4.2-54

The discrepancy between the staff report and Director Oviatt's statements on the one hand, and the text of the proposed ordinance and Final SREIR on the other, undermines the credibility of the Planning Commission's vote since it is unclear what the Planning Commission voted on exactly. Additionally, if the duration of the proposed ordinance and Final SREIR is not strictly limited to 15 years and 40,445 wells, then Director Oviatt's statements to this effect have sewn considerable misinformation within the public at large as these statements have been widely reported.⁸

Under the California Environmental Quality Act, "a project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading."⁹ Consequently, if the County truly intends for the proposed ordinance and the SREIR to be limited to 15 years and 40,445 wells, the proposed ordinance and the SREIR must be amended to reflect these constraints—subject to further notice, re-hearing, and another vote by the Planning Commission. Alternatively, if the County does not intend to strictly limit the proposed ordinance and SREIR to 15 years and 40,445 wells, then: the staff report must be withdrawn and corrected to conform to the actual text of the Final SREIR that the Board of Supervisors is considering for certification; Director Oviatt should withdraw her remarks and correct the record; and the Planning Commission should conduct a new hearing and vote again on an accurately described proposal that reveals the true longevity of the proposed ordinance and SREIR as well as the scope of development allowed.

Sincerely,



Ann Alexander
Natural Resources Defense Council



Chelsea Tu
Center on Race, Poverty & the Environment

[discussing "Cumulative Impacts to Rangeland/Grazing Land" "over 25 years"]; Response to Comment 0009-112 [discussing "the amount of total modeled silvery legless lizard habitat that could be impacted by the projected annual level of disturbance from the Project over 25 years"].

⁸ See, e.g., KGET news broadcast, Feb. 13, 2021 at 00:00:10 to 00:01:30, available at <https://www.kget.com/kern-county-in-depth/kern-county-in-depth-latest-on-kern-countys-oil-gas-permitting-plan-bakersfields-newest-homeless-shelter/>.

⁹ *Washoe Meadows Community. v. Dept. of Parks & Recreation* (2017) 17 Cal.App.5th 277, 287 [citation omitted].



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