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Supreme Court of California
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Case No. S271869

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHEVRON U.S.A., INC., et al.
Plaintiffs and Respondents,

v.

COUNTY OF MONTEREY, et al.
Defendants;

PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO
Intervenors and Appellants.

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; PROPOSED AMICUS CURIAE BRIEF OF THE COUNTY OF SANTA CLARA IN SUPPORT OF INTERVENORS AND APPELLANTS PROTECT MONTEREY COUNTY

After a Decision by the Court of Appeal
Sixth Appellate District, Case No. H045791

Appeal from a Judgment Entered in Favor of Plaintiffs
Monterey County Superior Court
Case No. 16-CV-3978 and consolidated cases
Honorable Thomas W. Wills, Judge

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rules of Court, rule 8.520(f), the County of Santa Clara ("County") hereby applies for permission to file a brief in this case as amicus curiae in support of Intervenors and Appellants Protect Monterey County and Dr. Laura Solorio. A copy of the proposed brief is attached to this application. No party, counsel for a party, or any person or entity other than amicus curiae and its counsel has made a monetary contribution intended to fund the preparation or submission of the brief, and no party or counsel for a party has authored this brief in whole or in part.

The County's interest in the issues raised by this case are manifest. The County has a direct interest in maintaining its long-established local land use and regulatory authority so that it may continue to protect the health, welfare, and interests of County residents and the local public. Relatedly, the County has an interest in ensuring that it can work in a complementary and collaborative fashion with state regulatory entities. The County exercises its land use authority in part through the Zoning Ordinance of the County of Santa Clara, which includes provisions regulating not only oil and gas extraction land uses, but many other land uses related to which the State holds some parallel permitting authority, including surface mining and recycling and waste facilities. There is currently one oil and gas extraction entity operating in the unincorporated county pursuant to a use permit issued by the County in 1993.

The Court of Appeal's holding and underlying analysis raise exceedingly important questions about the extent to which state permitting schemes can be interpreted to divest long-held land use or regulatory authority from local governments even in the absence of express preemption language. These questions go to the heart of local governments' ability to carry out some of their most important functions

under the police powers granted to them by the California Constitution. The Court of Appeal's opinion, if not corrected, could have wide-ranging impacts well beyond the facts of this particular case, including not only on counties' authority to regulate local oil and gas land uses, but also on their authority in the many other contexts in which the State has some form of parallel permitting authority or regulatory scheme.

The County has an interest in not only the substantive answer to the questions presented by this case, but also in the answers to those questions—and the preemption standards in particular—being clear and uniform. Because the Court of Appeal's opinion and Plaintiffs' arguments confuse the legal issues and break from precedent, adopting their reasoning could create uncertainty for the County and regulated parties alike, and could expose the County to increased litigation risk. Absent reversal by this Court, the opinion below could have consequences for the County's interests in its ability to effectively regulate or prohibit land uses in fields in which a State entity has some related permitting or regulatory authority.

This brief will assist the Court by narrowly focusing on issues not addressed in detail by the parties, including important policy considerations supporting this Court's preemption precedents and a detailed illustration in concrete terms of the ramifications of the Court of Appeal's opinion on the County's conditional use permit system for regulating oil and gas land uses. Specifically, the brief zeroes in on a foundational and well-established preemption precedent that should be determinative of this case but is improperly ignored and elided by Plaintiffs and the Court of Appeal. The brief discusses not only how that precedent applies here, but also takes a step back and elucidates why the precedent is justified and important for proper assessment of a state statute's preemptive effect on long-held local land use authority. In addition, the brief describes the County's use permit system for regulating oil and gas extraction uses and the far-reaching and

radical implications of the Court of Appeal's logically inconsistent conclusion that Public Resources Code section 3106 preempts Measure Z.

DATED: October 17, 2022

Respectfully submitted,

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TABLE OF CONTENTS

Page

I. INTRODUCTION 9

II. ARGUMENT 10

A. The Court of Appeal's Opinion and Plaintiffs' Arguments Contravene This Court's Important Precedent That Strongly Disfavors Finding Implied State Preemption of Local Land Use Authority 12

B. The Presumption Against Implied Preemption of Local Land Use Authority is Grounded in Sound Reasoning and Policy Considerations and Should be Upheld 19

1. This Court's precedents limiting implied state preemption of local land use authority are justified because—as demonstrated by the County's use permit system—local regulation of land use is a long-standing, constitutionally derived practice that provides important benefits that are not easily replaced by the State if preempted. 20

2. The interest in maintaining clear rules supports upholding this Court's precedents limiting implied state preemption of local land use authority. 28

3. No change in this Court's precedents limiting implied state preemption of local land use authority is warranted because the Legislature has long known how to indicate any preemptive intent in statutory language. 29

C. The Court of Appeal's Opinion is Internally Inconsistent and Creates a Rigid Binary Choice for Local Governments That is Detrimental to All Parties and Misunderstands How Local Land Use Authority Has Long Been Exercised 32

III. CONCLUSION 36

TABLE OF AUTHORITIES

Page

CASES

Ainsworth v. Bryant,
(1949) 34 Cal.2d 465 30

Big Creek Lumber Co. v. County of Santa Cruz,
(2006) 38 Cal.4th 1139 ("*Big Creek Lumber Co.*") ..... *passim*

City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.,
(2013) 56 Cal.4th 729 ("*City of Riverside*")..... *passim*

Fisher v. City of Berkeley,
(1984) 37 Cal.3d 644 ..... 9, 12

Galvan v. Superior Ct. of City & Cnty. of San Francisco,
(1969) 70 Cal.2d 851 27

Great Western Shows, Inc. v. County of Los Angeles,
(2002) 27 Cal.4th 853 ("*Great Western Shows*")..... 9, 12, 27

Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach,
(2001) 86 Cal.App.4th 534 33

IT Corp. v. Solano County Bd. of Supervisors,
(1991) 1 Cal.4th 81 *("IT Corp.*") ..... *passim*

Pacific Palisades Ass'n v. City of Huntington Beach,
(1925) 196 Cal. 211 33

People v. Nguyen,
(2014) 222 Cal.App.4th 1168 18

Pipoly v. Benson,
(1942) 20 Cal.2d 366 31

Sawyer v. Bd. of Sup'rs of Napa Cnty.,
(Cal. Ct. App. 1930) 108 Cal.App. 446..... 30

Sherwin-Williams Co. v. City of Los Angeles,
(1993) 4 Cal.4th 893 28

T-Mobile West LLC v. City and County of San Francisco,
(2019) 6 Cal.5th 1107 ("*T-Mobile*") 12, 15, 28, 29

CONSTITUTIONAL AUTHORITIES

Cal. Const., art. XI, section 7 ..... 12, 21
Cal. Const., art. XII, section 8 31
Cal. Const., art. XX, section 22 30

STATUTES

Stats. 1963, ch. 1853, § 2, p. 3829 31
Stats. 1980, ch. 992, § 8, p. 3166 31
Stats. 1981, ch. 244, § 3, p. 1296 32

Government Code

Gov. Code, § 65300 22
Gov. Code, § 65300.7 22
Gov. Code, § 65800 22
Gov. Code, § 65804 22

Health and Safety Code

Health & Saf. Code, § 25149 32
Former Health & Saf. Code, § 35743 31

Public Resources Code

Pub. Resources Code, div. 3, §§ 3000-3865 14
Pub. Resources Code, § 3012 15
Public Resources Code § 3106 ..... *passim*
Pub. Resources Code, § 3106, subd. (a), (b) 13, 14, 17
Pub. Resources Code, § 3270 14
Pub. Resources Code, § 21092 25

RULES

California Rules of Court, rule 8.520(f) 2

REGULATIONS

Cal. Code Regs., tit. 14, § 15201 25
Cal. Code Regs., tit. 14, § 17850(c) 14
Cal. Code Regs., tit. 14, § 17854 14

OTHER AUTHORITIES

County of Santa Clara Zoning Ordinance

County Zoning Ordinance, § 2.10.040 23
County Zoning Ordinance, § 2.20.010 26
County Zoning Ordinance, § 2.20.020 ..... 22, 23
County Zoning Ordinance, § 2.50.020 ..... 22, 23
County Zoning Ordinance, § 5.10.060 23
County Zoning Ordinance, § 5.20.010 - 5.20.160 23
County Zoning Ordinance, § 5.20.050 25
County Zoning Ordinance, § 5.40.010 23
County Zoning Ordinance, § 5.40.040 26
County Zoning Ordinance, § 5.65.010 ..... 24, 26
County Zoning Ordinance, § 5.65.030 25

BRIEF OF AMICUS CURIAE COUNTY OF SANTA CLARA IN SUPPORT OF INTERVENORS AND APPELLANTS

I. INTRODUCTION

This case presents important questions about the appropriate legal test for whether, and the extent to which, a State supervisory or permitting scheme should be read to divest a local government of its historic land use authority. Those questions implicate serious policy concerns; land use regulation is traditionally a local function because local regulation can account for local interests and conditions that may differ from one locality to another. (Cf. *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1152 ("*Big Creek Lumber Co.*") ["[T]he power of cities and counties to zone land use in accordance with local conditions is well entrenched."]; *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 866-67 ("*Great Western Shows*") [explaining this Court is "reluctant to find … implied preemption 'when there is a significant local interest to be served that may differ from one locality to another'" (quoting *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707)].) Divesting local governments of their land use authority would undermine localities' ability to tailor land use regulations to local conditions in the manner that best protects and advances the public welfare. It would also diminish residents' ability to hold their elected representatives accountable for local land use decisions.

The County of Santa Clara ("County") files this amicus curiae brief in support of Intervenors and Appellants Protect Monterey County and Dr. Laura Solorio ("Intervenors") because the Court of Appeal's and Plaintiffs' unsupported assertions and baseless conclusions about the preemptive effect of Public Resources Code section 3106 ("Section 3106") imperil the County's ability to regulate and condition oil and gas extraction land uses

to protect the local public interest. Not only does the Court of Appeal's flawed preemption finding jeopardize the County's ability to impose conditions on oil and gas uses to protect against adverse impacts and ensure that such uses are compatible with the local community, but it also shockingly suggests that the County could not, in the future, determine that oil and gas uses are incompatible with local interests and ban the drilling of new wells in certain zones or altogether. In addition, if accepted, Plaintiffs' arguments threaten to upend settled preemption law more broadly and vastly increase the potential scope of implied preemption of local land use authority.

The County agrees with Intervenors' analysis that Public Resources Code section 3106 does not impliedly preempt Measure Z and writes separately to emphasize and explain the significance of and justification for this Court's precedent—which Plaintiffs and the Court of Appeal ignored—that applies a presumption against implied preemption of local land use regulation absent a clear indication of preemptive intent by the Legislature. In so doing, this brief both focuses in on a core overarching preemption principle that should control the outcome of the case and provides broader context for the relevant analysis for implied preemption of local land use regulation. Finally, this brief illustrates in concrete terms the far-reaching implications of the Court of Appeal's logically inconsistent conclusion that section 3106 preempts Measure Z.

II. ARGUMENT

This Court should reverse the judgment below and adhere to, and reinforce, its well-established and important precedent strongly disfavoring finding implied state preemption of local land use authority. As explained below, the Court of Appeal's opinion and Plaintiffs' arguments before this Court ignore—and worse, contravene—this Court's precedent recognizing

a presumption against implied preemption of local land use authority absent a clear indication of preemptive intent by the Legislature. (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 742-43 ("*City of Riverside*").) This Court should not abide any erosion of this foundational precedent, however, because that precedent is well-founded, best protects legislative intent, and ensures that state and local government can work in concert through complementary regulation and permitting schemes that reflect their respective areas of expertise.

Specifically, the presumption against preemption in the absence of a clear indication of preemptive intent is justified because it appropriately recognizes the critical role of local land use regulation in facilitating local public input into land use decisions and ensuring appropriate protection of local interests that may vary according to local conditions, which functions cannot easily be replaced by the State if preempted. In addition, it provides a clear standard that reduces confusion and litigation risk, creating stability for local governments and regulated entities alike. Departing from this precedent, on the other hand, would risk upsetting the constitutionally delegated balance of powers and permitting courts to read an effect into statutes that was never intended by the Legislature.

Applied in this case, the strong presumption against implied preemption of local land use authority absent a clear indication of preemptive intent is determinative. Section 3106 does not preempt Measure Z or other local land use regulation of oil and gas uses because that section says nothing about curtailing local authority or establishing exclusive State authority to regulate oil and gas drilling, nor does it include any other language reflecting preemptive intent by the Legislature. Despite the backdrop of case law holding oil and gas regulation and even bans to be within the land use authority of local governments, and even though the Legislature has demonstrated it knows how to make clear its preemptive

intent, the Legislature chose not to use language in section 3106 that preempted local authority. That legislative decision must be respected.

In holding that the State's supervision of oil and gas drilling and operations preempted the County of Monterey's land use policies, the Court of Appeal created logical inconsistencies and set up a rigid binary choice for local governments that conflicts with longstanding land use practices and produces absurd results.

A. The Court of Appeal's Opinion and Plaintiffs' Arguments Contravene This Court's Important Precedent That Strongly Disfavors Finding Implied State Preemption of Local Land Use Authority

The Court of Appeal's opinion and Plaintiffs' arguments contravene this Court's long-standing precedent disfavoring a finding that state law impliedly preempts local land use regulation. Specifically, this Court has repeatedly held that "[l]and use regulation in California historically has been a function of local government under the grant of police power contained in article XI, section 7" of California's Constitution and that, as a result, when local governments regulate in the area of land use, "California courts will presume, *absent a clear indication of preemptive intent* from the Legislature, that such regulation is *not* preempted by state statute." (*City of Riverside*, *supra*, 56 Cal.4th at pp. 742-43 [first emphasis added] [quoting *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1151]; see also *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1121 ("*T-Mobile*") [same].) What is more, this Court has "been particularly reluctant to infer legislative intent to preempt a field covered by municipal regulation when," as here, "there is a significant local interest to be served that may differ from one locality to another." (*City of Riverside*, *supra*, 56 Cal.4th at pp. 742-43 [quoting *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1149]; see also *Great Western Shows*, *supra*, 27 Cal.4th at pp. 866-67 [same]; *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707 [same].) In

such cases involving a significant local interest that may differ between localities, this Court has applied a "presumption favor[ing] the validity of the local ordinance against an attack of state preemption." (*City of Riverside*, *supra*, 56 Cal.4th at p. 744 [quoting *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1149].)

The Court of Appeal upended this precedent when it improperly held that the County of Monterey's wastewater injection and new wells general plan land use policies are preempted by Section 3106, even though that Section contains no preemption language and says nothing about constraining local land use authority or raising matters of a paramount statewide concern that will not tolerate further local regulation. Nowhere does section 3106 express any intent to occupy the field or preempt local ordinances, or describe the State's supervisory or permitting authority as "sole," "exclusive," or otherwise in conflict with local authority. The statute simply directs the state to "supervise the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities attendant to oil and gas production." (§ 3106, subd. (a); see also *id.*, subd. (b).)

The Court of Appeal nevertheless held that Measure Z conflicted with section 3106 because "Section 3106 … explicitly places the authority to permit new wells and wastewater injection in the hands of the State, while Measure Z bans those methods and practices." (Opinion at p. 19.) The mere establishment of a state supervision and permitting scheme, however, does not constitute a "clear indication" that the Legislature intended to preempt long-held local land use authority. (*City of Riverside*, *supra*, 56 Cal.4th at pp. 742-43.) The State has over time enacted countless regulatory and permitting schemes and many of them, including the one at issue here, are designed to work alongside, and in concert with, local land use regulation. For example, the State may establish minimum standards

and technical oversight by an expert State agency of the day-to-day operation of various land uses, while continuing to rely on local land use regulation to determine where (if at all)—and under what conditions that appropriately account for local interests—such uses may occur in the first place. (See, e.g., Pub. Resources Code, § 3270 [directing state agency to "prescribe minimum facility maintenance standards for all [oil and gas] production facilities in the state"]; Cal. Code Regs., tit. 14, §§ 17850(c), 17854 et seq. [establishing state standards and permitting requirements for facilities handling compostable materials].) Reading such schemes as instead preempting local land use authority absent any clear indication of preemptive intent would upend this complementary approach and divest important land use functions from the entities best situated to carry them out—local governments.

Crucially, here, section 3106 does not demand that entities be permitted to drill new wells or utilize wastewater injection regardless of local land use regulation; it only establishes a state scheme of supervision that covers the drilling, operation, maintenance, and abandonment of wells and facilities attendant to oil and gas production if such oil and gas activity is otherwise permitted and occurs. (Pub. Resources Code, § 3106, subd. (a), (b).) This state scheme provides important expert oversight of oil and gas operations that complements local land use regulation, particularly because local governments may not have the expertise or resources to regulate in such detailed and comprehensive fashion the actual operation of oil and gas extraction uses that they may permit. (See Pub. Resources Code, div. 3, §§ 3000-3865). But nothing in section 3106 reflects an intent by the Legislature to preempt local land use authority, and in fact another provision in the same chapter explicitly recognizes that cities may "prohibit" "the drilling of oil wells," noting that the provisions of the division (i.e., including section 3106) even apply to any land where drilling

is or may be prohibited by localities, until all wells have been abandoned pursuant to state law requirements. (Pub. Resources Code, § 3012.) Thus, the Court of Appeal's holding that section 3106 preempts Measure Z breaks from this Court's precedent establishing a presumption against state preemption of local land use regulation "absent a clear indication of preemptive intent from the Legislature." (*City of Riverside*, *supra*, 56 Cal.4th at pp. 742-43 [quoting *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1151].)

Instead of identifying specific statutory language evidencing a clear intent to preempt local land use regulation, the Court of Appeal flipped the applicable test on its head by requiring Appellants to point to explicit statutory language reserving local authority. (See Opinion at p. 9 ["Section 3106 makes no mention whatsoever of any reservation to local entities of any power to limit the State's authority to permit well operators to engage in these 'methods and practices.'"]; *id.* at p. 17 ["PMC … has failed to identify any provision of state law that, contrary to section 3106, reflects that the Legislature intended to reserve all or part of the authority to make decisions about whether an oil drilling operation should be permitted to drill new wells or utilize wastewater injection for the discretion of local entities."].)

This approach is misguided for several reasons. As an initial matter, "a city's or county's power to control its own land use decisions derives from th[e] inherent police power, not from the delegation of authority by the state." (*City of Riverside*, *supra*, 56 Cal.4th at p. 744 [quoting *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1149].) Local land use authority therefore does not depend on a reservation by the State; it exists independently but can be specifically preempted by the State. (See *T-Mobile*, *supra*, 6 Cal.5th at p. 1118 ["Under our preemption cases, the question is not whether the [state statute] can be read to permit the City's

exercise of power under the [local] Ordinance. Rather, it is whether [the state statute] divests the City of that power."].) Next, this Court's precedent establishes that "[t]he party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (*Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1149.) Finally, finding implied preemption merely from the lack of a reservation of authority to local entities does not satisfy the "clear indication of preemptive intent" standard. The Court of Appeal was required to, but did not, heed this Court's precedent applying a presumption against implied preemption of local land use regulation.

Plaintiffs' arguments similarly disregard this Court's precedents regarding preemption principles in the context of local land use regulation. For example, Plaintiffs argue that Measure Z is preempted because it "prohibits activities that state law encourages, promotes, and directly regulates." (Chevron Br. at p. 29; see also Eagle Br. at pp. 23, 26; Aera Br. at pp. 39, 50-51.) In the specific context of local land use regulation, however, Plaintiffs' proposed preemption tests focusing on prohibition of an encouraged activity or frustration of a state statute's purpose, without more, are inconsistent with the rule presuming that local land use authority is not preempted unless the state statute includes a *clear indication of preemptive intent*. This rule requiring a clear indication reflects the reality that it is entirely possible for the Legislature to promote an activity without intending to interfere with local land use regulation of that activity, even if that land use regulation limits or bans the promoted activity. (See, e.g., *City of Riverside*, supra, 56 Cal.4th at p. 510 ["[T]hough the Legislature stated it intended the MMP to "promote" uniform application of the CUA and to "enhance" access to medical marijuana through collective cultivation, the MMP itself adopts but limited means of addressing these ideals."].) For example, a state law could seek to promote, say, petting

zoos by providing the carrot of funding and creating a permitting scheme for such zoos without going so far as to employ the big stick of preempting local governments from more strictly regulating or even banning petting zoos based on their local land use interests. The State has many tools for accomplishing its goals, from funding and incentives, to removing obstacles under state law, to establishing minimum standards that promote an activity by limiting its risks or impacts, to the extreme measure of preempting long-held local land use authority; when the Legislature wants to employ the latter tool to accomplish its goals, it must clearly indicate as much.

Here, even assuming arguendo that Plaintiffs were correct about section 3106's purpose and what that section "encourages," section 3106 does not preempt Measure Z because, as explained above, it does not contain a clear indication of preemptive intent by the Legislature. Courts "cannot employ the Legislature's expansive declaration of [a statute's] aims to stretch [a state statute's] effect beyond a reasonable construction of its substantive provisions." (*City of Riverside*, supra, 56 Cal.4th at p. 511.) While Plaintiffs make much ado about the statutory phrase "so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry" (Chevron Br. at pp. 11, 15, 30, 32; Aera Br. at 22, 40 NARO Br. at 2-4; Eagle Br. at 7-9, 29, 39, 43), this phrase refers back to and modifies "[t]he supervisor shall … supervise …." (Pub. Resources Code, § 3106, subd. (b).) In other words, that phrase, along with the parallel "so as to …" phrase in subdivision (a), provides guidance for how the *Supervisor* should exercise *their* supervisory authority over oil and gas wells and facilities. It does not refer to or constrain local land use authority or reflect a preemptive intent.

Of the Plaintiffs, only Chevron even acknowledges this Court's precedent establishing that, in the context of local land use regulation,

"California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (Chevron Br. at p. 59 [quoting *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1149].) Chevron attempts to dismiss this precedent by citing to a Fourth District case that explains that there is no presumption against preemption when a local ordinance regulates in an area historically dominated by state regulation, and by arguing that Measure Z is not a land use measure and regulates a field historically dominated by the Division of Oil, Gas, and Geothermal Resources (DOGGR, now known as the California Geologic Energy Management Division or CalGEM). (Chevron Br. at pp. 59-61 [citing *People v. Nguyen* (2014) 222 Cal.App.4th 1168, 1186].) But the sole case on which Chevron relies is entirely distinguishable because it did not concern local land use regulation. Rather, *Nguyen* involved local restrictions on sex offenders that were preempted by a "comprehensive" and "standardized" "statewide system" for regulating a sex offender's daily life that "manifested a legislative intent to fully occupy the field to the exclusion of local regulations." (*People v. Nguyen*, *supra*, 222 Cal.App.4th at p. 1181.) Notably, the *Nguyen* court explicitly recognized that while "sex offender registration is an area the state has traditionally regulated," "[l]and use regulation is the classic example of an area in which a local regulation is entitled to a presumption against preemption." (*Id.* at pp. 1186, 1187.)

Thus, the case on which Chevron relies actually *supports* the presumption against implied preemption in this case. Plaintiffs' unavailing arguments to the contrary notwithstanding, the determination about whether and where various types of oil and gas drilling and extraction is permitted is, quite literally, a decision about the use of land. (See also Reply Br. at pp. 23-24 [explaining why Measure Z constitutes a land use regulation].) As a result, Measure Z, as well as other local land use regulation of oil and

gas extraction like the County's use permit system, are entitled to a presumption against implied preemption. Because nothing in section 3106 reflects a clear indication of preemptive intent by the Legislature, the presumption holds and Measure Z is not preempted. The Court of Appeal's and Plaintiffs' reasoning is inconsistent with this important precedent and must be rejected.

B. The Presumption Against Implied Preemption of Local Land Use Authority is Grounded in Sound Reasoning and Policy Considerations and Should be Upheld

Because this Court's important precedent recognizing a presumption against state preemption of local land use regulation "absent a clear indication of preemptive intent from the Legislature" is grounded in sound reasoning and supported by important policy considerations, this Court should uphold that precedent rather than heeding Plaintiffs' implicit invitations to overturn or erode it. (*City of Riverside*, *supra*, 56 Cal.4th at pp. 742-43.)

First, the presumption against implied preemption of local land use authority is justified because it reflects a thoughtful recognition of the important and often irreplaceable functions that local control over land use serves, including consideration of local interests and opportunity for local input into land use decisions. A presumption against implied preemption appropriately accounts for these benefits and the foundational nature of local land use authority; given that divesting local land use authority would constitute a monumental and consequential deviation from a bedrock constitutional principle, an assumption that the Legislature did not intend to enact such a divestiture unless it specifically indicates its intent to do so is most likely to hew to legislative intent and avoid unintended consequences.

What is more, this Court's precedent recognizing a presumption against implied preemption of local land use authority is beneficial because

it establishes a clear standard for implied preemption that is easy to understand and predictably apply. Rather than forcing local governments to wade into the morass of divining how a court might interpret a statute's purpose and what level of local regulation could be said to "frustrate" that purpose, the Court's precedent looks to the language of the state statute and assesses whether that language reflects a clear indication of preemptive intent by the Legislature. Not only is this standard straightforward, but it also encourages the Legislature to be clear about its intentions, to the benefit of local governments and regulated parties alike.

Finally, no countervailing reasons exist that would support overruling this Court's precedent recognizing a presumption against implied preemption of local land use authority absent a clear indication of preemptive intent. The Legislature has repeatedly demonstrated that it is capable of drafting statutes so as to make clear any intention to preempt local land use regulation. (See Section II.B.3, *infra*.) Inferring preemption even when the Legislature has not indicated a preemptive intent risks improper judicial rewriting of statutes.

For these reasons, which are further discussed in turn below, this Court's implied preemption precedents in the context of local land use regulation are well-founded and should be reaffirmed.

1. This Court's precedents limiting implied state preemption of local land use authority are justified because—as demonstrated by the County's use permit system—local regulation of land use is a long-standing, constitutionally derived practice that provides important benefits that are not easily replaced by the State if preempted.

This Court's precedents limiting implied preemption of local land use authority are justified and should be upheld because local regulation of land use provides important benefits such as facilitating local input, consideration of local interests, and accounting for conditions that may

differ from one locality to another. Given that these benefits cannot practically be replicated at the state level and that local governments have long exercised constitutionally granted land use authority, the Legislature should be presumed not to have intended to preempt local land use authority unless it clearly indicates such intent.

To begin, local regulation of land use is a keystone feature of our system of government. As this Court has long recognized, the California Constitution's grant of authority to counties and cities allowing them to "make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws" encompasses broad authority to regulate land use. (Cal. Const. art. XI, § 7; see, e.g., *City of Riverside*, *supra*, 56 Cal.4th at pp. 737-38 [explaining that the inherent local police power of cities and counties recognized by the California Constitution "includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders"].) Local governments utilize this broad authority to regulate where, whether, when, at what intensity, and under what conditions various types of land uses are permitted consistent with the public interest in light of local conditions. (See *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1152 ["The power of cities and counties to zone land use in accordance with local conditions is well entrenched." (quoting *IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89 ("*IT Corp.*"))].)

Importantly, regulation of land use at the local level facilitates input from local communities and residents, detailed consideration of local interests and conditions, and careful balancing of potential conflicts between competing local land uses. As a result, local (as opposed to state) control over land use is widely understood as the primary and preferred method of protecting and advancing the public interest and welfare of each

community. The Legislature itself has repeatedly recognized as much. (See, e.g., Gov. Code, § 65800 [in enacting state law on zoning regulations, Legislature preserved local control to the fullest extent possible, declaring its "intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters"]; *IT Corp. v. Solano County Bd. Of Supervisors* (1991) 1 Cal.4th 81, 89.) In fact, the Legislature has even *required* local governments to exercise their land use authority to prepare and adopt long-term general plans and has found that "the diversity of the state's communities and their residents requires planning agencies and legislative bodies to [do so] in ways that accommodate local conditions and circumstances." (Gov. Code, §§ 65300, 65300.7.) In addition, recognizing the importance of public input that local control over land use promotes, the Legislature has enacted "minimum procedural standards for the conduct of city and county zoning hearings" with the intent of "insur[ing] uniformity of, and public access to, zoning and planning hearings while maintaining the maximum control of cities and counties over zoning matters." (Gov. Code, § 65804.)

The County's scheme for regulating oil and gas land uses aptly illustrates in concrete terms how maintaining land use authority at the local level provides benefits such as allowing for input from the public and relevant agencies, consideration of local interests and circumstances, and an informed balancing of competing land uses. Specifically, the County, like many other counties and cities, regulates oil and gas operations—as well as other land uses, including surface mining and recycling facilities—through a system of general plan policies and designations, zoning districts, and use permits. Use permits are a broadly accepted and well-established process for the exercise of local land use authority that entail designating zones in which certain uses may potentially occur, but only upon discretionary approval of a permit that may condition the use. (See, e.g., *IT Corp.*, *supra*,

1 Cal.4th at p. 89 ["A zoning ordinance may allow conditional uses, pursuant to permit, for particular parcels within a zone. The reasonable conditions included in such a permit become part of the zoning regulation applicable to the affected parcel." (citations omitted)].)

Under the current Zoning Ordinance of the County of Santa Clara ("County Zoning Ordinance"),[1] oil and gas extraction uses[2] are allowed subject to a use permit in Rural Base Districts and in a type of Special Purpose Base District called General Use Districts.[3] (County Zoning Ordinance, §§ 2.20.020, 2.50.020.) The County utilizes its system of use permits to ensure that any specific proposed oil and gas extraction use on any particular parcel within those districts is in the public interest. As the County Zoning Ordinance explains:

A use permit is required where specified in the Zoning

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[1] A copy of the County Zoning Ordinance is available online at https://library.municode.com/ca/santa_clara_county/codes/code_of_ordinances?nodeId=TITCCODELAUS_APXIZO.

[2] "Oil and gas extraction" is defined as "[t]he drilling for and production of oil, natural gas and other hydrocarbon substances from the ground and the temporary on-site storage of such substances," without specifying any particular techniques used to perform extraction or production. (County Zoning Ordinance, § 2.10.040.)

[3] In addition to a use permit, the County Zoning Ordinance also requires "Architecture and Site Approval" for such uses in these districts. (§§ 2.20.020, 2.50.020.) "The purpose of [Architecture and Site Approval] is to maintain the character and integrity of zoning districts by promoting quality development in harmony with the surrounding area, through consideration of all aspects of site configuration and design, and to generally promote the public health, safety and welfare." (*Id.*, § 5.40.010.) The Architecture and Site Approval procedure "commonly augments the use permit process by providing a means for establishing detailed conditions on proposed developments." (*Id.*) The Architecture and Site Approval is considered concurrently with a use permit using the same procedures. (See *id.*, §§ 5.10.020, 5.10.060; see generally *id.*, §§ 5.20.010-5.20.160.) In light of this joint process, and in the interest of brevity, this brief's general references to use permits and the use permit process are intended to encompass Architecture and Site Approval as well.

> Ordinance to establish and conduct certain uses deemed to be generally appropriate and potentially compatible with a zoning district, but for which *the intensity, impacts, or other characteristics* typically have a significant bearing on whether a use should be approved at a specific location *and under what conditions it may be established and conducted*. Such uses typically are of greater intensity and have more potential for off-site and adverse environmental impacts than those uses subject to other land use permits.
>
> The use permit procedure, standard findings, and public hearing requirements set forth in this chapter *are necessary to ensure that the proposed use is compatible with its surroundings*, satisfies all standards and conditional requirements appropriate for the use, and is consistent with the intent of the zoning district, the general purposes of the Zoning Ordinance, and any other applicable plans and policies, including the General Plan.

(*Id.*, § 5.65.010 (emphasis added).)

These purposes of the County's use permit system are effectuated as follows. First, to apply for a use permit an applicant must submit various information, including a detailed site plan, a comprehensive project description, fire protection information, grading quantities, and a Well Information questionnaire; in the case of oil and gas extraction uses, additional information such as geologic reports, environmental information forms, and a Clean Water Program questionnaire would likely also be required. *See* County of Santa Clara, Use Permit: Checklist of Required Application Materials (revised Sept. 8, 2021); County of Santa Clara, Architectural and Site Approval: Checklist of Required Application Materials (revised Sept. 8, 2021).[4] In addition, all proposed uses that

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[4] Copies of these checklists are available at https://stgenpln.blob.core.windows.net/document/Checklist_UsePermit.pdf and https://stgenpln.blob.core.windows.net/document/Checklist_ASA.pdf. Additional information is available on the County's Department of

require a use permit under the County Zoning Ordinance are subject to an environmental assessment consistent with the California Environmental Quality Act (CEQA). (*Id.*, § 5.20.050.) Such an assessment entails determining the impact of the proposed project on the surrounding environment and appropriate mitigation measures, and CEQA also requires opportunities for public input in the environmental review process. (See *id.*; Pub. Resources Code, § 21092; Cal. Code Regs., tit. 14, § 15201 ["Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement…."].)

The application materials and assessments are analyzed by the County and any relevant partner agencies such as the Santa Clara Valley Water District and Santa Clara Valley Habitat Agency, after which the use permit application must be considered at a public hearing before the Planning Commission, where interests of community members, adjacent landowners, interested organizations, and other members of the public can be shared and considered. (See County Zoning Ordinance, § 5.20.050.)

The Planning Commission may only grant the use permit if it is able to make a specific set of findings set forth in the County Zoning Ordinance. (See *id.*, § 5.65.030 [listing required findings].) The required findings include that the use "conforms with the general plan [and] the zoning ordinance"; "will not adversely affect water quality"; "will not be detrimental to the adjacent area because of excessive noise, odor, dust or bright lights"; and "by its nature, scale, intensity or design, will not impair the integrity and character of the zoning district or neighborhood, and will

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Planning and Development website. See *Use Permit*, https://plandev.sccgov.org/how/apply-permit/use-permit; *Architecture and Site Approval*, https://plandev.sccgov.org/how/apply-permit/architecture-and-site-approval.

not be significantly detrimental to any important and distinctive features of the site's natural setting." (*Id.*; see also *id.*, § 5.40.040 [listing required findings for Architecture and Site Approval, including that there are "[n]o significant, unmitigated adverse public health, safety and environmental effects of proposed development"].) These findings take account of local conditions and ensure that the impacts of the proposed project on the local community and environment, as well as the public welfare more broadly, are fully considered and appropriately limited.

In addition, the Planning Commission may impose conditions of approval on any use permit it grants in order to: "[a]void or mitigate adverse impacts," "[p]reserve the integrity and character of the zoning district," "[i]mplement General Plan policies and other adopted programs and policies related to land development and public infrastructure," and/or "[p]romote basic health, safety and welfare." (*Id.*, § 5.20.120.) For example, the Planning Commission could impose conditions limiting the intensity of a proposed oil and gas extraction use to ensure its compatibility with the zoning district and adjacent uses or impose conditions intended to protect sensitive environmental features or important groundwater sources used for drinking water (a significant concern in the County). (Cf. *id.*, §§ 2.20.010, 5.65.010.)

As a whole, the County's use permit process, including the environmental review, opportunity for public input, requisite findings, and ability to impose conditions on the use, allow the County to finely tailor its land use decisions on a parcel-by-parcel and project-by-project level based on local conditions and interests, in order to protect the public interest. What is more, the use permit process fits in with and reflects decades of comprehensive planning of the land uses that are appropriate in different areas of the county and the policies and regulations that should apply to such uses. The Court of Appeal's opinion ignores these advantages of local

regulation and imperils the County's use permit system by divesting local governments of their land use authority. (See Section II.C, *infra*.)

Critically, these beneficial features of local land use regulation cannot be practically replicated by the State. Thus, divesting local governments of their land use authority through state preemption would effectively extinguish altogether the ability to tailor land use regulations to local conditions in the manner that best protects and advances the public welfare. Placing land use decisions in the Legislature also has the potential consequence of removing the ability of city and county residents to hold their elected representatives accountable for local land use decisions and to have a local voice on such decisions.

The benefits of maintaining local land use authority at the local level—and the potentially serious consequences of divesting such authority—support this Court's cautious approach to implied preemption of local land use authority. (*Great Western Shows*, *supra*, 27 Cal.4th at 866-67 [explaining this Court is "reluctant to find … implied preemption when there is a significant local interest to be served that may differ from one locality to another" (internal quotation marks omitted)]; see also *Galvan v. Superior Ct. of City & Cnty. of San Francisco* (1969) 70 Cal.2d 851, 863-64 [explaining that the "issue of 'paramount state concern'" for the field preemption analysis "involves the question '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.'"]).) What is more, in light of the sea change that preemption of local land use authority could enact, limiting a finding of implied preemption to cases in which the Legislature has clearly indicated its preemptive intent in the language of the statute is most likely to give effect to legislative intent. (See *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at pp. 1149-50 ["The presumption against

preemption accords with our more general understanding that 'it is not to be presumed that the Legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication.'" (citations omitted)].)

2. The interest in maintaining clear rules supports upholding this Court's precedents limiting implied state preemption of local land use authority.

Another policy consideration that supports the Court's current precedent limiting implied state preemption of local land use authority is the interest in maintaining clear rules. Every city and county in the state—over 500 local governments in total—adopts local land use regulations including general plans and zoning ordinances. A lack of clear preemption rules with respect to local land use authority could cause chaos, confusion, and litigation risk for local governments.

The Court's existing precedent regarding the appropriate test for implied preemption of local land use authority is logical and easy to follow. First, the Court has repeatedly held that local enactments are preempted for conflicting with state law under the "contradictory and inimical" test for conflict preemption only where "the [local] ordinance directly requires what the state statute forbids or prohibits what the state enactment demands." (*T-Mobile*, *supra*, 6 Cal.5th at p. 1121 [citing *City of Riverside*, *supra*, 56 Cal.4th at p. 737]; see also, e.g., *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1161; *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 902.) The test's focus on the ability of the regulated entity to comply with both the state and local laws, and the test's use of words with clear meanings like "require" and "prohibit," render the test straightforward for local governments to apply when crafting their local land use regulations. Similarly, the overarching presumption against preemption of

local land use authority absent a "clear indication of preemptive intent" also provides a clear guideline. And not only is the test itself clear, but it also drives the Legislature to state clearly when it intends to preempt local land use regulation.

In contrast, the preemption tests proposed by Plaintiffs are markedly nebulous. For example, Aera Energy advances a test that would find preemption if a local regulation "frustrates and hinders" the "purposes" of a state law. (See Aera Br. at pp. 50-51.) But what rises to the level of "frustrate"? And how are local governments that are attempting to craft compliant local regulations to know what "purpose" a court will divine for every state law? Even if such a test might be appropriate in other contexts not relevant here, it contradicts this Court's precedent limiting implied preemption of long-held local land use authority to cases in which the Legislature evinces a clear indication of preemptive intent. (See *City of Riverside*, *supra*, 56 Cal.4th at pp. 742-43; *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1151; *T-Mobile*, *supra*, 6 Cal.5th at p. 1121.) Because Plaintiffs' tests would also muddy the waters and cause confusion for courts and local governments alike, the Court should reject them and uphold its clear, well-established precedent.

3. No change in this Court's precedents limiting implied state preemption of local land use authority is warranted because the Legislature has long known how to indicate any preemptive intent in statutory language.

Finally, this Court should uphold its important precedent limiting implied preemption of local land use authority because there is no need to alter it. Aera Energy claims that versions of the conflict preemption test that are narrower than the broad test it proposes "would have a drastic impact on the State's ability to enact legislation free from local interference," but its argument falls flat. (See Aera Br. at p. 49.) All the Legislature must do to preempt local land use regulation is clearly indicate

its intent to do so, let alone include an express preemption clause. The Legislature has long known—including at the time of section 3106's enactment and its subsequent amendment—how to make a clear statement of intent to preempt, whether stating explicitly that the state will have exclusive jurisdiction or that local authority is curtailed. For example:

- The "Dam Act of 1929" explicitly provided that:

> No city, county, or city and county shall have authority by ordinance enacted by the legislative body thereof or adopted by the people under the initiative power or otherwise, to regulate or supervise or to provide for the regulation or supervision of any dams or reservoirs in this state, or the construction, maintenance or operation thereof, nor to limit the size of any dam or reservoir or the amount of water which may be stored therein, it being the intent of the Legislature by this act to provide for the regulation and supervision of dams and reservoirs exclusively by the state.

(*Sawyer v. Bd. of Sup'rs of Napa Cnty.* (Cal. Ct. App. 1930) 108 Cal. App. 446, 453.)

- The 1934 amendment to article XX, section 22, of the California Constitution established that:

> The State of California, subject to the Internal Revenue Laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of intoxicating liquor within the State …. The State Board of Equalization shall have the exclusive power to license the manufacture, importation and sale of intoxicating liquors in this State ….

(Former art. XX, § 22, as amended Nov. 6, 1934; see also *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 471.)

- As early as 1942, a section of the Vehicle Code provided that:

> The provisions of this division are applicable and uniform throughout the State and in all counties and municipalities therein and no local authority shall enact or enforce any ordinance on the matters covered by this division unless expressly authorized herein.

(*Pipoly v. Benson* (1942) 20 Cal.2d 366, 372.)

- When it was passed in 1963, the Rumford Fair Housing Act (a predecessor to the Fair Employment and Housing Act) provided that:

> it is the intention of the Legislature to occupy the whole field of regulations encompassed by the provisions of this part, the regulation by law of discrimination in housing contained in this part shall be exclusive of all other laws banning discrimination in housing by any city, city and county, county, or other political subdivision of the State.

(Former Health & Saf. Code, § 35743, added by Stats. 1963, ch. 1853, § 2, p. 3829 and repealed by Stats. 1980, ch. 992, § 8, p. 3166.)

- In 1974, a section was added to the California Constitution that provided, "A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the [California Public Utilities] Commission." (Cal. Const., art. XII, § 8.)

- In 1981, the Legislature adopted language providing that:

> Notwithstanding any other provision of law … no city or county … may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment, or recovery of resources from hazardous waste or a mix of hazardous and solid wastes at that facility, unless, after public notice and hearing, the director determines that the operation

> of the facility may present an imminent and substantial endangerment to health and the environment.
>
> (Health & Saf. Code, § 25149, added by Stats. 1981, ch. 244, § 3, p. 1296.)

Thus, the State controls its own destiny. If the Legislature wishes to preempt local authority despite the attendant drawbacks because it believes doing so is necessary in order to achieve some compelling state goal, it knows how to do so. Concordantly, if the Legislature is silent as to any intent to preempt local land use authority, courts should not write preemption into the statute. Here, even though it knew how to do so, the Legislature chose not to use language in section 3106 that preempted local authority or evinced a clear intent to do so. That legislative decision must be respected.

For the foregoing reasons, this Court's precedent limiting implied preemption of local land use regulation is justified, and the Court should not countenance the Court of Appeals' breach of that well-established precent or accede to Plaintiffs' invitations to upend those precedents. Rather, the Court should reaffirm and reinforce its prior holdings that California courts "will presume, absent a clear indication of preemptive intent from the Legislature," that local land use regulation is *not* preempted by state statute. (*City of Riverside*, *supra*, 56 Cal.4th at pp. 742-43.)

C. The Court of Appeal's Opinion is Internally Inconsistent and Creates a Rigid Binary Choice for Local Governments That is Detrimental to All Parties and Misunderstands How Local Land Use Authority Has Long Been Exercised

Beyond contravening this Court's well-founded precedent limiting implied preemption of local land use authority, Plaintiffs' and the Court of Appeal's improper conclusions that Section 3106 preempts Measure Z would have absurd implications.

First, in attempting to reconcile its flawed preemption ruling with this Court's precedent affirming local governments' authority to regulate oil and gas land uses, the Court of Appeal rendered its opinion internally inconsistent and appears to set up a rigid binary choice for local governments to either ban all oil and gas uses or allow any and all types and intensities of oil and gas operations that may be permitted by the State.

Specifically, in a long line of cases this Court and the Court of Appeal have repeatedly held that local governments, through their inherent police powers, may limit the location of oil and gas land uses to certain zones or ban those uses altogether within the locality. (E.g., *Pacific Palisades Ass'n v. City of Huntington Beach* (1925) 196 Cal. 211, 216-17 ["The City of Huntington Beach has the unquestioned right to regulate the business of operating oil wells within its city limits, and to prohibit their operation within delineated areas and districts, if reason appears for so doing."]; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 555 ["Enactment of a city ordinance prohibiting exploration for and production of oil, unless arbitrary, is a valid exercise of the municipal police power."]; see also Opening Br. at pp. 18-19.) The Court of Appeal's opinion pays hollowed support to this precedent by stating that it "does not in any respect call into question the well-recognized authority of local entities to regulate the location of oil drilling operations." (Opinion at p. 2.) But the Court of Appeal's holding that the County of Monterey may not ban certain oil and gas land uses—specifically, wastewater disposal uses and the drilling of new wells—does not hew to the principle that a local government may ban all oil and gas land uses. If, as is well established, a local government has the power to ban *all* oil and gas land uses, it is logically inconsistent to say that the local government cannot exercise that same power to a lesser degree to ban a subset of those same oil and gas land uses.

Indeed, this logical inconsistency becomes all the more apparent when examining the Court of Appeal's reasoning for holding that the County of Monterey's ban on wastewater disposal land uses and drilling new wells is preempted. The opinion explains that "Measure Z conflicts with section 3106" because it "ban[s] activities that section 3106 not only promotes and encourages, but also explicitly places the authority to permit in the hands of the State." (Opinion at p. 16.; see also *id.* at p. 20 [explaining that State's permitting authority would be "entirely frustrated by Measure Z's ban on some [oil and gas operation] methods and practices"].) Yet the opinion nowhere explains why the same reasoning would not extend to and preempt a total ban on all oil and gas land uses, in contravention of this Court's precedent permitting such bans. That is, the Court of Appeal does not address the logical inconsistency created by its holding that a ban on some oil and gas land uses conflicts with the State's permitting authority but a ban on all oil and gas land uses—including those banned by Measure Z—does not.

The practical result of the Court of Appeal's flawed and internally inconsistent analysis is to create a rigid binary choice for local governments to either completely disallow or completely allow all oil and gas land uses that may be permitted by the State on any particular parcel; this inflexible choice conflicts with longstanding common practices in the exercise of local land use authority and harms the public interest. As described earlier, the County of Santa Clara, like many other counties and cities, regulates certain land uses—including oil and gas operations, surface mining, and recycling facilities—through a system of use permits. (See Section II.B.1., *supra*.)

The Court of Appeal's flawed opinion, however, appears to conflict with the application of the County's use permit scheme as applied to oil and gas land uses. For example, does the Court of Appeal's holding that a ban

on the drilling of new oil wells is preempted mean that the County could not impose as a condition of approval on a use permit for a new oil and gas operation a limit on the number of new wells to be drilled in order to, for example, ensure that the use was not so intense as to create unacceptable adverse impacts? More broadly, does the Court of Appeal's suggestion that any limit on an oil and gas land use that implicates a method or practice covered by the State's permitting scheme would be preempted mean that the County could not impose any conditions of approval limiting a proposed oil and gas operation land use in any way that would affect the methods and practices covered by the State permitting system? If so, local governments would face an extremely rigid, binary choice: either reject an oil and gas operation altogether, or accept that such an operation may be allowed to drill as many wells as and use whatever methods and practices may be permitted by the State.

This binary choice would be detrimental to all parties, including entities interested in conducting oil and gas operations in the county. For example, if the County were not permitted to place conditions of approval on an oil and gas operation use permit limiting the intensity of use or imposing certain mitigation requirements on the use that affected the methods and practices utilized, it is more likely that the County would be unable to make the requisite findings for use permits and would deny the application altogether, even if it would have approved a more limited use with certain safeguards. Such a divestiture of local land use authority contravenes this Court's precedent that accords significant deference to local governments' authority to regulate local land uses in a flexible manner in accordance with local interests. (See, e.g., *City of Riverside*, *supra*, 56 Cal. 4th at p. 755 [explaining that a presumption again preemption is "supported by the existence of significant local interests that may vary from jurisdiction to jurisdiction."].)

III. CONCLUSION

For the foregoing reasons, Amicus the County of Santa Clara supports Intervenors' argument that the decision below must be reversed. Section 3106 does not preempt Measure Z or local land use authority over oil and gas extraction uses because it does not contain any language establishing exclusive State authority or otherwise indicating that the Legislature intended to divest local governments of their long-held and oft-recognized authority to regulate—or even ban—oil and gas drilling. This Court's precedent establishing a strong presumption against implied preemption of local land use authority absent a clear indication of preemptive intent is well-founded and should be reinforced.

Dated: October 17, 2022

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

In accordance with Rule 8.204(c)(1) of the California Rules of Court, the undersigned hereby certifies that the foregoing brief contains 9206 words, including footnotes, according to the word count generated by the computer program used to prepare the brief.

Dated: October 17, 2022

By: */s/ Elizabeth Vissers*
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PROOF OF SERVICE

I, Anissa Curiel, declare as follows:

I am employed in the County of Santa Clara, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 70 West Hedding Street, East Wing, 9th Floor, San José, California 95110, in said County and State. On October 17, 2022, I served the following document(s): **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; PROPOSED AMICUS CURIAE BRIEF OF THE COUNTY OF SANTA CLARA IN SUPPORT OF INTERVENORS AND APPELLANTS PROTECT MONTEREY COUNTY**

By electronic service (via TrueFiling) on:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 17, 2022, in San José, California.

/s/ Anissa Curiel
Anissa Curiel

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 10/19/2022 by Celia Wong, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **CHEVRON U.S.A. v. COUNTY OF MONTEREY (PROTECT MONTEREY COUNTY)**
Case Number: **S271869**
Lower Court Case Number: **H045791**

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/17/2022

Date

/s/Elizabeth Vissers

Signature

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