Opinion No. SO 76-32—August 24, 1976

SUBJECT: REGULATIONS ON DRILLING, OPERATION, MAINTENANCE, ABANDONMENT OF OIL, GAS AND GEOTHERMAL WELLS—State laws on drilling and production activities of oil, gas and geothermal resources wells for the purpose of conserving and protecting those resources take precedence over local regulations, particularly where the state law approves of or specifies plans of operation, methods, materials, procedures, or equipment to be used by the well operator or where activities are to be carried out under direction of the state Supervisor. With regard to state regulation for other purposes, such as land use control and environmental protection, the state has not fully occupied the field, and more stringent, supplemental regulation by cities and counties is valid to the extent that it does not conflict or interfere with state regulation. Cities and counties may regulate drilling, operation, maintenance and abandonment of oil, gas and geothermal wells with respect to phases of such activities not covered by state statute or regulation so long as there is no conflict with state regulation concerning other phases of such activities.

Requested by: STATE SUPERVISOR OF OIL AND GAS

Opinion by: EVELLE J. YOUNGER, Attorney General

Dennis B. Goldstein, Deputy

The Honorable Harold W. Bertholf, State Supervisor of Oil and Gas, has requested an opinion on the following questions:

1. Can counties and cities regulate the drilling, operation, maintenance and abandonment of oil, gas and geothermal wells with respect to phases of such activities not covered by state statutes or regulations?

2. Are regulations of counties and cities governing the drilling, operation, maintenance and abandonment of oil, gas and geothermal resources wells valid when they are more stringent than the state laws and regulations on the same subject matters?

Also, Mr. Bertholf has recently supplied us with county and city ordinances and proposed ordinances relating to oil, gas and geothermal resources and has requested our comments on the validity of their provisions in the light of our opinion.

Finally, Mr. Bertholf has made reference to two informal letter opinions of this office (IL 68/215 and IL 74/61) pertaining to the same general subject and has asked for a clarification of this office's opinion on that subject.

Our conclusions are:

1. Where there is state regulation of oil, gas and geothermal resources well drilling and production activities for the purpose of conserving and protecting

those resources, such state regulation has preempted certain phases of such activity. Particularly, where the state regulation approves of or specifies plans of operation, methods, materials, procedures, or equipment to be used by the well operator or where activities are to be carried out under the direction of the Supervisor, there is no room for local regulation. It appears from our review that for the most part such activities are confined to down-hole or subsurface operations. With regard to state regulation for other purposes, such as land use control and environmental protection, the state has not fully occupied the field; and more stringent, supplemental regulation by cities and counties is valid to the extent that it does not conflict with, interfere with, or frustrate the state's regulation for purposes of conservation and protection of the resources.

2. Counties and cities may regulate the drilling, operation, maintenance and abandonment of oil, gas and geothermal wells with respect to phases of such activities not covered by state statute or regulation so long as that regulation does not conflict with state regulation concerning other phases of such activities.

ANALYSIS

1. The Previous Letter Opinions

The first of the two informal letter opinions of this office referred to, IL 68/215, dated September 10, 1968, was addressed to the State Director of Conservation and discussed the validity of an amended Santa Barbara County ordinance which attempted to regulate oil and gas activities in unincorporated areas of the county. That letter came to the general conclusions that subsurface oil and gas operations were covered by provisions of the state Public Resources Code; that many or all of such subsurface phases of oil and gas drilling and production were subject to the approval of the State Supervisor of Oil and Gas (hereinafter "the Supervisor") both with respect to the materials to be used and methods to be followed; and that subsurface activities were so regulated by the state statutes that county regulation had been preempted. The provisions of the ordinance and the Public Resources Code were reviewed therein and conflicting provisions of the ordinance were said to be ineffective. It was noted, however, that other provisions of the ordinance were effective because they were not in conflict with the general state law.

It was indicated therein that the application of the ordinance to each well or activity must be examined before it could be said that there was a conflict, but probably most, if not all, subsurface regulation had been preempted by the Public Resources Code provisions.

The second informal letter opinion of this office referred to was IL 74/61, dated April 3, 1974, addressed to the Honorable Robert G. Beverly, Assemblyman for the 51st District. It discussed the power of the City of Torrance, a chartered city, to regulate or prohibit the subsurface aspects of the drilling for and production of oil or gas under the provisions of its Municipal Code, containing both zoning regulations and regulations covering oil and gas drilling and production operations.

The 1974 letter opinion concluded that the city, under its police power and

charter provisions as implemented in its Municipal Code, was empowered to regulate the subsurface aspects of drilling for and production of oil and gas within the city; that the provisions of the Public Resources Code regulating the drilling for and production of oil and gas gave no indication that the state had preempted the general field of activity. However, it appeared that certain subsurface oil and gas activities were so closely and directly regulated under the state code provisions that city regulation was, or was likely to be, in direct conflict with state law, and that the city's code provisions with respect to such latter activities were ineffective.

The emphasis of the 1974 opinion was on the authority of the local body to regulate in the absence of conflict with state regulation. The 1968 opinion put more stress on the preemption of subsurface activities by the state under the provisions of the Public Resources Code. Both opinions concluded that it was only in cases of irreconcilable conflict between state law and local regulation that the latter were ineffective. Thus, the result of the two opinions was generally the same. Nevertheless, since the preemption of local regulation by state law in California is a complex subject (See Sato, "*'Municipal Affairs' In California*," 60 Cal. L. Rev. 1055 (1972)), especially as applied to the many technical activities embraced in oil, gas and geothermal resources production, the matter will be examined once more.

The appendix attached hereto reviews certain provisions of the ordinances forwarded to us and attempts to apply the principles and guidelines set forth in the body of this opinion to those ordinances.

2. The General Principles Involved

California Constitution, article XI, section 7 (formerly art. XI, § 11) provides:

> "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

In carrying out this constitutional provision, Government Code section 37100 provides that the legislative body of a city "may pass ordinances not in conflict with the Constitution and laws of the State or the United States."

Any local regulation that directly conflicts with a provision of state legislation is to that extent void. *Galvan* v. *Superior Court*, 70 Cal. 2d 851, 856 (1969). A local regulation may be invalid if it attempts to impose additional requirements in a field or subject of legislation that is fully occupied or "preempted" by general law of the state. *In re Lane*, 58 Cal. 2d 99, 109 (1962); *Pipoly* v. *Benson*, 20 Cal. 2d 366, 370 (1943). Such preemption of the subject or field may be (1) by the *express language* of the state statute, *Ex parte Daniels*, 183 Cal. 636 (1920); *People* v. *Moore*, 229 Cal. App. 2d 221, 226-227 (1964), or, (2) such state preemption may be *by implication* when the purpose and scope of the statute reveal a legislative intent to occupy a particular phase, field or subject of regulation to the exclusion of local control. *Galvan* v. *Superior Court, supra*, at 859-860; *In re Hubbard*, 62 Cal. 2d 119, 128 (1964).

Because the Constitution fails to define what is and is not a matter of local interest or a "municipal affair," it is "necessary for the courts to decide, under the facts of each case, whether the subject matter under discussion is of municipal or statewide concern." *Professional Fire Fighters, Inc.* v. *City of Los Angeles*, 60 Cal. 2d 276, 294 (1963).

An implied preemption is said to exist where although the local regulation may not conflict with any express provision of the general state law, the Legislature has enacted such extensive and general laws upon the subject matter as to indicate to the court an intent that there shall be no local regulation. *In re Lane, supra*, 58 Cal. 2d 99. The test has been said to be "whether the demand for uniformity throughout the State outweighs the needs of local governments to handle problems peculiar to their communities." *Robins* v. *County of Los Angeles*, 248 Cal. App. 2d 1, 9 (1966). Moreover, this issue has been said to involve

> ". . . whether local legislators are more aware of and better able to regulate appropriately the problems of their areas, whether substantial geographic, economic, ecological or other distinctions are persuasive of the need for local control, and whether local needs have been adequately recognized and comprehensively dealt with at the state level. Certain areas of human behavior command statewide uniformity, especially the regulation of statewide commercial activities . . . ." *Id.* at 9.

As stated in *California Water & Telephone Co.* v. *County of Los Angeles*, 253 Cal. App. 2d 16 (1967):

> "Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a 'municipal affair.' No exact formula exists upon which to forecast precisely the application of implied legislative preemption. One of the clouds in the crystal ball is the definition of the field which may be ultimately adopted in any particular case. If the definition is narrow, preemption is circumscribed; if it is broad, the sweep of preemption is expanded. . . ." (Footnotes omitted.) *Id.* at 27-28.

In addition to the general grant of police power to counties and cities (Cal. Const. Art. XI, § 7), it is provided in part in California Constitution, Article XI, section 5, subdivision (a) as follows:

> "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they

shall be subject to general laws. City charters . . . with respect to municipal affairs shall supersede all laws inconsistent therewith."

This provision eliminates the "conflict with general laws" restriction of California Constitution Article XI, section 7, as to "municipal affairs." *Bishop* v. *City of San Jose,* 1 Cal. 3d 56, 61 (1969). By appropriate provisions in its charter a city may acquire autonomy with respect to matters of predominately local concern ("municipal affairs"). *Bishop* v. *City of San Jose, supra,* at 61.

However, the preemption doctrine is still applied and "home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation (the preemption doctrine)." *Bishop* v. *City of San Jose, supra,* at 61-62. It is then said that the field or subject is not a "municipal affair." *Pipoly* v. *Benson, supra,* 20 Cal. 2d 366, 369-370.

But even if a state statute affects a municipal affair only incidentally in the accomplishment of a proper objective of statewide concern, then the state law applies to both a general law and a chartered city. *Dept. of Water and Power* v. *Inyo Chem. Co.,* 16 Cal. 2d 744 (1940); *Wilson* v. *Walters,* 19 Cal. 2d 111, 119 (1941); *Polk* v. *City of Los Angeles,* 26 Cal. 2d 519, 541 (1945).

Where the state has assumed to regulate a given course of conduct the local entities may make further regulations on *phases of the matter not covered by the state legislation* in furtherance of the purpose of the state law, provided such local regulations are not in themselves unreasonable. In such cases it is said that there is no conflict. As was stated in the *Baron* v. *City of Los Angeles,* 2 Cal. 3d 535, 541 (1970):

> "But if the state's preemption of the field or subject is not complete, local supplemental legislation is not deemed conflicting to the extent that it covers *phases of the subject* which have not been covered by state law." (Emphasis added.) *Id.* at 541; *In re Martin,* 221 Cal. App. 2d 14, 16-17 (1963); *Robins* v. *County of Los Angeles, supra,* 248 Cal. App. 2d 1, 9. *See, Yuen* v. *Municipal Court,* 52 Cal. App. 3d 351, 354-55 (1975).

It is only "those aspects of the subject" covered by state law that are preempted. *Madsen* v. *Oakland Unified Sch. Dist.,* 45 Cal. App. 3d 574, 581 (1975). Furthermore, no "direct conflict" is necessary to invalidate the local regulation. *Markus* v. *Justice's Court,* 117 Cal. App. 2d 391, 396 (1953).

The local regulation, in the absence of a complete occupation of a given phase of regulation of a matter of statewide concern, to be valid must nevertheless be in furtherance of the statewide public policy and supplement such policy. *Nat. Milk etc. Assn.* v. *City etc. of San Francisco,* 20 Cal. 2d 101, 109 (1942); *In re Lawrence,* 55 Cal. App. 2d 491, 499 (1942). This means that the local regulation must be supplemental to—more stringent than—the state law. The local ordinance may not

permit an activity prohibited by the general law and may not conflict with it. For these purposes, a conflict may arise from the State's adoption of a general scheme for the regulation of a particular subject. *Baron* v. *City of Los Angeles, supra,* 2 Cal. 3d 535, 541.

Where a subject of legislation is said to be regional in nature, just as when it is described as statewide in character, the field is said not to be a local or "municipal affair." For example, although treatment and disposal of sewage and issuance of sewer bonds are ordinarily "municipal affairs," where the sewerage transcends the boundaries of one or several municipalities and affects statewide concerns such as public health, protection of navigable waters and the tidelands, the system and its financing become matters of statewide concern subject to regulation under state general law. *City of Santa Clara* v. *Von Raesfeld,* 3 Cal. 3d 239, 246 (1970); *Wilson* v. *City of San Bernardino,* 186 Cal. App. 2d 603, 611 (1960). This principle is pertinent to certain aspects of the oil, gas and geothermal resources regulation problems under discussion that affect or are likely to affect pools or fields simultaneously underlying several cities or counties and often extending beneath tidelands or navigable waters.

In the absence of preemption by state authorities, the power of cities and counties to regulate oil and gas and geothermal well operations is complete; the city or county has police power equal to that of the state so long as local regulations do not conflict with general laws. *Chavez* v. *Sargent,* 52 Cal. 2d 162, 176 (1959). As discussed below, it is our opinion that cities and counties have the power to prohibit such operations. Moreover, local police power concerns extend to land use, maintaining public safety, preventing fires, explosions, excessive noises, unwholesome and noxious odors and other threats to life, health and property as well as environmental protection and preservation of aesthetic property values. 7 McQuillin, Municipal Corporations, § 24.478, p. 475 (3rd rev. ed. 1968). This power of cities and counties derives from article XI, section 7 of the California Constitution. *See,* Govt. Code § 37100. This power leaves wide discretion in local governmental bodies to regulate or control activities within their boundaries. *See, Selby Realty Co.* v. *City of San Buenaventura,* 10 Cal. 3d 110 (1973). In the absence of applicable statewide policies, it seems clear that local legislators are best-suited to make decisions concerning the use of lands.

With these general principles in mind, we examine the law with respect to state regulation of oil, gas and geothermal resources operations regulation.

3. Case Law Regarding Local Regulation of Oil, Gas and Geothermal Resources Operations

Though not in themselves nuisances, the drilling, operation and abandonment of wells to obtain water, *South Pasadena* v. *San Gabriel,* 134 Cal. App. 403 (1933), *cert. denied,* 292 U.S. 602 (1934), and also oil, gas and geothermal resources are fraught with danger to persons, property, livestock, wild animals, natural resources and the environment. As such they are fit subjects for regulation by counties and

cities under the police power. Where the matter is not exclusively regulated by statute "[m]unicipal regulation of oil wells may be directed to protection against fire hazard, menace of escape of gas, explosion or cratering, and other dangers incident to such wells." 7 McQuillin, Municipal Corporations (3d rev. ed. 1968), § 24.478, p. 475.

Many cases have arisen involving the application of county and city ordinances to oil and gas operations. These have been mainly land use (zoning) ordinances rather than regulatory measures. There is virtually no discussion of the relative power of the state and local entities to regulate the activity. Nevertheless, in such case law, the authority of the local entity is sometimes assumed. *Braly* v. *Board of Fire Commissioners,* 157 Cal. App. 2d 608 (1958), considered the provisions of an oil well spacing (zoning) ordinance of a chartered city. The ordinance was held invalid as an unreasonable deprivation of property rights. The question of possible conflict with state law covering well spacing was raised by the court but not decided since the litigants had not challenged the ordinance on that ground. *Braly* v. *Board of Fire Commissioners, supra,* at 616-617.

Sweeping statements appear in a number of cases asserting the authority of local entities to regulate the manner in which oil and gas operations are carried out as well as to prohibit such activities in designated areas. As has been said, these cases without exception fail to consider any conflict between local and state authority. It is noteworthy that all of these cases arose from local attempts to prohibit drilling or operation of wells in all or designated portions of the local unit. No such case has arisen out of an attempt to regulate the *manner* in which an oil, gas or geothermal resources well is to be drilled, operated, maintained or abandoned.[1] These cases do arise out of and concern the authority of local entities to prohibit or limit the areas in which drilling or other activities concerning the operation of a well may be carried on. No California case deals with the extent of the authority of a city or county to regulate the *manner* of carrying out oil and gas operations once that county or city permitted the area in question to be used for purposes of oil and gas extraction. Because the broad statements contained therein were made in the context of prohibition of oil and gas operations, rather than in the context of regulation as carried out by the Supervisor, such statements were unnecessary to the decision of the cases. Nevertheless, we will review those cases.

The right of cities and counties to regulate oil and gas activities was said to be

[1] We are aware of the case *Vincent Pet. Corp.* v. *Culver City,* 43 Cal. App. 2d 511 (1941), which sustained the revocation of a city drilling permit. Since the ordinance in question, which permitted oil drilling only in certain specified areas, also required the operator to post a bond "conditioned for the faithful drilling and . . . removal of the derrick and closing up of such well within ninety (90) days from cessation of drilling operations" as a condition to obtaining a drilling permit, *id.* at 512, it could be said that the case arose from an ordinance which did more than designate those areas which could and could not be used for oil operations. In our view, however, the purpose of the posting of a bond is to hold the permittor or any innocent person harmless from the operator's failure to restore the drilled premises to a safe condition after his operations have terminated. In our opinion, this is basically a surface concern and, in any event, is not regulation of the manner in which the well may be drilled and operated.

"unquestioned" in *Pacific P. Assn.* v. *Huntington Beach,* 196 Cal. 211 (1925). The zoning ordinance in question effectively prohibited oil drilling. In *Marblehead Land Co.* v. *City of Los Angeles,* 47 F.2d 528, 532 (1931), *cert. denied,* 284 U.S. 634 (1931), where oil drilling was declared illegal in the appellant's zone, it was pointed out that ". . . there can be no question of the inherent right of the city to control or prohibit such [oil] production, provided it is done reasonably and not arbitrarily." This is repeated in *Friel* v. *County of Los Angeles,* 172 Cal. App. 2d 142, 157 (1959), where appellant's land was also located in a zone where oil well drilling was prohibited. Similar assumption of such inherent right to regulate without discussion of the matter appears in other cases; but all such cases arose out of a factual situation in which the local entity tried to restrict or prohibit, rather than regulate, the carrying out of oil operations in a specific area. *See, Wood* v. *City Planning Commission,* 130 Cal. App. 2d 356, 364 (1955); *Sindell* v. *Smutz* 100 Cal. App. 2d 10 (1950), *Trans-Oceanic Oil Corp.* v. *Santa Barbara,* 85 Cal. App. 2d 776 (1948), and *Del Fanta* v. *Sherman,* 107 Cal. App. 746 (1930).

Several cases have involved the application to oil well activities of local ordinances other than zoning measures. In *Union Pac. R. R. Co.* v. *City of Los Angeles,* 53 Cal. App. 2d 825 (1942), the validity of a city business taxing ordinance was upheld as applied to the oil produced from wells bottomed within the city. This, of course, had nothing to do with regulation of the manner of operating the well.

The strongest statement of the matter we have found appears in *Beverly Oil Co.* v. *City of Los Angeles,* 40 Cal. 2d 552, 558 (1953), in which a local zoning ordinance was held to be valid as applied to an oil well operation:

> "The policy in this state favors the conservation of oil deposits through statutory regulation (Oil and Gas Conservation, Pub. Resources Code, div. 3, ch. 1). The people have a 'primary and supreme interest' in oil deposits (Pub. Resources Code, § 3400). And it is recognized that oil production is a business which must operate, if at all, where the resources are found. Nevertheless city zoning ordinances *prohibiting* the production of oil in designated areas have been held valid." (Emphasis added.)

Although the *Beverly* statement is limited to prohibition, it cites in support of this statement, *Pacific P. Assn.* v. *Huntington Beach, supra,* 196 Cal. 211, and *Marblehead Land Co.* v. *City of Los Angeles, supra,* 47 F.2d 528, 532. As stated above, both cases involved the prohibition of oil and gas operations in certain areas by virtue of zoning ordinances.

In sum, our review of the California case law has led us to the conclusion that although cities and counties may prohibit oil and gas operations within their boundaries, there is no reported decision concerning whether the authority granted to and exercised by the Supervisor has preempted cities and counties from regulating

the manner in which oil, gas, and geothermal resources wells are drilled and operated.[2]

4. The State's Regulation of Oil, Gas and Geothermal Drilling and Production Operations

a. In General

The purpose of the state's regulation of oil and gas operations has often been characterized as including the protection and conservation of natural resources. *Richfield Oil Corp.* v. *Crawford,* 39 Cal. 2d 729, 738 (1952); *see, Beverly Oil Co.* v. *City of Los Angeles, supra,* 40 Cal. 2d 552, 558. Division 3 of the Public Resources Code, commencing with section 3000, has long contained a regulatory scheme to promote oil and gas conservation. In fact, in section 3400 of that code it is stated that the "people of the State have a primary and supreme interest" in deposits of oil and gas within the state. Division 3, which is reviewed below in greater detail, then goes on to vest in the Supervisor the power and jurisdiction of the state to regulate the manner of drilling, operation, maintenance and abandonment of oil and gas wells so as to conserve, protect and prevent waste of those resources while simultaneously encouraging the ultimate recovery of them. Pub. Resources Code § 3106 *et seq.*

In recent years there has also been growing concern over the limited nature of energy sources and the state's statutes regulating oil, gas and geothermal resources have assumed added importance. Many of the Public Resources Code provisions covering oil and gas operations have been amended in recent years to include as an additional purpose of the state's regulation the prevention of damage to, and the protection of, life, health, property and natural resources. *See, e.g.,* Stats. 1970, ch. 799, amending, *inter alia,* Pub. Resources Code § 3106, and Stats. 1973, ch. 1076 enacting Pub. Resources Code § 3780 *et seq.*

The administrative regulations of the Supervisor pursuant to the Public Resources Code have also been expanded within the last few years to meet those additional purposes and carry out a program of environmental protection. *See, e.g.,* 14 Cal. Admin. Code §§ 1770-1779. Additionally, the Supervisor, like other

[2] In one facet of oil and gas activity the California reported cases have stated that there is preemption by a state statute. In *Monterey Oil Co.* v. *City Court,* 120 Cal. App. 2d 31 (1953), a Seal Beach city ordinance prohibiting the drilling for or production of oil was held inoperative with respect to offshore drilling on state-owned land within the city limits pursuant to a lease from the State Lands Commission since the Public Resources Code expressly gives that commission exclusive jurisdiction over mineral extraction on all ungranted tide and submerged lands owned by the state. In a companion case a Seal Beach city building ordinance prohibiting the erection of a structure without a building permit was held invalid on the same grounds when applied to an offshore oil well on state-owned submerged land within the city limits. *Monterey Oil Co.* v. *City Court,* 120 Cal. App. 2d 41 (1953).

Nevertheless, however, where the state has granted the tide and submerged lands to a city or county, the grantee has discretion to drill for oil or gas itself or lease sites to others for production.

> "Although the statutes show a preemption by the state with respect to the mode and manner in which a city may execute oil leases to tide and submerged lands granted to it by the state, there has been no preemption of the field of determining whether or not such lands should be developed for oil or gas." *Higgins* v. *City of Santa Monica,* 62 Cal. 2d 29, 32 (1964).

state officers, is subject to the provisions of the California Environmental Quality Act of 1970, which requires, among other things, that all state regulatory agencies regulate private activities so that major consideration is given to preventing environmental damage. Pub. Resources Code § 21000(g). See also Pub. Resources Code § 21001.

These recent changes indicate to us that the interest subject to regulation by the Supervisor under the police power is expanding from conservation, protection and encouragement of the development of energy resources to include safety and environmental protection.

> "What may at one time have been a matter of local concern may at a later time become a matter of state concern controlled by the general laws of the state." *Pac. Tel. & Tel. Co.* v. *City and County of S. F.,* 51 Cal. 2d 766, 771 (1959); Also see *Id.* at 775-776; *Bishop* v. *City of San Jose, supra,* 1 Cal. 3d 62-63; *Smith* v. *City of Riverside,* 34 Cal. App. 3d 529, 536 (1973).

Moreover, as will be seen hereunder, where the Supervisor's rules and regulations are reviewed, the Supervisor has put a broad interpretation on the scope of the state's regulatory powers under the Public Resources Code provisions; and the administrative construction of a constitutional or statutory provision by the state Supervisor is entitled to great weight. *Richfield Oil Corp.* v. *Crawford, supra,* 39 Cal. 2d 736; see *Mudd* v. *McColgan,* 30 Cal. 2d 463, 470 (1947); and *Whitcomb Hotel, Inc.* v. *Cal. Emp. Com.,* 24 Cal. 2d 753, 757 (1944).

A valid rule or regulation may enter a phase of regulation authorized to be controlled under a state statute and thereby preempt local regulation, even though the state administrator's rule or regulation only incidentally affects a local or municipal affair. *See, Orange County Air Pollution Control Dist.* v. *Public Util. Com.,* 4 Cal. 3d 945, 950-951 (1971); *Polk* v. *City of Los Angeles,* 26 Cal. 2d 519, 541 (1945); *Alta-Dena Dairy* v. *County of San Diego,* 271 Cal. App. 2d 66, 75 (1969). Thus the Supervisor may by administrative regulation make specific certain general statutory provisions; such regulations should also be considered in determining the extent to which local regulation of oil, gas and geothermal resources has been preempted or is in conflict with state law.

In our view the broad administrative interpretation of the Public Resources Code by the Supervisor through promulgated regulations is consistent with the increased interest of the Legislature in ecological protection, preservation of the environment and natural resources, including sources of energy. Further, the legislative concerns with conservation and resource protection have been increasing. These concerns are highlighted by findings made in the recent Energy Conservation and Development Act, Public Resources Code section 25000 *et seq.* There, the Legislature has restated the statewide concern with sources of energy. For example, it is said:

> "The Legislature hereby finds and declares that electrical energy is essential to the health, safety and welfare of the people of this state and

to the state economy, and that it is the responsibility of state government to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare, and for environmental quality protection." Pub. Resources Cole § 25001.

"The Legislature further finds and declares that prevention of delays and interruptions in the orderly provision of electrical energy, protection of environmental values, and conservation of energy resources require expanded authority and technical capability within state government." Pub. Resources Code § 25005.

b. The State Statutes and Administrative Regulations

1. The State Oil and Gas Conservation Law

The principal state legislation regulating drilling for the production of oil and gas is contained in Division 3 of the Public Resources Code, sections 3000-3690 and 3780-3787, and is placed under the administration of the Department of Conservation and the State Oil and Gas Supervisor. Public Resources Code section 3106 sets forth the duties of the Supervisor and the purposes and objectives of the statutory scheme. Briefly, these duties are: The supervision of "the drilling, operation, maintenance, and abandonment of wells [so] as to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy; and damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances. . . .", to increase the ultimate recovery of oil and gas and "to encourage the wise development of the oil and gas resources."

The provision with respect to "damage to life, health, property and natural resources" was added to Public Resources Code section 3106 and to certain other sections (3208, 3218, 3224) by Statutes of 1970, chapter 799. These additions, in our view, exhibit a limited expansion of the former purposes of these code sections. The former purposes were primarily concerned with the conservation of natural resources, protection against waste of natural gas, protection of oil and gas strata from infiltration by water and protection of underground and surface domestic and irrigation waters from contamination by oil and gas, avoiding and remedying subsidence caused by oil and gas operations, the equitable distribution of oil and gas among property owners and the encouragement of the wise development of petroleum resources.

To accomplish these objectives elaborate provisions are made in the Public Resources Code, implemented by means of 14 California Administrative Code sections 1710-1883. Among other things the Public Resources Code sections provide the following: Notice of intention to drill, deepen or redrill must be given to the Supervisor and *drilling is not to commence until the Supervisor's approval is obtained,* section 3203; a bond must be filed, sections 3204-3205, which bond is

cancelled only when the well is *completed to the satisfaction of the Supervisor* or has been abandoned and *the Supervisor is satisfied* that proper steps have been taken to exclude all water from oil or gas bearing strata, to protect underground and surface domestic and irrigation waters from contamination and to prevent subsequent damage to life, health, property and other resources, sections 3206-3209; in high gas pressure wells or in districts of unknown pressure, the *Supervisor prescribes* the strength of casings and other adequate safety devices and the method of their installation to prevent damages to life, health, property and natural resources and to prevent blowouts, explosions, fires and contamination of surface and underground domestic and irrigation waters, sections 3219-3220; to prevent such actual or threatened dangers *the Supervisor may order tests* to be performed and *may prescribe remedial work to be done* to protect against any such threatened or existing undesirable conditions, sections 3221-3226; wells must be abandoned *in accordance with methods approved by the Supervisor* and *under his direction* so as to prevent water from entering oil or gas bearing strata and oil or gas from contaminating underground or surface domestic or irrigation waters. §§ 3228-3232. Various notices and reports to the Supervisor must be given and made by the operator, sections 3203, 3215-3216, 3218, 3222, 3223, 3227, 3229, 3232; in numerous instances the operator is precluded from going forward with proposed work until he has filed the appropriate notice and received *approval* from the Supervisor. In practice, we are informed, the Supervisor's approval is often made contingent upon modification of the proposed plan of operations. Violations of these code sections are misdemeanors. § 3236.

Effective September 26, 1974, California adopted the Interstate Compact to Conserve Oil and Gas as Public Resources Code sections 3275-3278. The purpose of the compact is "to conserve oil and gas by the prevention of physical waste thereof from any cause" (Pub. Resources Code § 3276, article II), and the signatory states undertook to enact certain conservancy laws. Pub. Resources Code § 3276, art. III.

Public Resources Code section 3500 prohibits the act of "permitting natural gas wastefully to escape into the atmosphere" and on abandonment the well mouth must be capped to prevent such waste of gas. Pub. Resources Code § 3501. To prevent the unreasonable waste of natural gas, voluntary unitization agreements may be entered into, *subject to the approval* of the *Supervisor.* Pub. Resources Code § 3301. Procedures are set forth for the prevention of such unreasonable waste by administrative and court proceedings. Pub. Resources Code §§ 3302-3314. To prevent subsidence of areas along the ocean further detailed provisions are made for unitization. Pub. Resources Code §§ 3315-3347.

The spacing of wells is prescribed with certain minimum distances from public roads, outer boundaries of the operating parcel or of other wells (Pub. Resources Code §§ 3600-3608.1), but *with the approval of the Supervisor* these spacing minimums may be varied under certain circumstances. Pub. Resources Code §§ 3606, 3609.

To protect human beings and wildlife, oil sumps must be screened under

rules and regulations promulgated by the Supervisor in cooperation with the Department of Fish and Game. Pub. Resources Code §§ 3780-3787.

Chapter 3.5, comprising sections 3630 through 3690, was added to the Public Resources Code in 1971, to provide for certain compulsory unit operations of oil and gas properties to aid in preventing waste, to increase the ultimate recovery of oil and gas and to facilitate increased concurrent use of the surface for other beneficial purposes. It is provided in Public Resources Code section 3690 that said chapter 3.5

> ". . . shall not be deemed a preemption by the state of any existing right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including, but not limited to, zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment, and inspection."

This declaration in Public Resources Code section 3690 applies only to "any existing rights" and only to the provisions of "this chapter," *i.e.*, chapter 3.5.

2. State Administrative Regulations Concerning Oil and Gas

14 California Administrative Code, division 2, chapter 4, sections 1710-1883, sets forth rules and regulations with respect to exploration for and production of oil and gas pursuant to the authority of the Director of Conservation and the Supervisor under Public Resources Code section 3013 to do that which "may be necessary to carry out the purposes of" the Oil and Gas Conservation Act.

14 California Administrative Code sections 1710-1724 deal with onshore wells and 14 California Administrative Code sections 1740-1749 cover offshore activities; sections 1750 through 1780 are concerned with the environmental protection program; sections 1810-1883 deal with unit operations. § 1810. These regulations are expressly made statewide in application. §§ 1712, 1740.2, 1752.

The onshore regulations are comprehensive and detailed. Section 1714 of the regulations lays down the following general requirement:

> "Approval of the supervisor is required prior to commencing drilling, reworking, injection, or abandonment operations. *The written approval shall list any and all requirements of the division.*" (Emphasis added.)

The purpose of the well spacing regulations (§§ 1721-1721.9) is stated in section 1721 to be "to prevent waste and increase the ultimate recovery of oil and gas, or either, from new pools, to protect health, safety, welfare, or the environment." Sections 1721.2 through 1721.6 carry out the Supervisor's authority under Public Resources Code section 3609 to approve well spacing plans varying from the spacing requirements specified in Public Resources Code sections 3600-3608.1; 14 California Administrative Code section 1721.7 covers the Supervisor's authority to approve well spacing variances.

Section 1721.1 requires that for all wells drilled into pools discovered after

January 1, 1974, the producing interval shall be not less than 75 feet from the outer boundary of the parcel of land upon which the surface of the well is situated.

14 California Administrative Code sections 1723-1723.8 set forth requirements for plugging and abandonment of wells and surface cleanup, while section 1724 provides:

> "The supervisor in individual cases may set forth other requirements where justified or called for, or establish field rules."

These plugging and abandonment requirements are detailed and precise with respect to methods, materials, and distances; abandonment and plugging is *to be witnessed and approved by the Supervisor* or a member of his staff. 14 Cal. Admin. Code §§ 1723.4(b), 1723.5.

The offshore regulations (14 Cal. Admin. Code §§ 1740-1749) are also comprehensive and detailed. Again, the written *approval of the Supervisor,* listing all requirements of the Division of Oil and Gas, is required before commencing drilling, reworking, injection or abandonment operations. § 1740.5. Exploratory wells must be drilled, redrilled or deepened in accordance with the regulations until *field rules* are established, after which such rules apply. § 1744.

Casing requirements are set forth in detail (§§ 1744.1-1744.4); "blowout prevention and related well-control equipment" specifications and procedures are incorporated by reference to a specified publication (§ 1744.5); a drilling fluid program, subject to the inspection and approval of the Supervisor, is provided for (§ 1744.5); plugging and abandonment procedures and the materials to be used, subject to the Supervisor's witnessing and approval (§ 1745.10) are set forth (§§ 1745.1-1745.9) with minimum requirements specified; there are detailed provisions covering safety and pollution control devices (§§ 1747-1747.9) which are subject to periodic tests by the Supervisor (§ 1747.10); and waste disposal and injection projects are treated in detail. §§ 1748-1748.3.

To carry out the environmental protection program mandated in Public Resources Code sections 3106 and 3780 *et seq.,* 14 California Administrative Code sections 1750-1780 set forth requirements for the location, fencing and construction of sumps, which requirements are for the purpose of protecting human beings, livestock, wildlife and fresh water aquifers (§§ 1770-1772); and the prevention of leakage from tanks (§ 1773). Precautions are required with respect to oil field production facilities and equipment to protect human beings, wildlife and domestic animals (§ 1774); oil field wastes, trash, junk and the like are to be disposed of in a manner so as not to cause damage to life, health, property, freshwater aquifers, surface waters or natural resources (§ 1775); cleanup of the surface of abandoned well areas and the filling of sumps are covered (§ 1776); air pollution by harmful gases and noxious odors as the result of oil field operations are prohibited (§ 1777), and enclosures of oil field facilities and equipment to restrain access where necessary to protect life and property are provided for both with respect to methods of construction and installation and also as to materials to be used. § 1778. In addition to all these requirements, "The Supervisor in individual cases may set forth other

requirements where justified or called for." § 1779. As can be seen, these environmental regulations deal with many surface operations and could under some circumstances be a source of direct conflict with local regulations.

14 California Administrative Code sections 1810-1883 implement the unit operation provisions of Public Resources Code sections 3630-3690 in great detail.

3. The State Geothermal Resources Law

Public Resources Code sections 3700-3776 govern the development of geothermal resources and roughly cover the same ground as the Public Resources Code provisions with respect to oil and gas operations. Public Resources Code section 3700 is a finding that

> ". . . the people of the State of California have a direct and primary interest in the development of geothermal resources, and that the State of California . . . should exercise its power and jurisdiction to require that wells . . . be drilled, operated, maintained, and abandoned in such manner as to safeguard life, health, property, and the public welfare, and to encourage maximum economic recovery."

The duties of the Supervisor with respect to geothermal resources (Pub. Resources Code §§ 3714-3715) are generally similar to his duties in connection with oil and gas. Drilling, plugging, permanently altering the well casing and redrilling are subject to the *approval of the Supervisor.* Pub. Resources Code §§ 3724-3724.3. A performance and cost bond must be filed, to be cancelled upon abandonment of the well, to *the satisfaction of the Supervisor* as to the protection of underground and surface domestic and irrigation waters. Pub. Resources Code §§ 3725-3729. Casing and blowout prevention (§§ 3739-3740) in high pressure or unknown pressure areas and tests and remedial work (§ 3741) provisions are similar to those covering oil and gas. Also, abandonment of geothermal wells are *subject to the supervision and approval of the Supervisor* who may prescribe procedures (§§ 3746-3750); such abandonment provisions are similar to those with respect to oil and gas well abandonments. Casing is to be removed only *with the approval of the Supervisor.* § 3751. Again, well spacing minimums (100 feet from an outer boundary of an operating property or a public road) are set forth. Pub. Resources Code §§ 3757-3762.

4. State Administrative Regulations Concerning Geothermal Resources

14 California Administrative Code, division 2, chapter 4, sections 1900 through 1993, contains the "State-Wide Geothermal Regulations." These cover much the same ground as the regulations governing onshore oil and gas operations contained in 14 California Administrative Code sections 1710-1724, as adapted to the different type of resource dealt with. As with the various oil and gas regulations, the geothermal regulations are "statewide in application." § 1911. The *approval of the supervisor,* setting forth requirements, is to be obtained by the operator before commencing drilling, redrilling or abandonment. § 1914.

"All wells shall be drilled in such a manner as to protect or mini-

mize damage to the environment, usable ground waters (if any), geothermal resources, life, health, and property." § 1930.

Drilling and redrilling (§ 1931), deepening, plugging and any other operation that will permanently alter the casing of a well may not be undertaken until *written approval of the Supervisor is obtained.* § 1931.1. Such *approval* must also be obtained before an existing well may be converted into an injection or disposal well (§ 1931.2) or when any change is made in the location or manner of casing or operation. § 1931.4. A bond must be filed to insure compliance with the statute and secure the state against losses, charges and expenses, which bond is released when the well is "properly abandoned." § 1933. Well spacing is provided for (§ 1934); in general no well may be drilled within 30 meters of a public road or outer boundary. Also, under certain special conditions *the spacing requirements may be waived by the Supervisor.* § 1934. Well casing specifications are to be "determined on a well-to-well basis" so as to "protect or minimize damage to the environment, usable ground waters and surface waters (if any), geothermal resources, life, health and property." § 1935. There are, however, a number of specific casing requirements (§§ 1935-1935.4) including blowout prevention equipment. Some of the requirements with respect to casing may be *waived by the Supervisor.* §§ 1935.1, 1935.2. In fields where the pressures are unknown or where high pressures are known to exist (Pub. Resources Code § 3739) wells must be equipped with adequate casing and safety devices, *approved by the Supervisor,* so as to prevent blowouts, explosions and fires and to prevent damage to life, health, property and natural resources. 14 Cal. Admin. Code § 1940. Such equipment standards and specifications are set forth in great detail in 14 California Administrative Code sections 1941 through 1942.4. Completed wells must be "maintained in good condition in order to prevent loss or damage to life, health, property, and natural resources" and the *Supervisor is authorized to conduct tests and require remedial work* necessary to accomplish such purposes as well as to protect surface and subsurface waters from contamination. § 1954.

No injection wells may be drilled, redrilled or deepened before the *Supervisor's approval is obtained* (§§ 1960-1964) which approval "will contain those provisions specified by the division [of Oil and Gas] as necessary for safe operations." § 1962. Operation of injection wells is *subject to the surveillance of the Supervisor.* § 1966.

14 California Administrative Code sections 1980-1982 regulate plugging and abandonment of wells to prevent contamination of fresh water and other natural resources, to protect the integrity of resources, protect life, health, the environment and property, and to prevent loss of energy in geothermal reservoirs. § 1980. General abandonment requirements are set forth, subject to *review and modification by the Supervisor* "for individual wells or field conditions." § 1981. Abandonment is subject to the *approval of the Supervisor* with respect to final cleanup as well as to methods and materials used in the abandonment plugging. § 1981(c).

5. Statewide Concern with Oil, Gas, and Geothermal Resources Regulations and Conclusion

Having examined the local concerns with the drilling and production of oil, gas, and geothermal resources as well as the state's statutory and administrative regulatory scheme, we now turn to an examination of statewide policies applicable to the same operations. It is our opinion, based upon our review, that certain phases of oil and gas activities are of statewide rather than local concern and that any local regulation in conflict with those phases would therefore be ineffective; in our view, the state has so fully occupied these certain phases that there is no room left for local regulation. To the extent that the 1974 letter of this office referred to above is inconsistent with this conclusion, it is disapproved.

In our view, the conservation of and protection of the state's finite energy resources, by means of the regulatory policy reviewed herein, transcends local boundaries and interests. Oil, 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" avoided by the court in *California Water & Telephone Co.* v. *County of Los Angeles, supra,* 253 Cal. App. 2d 16, 31. Such local regulation could obviously interfere with and frustrate the state's conservation and protection regulatory scheme reviewed above. This "checkerboard" problem seems highlighted by the fact that this state's deposits of energy resources do often extend under the boundaries of several local entities as, for example, in the Los Angeles basin. In our view, the drilling and production of energy resources represents an endeavor of commercial activity that commands uniform regulation. Thus, the California Supreme Court stated as long ago as 1928 in *Boone* v. *Kingsbury*, 206 Cal. 148, at 181-82 (1928):

> "The contribution made to commerce and the varied industries of the world and to the comfort of the race by the modern intensive development of the oil and gas industry is not surpassed, if it is equaled, by any other of the natural agencies or physical forces which are contributing to the material welfare of mankind, including electrical energy. Gasoline is the power that largely moves the commerce of nations over lands and sea; it furnishes much of the power necessary to the manufacturer, agriculturist and miner, as well as power needful in the reclamation of swamp and overflowed land and in the irrigation of arid and waste land. It is the only power that is practical for aeroplane navigation. Gasoline is so closely allied with state and national welfare as to make its production a matter of state and national concern. . . . In fact, the development of the mineral resources, of which oil and gas are among the most important, is the settled policy of state and nation, and the courts should not hamper this manifest policy except upon the existence of most practical and substantial grounds."

The statutory and administrative regulatory scheme outlined above reveal to us a comprehensive purpose and scope broad enough to exclude local regulation in each instance where the Supervisor or his regulatory program approves or specifies plans of operation, methods, materials, procedures or equipment to be used by the operator or where activities are to be carried out under the direction of the Supervisor as a part of the Supervisor's regulation for purposes of conservation or protection of resources.

To us this seems analogous to the licensing by the state of members of professions or trades after examination as to fitness and competence. Local license fees for revenue are permitted in such cases, but not local licenses for regulatory purposes. *Baron* v. *City of Los Angeles, supra*, 2 Cal. 3d 540; *Verner, Hilby & Dunn* v. *City of Monte Serena*, 245 Cal. App. 2d 29, 34 (1966)-civil engineers and surveyors; *Robillwayne Corp.* v. *City of Los Angeles*, 241 Cal. App. 2d 57, 62 (1966)-fire insurance adjusters; *City & County of San Francisco* v. *Boss*, 83 Cal. App. 2d 445 (1948)-painting contractors; *Horwith* v. *City of Fresno*, 74 Cal. App. 2d 443, 447 (1946)-electrical contractors. As was said in *Agnew* v. *City of Los Angeles*, 110 Cal. App. 2d 612, 617 (1952), holding void an ordinance imposing a local regulatory fee and bond on electrical contractors:

> "[T]he state, . . . has adopted a broad and comprehensive plan for licensing contractors throughout the state, for examination as to their qualifications and fitness to engage in their various activities, for licensing only those who prove themselves qualified by satisfactorily passing examinations, and for punishing those who prove themselves incompetent or unfaithful to the trust imposed in them; . . . a state license implies permission to the licensee to conduct his business at any place in the state, and this permission should not be circumscribed by local authority."

Where the statutory scheme or Supervisor specifies a particular method, material or procedure by a general rule or regulation or gives approval to a plan of action with respect to a particular well or field or approves a transaction at a specified well or field, it is difficult to see how there can be any room for local regulation. Any local regulation, other than a complete prohibition of oil and gas activity in the zone, either more or less stringent than the Supervisor's specifications, would therefore be ineffective in our view.

We observe that these statutory and administrative provisions appear to occupy fully the underground phases of oil and gas activities. Since this is a field where the local entities can regulate in the absence of preemption, however, it is conceivable that local regulations may be imposed in phases not preempted; such regulations, if they did not conflict with the state regulation would be valid. Each such attempt by a local entity must be examined to see whether the phase is occupied and, if not, whether any conflict exists. Nevertheless, in all probability there will in our view be a conflict with state regulation when a local entity, attempting to regulate for a local purpose, directly or indirectly attempts to exercise control over subsurface activities.

We have found no reported cases on conflicts between local regulations and acts, methods or materials specified in rules or regulations of the Supervisor or acts approved by him with respect to specific oil, gas or geothermal resources activities at particular wells or fields. What was said in *In re Means*, 14 Cal. 2d 254 (1939), however, seems applicable. There a state civil service plumber working at the state fairgrounds (state property) in Sacramento was charged with carrying on his trade without a city regulatory license. The court said at page 260:

> ". . . if the city's ordinance is a valid exercise of power, then one whom the state has examined and found eligible for employment as a plumber and who has later entered the state civil service may be unable to work on state property because he cannot pass the examination of a city health officer or licensing board. The result is a direct conflict of authority. Either the local regulation is ineffective or the state must bow to the requirement of its governmental subsidiary. Upon fundamental principles, that conflict must be resolved in favor of the state."

Once again we emphasize that our conclusion above is with reference to the Supervisor's very comprehensive conservation and protection activities; these, it appears, are mainly restricted to subsurface activities. With regard to activities which are regulated by the Supervisor for purposes other than conservation and resource protection, such as environmental protection, we do not conclude that the Supervisor has occupied the field to the exclusion of the local governments.[3] For the most part, however, these latter activities are phases of oil and gas operations where the need for uniformity does not in our opinion outweigh "the needs of local governments to handle problems peculiar to their communities." *See*, *Robins* v. *County of Los Angeles*, *supra*, 248 Cal. App. 2d 1, 9. With regard to this latter category of concerns, which include land use, environmental protection, aesthetics, public safety, and fire and noise prevention, local governments may impose regulations more stringent than those imposed by the state so long as they do not conflict with, frustrate the purposes of, or destroy the uniformity of the Supervisor's statewide regulatory conservation and protection program. As we have stated, these latter activities appear to be, for the most part, surface activities.

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[3] Research shows that it is not uncommon for courts to conclude that a particular regulatory scheme has preempted further regulation for some purposes but not for others. *See, People* v. *Mueller*, 8 Cal. App. 3d 949 (1970). Also see, *Marshall* v. *Consumers Power Co.*, 237 N.W. 2d 266, 275-278 (Ct. App. Mich. 1975), dealing with the analogous federal preemption doctrine, concluding that the regulation of atomic power plants by the Atomic Energy Commission preempted state regulation concerning radiological hazards but did not preempt such regulation concerning non-radiological hazards; and *Huron Portland Cement Co.* v. *City of Detroit*, 362 U.S. 440 (1960), where the federal government maintained an extensive and comprehensive set of controls over ships including inspection of ships' boilers and unfired pressure vessels for safety purposes. The City of Detroit, in order to eliminate air pollution, regulated smoke emissions by ordinance. The appellant sought to avoid prosecution for violation of the ordinance on the ground that the field had been preempted. The court rejected this contention since the federal regulation was for safety purposes and the local regulation was for air pollution protection, a matter of state and local concern.

6. Areas of Conflict

We now examine specific areas of possible conflict between local ordinances and regulations and state statutes and regulations covering these matters. Although we will address ourselves to oil and gas operations, we believe our conclusions have equal validity with respect to geothermal operations since a similar regulatory scheme is applicable:

a. *Approval of Drilling*, redrilling or deepening operations by the Supervisor (Pub. Resources Code § 3203) is clarified in 14 California Administrative Code section 1714, which requires that the Supervisor's approval "shall list any and all requirements of the division [of Oil and Gas]." For the most part the Supervisor's approval to drill, redrill, or deepen subject to his specific requirements is a preempted phase of subsurface operations. Such an approval would, however, not nullify a valid prohibition of drilling or a permit requirement by a county or city in all or part of its territory. Any requirements imposed by the local entity in granting a conditional use permit would be subject to the same analysis as direct regulation, *i.e.*, it may or may not conflict with the state regulation. Each such condition must be examined individually. A local ordinance or regulation could impose a non-conflicting condition entirely compatible with the Supervisor's requirements; such a condition, however, would have to be reasonably related to a local concern such as environmental protection.

b. *Strength of casings* seems entirely under the control of the state through the Supervisor to the exclusion of regulation by local units. Public Resources Code section 3220 requires each owner or operator to "properly case" each well "with water-tight and adequate metal casing, in accordance with methods *approved* by the supervisor" and *under the direction of the Supervisor* to shut off all water overlying and underlying oil-bearing or gas-bearing strata and prevent any water from penetrating such strata.

In addition, Public Resources Code section 3219 provides that the operator of "any oil or gas well wherein high pressure gas is known to exist" or in a district where the oil or gas pressure is unknown

> ". . . shall equip the well with casings of sufficient strength, and with such other safety devices as may be necessary, in accordance with methods *approved* by the supervisor, and shall use every effort and endeavor effectually to prevent blowouts, explosions, and fires." (Emphasis added.)

Thus, to attain a number of objectives, both the materials used and procedures followed in casing wells are under the direction and subject to the approval of the Supervisor. The regulation of such equipment and methods by the Supervisor precludes local control.

c. *Shut-off tests and remedial work* may be ordered by the Supervisor under Public Resources Code sections 3221 through 3223 whenever it appears to him "that water from any well is penetrating oil-bearing or gas-bearing strata or that detrimental substances are infiltrating into underground or surface water suitable

for irrigation or domestic purposes." Under Public Resources Code sections 3224 through 3226:

> "The supervisor shall order such tests or remedial work as in his judgment are necessary to prevent damage to life, health, property and natural resources; to protect oil and gas deposits from damage by underground water, or to prevent the escape of water into underground formations, or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or domestic purposes, to the best interests of neighboring property owners and the public." Pub. Resources Code § 3224.

The regulation of activities under these code sections does go beyond the protection and "conservation" of natural resources. Tests and remedial work necessary, in the opinion of the Supervisor, "to prevent damage to life, health and natural resources" may be required. Public Resources Code sections 3221 through 3226 are concrete legislative authorizations and delegations of power to the Supervisor to regulate the conduct of oil and gas well operations to accomplish a wide range of conservation and other purposes.

d. *Where a unitization agreement* has been entered into with the approval of the Supervisor (Pub. Resources Code 3301-3315 *et seq.*, or 3630 *et seq.*), there would be no room for any local regulation aimed at the same result since the Supervisor would have specifically approved an agreement and plan of operations thereunder. Still, additional operational requirements of the local entity could be effective if they were directed to phases of unit operations not approved or specified by the Supervisor providing no conflict with state regulation for purposes of conservation or protection was created.

e. *Well spacing* restrictions can be reasonably related both to the zoning and land use police power interests of the local units as well as the broader concerns of the state. The state does not appear to have occupied this field to the exclusion of the local entities. *See, Beverly Oil Co.* v. *City of Los Angeles, supra,* 40 Cal. 2d 558. To the extent that the local regulation is more stringent than the state requirements and does not frustrate the conservation goal of maximum utilization of petroleum, local well spacing regulations could be valid. A word of caution is, however, in order. The Supervisor has authority to waive and alter the Public Resources Code's general spacing requirements or approve a specific spacing plan under certain circumstances. *See,* Pub. Resources Code §§ 3602.1, 3606, 3606.1, 3608, 3609; 14 Cal. Admin. Code §§ 1721.2-1721.7. Where a specific well spacing waiver or plan has been approved by the Supervisor, for a particular field, it must be concluded that the Supervisor has brought statewide conservation considerations to bear upon his decision; under such circumstances, it is our opinion that there would no longer be any room for local regulation of well spacing.

f. *Abandonment and plugging.* Under Public Resources Code sections 3228-3232, wells must be abandoned in accordance with methods *approved* by the Supervisor and under his direction to prevent water from entering oil or gas bearing

strata and oil and gas from contaminating underground or surface irrigation or domestic waters. The drilling bond (Pub. Resources Code §§ 3204-3205) is released only when the well has been completed to the satisfaction of the Supervisor or when the Supervisor is satisfied that proper steps have been taken to exclude all water from oil or gas bearing strata, to protect underground and surface irrigation and domestic waters from contamination and to prevent subsequent damage to life, health, property and other resources. Pub. Resources Code §§ 3206-3209. The regulations supplementing these Public Resources Code provisions with respect to down-hole plugging and abandonment of wells are detailed and precise as to methods to be followed and materials to be used. 14 Cal. Admin. Code 1723-1723.8. In individual cases the Supervisor may vary these requirements or establish field rules. 14 Cal. Admin. Code § 1724. All abandonments must be witnessed and approved by the Supervisor.

The underground regulation of plugging and abandonment of wells is so comprehensive and so intimately tied to the requirements of the Supervisor and his approval of the results with respect to the individual well that there is no room for any supplemental requirements of a city or county to regulate the down-hole plugging of wells. In our opinion this phase has been preempted. With regard to abandonment as it may relate to the surface area of the well, however, we believe there is no such occupation; in our opinion the same considerations apply there as to surface cleanup, discussed below.

g. *Surface cleanup is* not a phase occupied by the state and appears subject to local regulation so long as its requirements do not frustrate the extraction process. With respect to the individual well, field or pool, local interests may be served by regulation more stringent than the Supervisor's without prejudice to the state's regulatory program for conservation and protection. In such cases local regulation will apply.

h. As noted above *oil sumps* must be screened pursuant to rules and regulations of the Supervisor. *See,* Pub. Resources Code §§ 3106, 3780-3787, 14 Cal. Admin. Code §§ 1770-1772. Prevention of leakage from tanks (14 Cal. Admin. Code § 1773) and other regulations with respect to surface oil field production facilities and equipment are also dealt with. 14 Cal. Admin. Code §§ 1774-1778. In addition the rules provide that the Supervisor may make deviations or variances from these surface requirements in individual situations. 14 Cal. Admin. Code § 1779.

These powers of the Supervisor under the statute as implemented by the regulations with respect to surface oil field operations and preservation of the environment are very broad, but do not appear detailed or comprehensive enough to have preempted that phase of operations. Local entities, as we have pointed out, also have legitimate reasons for regulating such surface operations. The surface aspects of well abandonment, including regulation concerning pumps, tanks, and oil field surface installations and equipment, do leave room for more stringent local controls than those set up by the state if no direct conflict is otherwise created.

The illustrations just discussed are provided as examples of the application of

the guidelines suggested in this opinion for the determination of the validity of local efforts to regulate the drilling and production operations for oil, gas, and geothermal resources. In all of the above illustrations it has been assumed that local regulation has been reasonable. Such assumption, however, does not mean that problems of reasonableness are not important. Compare, for example, *Bernstein* v. *Bush,* 29 Cal. 2d 773 (1947) with *Hunter* v. *Justice's Court,* 36 Cal. 2d 315 (1950). Nor is this opinion intended to express any view concerning questions of preemption that may arise by virtue of state statutes and regulations not under the administration of the Division of Oil and Gas.

We are aware that the possibilities for regulatory requirements are endless and each attempt at local regulation brings with it the potential for conflict which must be individually examined.

APPENDIX

In this appendix selected portions of certain county and city legislation submitted to the office of the Attorney General by the State Supervisor of Oil and Gas are examined to illustrate the application of the principles set forth in the foregoing opinion. The summaries of the local ordinances or codes applying to oil, gas or geothermal resources are not complete. The application of each provision would be important. The review of the local legislation vis-a-vis the state regulation has not been extensive enough to express a firm opinion on whether specific provisions have been preempted by state provisions. The review is for purposes of illustration only.

1. *Beverly Hills* is a general law (nonchartered) city. *Beverly Hills Municipal Code,* §§ 10-5.301-10-5.320—"Oil Wells."

Section 10-5.315(i)—the operation of any oil or gas well and production therefrom licensed under this ordinance "shall be in accordance with the rules and regulations of the Division of Oil and Gas of the State." Thus, the provisions of the ordinance are made subordinate to state law and regulations with regard to operation; additional nonconflicting provisions of the municipal code are, however, enforceable. Section 10-5.303—existing wells are permitted to operate but no existing well surfaced in the city shall be drilled, redrilled or deepened below its present bottom. Although this requirement deals with subsurface operations, it appears to be within the local authority to prohibit operations and is a valid prohibition provided it is reasonable in application. *See, Bernstein* v. *Bush, supra,* 29 Cal. 2d 773 (1947). The same comment is applicable to the provision in section 10-5.307 prohibiting drilling for oil and gas from surface locations within the city limits or slant-drilling wells into the city limits from outside except in designated areas.

Section 10-5.315(d)—all slant-drilled wells surfaced outside the city must enter the city below a depth of 500 feet. This seems a valid regulation justified by exercise of the police power in the local interest and appears to fall within the right of the city to prohibit drilling in certain areas.

Section 10-5.315.1(f)—"Well abandonment shall be in accordance with the requirements of the Division of Oil and Gas of the State." This removes any question of conflict between the ordinance and the state law on abandonment that might otherwise arise.

Section 10-5.318—all nonproduction wells not used for injection for one year prior to March 21, 1968, are to be abandoned in compliance with DOG rules and regulations. Same comment as Section 10-5.315.1(f).

Section 10-5.319—to prevent subsidence any well may be shut down. This appears to be valid, if the action is reasonable. The state's regulation of subsidence through unitization under Public Resources Code sections 3315-3347 could create conflict if utilized; however, we know of no subsidence unit in the Beverly Hills area.

Under the Beverly Hills Municipal Code various permits, licenses, and conditional use permits are required for the drilling and production of oil and gas. Also, various fees must be paid and reports must be made to city officials. All this seems unobjectionable in light of the express subordination of the provisions of the code to state laws and regulations. Each condition imposed by the city, however, must be individually examined.

2. *Santa Fe Springs City Code.* Santa Fe Springs is a general law (non-chartered) city.

(a) *The city zoning* regulations permit oil and gas drilling, production, and storage in the M-2 zone "when located three hundred (300) feet or more from any residential zone, school or park." In general this is more restrictive than the well spacing requirements of Public Resources Code section 3600 and following; so long as it does not frustrate the purposes of the state regulation, it is to be regarded as a valid supplementary regulation not in conflict with state law and regulations. However, if under Public Resources Code sections 3600-3608.1 or 3609, a specific well spacing variance or plan has been approved by the state Supervisor with respect to a particular well or field within the city, any attempt on the part of the city to modify or replace the requirements set by the Supervisor would be invalid.

Section 47.03(2)—in M-2 zones a conditional use permit must be obtained for the storage of 1) oil or gas within 300 feet of any agricultural or residential zone, school or park, 2) oil in amounts of 100,000 gallons or more, or 3) flammable gases in amounts of 500,000 cubic feet or more. These are valid regulations to carry out important local interests in connection with land use and should supplement, rather than conflict, with any State requirement.

Section 60.19—*Oil and Gas Production.* Section 60.19(2)—No oil or gas well drilled after the effective date of this ordinance shall be located within eighty (80) feet of the centerline of any major highway, or seventy (70) feet of the centerline of any secondary highway, or sixty (60) feet of the centerline of any other public street. This is less restrictive than the general well spacing minimums of Public Resources Code sections 3600-3608.1 (100 ft.) and, thus conflicts with

the Public Resources Code provisions and is inoperative. Also, the municipal code spacing provisions may conflict with any DOG well spacing variance or spacing plan.

(b) Chapter 16, *"Oil and Gas Drilling,"* comprising sections 16-1 through 16-88 has many footnote references to corresponding provisions of the Public Resources Code evidently indicating an intent of the City Council not to have these ordinance provisions conflict with the Public Resources Code provisions.

Section 16-25—"Well location shall be in accordance with the requirements of the state and zoning ordinance of the city" with a footnote reference to well spacing requirements in Public Resources Code sections 3600-3608.1.

Section 16-29—blowout prevention shall be "in accordance with the requirements of the state petroleum safety orders—drilling and production, section 6691, of the Administrative Code of the state" with a footnote reference to Public Resources Code section 3219. There is no conflict with the state statute or regulations since compliance with the Public Resources Code blowout prevention requirements is the indicated standard of conduct.

Section 16-61—proper abandonment takes place when Public Resources Code (§§ 3228-3232, 3237) procedures have been complied with and the city fire chief certifies in writing that the well has been abandoned in compliance with the ordinance. There is no conflict here since the ordinance's provisions appear to be subordinated to state abandonment procedures.

(c) *"Proposed Revisions Santa Fe Springs City Code Oil and Gas Drilling"* by William B. Price, June 1975. In this proposed draft there are frequent footnote references to corresponding Public Resources Code provisions.

Section 16-25 (with footnote reference to Pub. Res. Code §§ 3600-3608.1)—"Well location shall be in accordance with the requirements of the state and the Zoning Ordinance of the city." Also, no well shall be located within 300 feet of any primary or secondary road shown on the city master plan or within 100 feet of a residence without occupant consent. These are valid provisions. The 300-feet-from-public road provision is a more restrictive provision than contained in state law but, as stated above, its application could conflict with a variance or specific spacing plan approved by the Supervisor.

Section 16-29—blowout protection (with footnote reference to Pub. Res. Code § 3219) shall be provided "in accordance with the requirements of the state petroleum safety orders—drilling and production, section 6691 of the Administrative Code of the state." No objection. Evidently, Public Resources Code section 3219 is meant to regulate the operations.

Section 16-30 *Sumps,* "No sumps or sump holes shall be constructed or used. All fluids used for drilling and fluids produced shall be contained in approved tanks or containers." This is more restrictive than the state statute and regulations, but supplements the state regulations, provided it does not effectively frustrate other operations.

Section 16-64—within 90 days after notice of desertion or notice of intention to abandon from the city manager, the well must be abandoned according to the provisions of the Public Resources Code. No conflict unless state Supervisor's approved plan for abandonment (Pub. Res. Code § 3229) allows less than 90 days for completion of abandonment, in which case the time stated in this section 16-64 would be less restrictive and, thus, inoperative.

In spite of a general compliance with the Public Resources Code abandonment procedures set forth in section 16-64, specific cleanup procedures are set forth in section 16-65 which may conflict with the specifics of the state Supervisor's approved plan for abandonment of the particular well.

For example, section 16-65(c) provides: "All buried pipeline shall be excavated and removed or, in the alternative, purged of all hydrocarbon substances and filled with water-base drilling mud or other inert material approved by the city manager." Depending on the Supervisor's orders, if any, in this regard, there could be a conflict here.

Section 16-65(d)—the well casing shall be cut off at the cellar floor to the satisfaction of the city. This section is ineffective since it conflicts with Public Resources Code provisions (§§ 3228-3232) that abandonment shall be witnessed and approved by the Supervisor and probably also conflicts with the administrative regulations setting forth abandonment procedures.

Section 16-65(e)—"A steel cap of not less than the same thickness as the well casing shall be welded to the casing around the entire circumference of the well casing." If this refers to a surface cap, it may be a valid regulation; if, however, it refers to a down-hole operation, it may well conflict with abandonment plan as approved by the Supervisor.

Section 16-65(f)—"The rathole and all holes, sumps, and depressions shall be filled with native earth and compacted to 90% compaction factor (A.T.E.S.)." Same comments as section 16-65(e).

Note that the existing Santa Fe Springs ordinance, in section 16-61, follows Public Resources Code abandonment procedures; the revised ordinance, while purporting to follow those procedures, nevertheless, details as abandonment procedures those requirements set forth above in sections 16-65(c), 16-65(d), 16-65(e), 16-65(f)). These may conflict with state regulations or approved plans.

3. *Proposed Santa Barbara County Petroleum Ordinance—Amending Chapter 25 of the Santa Barbara County Code In Its Entirety.*

The ordinance is not limited to onshore operations. Insofar as the ordinance attempts to apply to state-owned tide and submerged lands within the County, it is probably inoperative. *Monterey Oil Co.* v. *City Court, supra,* 120 Cal. App. 2d 31 (1953).

Section 25-19—"Conflict of Laws—Statement of Necessity"—recites that this ordinance is intended to supplement state laws to meet the particular problems of

Santa Barbara County and "in all cases where there is conflict with state regulations or laws, such state regulations or laws shall prevail over any contradictory provisions of this Chapter 25 or contradictory prohibitions or requirements made pursuant thereto."

Thus, the ordinance is subordinate to conflicting state law and regulations in the same field. The purposes (stated in § 25-2) of the ordinance include the "preservation of the county's unique, scenic, recreational and environmental values" and a number of its provisions cut into state regulatory controls of the same nature.

Section 25-11—each well operator must file a pollution control plan "for controlling oil spillage, and for preventing saline or other polluting or contaminating substances from reaching the water courses and reservoirs of the watershed. The said pollution control plan shall meet the requirements of County, State, and Federal authorities." Contamination of surface and underground water fit for irrigation or domestic use is peculiarly a problem to be dealt with by the state Supervisor under the Public Resources Code provisions and by the state under its Water Quality Control laws and regulations. However, this ordinance contemplates compliance with state regulation.

Section 25-22—well spacing. The minimum is 200 feet from the nearest edge of street, highway, railroad track or building (except oil field building) with power in the Petroleum Administrator to waive or modify. In general, this is more restrictive than Public Resources Code sections 3600-3609 and, thus, valid unless a variance or spacing plan has been approved by the state Supervisor or unless the County Petroleum Administrator's waiver or modification attempts to reduce the spacing below state prescribed minimums.

Section 25-24—blowout equipment. Division of Oil and Gas "specifications will be a minimum guideline, however, the Petroleum Administrator may impose more stringent requirements, if in his opinion, the situation so requires." Blowout prevention equipment is installed down-hole and is required by the supervisor so as to conserve and protect resources. We believe there is no room for local regulation. If the administrator and supervisor do not agree on such equipment, the county regulation will have no effect.

Section 25-25—cementing requirements "for the purpose of protecting the fresh water bearing strata—shall be subject to the approval by the Petroleum Administrator." This is an area within the scope of Public Resources Code protection of water provisions, and is subject to approval of the state Supervisor. The detailed cementing requirements subject to the County Petroleum Administrator's approval as to materials, methods, and procedures will doubtless conflict with state controls and are invalid.

Section 25-32—Secondary Operations. These must be carried on under the surveillance of the Petroleum Administrator and probably conflict with state law and regulations relating to secondary recovery, injection, and unitization.

Section 25-32A—sets forth safety requirements with respect to surface equipment in connection with secondary recovery operations may be made more stringent "when in the judgment of the Petroleum Administrator, there is not adequate protection of fresh water strata." If this is attempting to regulate a down-hole area preempted by the state, this regulation is ineffective.

Section 25-32B—casing, cementing, and equipment used in secondary recovery projects are subject to approval of the County Petroleum Engineer. Again, this is already within the scope of approval of the state Supervisor unless it is somehow restricted to surface uses and effects.

Section 25-32E—the Petroleum Administrator may impose such conditions on secondary recovery operations as he deems necessary so that such operations shall not become a nuisance or damage the surface or subsurface environment. Since questions concerning the subsurface environment are likely to involve phases of operations preempted by the state, the authority of the county with respect to subsurface phases of secondary operations is probably very limited even when exercised for environmental purposes. The specific conditions imposed would have to be examined.

Section 25-33—Abandonment Procedures. Detailed requirements for cut-off of casing, plugging, capping, and filling of excavations are set forth, all subject to waiver by the County Petroleum Engineer. These are areas subject to the witnessing and approval of the state Supervisor as to each well or field and conflict with the state requirements which are comprehensive.

Section 25-37—to prevent contamination of "any fresh water body, zone or strata," among other hazards, the County Petroleum Administrator may require remedial work to be done. This in our opinion enters an area of determination for the Supervisor, not the County Administrator, insofar as it relates to down-hole activities.

Section 25-39—pollution. Includes a prohibition of pollution of air, surface and subsurface waters. No specific regulatory action is prescribed.

Section 25-40—prohibits, among other things, contamination of surface and subsurface waters by salt water resulting from oil field operations. This in our opinion enters an area preempted by the state insofar as it relates to down-hole activities.

4. *City of Torrance*

(a) *A Proposed Ordinance Amending The Torrance Municipal Code To Require A Conditional Use Permit For Secondary Oil Operations.*

Torrance is a chartered city. Its charter gives it authority to regulate *municipal affairs* to the extent provided in the California Constitution. There is nothing in the Torrance City Charter specifically relating to the drilling or production of oil or gas.

This proposed amendment appears to affect the city's zoning code. The amendment requires that a conditional use permit be obtained for secondary

recovery operations (gas injection, water injection, etc.), as well as a drilling permit. This applies to secondary recovery wells drilled within the city and also to those slant-drilled from without the city limits but bottomed under and draining a pool any part of which is under city territory. There are certain exceptions with respect to existing secondary recovery operations. Evidently, the zoning ordinance permits oil operations only in areas zoned as "combining oil districts" and then only if a conditional use permit is obtained as well as a drilling permit. Under its authority to prohibit all drilling within the city limits, land use permits appear proper with regard to secondary recovery operations since such operations may represent a different land use than primary operations and may have an effect on the surface in phases not preempted by the Supervisor.

As far as the Supervisor is concerned, it should simply be noted that regulatory control by way of conditional use permits may conflict with specific approval of particular operations by the state Supervisor. Each condition must be reviewed for such conflict.

(b) *Proposed Ordinance Of City Of Torrance Creating A New Combining Oil District "0-5."*

This establishes a new type of combining oil district. A "combining oil district" is a zone wherein oil operations are permitted. The new 0-5 district is one in which conventional oil wells, as well as secondary recovery wells, may be bottomed. Evidently, this also designates areas within the city that may be used to bottom wells slant-drilled from outside the city.

This proposed ordinance is apparently ancillary to the ordinance requiring a conditional use permit for slant-drilled secondary recovery wells. It appears that in addition to the conditional use permit, a drilling permit must also be obtained from the city for any well drilled in a "combining oil district."

In addition, this ordinance provides that no wells, derricks or other producing facility or equipment may be located on the surface or within 500 feet of the surface of any land designated as in zone 0-5. If this is merely a prohibition against locating surface drilling areas within an 0-5 district, it is unobjectionable. However, with respect to land within the City along the borders of the 0-5 zone, it may effectively serve as an oil well spacing ordinance, creating the potential conflicts with general spacing regulations of the state or any special spacing variance or plan approval by the state Supervisor discussed above.

5. *Whittier.*

(a) *Resolution No. 4302 Regulating Oil And Gas Production And Exploration Facilities—Adopted November 24, 1970.*

Whittier is a chartered city. Most of the provisions of Resolution No. 4302 control surface operations and seem not to conflict with state regulations.

Section 1 (d)—the declarations and findings of this resolution seem ancillary to and in aid of the city's zoning regulations. Section 4(5)—the drilling bond is

exonerated on compliance with city abandonment procedure requirements as well as all applicable regulations of the Division of Oil and Gas. Since the state subsurface abandonment procedures are so detailed, and since they apply to the specific well, they supersede any city subsurface abandonment requirements.

Section 5(4) and (5)—blowout protection is to comply with state Petroleum Safety Orders-Drilling and Production, section 6691, California Administrative Code. This probably includes compliance with Public Resources Code blowout and safety equipment provisions.

Section 5(6)—the state blowout prevention requirements may be waived by the City Petroleum Administrator "upon such conditions and for such operations as he may determine will not endanger the public safety," based upon "the depth of the hole, probable gas pressures to be encountered, the proposed drilling, completion or abandonment program and whatever further information the Petroleum Administrator may require."

The blowout prevention regulation of the state Supervisor is directed not only to fields of unknown gas pressure or fields where high oil or gas pressure is known to exist (Pub. Res. Code § 3219), but also with respect to other wells. *See, e.g.* 14 Cal. Admin. Code section 1744.5. Note also that the Supervisor controls strength of casings (Pub. Res. Code § 3220) and has the right to specify safety devices with demonstrations and tests. Pub. Res. Code §§ 3221-3224. The requirement of Public Resources Code section 3203 that no drilling be commenced without the prior approval of the Supervisor is implemented by 14 California Administrative Code section 1714, which requires that prior to drilling, redrilling, injection or abandonment, the written approval of the Supervisor "shall list any and all requirements" of the Division of Oil and Gas. Given this elaborate operational plan subject to the Supervisor's control with regard to each well, it is difficult to see how the City Petroleum Administrator's waiver of any state blowout preventative requirement can be valid. Public interest in conservation of petroleum and other natural resources is a statewide or regional matter, especially in the Los Angeles basin, where oil fields are not confined to one city's territorial boundaries. Thus, in our opinion, this provision of the Whittier ordinance is void to the extent it purports to authorize waiver of state regulatory requirements.

Section 5(7)—in effect requires all oil field wastes to be discharged into steel tanks and prohibits open sumps. This is a more stringent requirement than any general requirement of the state and should be compatible with and in furtherance of any state authorization or approval with respect to a particular well or field.

Section 5(9)—construction standards for cellars are set forth. These may conflict with the approval requirements of the state Supervisor for the particular well or field and because of such conflict be void in the particular situation.

Section 6—abandonment procedure. This section prescribes detailed methods to be pursued with respect to some subsurface installations on abandonment of wells and also covers surface cleanup. Public Resources Code §§ 3228-3232 and 14 California Administrative Code §§ 1723-1724 put the subsurface aspects of

abandonment under the state Supervisor's control, surveillance, and approval. It is difficult to see any room for city control as to the abandonment of subsurface facilities or equipment. When the state acts reasonably and under statutory authority to carry out a statewide purpose, a "conflicting" regulation or ordinance of a city, even if chartered, is superseded. In our view, all aspects of section 6 prescribing the manner of plugging the well beneath the surface are void.

Section 7—Inspections. This section provides for the inspection and approval by the City Petroleum Administrator of (1) the well site preparation; (2) of the commencement of drilling; (3) the release of the drilling crew on completion of drilling; and (4) the abandonment to assure the Administrator that all the provisions of this resolution have been complied with. The inspections and approvals of the state Supervisor under the Public Resources Code and the California Administrative Code could give rise to conflicts with these section 7 inspection and approval provisions, in which case the city resolution provisions would be superseded.

(b) *Ordinance No. 1992.* Adopted January 9, 1973, makes oil and gas production within the city a nonconforming use which shall be terminated unless an unclassified use permit application is filed not later than May 4, 1973. A city may prohibit oil and gas drilling and production within its boundaries subject to constitutional limitations such as those set forth in *Bernstein* v. *Bush, supra,* 29 Cal. 2d 773 (1947).

6. Napa County. Proposed Ordinance Regulating The Use Of Land For Oil, Gas, And Geothermal Development.

From a sample conditional use permit supplied to us, it appears that this proposal has been adopted as Ordinance No. 475.

This ordinance covers geothermal resources activities as well as those concerned with oil and gas. The state statutes and regulations with respect to geothermal resources are, in general, the same as the state laws and regulations concerning oil and gas. Also, local entities, such as Napa County, have the same scope of control over the development of geothermal resources under their police power (although there appear to be no reported court cases on this) as they do with respect to oil and gas development. Therefore, the following comments will apply to the county's regulation of geothermal resources as well as oil and gas.

Section 1 ("Findings") and section 2 ("Purposes") show the ordinance to be basically an environmental and natural resources protection measure (the same general field as the state statute) as well as a regulation of land use and a general exercise of the police power to protect life, health, property and the general welfare. Section 2 does, however, indicate that one of its purposes is to establish procedures for "conservation" of these resources. As stated above, we believe that regulation for such purpose has been preempted.

Section 17—a use permit is required for oil, gas or geothermal resources operations to be issued by the Conservation Development and Planning Commis-

sion (hereafter "the Commission"). In general this is a valid regulation since the county may prohibit operations in all areas or selected parts of its territory.

Section 18—the Commission may specifically set forth conditions in the use permit, including, among others (§ 18(D)) provisions with respect to water quality control, fish and wildlife and land subsidence. Such conditions could affect phases of statewide concern; in cases of conflict between the conditions of the use permit and the state laws and regulations reviewed above, the permit conditions would be inoperative. Without examining the conditions imposed, little more can be said.

Section 19—before issuing a use permit the Commission must make findings with respect to a variety of matters. Among them are the following which appear to be at least of some, if not exclusive, statewide concern. No specific regulation, however, appears to be contemplated here:

Section 19A—water pollution, protection of surface and subsurface waters and fish and wildlife and their habitats.

Section 19B—water quality degradation; ground water infiltration; seepage; spillage or escape of toxic material; environmental changes in air quality.

In addition, there are a number of conditions that may be placed in the use permits listed in section 19 that could raise questions of state preemption by virtue of state statutes and regulations not under the administration of the state Supervisor.

Among findings of potentially regional or statewide, as well as local, interest set forth in section 19, are air pollution, potential contribution to smog, the "premature condensation of moisture in air preventing thunderstorms in the Sierra Nevada and local climate modification such as increased fog and ice." § 19(B)(4).

Section 24—the operations carried on under the use permit are subject to periodic inspections by the Director of the Commission.

It appears that the county's control of oil, gas, and geothermal resources development and production is to be by conditions inserted in a required use permit for each plot of land. The general purposes and many of the specific purposes and objectives are those of the state oil, gas, and geothermal statutes and regulations. The county may enact and enforce ordinances supplementary to the state laws and regulations to carry out the same objectives, but in case of conflict the state provisions prevail. In certain phases of the operations the state laws and regulations have so fully covered the field that conflicts will probably appear—casings, drilling muds, safety devices, abandonment. The conditions of each use permit must therefore be examined before an opinion can be given as to the validity of that permit.

We have been furnished with a copy of one Napa County conditional use permit issued under Ordinance No. 475 authorizing the drilling of 7 shallow exploratory temperature gradient holes with an average depth of 170 feet in the Aetna Springs area of Pope Valley. The permit sets forth 3 detailed conditions and 4 "improvement summary requirements." None of these appear to conflict with

state laws or regulations administered by the Division of Oil and Gas. The requirements are principally with respect to surface operations. Compliance with the regulations of various county and state agencies is required in the conditions including condition No. 7: "Compliance with all applicable regulations of the State . . . Division of Oil and Gas."

Thus, in practice, the county's control under the ordinance, by the device of placing conditions in use permits, may in no manner conflict with the authority lodged in or exercised by the Division of Oil and Gas under the Public Resources Code and California Administrative Code provisions. Each situation must be separately examined.

Opinion No. CV 75-108—August 20, 1976

SUBJECT: SUBDIVISION MAP ACT—CREATION OF SUBDIVISION OF FIVE OR MORE PARCELS—Legislative deletion of the phrase, "by any subdivider" from the definition of "subdivision" set forth in Government Code section 66424 alters conclusion to second question posed in 55 Ops. Cal. Atty. Gen. 414 (1972), so that a subdivision of five or more parcels is created, subject to Government Code section 66424 and 66426 of the Subdivision Map Act, where the owner of a unit of property as shown on the latest equalized county assessment roll divides the unit into four parcels for the purpose of sale, lease, or financing, and one parcel thereof is further subdivided during the same year by a purchaser acting independently of the owner.

Requested by: COUNTY COUNSEL, KERN COUNTY

Opinion by: EVELLE J. YOUNGER, Attorney General

Charles X. Delgado, Deputy

The Honorable Ralph B. Jordan, County Counsel of the County of Kern, has requested the opinion of this office on the following question:

Does the deletion by the Legislature of the phrase "by any subdivider" from the definition of "subdivision" set forth in section 66424 of the Government Code[1] alter the conclusion reached to the second question posed in 55 Ops. Cal. Atty. Gen. 414 (1972), so that a subdivision of five or more parcels is created, subject to sections 66424 and 66426 of the Subdivision Map Act, where the owner of a unit of property as shown on the latest equalized county assessment role divides the unit into four parcels for the purpose of sale, lease, or financing, and one parcel thereof

[1] Operative March 1, 1975, the Subdivision Map Act was in some respects amended and transferred from the Business and Professions Code to Government Code sections 66410 *et seq.* by Stats. 1974, Ch. 1536.

Compare section 66424 with former Business and Professions Code section 11535.

All references herein are to the Government Code unless otherwise noted.