

MONTEREY COUNTY PLANNING COMMISSION

Meeting: March 30, 2011 Time: 11:00 a.m.	Agenda Item No.: 6
<p>Project Description: (CONTINUED FROM DECEMBER 8, 2010) Appeal by the Ventana Conservation and Land Trust and Halt Oil Drilling Now (HOLD) of Southern Monterey County from the Zoning Administrator's approval of applications (Venoco LLC /PLN090118, PLN090119, and PLN090120) for three Use Permits, each allowing the drilling of up to three exploratory oil and natural gas wells. There are three proposed sites (1b, 7a, 34b), and each site will contain up to three (3) exploratory oil and gas wells on a single pad. The drilling of the second and then the third exploratory wells on each pad is dependent upon the results of the testing for the first well. The project will be completed in two phases: 1) a site preparation phase, road grading for the purpose of access to each of the proposed sites; and development of pads to locate a stable drilling platform for the exploratory drilling equipment and the construction of ancillary non permanent structures; and 2) the drilling and testing phase. The project will require a total of 30,010 cubic yards of grading. The soil will be redistributed on each site to create a pad for each of the three drilling platforms. Project site 7a will require 2,770 cubic yards of cut and 2,560 cubic yards of fill. Project site 1b will require 8,970 cubic yards of cut and 8,240 cubic yards of fill, site 34b will require 18,270 cubic yards of cut and 16,320 cubic yards of fill. The remainder 2,890 cubic yards of spoils will remain on each respective site. The appeal also includes a request for the Planning Commission to waive and refund the appeal fees to the Appellant.</p>	
<p>Project Location: Well site 34b is located in Township 23 South, Range 10 East, Section 34. The site is approximately 2.2 miles west of state Highway 101 and approximately 0.90 miles north of Jolon Road. (AVILA SAM TR ET AL - File PLN090118) (Assessor's Parcel Number 423-091-040-000);</p> <p>Well site 7a is located in Township 24 South, Range 11 East, Section 7. The site is approximately 0.60 miles south west of Highway 101 and approximately 0.90 miles southeast of Jolon Road, (WARD ROWENA JOANNE TRS - File PLN090119) (Assessor's Parcel Number 424-101-023-000).</p> <p>Well site 1-b is located in Township 24 South, Range 10 East, Section 1. The site is approximately 0.59 miles west of Highway 101 and 0.20 miles north of Jolon Road. (PORTER ESTATE COMPANY BRADLEY RANCH INC - File PLN090120) (Assessor's Parcel Number 424-081-016-000).</p>	<p>APNs: 424-081-016-000, 424-101-023-000, 423-091-040-000</p> <p>Applicant Name: Venoco Inc. Agent: Bruce Carter</p> <p>Appellant Names: Ventana Conservation and Land Trust. HOLD (Halt Oil Drilling Now) of Southern Monterey County. Appellant Agent: Steve Craig</p> <p>Additional Appellant names submitted: Charles Rowley, Fernando Chavez, Fred Kenyon, Sue Rayfill, Katie Banister</p>
<p>Planning File Numbers: PLN090118, PLN090119, PLN090120 and PLN100652 (The Appeal file)</p>	
Planning Area: South County Area Plan	Flagged and staked: No
Zoning Designation: : PG/40 and F/40 Permanent Grazing, 40 acre minimum parcel size and Farmland, 40 acre minimum parcel size	
CEQA Action: Proposed Mitigated Negative Declaration	
Department: RMA - Planning Department	

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Approve the Appeal Fee Waiver Request, and
2. Continue the hearing to June 29, 2011 to provide an opportunity for additional analysis of issues raised on the appeal.

BACKGROUND:

On September 30, 2010 the Zoning Administrator approved an application by Venoco Inc to drill up to nine exploratory oil and gas wells on three separate properties west of Highway 1 off of Jolon Road in southern Monterey County. Mr. Steve Craig representing the Ventana Conservation and Land Trust submitted an appeal of the Zoning Administrator's decision on October 18, 2010. Additionally, a letter in support of the appeal was also received on October 18, 2010 from the Center for Biological Diversity. On December 8, 2010, both the appellant and the applicant recommended that the matter be continued only and not reviewed by the commission at that time. The Planning Commission continued the matter to March 30, 2011 to allow sufficient time for an independent review of the environmental analysis prepared to date.

From the continuance in December, staff attempted to engage the applicant to facilitate contract preparation for a third party to conduct the additional environmental work (at Venoco's expense). Venoco LLC was not responsive to telephone calls, messages and e-mail. No additional environmental analysis of the matter under appeal has occurred.

On February 28, 2011 staff received a letter dated February 24, 2011 requesting a six month continuance for consideration of the pending exploratory well permits. Please see **Exhibit A**.

On March 8, 2011, staff responded with a letter formally requesting clarification of items in the letter and to determine the direction that Venoco LLC was pursuing under existing or proposed well sites in Monterey County. Please see **Exhibit B**.

On March 17, 2011 staff received a response from Remy Thomas Moose & Manley to the March 8, 2011 letter. This letter from Venoco's counsel is the formal written response to staff's March 8, 2011 letter. Please see **Exhibit C**.

Appeal Fee Waiver Request

Staff recommends that the Appellant's fees be returned. As the environmental issues that have been brought to light by the appellant are considerable and the duty to fully vet such environmental issues is a true public purpose and one that falls to the County. Staff supports the appellant's request. See **Exhibit D**.

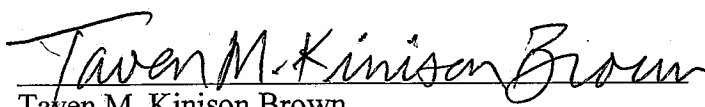
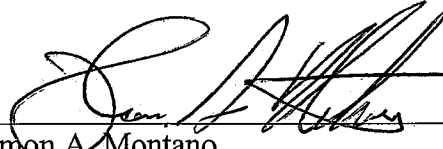
Continuance to June 29, 2011

In review of recent correspondence from the applicant and applicant's counsel (Exhibits A and C), and the need for staff to perform additional research and investigation into presently permitted wells in Monterey County, and to further research and review Federal, State, and regional oversight of drilling practices and procedures, County staff requests that this matter be continued to June 29, 2011 to affect this work.

SOUTH COUNTY LUAC

The project was referred to the South County Land Use Advisory Committee (LUAC) for review on April 21, 2010 under the three separate Use Permits PLN090118, PLN090119 and PLN090120 as described above. On each of the proposals the LUAC voted 3-0 to approve the projects. Each of the votes included one abstention and one recusal from the other two members of the five person quorum. Concerns were expressed about visual impacts, potential flares, water use, water quality and that oil production would be good for the area. The matter of the Appeal has not returned to the LUAC for further evaluation.

The decision on this appeal to the Planning Commission is appealable to the Board of Supervisors.

 Taven M. Kinison Brown, Planning Services Manager (831) 755-5173 kinisonbrownmtm@co.monterey.ca.us March 23, 2011	 Ramon A. Montano, Assistant Planner (831) 755-6169 montanor@co.monterey.ca.us March 23, 2011
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cc: Front Counter Copy; Planning Commission; CDF South County District; Public Works Department ; Environmental Health Bureau ; Water Resources Agency; Taven Kinison Brown, Planning Services Manager; Ramon A. Montano, Planner; Carol Allen, Clerk; Porter Estate Company Bradley Ranch Inc., Property Owner; Avila Sam Tr. Et Al; Property Owner ; Ward Rowena Joanne Trs, property owner; Venoco, Inc . c/o Bruce Carter, Applicant; Bob Booher, Consultant ; Appellant, Steve Craig, Charles Rowley, Fernando Chavez, Fred Kenyon, Sue Rayfill, Katie Banister, and Ed Buntz Lisa T. Belenky, for The Center for Biological Diversity ; Jeff Kuyper, Los Padres Forest Watch; Katie Banister; Susan Raycraft and Larry Woodfill, Carol McComas; Planning Files PLN090118, PLN090119, and PLN090120 and PLN100652.

Attachments:

- Exhibit A Letter from Venoco LLC, dated February 24, 2011
- Exhibit B Letter from staff to Venoco LLC, Dated March 8, 2011
- Exhibit C Letter from Remy Thomas Moose & Manly LLP (on behalf of Venoco LLC), dated March 17, 2011
- Exhibit D E-mail from Appellant, HOLD Halt Oil Lease Drilling Now, Ventana Conservation and Land Trust, dated March 19, 2011

This report was prepared by Ramon Montano, Assistant Planner and by Taven M. Kinison Brown, Planning Services Manager,

COPY



VENOCO, INC.

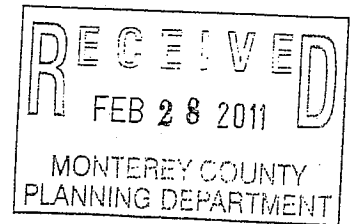


Exhibit A
Page 1 of 1 Pages

February 24, 2011

Mike Novo, Planning Director
Monterey Co. Resource Mgmt. Agency
Planning Dept.
168 West Alisal St., 2nd floor
Salinas, CA 93901

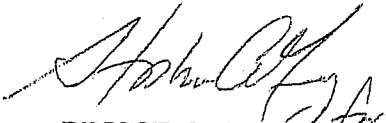
RE: Request for 6 month continuance
PLN09-0118, PLN090-119, PLN 090-120
Venoco, Inc. Exploratory Wells # 1b, 7a and 34b

Dear Mr. Novo,

We respectfully request a six month continuance for consideration of our permit applications PLN09-0118, PLN090-119, PLN 090-120 (Venoco, Inc. Exploratory Wells # 1b, 7a and 34b) at the March 30, 2011 Planning Commission hearing until September 2011. Due to unforeseen drilling delays we have been unable to gather exploratory well results to allow us to determine the viability of our prospect. Should the results prove positive, then we will continue processing the permits at that time.

Please contact me at (805) 745-2184 should you require additional information. Thank you for your consideration.

Sincerely


BRUCE CARTER
Venoco, Inc.

cc: T. Kinison-Brown
S. Greig

MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY



PLANNING DEPARTMENT, Mike Novo, Director

168 W. Alisal St., 2nd Floor
Salinas, CA 93901

(831) 755-5025
FAX (831) 757-9516

March 8, 2011

Bruce Carter
Venoco Inc.
6267 Carpinteria Ave., Suite 100
Carpinteria, CA 93013

Re: Your letter dated February 24, 2011
First contact with Monterey County since December 2010.

Thank you for the e-mail response on your availability to speak with us Wednesday morning. Although this letter will reach you following our telephone call tomorrow morning, I sent you these conversation points via the e-mail confirmation of our Wednesday March 9 telephone call. A formal written response to these questions and conversation points is requested.

1) In your brief letter you have requested a sixth month continuation. You indicate that you are presently experiencing "drilling delays" and are unable to gather exploratory well results to determine viability of your prospect. I do not exactly understand what this means and have a direct question to ask. Is Venoco or a sub contractor working for Venoco fracking existing wells in Monterey County? Is Venoco planning too? We need to know. No fracking has ever been reviewed under CEQA by the County of Monterey and never has been considered in permits for "testing" or for an "exploratory test well." To my knowledge, fracking has never been reviewed or permitted by the County of Monterey even for a production well.

2) The appeal was initialized by another party and your request to postpone the matter six months may not be supported by staff or the appellant. We need to know the wishes of the appellant. Should both you and the appellant come to an agreement about seeking a delay in processing - this can be presented to the Planning Commission. Staff may still wish to fully present the proposal as we know it now (and describe what we don't know) and make a recommendation to the Commission March 30, 2011.

3) You have not engaged with the County of Monterey to further the environmental review process of the 3-platform request (PLN090118, PLN090119, and PLN090120). The continuance from December to the March 30th date was proposed by staff and timed to have allowed Venoco and the County to enter quickly into a 3 party contract with a petroleum engineer/environmental consultant, to have that consultant freshly review and engage the CEQA checklist, answer newly raised environmental questions, circulate that document for public review and return to the Planning Commission on March 30, 2011. Without verbal, written or an e-mail response from Venoco until your February 24, 2011 letter (received Monday February 28) no additional environmental review

has occurred. This lack of dialogue with the County only serves to lead to speculation and uncertainty. A full discussion of the direction Venoco wishes to take under existing and or proposed well sites in Monterey County is necessary at this time.

Please take the time to respond in writing to each of the several points in this letter.

Respectfully,

Taven M. Kinison Brown, Planning Services Manager
kinisonbrowntm@co.monterey.ca.us 831-755-5173

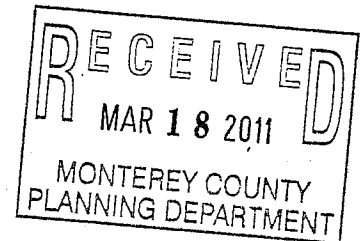
cc: County Files PLN090118, PLN090119, and PLN090120
Ramon Montano, Assistant Planner
Wendy Strimling, County Counsel

James G. Moose
jmoose@rtmmlaw.com

March 17, 2011

Sent by Federal Express and by Email

Charles J. McKee
County Counsel
Office of County Counsel
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901



Re: Response to the March 8, 2011, letter from County Planning Manager
Taven M. Kinison Brown re: Venoco Use Permit Number PLN 080321

Dear Mr. McKee:

I am writing as counsel for Venoco, Inc., ("Venoco") in response to a letter sent on March 8, 2011, to Bruce Carter of Venoco by Taven M. Kinison Brown of the Monterey County Planning Department. Mr. Kinison Brown's letter requests that Venoco provide a "formal written response" to issues addressed in the letter. This letter constitutes Venoco's formal written response, and reflects technical and financial input from the appropriate experts within Venoco.

I. The County may not regulate down-hole completion techniques authorized under Venoco's existing exploratory permits.

Venoco is currently drilling two wells in Monterey County pursuant to two previously issued exploratory well permits (PLN 080320 and PLN 080321) and has two other approved exploratory well permits (PLN 080322 and PLN 080327) (together, the "Existing Permits") for which drilling may commence in the near future. None of the Existing Permits restricts the down-hole procedures that Venoco may use to evaluate the commercial potential of its wells. Hydraulic fracturing is among various techniques commonly in use in the oil and gas industry. The last well Venoco drilled in Monterey County, a 2004 redrill of a well previously permitted (PLN 040283), was hydraulically fractured.

In his letter of March 8, 2011, Mr. Kinison Brown asserts that hydraulic fracturing "has never been considered in permits for 'testing' or for an 'exploratory test well.'"

And rightly so. There are a wide range of down-hole operations that are routinely undertaken to evaluate reservoir qualities. For reasons explained in detail below, those operations are clearly within the exclusive jurisdiction of the State of California¹. By issuing a drilling permit, the County is authorizing the permit holder to proceed, subject to the requirements and regulations relating to down-hole activities imposed by the state.

A. In issuing the Existing Permits, the County authorized all downhole completion techniques required to determine the type, extent, or quantity of oil within the reservoir consistent with State regulations.

To date, Venoco has spent over \$10 million on drilling, permitting, and engineering on the Existing Permits in good faith reliance on approvals issued by the County. Although the County's sudden interest in "fracking" (also spelled "fracing") is not surprising given the recent controversy over (the entirely separate) currently pending *proposed* exploratory permits sought by Venoco (Permit Numbers PLN090118, PLN090119, and PLN090120), the suddenly increased profile of this commonly used method does not give the County any legal authority to *retroactively* try to take away an entitlement and property right previously granted under the County's administrative process.

The Existing Permits necessarily encompass Venoco's right to use hydraulic fracturing and other "stimulation techniques." "Exploration" is a term of art under the Monterey County Code with a very broad meaning. The Existing Permits were issued pursuant to the County's authority to permit "[t]he exploration for and the removal of oil and gas" in the "Permanent Grazing" District. (County Code, § 21.34.050.EE.) The term "exploration" is defined in Chapter 16.04 of the County Code.² Notably, "exploration" is defined as "the search for minerals by geological, geophysical, geochemical or other techniques, including, but not limited to sampling, assaying, drilling, or *any surface or underground work needed to determine the type, extent, or quantity of minerals present.*" (Monterey County Code, § 16.04.020.E [italics added].)³

¹ The Division of Oil, Gas and Geothermal Resources within the Department of Conservation ("DOGGR") is responsible for regulating underground activities used to increase the ultimate recovery of underground hydrocarbons.

² / The County's Zoning Code provides that definitions found in "other Chapters of the Monterey County Code" must be used where the Zoning Code does not provide an alternative definition. (County Code, § 21.06.001.B.)

³ / Although it might be noted that Chapter 16.04 is intended to address the County's duties as a local government under the state Surface Mining and Reclamation Act (Pub. Resources Code, § 2710 et seq.), which at the state level does not directly regulate oil and gas exploration or removal, it is nevertheless clear that the term "mineral," as used under California law generally, is understood to describe liquid oil and gas resources in addition to "harder" substances such as gravel and rock. (See, e.g., *In re Great Western Petroleum Corporation*, 16 F.Supp. 247, 249-250 (S.D. Cal. 1936) ["oil is . . . generally

The broad definition of “exploration” used by the County, which authorizes any underground work needed to determine the type, extent, or quantity of oil and gas, necessarily permits hydraulic fracturing. This plain language interpretation of the County Code is consistent with federal and state law. Pursuant to federal regulation, hydraulic fracturing is one of several recognized “well stimulation” techniques. (Code of Federal Regs., tit. 40, § 146.3.) Moreover, as reiterated by State Oil and Gas Supervisor Elena M. Miller in a February 16, 2011, letter to State Senator Fran Pavley (“Pavley Letter”), her office, pursuant to “Public Resources Code Section 3106, permits the owners or operators of wells to, ‘utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons... [and to] do what a prudent operator using reasonable diligence would do... including, but not limited to, the injection of air, gas, water, or other fluids into the productive strata, the application of pressure, heat or other means for the reduction of viscosity of the hydrocarbons, the supplying of additional motive force, or the creating of enlarged or new channels for the underground movement of hydrocarbons into production wells.’” (Pavley Letter, p. 3, citing Public Resources Code Section 3106.)⁴ In light of this legal backdrop, there can be no reasonable doubt that, in approving the Existing Permits the County authorized the use of any down-hole operations, including hydraulic fracturing, allowed under state laws and regulations.

As a result of the County’s approval of the Existing Permits and Venoco’s reliance on those Existing Permits in investing more than \$10 million, the County may not now reverse course and impose new conditions on the previously approved Existing Permits. One of the primary purposes of the Planning and Zoning Law (Gov. Code, § 65000 et seq.) is to provide “certainty for property owners . . . regarding decisions made pursuant to” that law, including decisions relating to “conditional uses or other permits” when a city or county zoning ordinance provides for such permits. (Gov. Code, §§ 65009, subd. (a)(3), 65901, subd. (a).) Here, it would be inconsistent with the Planning and Zoning Law for the County to revoke or reconsider Venoco’s Existing Permits. [D]eterminations by public authorities, vested with authority to make them, are deemed final and conclusive” where the statute of limitation for a legal challenge has run. (*People ex rel. Dep’t of Public Works v. Neider* (1961) 195 Cal.App.2d 582, 587, citing *People v. Henderson* (1948) 85 Cal.App.2d 653, 658.)

considered a mineral and the extraction of oil is . . . generally considered as mining”]; and *M. Cornwell v. Buck & Stoddard, Inc.* (1938) 28 Cal.App.2d 333, 336 [same].) Had the County intended that “exploration” should mean something different as applied to oil and gas than as applied to harder minerals, the County Code should reflect such a distinction. Instead, however, provisions of the Code dealing with zoning direct readers to definitions wherever else in the Code they can be found. The definition of “exploration” happens to reside in Chapter 16.04.

⁴/ A copy of the Pavley letter is attached hereto as Exhibit. A.

Furthermore, state law does not afford the County with any special authority to reconsider its own use permits after the period for an administrative appeal or judicial challenge has run. As articulated by the court in *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 561, a local government violates the law when it attempts to create an unauthorized appeal or reconsideration process in response “to the roar of the crowd.” (*Id.* at p. 561; see also *Kirk v. County of San Luis Obispo* (1984) 156 Cal.App.3d 453, 460 [“[i]n the absence of a statute to the contrary, an agency’s jurisdiction in a particular proceeding expires when it renders its decision”]; *Guilbert v. Regents of University of California* (1979) 93 Cal.App.3d 233, 243 [“as a general rule, once the decision of an administrative agency becomes final, the agency lacks jurisdiction to alter or modify it unless provided for by statute”]; *Chas. L. Harney, Inc. v. State* (1963) 217 Cal.App.2d 77, 97 [“where no specific authority is conferred by statute, an administrative board or agency has no inherent or implied power to reopen or reconsider a final decision and exhausts its jurisdiction when it announces such decision”].) Therefore, as a matter of law, the County may not reconsider or recondition Venoco’s Existing Permits as a means of limiting the extent of the activities authorized under that entitlement.

B. County regulation of down-hole completion techniques is preempted by State Law.

Any attempt by the County to try to begin to regulate underground hydraulic fracturing would not only represent a departure from the meaning of “exploration” under the County’s Code, but would also disturb a long-standing, and long-recognized, division of labor between local governments and the State. The California Legislature delegated to DOGGR the authority to “supervise the drilling, operation, maintenance, and abandonment of wells.” (Pub. Resources Code, § 3106, subd. (a).) In exercising this power, DOGGR must “permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case.” (Pub. Resources Code, § 3106, subd. (b).) This authority expressly extends to the regulation of “injection of air, gas, water, or other fluids into the productive strata” to “explore for and remove all hydrocarbons from any lands in the state...” (*Ibid.*) To the extent DOGGR exercises its discretion to limit or prohibit the use of hydraulic fracturing or any other activity related to drilling or deepening exploratory wells, DOGGR’s regulations require that the Supervisor list such conditions and requirements in its written approval. (Cal. Code of Regs., tit. 14, § 1914.) In this instance, DOGGR did not restrict the manner or type of completion techniques that may be used by Venoco in conducting oil and gas exploration. (See, e.g., Exhibit B attached hereto, DOGGR Approval of Exploratory Drilling pursuant to Permit Number PLN 080321.)

As early as 1976, the Attorney General concluded that Public Resources Code section 3106 and Division 3 of the Public Resources Code generally (sections 3000-3865) evince the legislative intent to preempt local regulation of certain phases of oil and gas development to permit the state “to conserve, protect and prevent waste of those resources while simultaneously encouraging the ultimate recovery of them.” (59 Ops.Cal.Atty.Gen. 461, 469.) The Attorney General explained that such local preemption is necessary because “[o]il, gas and geothermal resources are flung far and wide around the state; to leave the simultaneous regulation of their development to various local entities would subject development of the state’s fuel resources to the ‘checkerboard of regulations’...” (*Id.* at p. 477.)

The Attorney General opinion acknowledges that state preemption does not eliminate all local control of oil and gas development. As an initial matter, the Attorney General explained that local governments have the authority to determine whether or not to permit the development of oil and gas wells within their jurisdiction. (59 Ops.Cal.Atty.Gen. 461, 466-469.) If, however, a local government authorizes the development of oil and gas wells (as Monterey County has chosen to do), then “the *manner* in which an oil, gas or geothermal resources well is to be drilled, operated, maintained or abandoned” is generally a matter of statewide concern to be regulated by the state rather than local governments. (*Id.* at p. 467 (emphasis in original).) More specifically, the Attorney General concluded that the “statutory and regulatory provisions appear to *occupy fully the underground phase of oil and gas activities.*” (*Id.* at pp. 478 (emphasis added), 479 [explaining further that local jurisdiction is generally limited to “surface activities”].)

Based on the principles set forth in its opinion, the Attorney General reviewed a variety of local regulations relating to oil and gas development to determine whether they were enforceable in light of the principles of state preemption outlined in its decision. In reviewing Santa Barbara County’s oil and gas regulations, the Attorney General found that the county’s regulations were preempted by state law in two relevant respects. First, the Attorney General concluded that the county’s requirement that a County Petroleum Engineer review proposed “casing, cementing, and equipment used in secondary recovery projects” is preempted “unless it is somehow restricted to surface uses and effects.” (59 Ops.Cal.Atty.Gen. 461, 488.) Second, the Attorney General determined the county’s regulations attempting to “prevent contamination of ‘any fresh water body, zone or strata’... [by] requir[ing] remedial work to be done.... enters an area of determination for the Supervisor, not the County Administrator, insofar as it related to down-hole activities.” (*Ibid.*) As with these Santa Barbara County regulations, any effort by Monterey County to regulate hydraulic fracturing would necessarily require the

regulation of the manner in which down-hole operations are conducted and thus would be preempted by state law.

In approving the Existing Permits, the County seemingly understood that the Legislature has vested DOGGR alone with the authority to regulate down-hole activities. The "Project Description" portion of the permit application for approved Permit Number PLN 080321 states that "[a]ll down-hole well operations will be regulated by the State of California, Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR) to protect groundwater." (Exhibit C attached hereto, Permit Project Description for Permit Number PLN 080321, p. 2.) Furthermore, the "Condition Compliance" Plan approved as part of Permit Number PLN 080321 reiterates DOGGR's traditional role by stating, first, that the "permit to conduct well operation for each exploratory well" must be issued by DOGGR and, second, that the authority of the County's Environmental Health Division with respect to well operations is limited to confirming that "DOGGR has issued the required permit." (Exhibit D attached hereto, Permit Findings & Decision for Permit Number PLN 080321, p. 10.) Therefore, by their express terms, the Existing Permits reflect the understanding of County staff that DOGGR, not the County, has regulatory authority over "down-hole" well operations.

For all the forgoing reasons, Venoco respectfully requests that the County Counsel's office, on behalf of the County government as a whole, inform Mr. Kinison Brown that Venoco has a vested right to complete operations of any wells drilled pursuant to the Existing Permits and that, based both on the plain meaning of the County Code and the principles of state preemption, the County Planning Department cannot regulate or restrict Venoco's ability to use hydraulic fracturing as a completion technique. You should be aware that if the County takes any action that would add costs to Venoco's ongoing and very expensive operations at the approved well sites, Venoco reserves its right to seek money damages under a "temporary taking" theory or similar legal principle.

II. Venoco requests a 6-month extension before the appeal hearing on its pending exploratory well permits (PLN090118, PLN090119, and PLN090120).

Venoco has applied to Monterey County for three separate temporary minor use permits (Permits PLN090118, PLN090119, and PLN090120). On February 24, 2011, Venoco sent a letter to the County to request a six-month extension before the appeal associated with Permits PLN090118, PLN090119, and PLN090120 could be heard in order to allow Venoco to resolve the delays it is experiencing in developing its exploratory wells under Permit Number PLN 080321 prior to the appeal hearing.

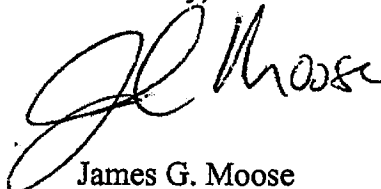
Although Venoco recognizes the County's position that it need not honor this request, Venoco nevertheless respectfully reiterates its request as stated in its February 24th letter. We note that, on March 16, 2010, the Monterey County Board of Supervisors took an action that we believe is consistent with our request for this additional time in this context. Specifically, the Board passed Agenda Item S-6, thereby adopting Ordinances that amended both Title 20 and 21 of the County Code so as to grant an automatic, one-time, extension of two (2) years for permits approved between January 2006 and January 2009. The spirit of the Board's decision in that context, which exhibits an understanding of the difficult economic environment in which businesses have been operating in the last few years, is consistent with Venoco's extension request.

III. Venoco requests re-review of environmental impacts associated with the pending exploratory well permits (PLN090118, PLN090119, and PLN090120) be postponed until exploration activities authorized under the Existing Permits are completed.

At this time, Venoco is not willing to commit to hiring a third party contractor to re-review the environmental data that were previously submitted to the County for the pending permits (Permits PLN090118, PLN090119, and PLN090120). In reliance on its Existing Permits, Venoco intends to complete authorized construction and exploration activities to evaluate the prospects of developing commercially viable wells within the reservoir. After Venoco completes this exploration, Venoco will be in a position to determine if, from a business standpoint, it will be appropriate to undertake the significant costs associated with hiring a third party contractor and potentially preparing an Environmental Impact Report (EIR) to seek approval of the three pending minor use permits for further exploration. Given that Venoco submitted its applications for these three separate temporary minor use permits in June 2009 (nearly two years ago), Venoco believes that a decision by the County providing Venoco with six additional months to evaluate the merits of undergoing these multi-million dollar project prior to commencing further environmental review would be reasonable and fair under the circumstances.

Please do not hesitate to contact me or my associate Christopher Butcher should you have any questions regarding these matters. We look forward to your response.

Sincerely,



James G. Moose

Charles J. McKee
March 17, 2011
Page 8 of 8

Exhibit C
Page 8 of 36 Pages

cc: Wendy Strimling
Deputy County Counsel

Mike Novo
Planning Director

Taven M. Kinison Brown
Planning Services Manager

Ramon Montano
Assistant Planner

Exhibit A



DEPARTMENT OF CONSERVATION

Managing California's Working Lands

Division of Oil, Gas, & Geothermal Resources

801 K STREET • MS 20-20 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 445-9686 • FAX 916 / 323-0424 • TDD 916 / 324-2555 • WEB SITE conservation.ca.gov

February 16, 2011

Exhibit C
Page 10 of 36 Pages

The Honorable Fran Pavley
California State Senate
23rd State Senate District Office
2716 Ocean Park Blvd. Ste 3088
Santa Monica, CA 90405

Dear Senator Pavley;

I appreciate your letter concerning the practice of "hydraulic fracturing" as it relates to the recovery of natural gas in California. Recent news events have brought to light the use of hydraulic fracturing in gas shale, similar to those found in Texas, such as the Barnett Shale and the Marcellus Shale, which are located in the eastern states of New York and Pennsylvania, respectively. In these shale formations, the gas production is not associated with oil production and is referred to as *non-associated gas production*. Although California, as the fourth largest oil and gas producing state in the nation, indeed has some oil and gas production from shale formations, it is not noted for shale non-associated natural gas production. Over 90 percent of California's non-associated gas production occurs in northern California, north of Stockton, and is produced from sands, rather than from shale. This is because sands do not respond well to hydraulic fracturing. While the Division is aware of industry white papers touting the potential for increasing non-associated natural gas production in the state through hydraulic fracturing, the associated costs of production may remain too high to be beneficial at present natural gas prices. Since 2006, the non-associated gas production in California has been on the decline. (2008 Annual Report of the Oil and Gas Supervisor.)

History and Definition of Hydraulic Fracturing

Hydraulic fracturing, which was first introduced in western Kansas in 1947, has been used primarily to overcome wellbore damage and to create deep-penetrating reservoir fractures to improve the productivity of a well.

Hydraulic fracturing associated to natural gas production from shale and other underground deposits is related to creating deep-penetrating reservoir fractures to improve the productivity of a well. More specifically, hydraulic fracturing is a process that involves injecting fluids into a wellbore at pressures that exceed the strength of the formation (rock), thereby resulting in the formation breaking down or fracturing. Typically, a propping agent, such as sand, is also injected into the well to ensure the

fractures in the formation remain open. This process increases the permeability of the formation and, therefore, increases the production of the resource.

Responses to your questions are presented below in the order included in your letter:

- **What is the extent to which hydraulic fracturing is used, including number and location of wells?** The Division is unable to identify where and how often hydraulic fracturing occurs within the state. The limited data we have is unreliable as there are neither reporting requirements nor regulatory parameters of when, how, and what needs to be reported when applying for permits. Although the Division has statutory authority to regulate hydraulic fracturing under Section 3106 of the Public Resources Code, the Division has not yet developed regulations to address this activity. A BCP was approved last year to provide additional resources to address deficiencies in the Underground Injection Control Program (UIC). These resources were to put engineers in the field for inspections, monitoring, compliance, and equipment testing functions; to provide an environmental planner to address CEQA issues, and an environmental planner to address regulatory and CEQA tasks. Late passage of the Budget, the subsequent hiring freeze, ensuing retirements, and existing vacancies have delayed much progress for this program. As we are able to thoroughly assess the UIC Program, the Division will begin the process of determining what regulations are needed as well as identifying any necessary additional resources to ensure the Division and the industry is in compliance with state and federal law.
- **What is the amount of energy produced using hydraulic fracturing?** The Division permits well drilling, re-drilling, deepening, and any permanent alteration of well casing. The Division collects annual assessment amounts from the operators based upon each barrel of oil and/or metric cubic feet (mcf) of gas produced. However, the Division is not aware of the amount of energy produced using hydraulic fracturing, since there is no provision in the statutes requiring the reporting or collection of this information.
- **What is the amount of water used in the hydraulic fracturing process?** Recent literature indicates that in the Barnett Shale (located in Texas) an estimated 70,000 barrels of water per well are injected for hydraulic fracturing. Again, because California has no such reporting requirements for this specific information, the Division does not have information specific to the practice here.
- **Does the Division have any information regarding the safety, efficacy, and necessity of hydraulic fracturing as it is currently employed in California?** Again, because there are no reporting requirements for hydraulic fracturing, the Division has no data on the safety, efficacy, and necessity as currently employed in California. The Division's mission is to prevent damage to life, health, property, natural resources, and underground and surface waters suitable for irrigation or domestic purposes. (CA Public Resources Code Section 3106). The Division has no known reports of damage occurring in relation to hydraulic fracturing.

- **Is the Division able to provide any information regarding potential risks to human or environmental health associated with hydraulic fracturing?** On February 7, 2011 the US EPA released a, "Draft Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources." The Plan and additional information on this subject are available at:
<http://yosemite.epa.gov/sab/SABPRODUCT.NSF/PeopleSearch/D3483AB445AE61418525775900603E79?OpenDocument>.

Siting and Permitting

- **What is the current permitting process, including the duration of permits, in California for the recovery of natural gas via hydraulic fracturing?** There is currently no permitting process for the recovery of natural gas via hydraulic fracturing in the State.
- **What specific statutory and regulatory authority is in place to regulate this drilling technique, including the chemical components of the fluids that are injected into the strata during the drilling process?** As noted above, there are no regulations currently in place specific to hydraulic fracturing. In Public Resources Code Section 3106, the Supervisor permits the owners or operators of wells to, "utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons . . . [and to] do what a prudent operator using reasonable diligence would do . . . including, but not limited to, the injection of air, gas, water, or other fluids into the productive strata, the application of pressure heat or other means for the reduction of viscosity of the hydrocarbons, the supplying of additional motive force, or the creating of enlarged or new channels for the underground movement of hydrocarbons into production wells."

However, the Division does have a UIC Program in place to address enhanced oil recovery (EOR), water disposal, and gas storage. Historically, these three methods have been treated by the Division as sustained injection. The Federal Code of Regulations defines hydraulic fracturing as one of several processes used for well stimulation to, "clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation . . ." (40 CFR Ch.1 Section 146.3).

Additionally, the Division has state and federal authority to permit Class II injection wells, which allow for injection of fluids produced in the course of oil and natural gas production operations. The US EPA has delegated its authority under the Safe Drinking Water Act (SDWA) to the Division to permit Class II injection wells. The SDWA specifically excludes hydraulic fracture, except when diesel fuel is used as the fracking agent. The Division has not permitted the injection of diesel fuel as it is a refined product rather than a crude product.

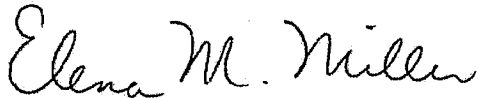
Before a permit is issued, the proposed injection project is studied by Division engineers and reviewed by the appropriate Regional Water Quality Control Board.

Injection project permits often include conditions, such as approved injection zones, allowable injection pressures, and testing requirements. State regulations, beginning at CA Code of Regulations Section 1724.6 *et seq.*, were designed to ensure that injected fluids are confined to the project area and zone, and that formation pressures are not exceeded to the extent that damage occurs.

- **If possible, please provide the results of any risk assessments that the State of California has conducted regarding potential groundwater contamination associated with hydraulic fracturing.** The Division does not know of any state risk assessment regarding potential groundwater contamination associated with hydraulic fracture.

Thank you for this opportunity to address your questions. If you have additional questions for the Division, please contact Mami Weber, Assistant Director, Office of Governmental and Environmental Relations, at (916) 445-8733. We would be pleased set an appointment to come to your office to provide more information and answer any further questions you may have on this issue.

Sincerely,



Elena M. Miller
State Oil and Gas Supervisor

cc: John Laird, Secretary, California Natural Resources Agency
Derek Chernow, Acting Director, Department of Conservation
Mami Weber, Assistant Director, Department of Conservation

Exhibit B

NATURAL RESOURCES AGENCY
DEPARTMENT OF CONSERVATION
DIVISION OF OIL, GAS AND GEOTHERMAL RESOURCES

No. P 310-184

PERMIT TO CONDUCT WELL OPERATIONS
CONFIDENTIAL

00
(Old) Field Code (New)
00
(Old) Area Code (New)
00
(Old) Pool Code (New)

Gary Lower, Agent
Venoco, Inc.
6267 Carpinteria Avenue, Suite 200
Carpinteria, CA 93013-1423

Santa Maria, California
July 12, 2010

Your supplementary proposal to drill well in "Hames Valley" 1-35, A.P.I. No. 053-22059,
Section 35, T. 23S, R. 10E, M.D. B. & M., _____ Field, _____ Area, _____ Pool, Monterey
County, dated 6-28-10, received 6-28-10 has been examined in conjunction with records filed in this office.

THE PROPOSAL IS APPROVED PROVIDED:

1. Blowout prevention equipment, as defined by this Division's publication No. M07, shall be installed and maintained in operating condition and meet the following minimum requirements:
 - a. A 6" diverter system on the 20" conductor.
 - b. Class III b 5M, with hydraulic controls, on the 13 3/8" casing.
 - c. Class III b 5M, with hydraulic controls, on the 9 5/8" casing.
 - d. Class III b 5M, with hydraulic controls, on the 7" casing.
2. Hole fluid of a quality and in sufficient quantity to control all subsurface conditions in order to prevent blowouts shall be used.
3. At least 924' of surface casing shall be cemented in the well.
4. The 13 3/8" casing is cemented with sufficient cement to fill behind the casing from the shoe to the surface.
5. The 9 5/8" and 7" casings are cemented with sufficient cement to fill behind the casing to at least 500' above all oil, gas zones and/or anomalous pressure intervals and to at least 100' above the base of freshwater zone, if present.
6. Once drilled the well location shall be surveyed and the survey shall be filed with this office, latitude and longitude in decimal degrees, to six decimal places, NAD83.
7. No program changes are made without prior Division approval.
8. **THIS DIVISION SHALL BE NOTIFIED TO:**
 - a. **Inspect** the diverter system prior to commencing drilling operations.
 - b. **Witness** a test of the installed blowout prevention equipment prior to drilling out the shoe of the 13 3/8" casing.
 - c. **Witness** a test of the installed blowout prevention equipment prior to drilling out the shoe of the 9 5/8" casing.
 - d. **Witness** a test of the installed blowout prevention equipment prior to drilling out the shoe of the 7" casing.
 - e. **Witness** a leak-off test at the 9 5/8" casing shoe.
 - f. **Witness** a leak-off test at the 7" casing shoe.

JC:pd

cc: Derek Paulgaard
Well file

CONTINUED ON NEXT PAGE

Engineer: Ross Brunetti

Phone: (805) 937-7246

Elena M. Miller
State Oil and Gas Supervisor

By J.R. Carrasquero / E.H.
Patricia A. Abel, Deputy Supervisor

A copy of this permit and the proposal must be posted at the well site prior to commencing operations. Records for work done under this permit are due within 60 days after the work is completed or the operations have been suspended. Issuance of this permit does not preclude the recipient from the obligation of being in compliance with all applicable Federal, State and Local laws, regulations and ordinances.

P-310-184
July 12, 2010
Page 2

NOTES:

1. This Division does not pass upon your right to enter the property, but solely approves the proposal as conforming to our requirements.
2. Prior to notifying the Division engineer to witness the test, the blind rams must be tested. Information on the blind rams test must be entered on the tour sheet along with the signature of the person in charge.
3. This well has been granted confidential status for two years from the cessation of drilling operations.
4. Unlined sumps containing harmful water are not to be located over freshwater bearing aquifers.
5. This permit was held in abeyance pending review and approval of the casing program.

Exhibit C

VENOCO, INC.
Bradley Minerals #1-35
PROJECT DESCRIPTION

Venoco, Inc. (Venoco) is proposing to drill three exploratory oil and gas wells the Bradley Minerals #1-35a, #1-35b and the #1-35c from the proposed #1-35 drill site in southern Monterey County. The proposed exploratory oil and gas well site is located in Section 35 (Township 23 South, Range 10 East). The location of the proposed well site and existing access route are identified on the attached figures. The site can be accessed from an existing driveway and access road off of Jolon Road. The project as proposed includes two (2) phases: a site preparation phase for constructing the drill site and a drilling and testing phase for each well.

Site Preparation Phase

Site preparation activities will include clearing, grading, and compaction of the site. Once a site has been cleared, the site will be graded, watered and compacted to establish a level and solid foundation for the drilling rig. The proposed drill site will encompass an area of approximately 200 feet by 300 feet. Grading will be required; however, the project would not alter the current drainage pattern of the site or area in a manner that would promote flooding, erosion or siltation either on or off site. The project will maintain existing drainage patterns. No trees will be removed; however, approximately 1.4 acres of grassland used for cattle grazing will be temporarily removed.

Completing the site preparation process will require approximately one week. In addition, a temporary pit will be excavated within the site to contain drilling fluid and wastes. Portable tanks also may be used to mix and store drilling and completion fluids. Dust suppressants and/or water may be applied to access roads and well site to control dust.

Drilling and Testing Phase

Upon completion of well pad construction, the drilling rig will be mobilized and rigged up. Typically, this process is completed in approximately two to five days.

A company representative will be onsite 24 hours a day 7 days a week during drilling operations. A 30 to 40 foot travel trailer will be used to provide accommodations on site for the company representative. Water supplies and sewage disposal will be provided by Pensingers Trailer Rentals.

Temporary facilities, equipment and materials necessary for the drilling operation would be set up and stored on site (i.e., drilling mud supplies, water, drilling materials and casing, crew support trailers, pumps and piping, portable generators, fuels and lubricants, etc.) All hazardous materials such as diesel fuel shall be stored according to applicable federal, state and local regulations.

Drilling wastes (mud and cuttings) will be managed in compliance with all requirements established by the Regional Water Quality Control Board (RWQCB). Drilling mud will be contained in tanks on site and no sump will be constructed. Drilling mud and cuttings will be transported and disposed of off-site at a permitted facility.

All down hole well operations will be regulated by the State of California, Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR) to protect ground water. Surface casing will be set, cemented, and blowout prevention equipment installed at the wellhead and tested. Well casing is designed to protect fresh water zones. DOGGR will regulate blowout prevention equipment, and DOGGR engineers will be notified for required tests and other operations.

Drilling for each well would continue until target depth is reached. Equipment and supply deliveries would continue through the course of the drilling program. Evaluation of a well to determine if it is economically viable could continue for up to one year. If the well were eventually determined to be economically viable, Venoco would submit an application to the County to produce the well.

Exhibit D

Recording Requested by and
When Recorded, Mail to:
Monterey County Resource Management Agency
Planning Department
168 West Alisal Street, 2nd Floor
Salinas, CA 93901

Space above for Recorder's Use

PERMIT APPROVAL NOTICE

- 1. PROJECT NAME: PORTER ESTATE COMPANY BM 1-35
- 2. APPLICANT(S) NAME: PORTER ESTATE COMPANY/BRADLEY MINERALS, INC.
- 3. FILE NO: PLN080321
- 4. RESOLUTION NO: 080321
- 5. PRIMARY APN: 423-091-043-000
- 6. PROJECT PLANNER: BERNAL
- 7. LEGAL DESCRIPTION: SEE EXHIBIT "A"

A Permit (PLN080321) was approved by the Monterey County RMA - Director of Planning for Assessor's Parcel Number 423-091-043-000 on January 8, 2009. The permit was granted subject to 14 conditions of approval and 8 on-going mitigation measures which run with the land. A copy of the permit is on file with the Monterey County Resource Management Agency - Planning Department.

- 8. OWNER(S) SIGNATURE(S):
 - Ed O'Donnell DATE: 3/6/09
Ed O'Donnell, VP, Venoco, Inc.
 - Terry Anderson DATE: 3/6/09
Terry Anderson, Secretary, Venoco Inc.

NOTE: OWNER'S SIGNATURE(S) MUST BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC.

STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

On March 6 2009 before me, Jennifer Parkes, Notary Public, personally appeared Ed O'Donnell, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



(Seal)

Signature Jennifer Parkes

EXHIBIT "A"

Attached hereto and made a part of the **Permit Approval Notice** for Monterey County, CA regarding the Porter Estate -- Bradley Minerals #1-35 Exploratory Oil Well.

Legal Description of APN# 423-091-043 is as follows:

Certain real property situated in a portion of Sec. 35, Township 23 South, Range 10 East, Mount Diablo Base and Meridian, County of Monterey, State of California, according to the Official Plat thereof, said portion being more particularly described as follows:

That portion of land lying north of Jolon Road situated in the Northeast Half of (N ½) of said Section 35.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Barbara

On March 6, 2009 before me, Jennifer Parkes, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Terry Anderson
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jennifer Parkes
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

MIKE NOVO
ZONING ADMINISTRATOR

STATE OF CALIFORNIA
COUNTY OF MONTEREY

RESOLUTION NO. 080321

APN# 423-091-043-000

In the matter of the application of

FINDINGS & DECISION

PORTER ESTATES COMPANY/VENOCO, INC. /BRADLEY MINERAL, INC. (PLN080321)

This Use Permit (PLN 080321) allows for the drilling of three (3) exploratory oil and gas wells. The property is located approximately 0.96 miles west of State Highway 101 and 1.37 miles north of Jolon Road, within Township 23 South, Range 10 East, Section 35 in southern Monterey County (Assessor's Parcel Number 423-091-043-000), South County Area Plan, and came on regularly for meeting before the Zoning Administrator on January 8, 2009.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. **FINDING: CONSISTENCY** – The project, as described in Condition No. 1, and as conditioned, conforms to the policies, requirements and standards of the Monterey County General Plan, South County Area Plan, South County Area Plan Inventory and Analysis and the Monterey County Zoning Ordinance (Title 21).

EVIDENCE: (a) The text, policies and regulations in the above-referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

(b) The proposed project conforms to the goals, objectives and policies of the following documents:

i. Monterey County General Plan: Goals, Objectives and Policies for Natural Resources - Geology, Minerals and Soils, Goal # 2, Objective # 2.3, Policy 2.3.2;

ii. South County Area Plan: Chapter 1, Natural Resources - Mineral Resources & Energy Resources; Chapter V, The Plan - Area Land Use Plan, Major Land Use Recommendations: Industrial (re: San Ardo oil fields);

iii. South County Area Plan Inventory & Analysis: Chapter I - Natural Resources: Mineral Resources;

iv. Monterey County Zoning Ordinance (Title 21 for Inland Areas): The property is located approximately 0.96 miles west of State Highway 101 and 1.37 miles north of Jolon Road (Assessor's Parcel Number 423-091-043-000), South County Area Plan. The property is zoned Permanent Grazing with a minimum parcel size of 40 acres ("PG-40"), which allows the exploration for, and the extraction of, oil and natural gas resources with a Use Permit. Therefore, the property is suitably zoned to accommodate the proposed development.

(c) The application, project plans, and related support materials were submitted by the project applicant for the proposed development to the Monterey County Resource

2. **FINDING: SITE SUITABILITY** – The site is physically suitable for the use proposed.

EVIDENCE: (a) The project has been reviewed for site suitability by the Resource Management Agency (Planning Department & Public Works Department), South County Fire Protection District, Health Department (Environmental Health Division) and Water Resources Agency. There has been no indication from these departments/agencies that the site is unsuitable for the proposed project. Conditions recommended by the Planning Department and the Environmental Health Division have been incorporated in this staff report as part of the project approval process.

(b) Technical reports by outside archaeological, biological, geological and geotechnical consultants concluded that there are no physical and/or environmental constraints that would indicate that the site is not suitable for the use proposed, provided the appropriate recommendations outlined in those reports are followed. County staff concurs.

i. **Archeological resources:** A record search and literature review by consulting firm Pacific Legacy, Inc., revealed that no previously recorded ethnographic, historic or archeological sites are located within the project area. A pedestrian survey (i.e. surface inspection) of the property did not result in the discovery of any prehistoric or historic artifacts, or archeological deposits, within the project area; no cultural resources were noted during the survey. The consultant advised that construction personnel be alerted to the possibility of buried cultural remains or artifacts and that, upon discovery of any such remains or materials, the appropriate persons and authorities be contacted. Source: Cultural Resources Assessment of the Venoco, Inc., Bradley Minerals No. 1-35 Oil and Natural Gas Well Project, Monterey County, California (LIB080555), prepared by Pacific Legacy, Inc., Berkeley, California (August 22, 2008).

ii. **Biological resources:** The biological assessment concluded that it is highly unlikely that special-status listed or sensitive species or habitats will be negatively impacted by the proposed project, although locally and regionally common wildlife species would be temporarily disturbed – albeit at a less than significant level. The report recommended that best management guidelines be followed during the construction phase of the project and that the species-specific avoidance and minimization measures described in the biological assessment be implemented in order to mitigate any potential impacts to wildlife species, plants and trees. Source: Biological Assessment, Venoco, Inc., Bradley Minerals No. 1-35 Natural Gas and Oil Exploration Project, Monterey County, California (LIB080556), prepared by Robert A. Booher Consulting, Fairfield, California (June 2008).

iii. **Geotechnical resources:** The site has been deemed suitable for the proposed development from a geotechnical engineering standpoint provided the recommendations contained in the consultant's report and pertaining to grading and structural design are successfully implemented. Source: Geotechnical Engineering Report for Proposed Oil and Natural Gas Exploration Well Pad, Bradley Minerals No. 1-35, Monterey County, California (LIB080558), prepared by Norman G. Hallin, Buena Geotechnical Services, Paso Robles, California (August 12, 2008).

iv. Geological resources: A site investigation revealed evidence of potential geologic & seismic conditions which could affect the subject property. In order to minimize hazards, the consultant made several recommendations in order to mitigate any potentially negative impacts. Source: Geologic Hazards Investigation – Proposed Oil/Gas Well Pad, Bradley Minerals, Site No. 1-35, Jolon Road, County of Monterey, California (LIB080557), prepared by Ron Barto, Sierra Delta Corporation of California (no city provided) (September 5, 2008).

(c) Assistant Planner Jody Lyons conducted a site inspection on July 24, 2008, to verify that the site is suitable for the proposed use.

3. FINDING: CEQA (Exempt) – The project is categorically exempt from environmental review and no unusual circumstances were identified for the proposed project.

EVIDENCE: (a) Minor alterations to land, such as those that will result from the proposed project, have been found to be categorically exempt from the requirement for the preparation of environmental documents under California Environmental Quality Act (CEQA) Guidelines, Article 19, Section 15304. Class 4 activities, as they are known, are those that do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes; this project will not result in the removal of existing oak trees.

(b) Under Section 21084 of the California Public Resources Code, Class 4 activities such as the exploratory drilling operations that will be conducted as part of this project have been determined not to have a significant effect on the environment and, therefore, are exempt from CEQA requirements. This is due to the fact that such activities have been determined to only result in minor public or private alterations to land with negligible or no permanent effects to the existing conditions of the land, water, air and/or vegetation.

(c) No adverse environmental effects were identified during staff review of the development application and during a site visit performed by Assistant Planner Jody Lyons on July 24, 2008.

(d) Once exploratory drilling has ended, and if no commercial quantities of mineral resources that would pave the way for full extraction are found, the applicant will need to restore the site to its pre-development natural grassland condition (Condition no. 8).

4. FINDING: NO VIOLATIONS – The subject property is in compliance with all rules and regulations pertaining to zoning uses and any other applicable provisions of the County's zoning ordinance. No violations exist on the property and zoning violation abatement costs, if any, have been paid.

EVIDENCE: Staff reviewed Monterey County Planning Department and Building Services Department records. The research did not reveal any violations currently existing on the subject property.

5. FINDING: HEALTH AND SAFETY – The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE: The proposed project was reviewed by the South County Fire Protection District, the Water Resources Agency, the Public Works Department, the Planning Department (PD) and the Health Department's Environmental Health Division (EH). The latter two have

recommended specific conditions of approval and mitigation measures, where appropriate, to ensure that the project will not have adverse health and safety impacts:

- (a) Permit to conduct well operations (EH);
- (b) Hazardous materials spill prevention control countermeasure plan (EH);
- (c) Hazardous materials business response plan (EH);
- (d) Hazardous waste control (EH);
- (e) Use Permit to convert the temporary exploratory well to a full production extractive well meeting California Division and Oil & Gas guidelines (PD);
- (f) Restoration of the site to pre-development grassland condition in the event no commercial quantities of oil and gas are found (PD);
- (g) Pre-construction survey to determine whether wildlife inhabits the project area with mitigation measures in the affirmative (PD);
- (h) Erosion control and pollution prevention plans (PD).

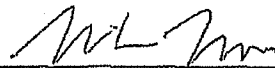
6. FINDING: APPEALABILITY – Decisions of the Zoning Administrator concerning this project can be appealed to the Planning Commission.

EVIDENCE: Title 21, Chapter 21.80, Section 21.80.040, Paragraph B, of the Monterey County Zoning Ordinance.

DECISION

It is the decision of the Zoning Administrator of the County of Monterey that said application for a Use Permit to be granted as shown on the attached sketch and subject to the attached conditions.

PASSED AND ADOPTED this 8th day of January, 2009.



MIKE NOVO, ZONING ADMINISTRATOR

COPY OF THIS DECISION MAILED TO APPLICANT ON FEB 05 2009

THIS APPLICATION IS APPEALABLE TO THE PLANNING COMMISSION. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE SECRETARY OF THE PLANNING COMMISSION ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

FEB 15 2009

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Salinas.

2. This permit expires 4 years after the above date of granting thereof unless construction or use is started within this period.

**Monterey County Resource Management Agency
 Planning Department
 Condition Compliance and/or Mitigation
 Monitoring Reporting Plan**

Project Name: PORTER ESTATES COMPANY/VENOCO, INC.
/BRADLEY MINERAL, INC.

File No: PLN080321

APN: 423-091-043-000

Approved by: ZONING ADMINISTRATOR

Date: January 8, 2009

**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

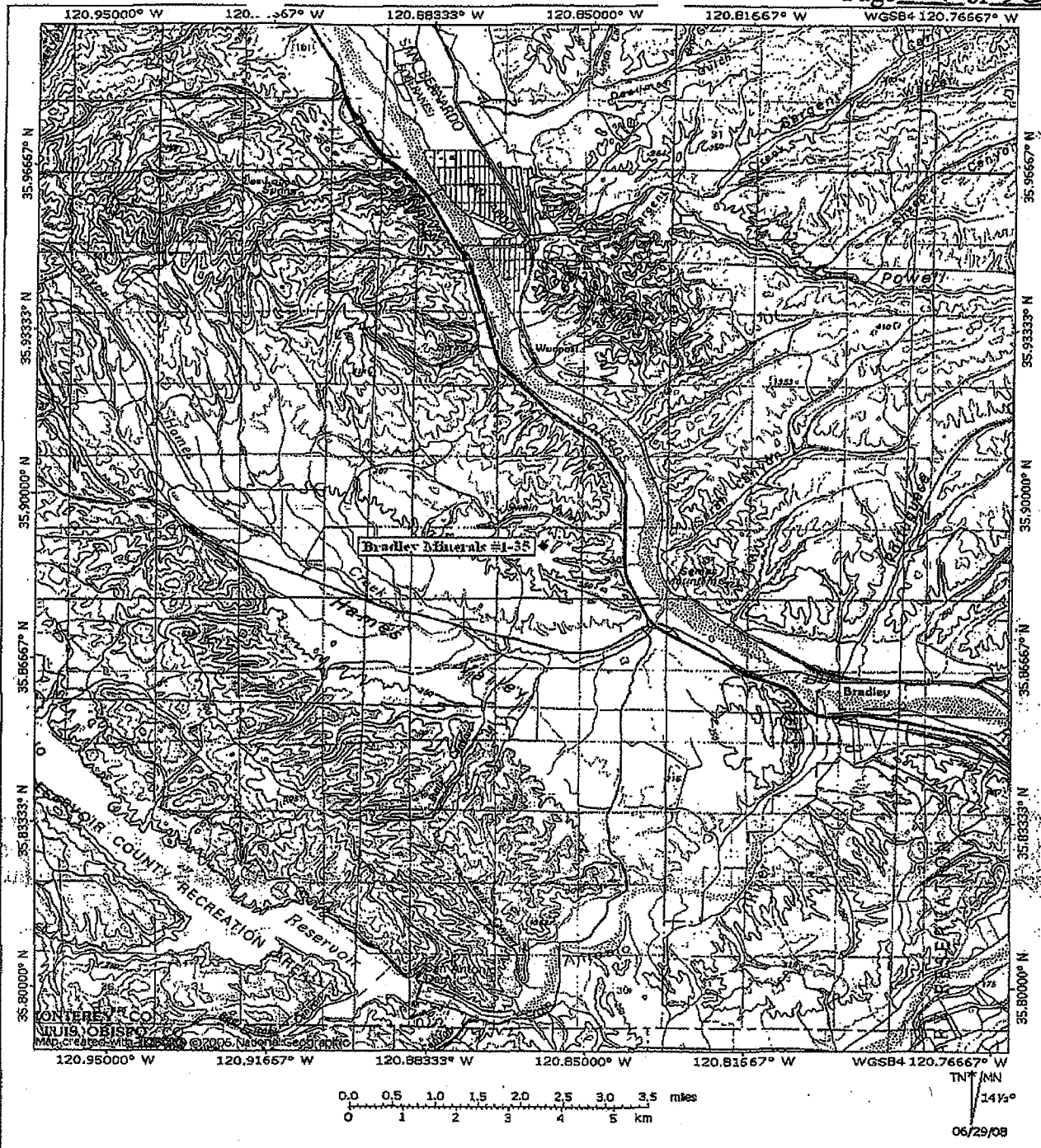
Permit Condition Number	Mitigation Number	Conditions of Approval and Responsible Department	Compliance or Monitoring Actions to be performed (where applicable, a certified professional is required for action to be accepted)	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
1.		<p>PD001 – SPECIFIC USES ONLY This Use Permit (PLN 080321) allows for the drilling of three (3) exploratory oil and gas wells. The property is located approximately 0.96 miles west of State Highway 101 and 1.37 miles north of Jolon Road, within Township 23 South, Range 10 East, Section 35 in southern Monterey County (Assessor's Parcel Number 423-091-043-000), South County Area Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of the RMA - Planning Department. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning Department)</p>	Adhere to conditions and uses specified in the Use Permit.	Owner/ Applicant	Ongoing unless otherwise stated.	

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2.		PD002 – NOTICE: PERMIT APPROVAL The applicant shall record a notice which states: "A permit was approved by the Zoning Administrator for Assessor's Parcel Number 423-091-043-000 on January 8, 2009. The permit was granted subject to 14 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of the RMA - Planning Department prior to issuance of building permits or commencement of the use. (RMA - Planning Department)	Proof of recordation of this notice shall be furnished to the RMA - Planning Department.	Owner/ Applicant	Prior to the issuance of grading and building permits or start of use.	
3.		PD003(A) – CULTURAL RESOURCES: NEGATIVE ARCHAEOLOGICAL REPORT If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources), work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County RMA - Planning Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. (RMA - Planning Department)	Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County RMA - Planning Department and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop the required proper mitigation measures.	Owner/ Applicant/ Archaeo-logist	Ongoing	
4.		PD008 – GEOLOGICAL CERTIFICATION Prior to final inspection, the geological consultant shall provide certification that all development has been constructed in accordance with the geological report. (RMA - Planning Department)	Submit certification by the geological consultant to the RMA - Planning Department showing project's compliance with the geological report.	Owner/ Applicant/ Geological Consultant	Prior to final inspection.	
5.		PD009 – GEOTECHNICAL CERTIFICATION Prior to final inspection, the geotechnical consultant shall provide certification that all development has been constructed in accordance with the geotechnical report. (RMA - Planning Department and Building Services Department)	Submit certification by the geotechnical consultant to the RMA - Building Services Department showing project's compliance with the geotechnical report.	Owner/ Applicant/ Geotechnical Consultant	Prior to final inspection.	

Page 31 of 36 Pages
Exhibit 2

Permit Condition Number	Mitigation Number	Conditions of Approval and Responsible Department	Compliance or Monitoring Actions to be performed. (Where applicable, a certified professional is required for action to be accepted)	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
6.		<p>PD010 – EROSION CONTROL PLAN AND SCHEDULE</p> <p>The approved development shall incorporate the recommendations of the Erosion Control Plan as reviewed by the Director of RMA - Planning Department and Director of RMA - Building Services. All cut and/or fill slopes exposed during the course of construction shall be covered, seeded, or otherwise treated to control erosion during the course of construction, subject to the approval of the Director of RMA - Planning Department and Director of RMA - Building Services. The improvement and grading plans shall include an implementation schedule of measures for the prevention and control of erosion, siltation and dust during, and immediately following, construction and until erosion control planting becomes established. This program shall be approved by the Director of RMA - Planning Department and Director of RMA - Building Services. (RMA - Planning Department and RMA - Building Services Department)</p>	<p>An Erosion Control Plan shall be submitted to the RMA - Planning Department and the RMA - Building Services Department prior to issuance of building and grading permits.</p>	Owner/ Applicant	Prior to the issuance of grading and building permits.	
			Comply with the recommendations of the Erosion Control Plan during the course of construction until project completion as approved by the Director of RMA - Planning and Director of RMA - Building Services.	Owner/ Applicant	Ongoing	
			Evidence of compliance with the Implementation Schedule shall be submitted to the RMA - Planning Department and the RMA - Building Services Department	Owner/ Applicant	Prior to final inspection.	
7.		<p>PD032 – PERMIT TIME/YEAR & DATE</p> <p>The Use Permit shall be granted for one year, to expire on January 8, 2010, one year from today's public hearing date. A request for a subsequent extension can be made to the RMA - Planning Department, with the stipulation that the permit cannot exceed a time period of six (6) months. Any request for an extension will be contingent upon the finding that no grading, zoning, land use policies or local and state regulations will have been violated. (RMA - Planning Department)</p>	None unless an extension of the Use Permit is requested, in which case an application for such shall be made to the RMA - Planning Department.	Owner/ Applicant	As stated in the conditions of approval. Prior to expiration of Use Permit if an extension is sought.	
8.		<p>PD033 – RESTORATION OF NATURAL MATERIALS & CONDITIONS</p> <p>Upon completion of the exploratory phase, and if no commercial quantities of oil and gas are found at the site, the area disturbed shall be restored to its pre-development condition as an annual grassland, subject to the approval of the Director of the RMA - Planning Department. Plans for such restoration shall be submitted to and approved by the Director of the RMA - Planning Department prior to commencement of use. (RMA - Planning Department)</p>	Submit restoration plans to the RMA - Planning Department for review and approval. Site shall be restored prior to expiration of Use Permit, if no extension is requested or subsequent Use Permit applied for.	Owner/ Applicant	Prior to commencement of use.	

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		112.1) of Subchapter D of Chapter 1, Title 40. (Environmental Health Division)				
12.		EHSP02 – HAZARDOUS MATERIALS: BUSINESS RESPONSE PLAN The applicant shall maintain an up-to-date Business Response Plan that meets the standards found in the California Code of Regulations, Title 19, Division 2, Chapter 4 (Hazardous Material Release Reporting, Inventory and Response Plans) and the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Material Release Response Plans and Inventory). (Environmental Health Division)	Submit a signed <u>Business Response Plan – Memorandum of Understanding</u> (form available from EHD) that specifies an approved Business Response Plan must be on file with Hazardous Materials Management Services of Environmental Health prior to bringing hazardous materials on site and/or commencement of operations. Once approved, the applicant shall maintain an up-to date Business Response Plan.	Owner/ Applicant	Prior to commencement of operations. Ongoing	
13.		EHSP03 – HAZARDOUS WASTE CONTROL The facility shall comply with the California Code of Regulations, Title 22, Division 4.5 and the California Health and Safety Code, Chapter 6.50, for the proper handling, storage and disposal of hazardous waste as approved by the Environmental Health Division (EHD). (Environmental Health Division)	Register the facility with Hazardous Materials Management Services of EHD. Maintain the Hazardous Materials permit and comply with all permit conditions.	Owner/ Applicant	Prior to commencement of operations. Ongoing	
14.		EHSP04 – PERMIT TO CONDUCT WELL OPERATIONS The applicant must obtain a permit to conduct well operations for each exploratory well prior to commencing construction pursuant to the California Department of Conservation, Division of Oil, Gas and Geothermal Resources, Public Resources Code, PRC01 and PRC04. (Environmental Health Division)	Submit an application for a permit to conduct well operations to the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR) for review and approval. Submit verification to the Environmental Health Division indicating that DOGGR has issued the required permits.	Owner / Applicant	Prior to commencement of construction.	



Venoco, Inc.
Bradley Minerals #1-35
Vicinity Map

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 Environmental Planning & Management
 3221 Quail Hollow Drive
 Fairfield, California 94534
 (707) 399-7835

Venoco, Inc.
 6267 Carpinteria Avenue, Suite 100
 Carpinteria, California 93013
 (805) 745-2145

Kinison Brown, Taven M. x5173Exhibit D
Page 1 of 2 Pages

From: Steve Craig [ventanatrust@wildblue.net]
Sent: Saturday, March 19, 2011 2:51 PM
To: Novo, Mike x5192; Kinison Brown, Taven M. x5173; Montano, Ramon x5169
Cc: Bauman, Lew; Parker, Jane; dave.potter@co.monterey.ca.us; 100-District 2 (831) 755-5022; 100-District 1 (831) 647-7991; Patricia Ashe; Larry and Sue; Hold Onnow; Fred Kenyon; katie banister; Milton (Butch) Heinsen; Bart Bartosh; Julie Engell; Lisa Belenky; Jeff Kuyper; Paula Getzelman
Subject: March 30th Venoco Appeal - legal status of a second request for a 6 month

Saturday

Gentlemen:

Over the past week, I have made several calls to Ramon and to Taven, with an informational report in to Mike Novo on my efforts, and have sent one email in an attempt to get some clarification on the March 30th hearing on our appeal of the "next" Venoco well set.

We have asked specifically:

1. Is it legally permitted for an applicant whose project has been appealed to request a second extension (this time for six months) on the appeal we filed back in late 2010 without the appellant's concurrence? At this point, this is strictly speaking a legal question, and a simple one we hope. Our understanding is that the appellant and applicant both have one opportunity to request an appeal extension. Venoco has exhausted their request on the first appeal. Despite some considerable effort to contact Venoco, we received no response to our proposal for conditions for consent to further delays on the appeal. What are the code sections that permit such an extension without the appealing parties consent? For your information, we did agree to a three month continuance in December until March without protest. A copy of the face page of the continued application is provided in Attachment 1.

2. The six month extension is consistent with the language in many of Venoco's requests for extensions for drilling approvals. See, for example, in County web archives, a well application originally approved for drilling in mid 2000 which was just recently drilled in 2010 and is being re-drilled presently being re-drilled presumably with Chemical Injection Hydraulic Fracking as the original depth of this well was projected to be 11,000 feet. Interestingly, this well was approved only for a one year drilling window originally for Trio Petroleum, then a one year extension was given to Venocoa, and yet it is now being drilled about 8 years later, and we were unable to find any extension permitting this action on the County Website or on Google or Bing. We are checking with DOGGR on whether they have record of an active approval for this drilling. Perhaps we overlooked an old approval but Google, Bing, and your website failed to turn up any evidence of an extension beyond about mid-2005. The point being: long delays and keeping permits active is a strategy, not random.

3. The applicant has stated they are unprepared to proceed with the current appeal and they have not funded any of the requested studies the County apparently asked the applicant to submit to clarify a number of issues before the March 30th hearing date.

4. Our appeal funds have been wrapped up on this matter for months now, the pensioners want a decision and their money back, and if this extension is granted, the fees should be returned, as the record of historic drilling approvals and delays suggests this type of request for "suspended animation" of an entitlement is both a strategy to keep as many options open as possible for future drilling and is a pattern of conduct which can drag on literally for years. Keeping a number of "live" options open for drilling helps boost the stock price for a publically traded equity and I suspect this is the real reason for the extension. We believe it is important to have

03/23/2011

the discussion about whether a new oil and gas field using chemical injection hydraulic fracturing should be opened in the area where this test drilling is being done and this could occur during the next six months, and then Venoco could return to the table with new applications when they are ready to proceed..

5. The status of Venoco's efforts in the Monterey Shale have been ambiguous thus far, as reported below in Attachment 2.. San Joaquin Monterey Shale drilling for this formation has been unproductive. This situation also may well be influencing the timing of fundraising through public sale of drilling risk in the form of capitalization of their equity company (VQ is the symbol)--we bring this to your attention because this is the profile of a company which may seek to cut corners in a variety of ways.

6. At this point, we request that the County recommend the appeal be sustained, further extensions denied, our funding be returned, and the applications be denied without prejudice until the applicants are actually prepared to drill wells for which they seek applications. Seeking applications to inflate the inventory of "held opportunities for drilling" for stock sale purposes is not an appropriate use of the County land use process. And, since the applicants are not prepared to proceed in the next six months, we believe that this may well be the motivation involved in this case. Let us debate the merits of these wells once Venoco funds the required studies and is ostensibly prepared to proceed with applications.

Regards, on behalf of the appellants,

Halt Oil Lease Drilling Now
South Monterey County Citizens Planning
Ventana Conservation and Land Trust
Various local citizens, farmers and ranchers named in the appeal

Attachment 1

Attachments did not come through the e-mail.
Taven.