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5 MONTE BEARD, SR. and  
MERRY VANDERWAAL  
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES**  
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11 MONTE BEARD, SR., a California citizen;  
and MERRY VANDERWAAL, a California  
12 citizen,

13 Petitioners and Plaintiffs,

14 v.

15 STATE OF CALIFORNIA; CALIFORNIA  
DEPARTMENT OF CONSERVATION,  
16 GEOLOGIC ENERGY MANAGEMENT  
DIVISION; and DOES 1 through 25, inclusive,  
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18 Respondents and  
Defendants.  
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Case No.

PLAINTIFFS' AND PETITIONERS'  
VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
VIOLATION OF PROCEDURAL AND  
SUBSTANTIVE DUE PROCESS, EQUAL  
PROTECTION, INVERSE  
CONDENMNATION (OR,  
ALTERNATIVELY, REGULATORY  
TAKING), AND DECLARATORY  
RELIEF

[Code Civ. Proc. §§ 1085, 1094.5]

JURY TRIAL DEMANDED

Petitioners and Plaintiffs MONTE BEARD, SR. and MERRY VANDERWAAL (collectively, “**Petitioners**”) hereby petition this Court for a writ of mandamus pursuant to Code of Civil Procedure § 1085, or alternatively, § 1094.5, directed to Respondents and Defendants State of California (“**State**”) and California Department of Conservation, Geologic Energy Management Division (“**CalGEM**”) (collectively, “**Respondents**”) and hereby bring the within Complaint for Violation of Procedural and Substantive Due Process, Equal Protection, Inverse Condemnation, and Declaratory Relief. In support, Petitioners hereby allege on information and belief as follows:

## NATURE OF THE CASE

1. Petitioners are long-time residents of Long Beach, California. For nearly 100 years, the Beard family has lived in and contributed to their local community. The Beard family has been in California since 1929, when Petitioners' maternal grandfather moved to Long Beach from Minnesota. Mr. Beard's father later served in the U.S. Navy during World War II, and Mr. Beard himself spent the majority of his career in civil service for the City of Long Beach.

2. Petitioners are lifelong residents of Long Beach, California. Mr. Beard spent the majority of his career at the City of Long Beach in financial services. In this role, he saw firsthand the positive tax impact that oil and gas production has had on the City of Long Beach, including providing financial support for the City's activities and providing funds for the construction of numerous municipal buildings, including the Convention Center and others. Mr. Beard is very involved in his local Lutheran church.

3. Petitioners are also owners of property rights to subsurface oil and gas hydrocarbon reserves in Long Beach, which their maternal grandfather purchased in 1929. These mineral rights were originally purchased along with a “4-plex” small residential building on the surface of the property. However, when the City of Long Beach took the surface property via eminent domain in the 1950s, Petitioners’ mother wisely severed the mineral rights to keep the royalty income in their family, where it remains to this day. Consequently, Petitioners own only

1 the mineral rights, and not the surface real property.

2 4. Such mineral rights holders are typically referred to as “royalty owners” as they  
3 receive royalty payments from oil and/or gas producers to whom they lease their property  
4 interests in oil and gas reserves for the purpose of extraction and sale of those reserves. .  
5 Petitioners have leased their mineral rights to certain producers operating in the County of Los  
6 Angeles (“**Operators**”). Petitioners, and their predecessors in interest, have owned their mineral  
7 interests for decades, and the Operators to whom they have leased those interests have produced  
8 oil and gas in paying quantities for more than 70 years pursuant to local and State entitlements  
9 expressly authorizing such mineral exploration and production.

10 5. This action challenges the State’s adoption of Senate Bill No. 1137, which added  
11 Article 4.6 to Chapter 1 of Division 3 of the Public Resources Code (commencing with Section  
12 3280) (“**SB 1137**”). SB 1137 effectively prohibits the rework or maintenance of existing oil and  
13 gas wells, as well as the development of any new wells or production facilities, within a 3,200  
14 foot (0.61 mile) radius of a lengthy list of land uses, each of which SB 1137 summarily  
15 characterizes as a “sensitive receptor.” SB 1137 also imposes unreasonably burdensome and  
16 scientifically unsupported operational requirements on existing oil and gas wells and production  
17 facilities located within 3,200 feet of a sensitive receptor.

18 6. SB1137 is not based on facts or science. Among other things, SB 1137 includes a  
19 wholly arbitrary 3,200 foot setback, which effectively eliminates the possibility that any oil well  
20 can be utilized to its full potential because it is within 3,200 feet of a “sensitive receptor.” There  
21 is no credible scientific report or analysis to support this arbitrary 3,200 setback.

22 7. Petitioners seek a writ of mandamus ordering nonenforcement of SB 1137,  
23 compelling issuance of all necessary permits and entitlements for well operations notwithstanding  
24 SB 1137, and finding SB 1137 unconstitutional and unenforceable, because it: (1) denies  
25 Petitioners (and others) due process of law under Article 1, Section 7 of the California  
26 Constitution and the Fourteenth Amendment to the United States Constitution; (2) denies  
27 Petitioners equal protection under the law in violation of Article 1, Section 7 of the California  
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1 Constitution and the Fourteenth Amendment to the United States Constitution; and (3) takes  
2 Petitioners' property for public use without just compensation.

3 8. As set forth in detail in this Petition and Complaint, the State's adoption of SB  
4 1137, and its enforcement by CalGEM, infringes upon the Petitioners' ability to access the  
5 subsurface hydrocarbons in their Property and constitutes a taking of property without just  
6 compensation in violation of the United States and California Constitutions. The state and federal  
7 constitutions prohibit government from taking or damaging private property for a public use  
8 without just compensation being paid. SB 1137 improperly constrains the Operators' (and  
9 thereby Petitioners') ability to extract hydrocarbons owned by Petitioners in violation of relevant  
10 laws, thereby undermining Petitioners' property rights. In doing so, SB 1137 deprives Petitioners  
11 of all beneficial use of their property, thereby depriving them of their ownership rights without  
12 just compensation. The Petitioners, and each of them, therefore seek an award of just  
13 compensation as guaranteed by Article 1, Section 19 of the California Constitution and the  
14 Takings Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

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17 **PARTIES**

18 9. Monte Beard, Sr. is a citizen of the State of California, residing in the City of Long  
19 Beach in Los Angeles County, California.

20 10. Merry Vanderwaal is a citizen of the State of California, residing in the City of  
21 Long Beach in Los Angeles County, California.

22 11. Respondent and Defendant, the State of California, through its Legislature, passed  
23 Senate Bill 1137, which is the subject of this action.

24 12. Respondent and Defendant CalGEM is a state agency and a department of the  
25 California Natural Resources Agency, created by statute. (*See Pub. Res. Code §§ 600, et seq.*)  
26 CalGEM is a subdivision within the State of California's Department of Conservation. (*See Pub.*  
27 *Res. Code § 607.*) CalGEM regulates and oversees oil and gas exploration and production  
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1 throughout the state.

2 13. Petitioners are unaware of the true names and/or capacities of Respondents and  
3 Defendants DOES 1 through 25, inclusive, and therefore sue said Respondents and Defendants by  
4 such fictitious names. Petitioners will amend this Petition and Complaint to insert the true names  
5 and/or capacities of DOES 1 through 25, inclusive, when the same have been ascertained.  
6 Petitioners are informed and believe and thereon allege that each such fictitiously named  
7 Respondent and Defendant is, in some manner or for some reason, responsible for the damage  
8 caused to Petitioners and is subject to the relief being sought in this Petition and Complaint.

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10 **JURISDICTION AND VENUE**

11 14. This Court has jurisdiction under Code of Civil Procedure §1085, or alternatively,  
12 Code of Civil Procedure § 1094.5.

13 15. Venue is proper in this Court under Code of Civil Procedure § 392, as the property  
14 at issue in this action is located in the County of Los Angeles and the acts and omissions alleged  
15 herein took place within the County of Los Angeles.

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18 **GENERAL FACTUAL ALLEGATIONS**

19 **Oil and Gas Production in the State of California**

20 16. For more than a century, the oil and gas industry has been a critical contributor to  
21 the State's economy. The first California oil well was drilled in 1865 in Humboldt County; and  
22 in 1875, the first commercial oil field was discovered in the Pico Canyon oil field north of Los  
23 Angeles. Beginning in the early 1900s, oil became a major economic and cultural driver in the  
24 State bringing tremendous wealth, supporting high-paying jobs, and offering economic stability to  
25 the region. Those contributions continue to this day.

26 17. The oil and gas industry has also been a critical part of Petitioners' families' lives.  
27 The royalties produced by Petitioners' property helped Mr. Beard and his wife to put their  
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1 children through college, just as those royalties helped support their parents and grandparents for  
2 more than seven decades. These royalties also help support Mrs. Vanderwaal, who is in poor  
3 health and relies on these payments, along with her government benefits, for her income.

4 18. More broadly, the oil and gas industry in California provides royalty payments to  
5 an estimated 500,000 individual California royalty owners and their families, the majority of  
6 whom are middle-class individuals like Petitioners. These individuals come from diverse  
7 backgrounds, including ranchers, farmers, teachers, factory workers, retirees, foundations,  
8 religious organizations, municipalities, and many others. The average age of a royalty owner is  
9 over 60, and many rely on royalty income to supplement their Social Security benefits. For  
10 generations, royalty owners have been able to provide for their families through royalty income,  
11 which allows regular working families to not only survive but thrive in the Golden State. For  
12 many families, royalties represent family history, as many of these properties were purchased  
13 decades ago when families first arrived in California during the gold rush and subsequent waves  
14 of immigration to the state.

15 19. In 1915, the California Legislature created the agency now known as CalGEM  
16 (formerly known as the Division of Oil, Gas and Geothermal Resources) under the direction of  
17 the State Oil and Gas Supervisor (“supervisor”) to oversee the beneficial exploitation of oil and  
18 gas and to ensure the safe recovery of energy resources in the State. California law vests  
19 authority in CalGEM to “supervise the drilling, operation, maintenance, and abandonment of  
20 wells so as to permit owners or operators of wells to utilize all methods and practices known to  
21 the oil industry *for the purpose of increasing the ultimate recovery of underground*  
22 *hydrocarbons* and which, in the opinion of the supervisor, are suitable for this purpose in each  
23 proposed case.” (Public Resources Code, § 3106 (emphasis added).)

24 20. California law directs the supervisor to administer state statutes and regulations so  
25 as to “encourage the wise development of oil and gas resources” to “best meet . . . [the] needs in  
26 this state” and to avoid waste of those resources. (Pub. Resources Code § 3106, subds. (b), (d).)

1 **The Adoption of Senate Bill 1137**

2 21. Senate Bill 1137 is directly at odds with the above-quoted proclamations. SB 1137  
3 establishes “health protection zones,” (“HPZs”) which are defined as “the area within 3,200 feet  
4 of a sensitive receptor,” and prohibits CalGEM from approving the reworking or maintenance of  
5 existing oil and gas wells or production facilities and **any** new oil and gas wells or production  
6 facilities, within any HPZ. (Pub. Res. Code §§ 3280, 3281(a).) A “sensitive receptor” is defined  
7 broadly to include any of the following:

- 8 (1) A residence, including a private home, condominium, apartment, and living  
9 quarter.
- 10 (2) An education resource, including a preschool, school maintaining  
11 transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive,  
12 daycare center, park, playground, university, and college. Where a  
13 university or college is the only sensitive receptor within 3,200 feet of the  
14 operator’s wellheads or production facilities, the university or college is not  
15 a sensitive receptor if the operator demonstrates to the division’s  
16 satisfaction that no building with nominal daily occupancy on the  
17 university or college campus is located within 3,200 feet of the operator’s  
18 wellheads or production facilities.
- 19 (3) A community resource center, including a youth center.
- 20 (4) A health care facility, including a hospital, retirement home, and nursing  
21 home.
- 22 (5) Live-in housing, including a long-term care hospital, hospice, prison,  
23 detention center, and dormitory.
- 24 (6) Any building housing a business that is open to the public.

25 (Pub. Res. Code §3280(c).)

26 22. SB 1137 imposed additional onerous conditions on oil and gas operators as well.  
27 It imposes additional notice and monitoring requirements on operations within a HPZ. (Pub. Res.  
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1 Code § 3282.) It also limits the amount of noise, light and dust that would be permitted to  
2 emanate from wells and production facilities and requires operators to develop leak detection and  
3 response plans and regular water testing and monitoring protocols. (*Id.* at §§ 3282-3284.)

4 23. The State and CalGEM declined to undertake a rulemaking process for adoption of  
5 the changes to the Public Resources Code contemplated by SB 1137. By avoiding the rulemaking  
6 process, the State and CalGEM avoided subjecting the proposed changes, in particular the  
7 establishment of a 3,200 foot setback between the above-identified laundry list of receptors and  
8 oil and gas facilities, to review under the California Environmental Quality Act (“CEQA”). Had  
9 the State and CalGEM followed the typical rulemaking process, the establishment of setbacks  
10 from oil and gas facilities, if any, would have been governed by the findings of facility-specific  
11 health risk assessments prepared by qualified experts in accordance with CEQA.

12 24. As a matter of indisputable public record, there are multiple, publicly available air  
13 monitoring studies conducted in California near oil and gas operations or in oil and gas basins  
14 that provide directly relevant data from which to assess the potential for exposures and adverse  
15 health risks to people that may live within 3,200 feet from active operations and oil fields. In  
16 fact, most such studies were commissioned or conducted by the California Air Resource Board or  
17 various local air districts in oil and gas regions, and many studies were undertaken as part of  
18 existing local and regional air quality health protective regulations. The existing data reflects a  
19 wide range of different operations, pre-production and production activities, basins, seasons,  
20 sampling durations, and distances from oil and gas operations in California spanning  
21 approximately 20 years. Taken together, these publicly available data sets constitute an extensive  
22 body of relevant air measurements and health risk studies that ***categorically do not support*** state-  
23 wide imposition of a 3,200-foot setback.

24 25. Ignoring this voluminous body of scientific work and avoiding a rule-making  
25 process that would have triggered CEQA review, SB 1137 relies on inapposite “pseudo-studies”  
26 that fail to demonstrate any causal relationship between proximity to oil and gas operations and  
27 adverse health outcomes. One such study was actually generated by the State ***after*** SB 1137’s  
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1 adoption. In sum, the conclusion that SB 1137's 3,200 foot buffer is necessary to minimize  
2 exposure to contaminants is not supported by any relevant scientific evidence.

3 **Petitioners' Property Rights**

4 26. Monte Beard, Sr. and Merry Vanderwaal are joint property owners of Lot 14 in  
5 Block 5 of Tract No. 3751, in the City of Long Beach, Los Angeles County, A.P.N. 7245-009-  
6 011 (the "**Property**"). Mr. Beard and Mrs. Vanderwaal are brother and sister, and each has a  
7 50% interest in the Property as tenants in common. Their maternal grandfather purchased the  
8 Property, along with a small residential building on the surface, in 1929. In the 1950s, City of  
9 Long Beach took the surface via eminent domain in the 1950s, and the family severed the mineral  
10 rights to keep the royalty income in their family. Petitioners each receive approximately \$3,600  
11 annually in royalty payments (subject to fluctuation based on the market price of oil).

12 27. The oil field in which the Property lies is referred to as the Long Beach Unit of the  
13 Wilmington Field. THUMS Long Beach ("**THUMS LB**") is the operator of record in this portion  
14 of the Long Beach Unit in the Wilmington Field.

15 28. Petitioners leased their mineral ownership interest in the Property to THUMS LB  
16 and its predecessors in interest, beginning as early as 1954 if not earlier, in order to permit  
17 THUMS LB to extract the hydrocarbons therein and, in exchange, to receive royalty payments for  
18 the sale of those hydrocarbons from THUMS LB. Petitioners regularly receive such royalty  
19 payments. The Courts have recognized that "the right to remove oil and gas from the ground is a  
20 property right." *Maples v. Kern County Assessment Appeals Bd.*, 103 Cal.App.4th 172, 186  
21 (2002).

22 29. As the oil and gas wells and facilities on the Property age and otherwise reach the  
23 ends of their mechanical lives, they require (among other things) ongoing and periodic  
24 maintenance, redrilling and sidetracking to sustain their ability to access and remove underground  
25 hydrocarbons from the subsurface. Without the ability to perform such operations, Operators will  
26 lose the ability to extract the underground hydrocarbons. Similarly, wells and production  
27 facilities become less effective over time and ultimately break down and must be repaired and  
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1 replaced. Without the ability to repair and replace inoperative wells, Operators will lose the  
2 ability to extract the underground hydrocarbons, and in turn, the Petitioners and other royalty  
3 owners will be directly harmed by the taking of their property interest and the right to all or  
4 substantially all economic benefit from their property.

5 30. There are approximately 1,579 active or idle wells within the Long Beach Unit, of  
6 which approximately half, 868, are located with an HPZ. The well(s) specifically accessing  
7 Petitioners' Property are entirely within the HPZ. The LBU has oil and gas reserves of not less  
8 than 438 million barrels, and an anticipated useful life of not less than 66 years, which will  
9 provide Petitioners with ongoing royalty payments in the thousands of dollars per year for the  
10 foreseeable future unless SB 1137 is enforced.

11 31. All of Petitioners' ownership interests in the Long Beach Unit, as well as the  
12 existing wells and production facilities related to those interests, are within an HPZ. Therefore,  
13 SB 1137 completely eliminates Petitioners' ability to access any of the underground  
14 hydrocarbons in which they have an ownership interest.

### 15 16 **FIRST CAUSE OF ACTION**

#### 17 **(Petition for Writ of Mandate For Violation of Substantive Due Process** 18 **Against the California Department of Conservation, Geologic Energy Management** 19 **Division; and Does 1-25)**

20 32. Petitioners incorporate by reference the allegations contained in paragraphs 1  
21 through 31, above.

22 33. Article I, Section 7, subdivision (a) of the California Constitution states that "[a]  
23 person may not be deprived of life, liberty, or property without due process of law ...." As a  
24 substantive limitation on governmental action, the due process clause precludes arbitrary and  
25 irrational decision making. The procedural component of the due process clause ensures a fair  
26 adjudicatory process before a person is deprived of life, liberty, or property.

27 34. When the government enacts legislation that is "arbitrary" or "discriminatory" or  
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1 lacks a reasonable relation to a proper legislative purpose, it violates the substantive due process  
2 clause of the California Constitution. *Shaw v. County of Santa Cruz*, 170 Cal.App.4th 229, 265  
3 (2008). Moreover, statutes which either forbid or require the doing of an act in terms so vague  
4 that people of common intelligence must necessarily guess at their meaning and differ as to their  
5 application, violate due process of law. *Zubarau v. City of Palmdale*, 192 Cal.App.4th 289, 308  
6 (2011).

7 35. SB 1137 violates substantive due process rights because it is irrational and  
8 arbitrary in that it “fails to serve any legitimate governmental objective[.]” *Lingle v. Chevron*  
9 *U.S.A.*, 544 U.S. 528, 542 (2005).

10 36. As discussed above, there is simply no scientific evidence supporting the State’s  
11 and CalGEM’s assertion that direct health impacts, significant health risks from air pollution, or  
12 any actual harm will result at distances of less than one kilometer (3,200 feet) from an oil or gas  
13 facility. To the contrary, state-of-the-art analyses prepared by qualified experts examining  
14 California oil and gas operations (and California agencies themselves) demonstrate that air  
15 contaminant concentration levels within 3,200 feet of oil and gas facilities fall consistently below  
16 thresholds scientifically shown to pose significant adverse health risks. Additionally, background  
17 concentrations in other areas of California have been recorded at similar or even higher values  
18 than concentrations from sampling locations near oil and gas operations, and source  
19 apportionment analyses conducted as part of these studies have shown that high value  
20 concentrations are often caused by sources having nothing to do with oil and gas development.

21 37. In an effort to generate some sort of scientific work product that would support a  
22 3,200 foot setback, CalGEM convened a California Oil and Gas Public Health Rulemaking  
23 Scientific Advisory Panel (“SAP”). On October 1, 2021, the SAP provided responses to several  
24 questions posed by CalGEM related to the “level of certainty that proximity to oil and gas  
25 extraction wells and associated facilities in California causes negative health outcomes.”  
26 However, the evidence relied upon by the State and SAP fails to establish any causal connection  
27 between well proximity and negative health outcomes for several reasons, including but not  
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1 limited to, ignoring relevant environmental data collected in California communities near oil and  
2 gas operations and cherry-picking certain data results to support conclusions, including studies  
3 from regions outside California that do not reflect California's current regulatory environment.  
4 **None** of the studies SAP relied on to support its conclusions connect measured emissions  
5 exposures from any specific oil production operations in California. Moreover, **none** of the  
6 health studies relied on by SAP ***even measured air concentrations of compounds emitted from***  
7 ***oil and gas operations.***

8 38. In addition, the cited scientific studies are generally irrelevant to the activities  
9 targeted by SB 1137. Many concern operations from outside of California with very different  
10 geological characteristics, or operations involving hydraulic fracturing or natural gas extraction,  
11 that are very different from the operations prohibited by SB 1137. SB 1137 also targets the  
12 drilling of wells. But the State has not identified any scientific studies that have found a negative  
13 health impact from the drilling of new wells, even when existing wells are already operating in  
14 the area. Thus, the methodology employed by SAP to assess the causal relationship between  
15 proximity to oil and gas facilities and negative health outcomes was fundamentally flawed and  
16 unreliable, and cannot reasonably serve as the basis for the law.

17 39. SB 1137 also fails to recognize the comprehensive process "for control of air  
18 pollution from all sources" set forth in the Health and Safety Code, which vests power in the local  
19 and regional authorities (air districts, cities and counties) and the state board (California Air  
20 Resources Board ("**CARB**")). Indeed, SB 1137 conflicts with the laws and regulations enacted  
21 by the State to address air quality comprehensively (including compliance with federal Clean Air  
22 Act requirements), rather than by targeting specific industries. SB 1137 identifies no role for the  
23 air districts or CARB in setting the 3,200-foot distance - summarily claiming that "harm" will  
24 occur at "less than" 3,200 feet, although no specific distance is provided, nor is any specific  
25 pollutant identified in the law. (SB 1137, Section 1(d).)

26 40. Under the Health and Safety Code, the air districts and/or CARB would be  
27 required to evaluate the potential harm based on specific air pollutants, using scientific methods,  
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1 and then evaluate controls for those specific pollutants, establish air quality standards, and on top  
2 of that, consider economic impacts and alternative methods to achieve these standards. Health &  
3 Saf. Code, § 40002, and associated regulations; *see also* Gov. Code § 11340 *et seq.* for regulatory  
4 and rulemaking requirements.)

5 41. SB 1137 sidesteps the entire regulatory process of the air districts/CARB and  
6 determines, without following any of the Health and Safety Code requirements, that a health risk  
7 exists and that prohibiting oil and gas operations in the 3,200-foot zone is the only way to solve it.  
8 SB 1137 does not set any air quality standards—it simply assumes that all oil and gas activity is  
9 harmful (“especially due to increased air pollution”) within the arbitrary 3,200-foot zone, and  
10 mandates one method (and one method only) to control the harm—something that neither the air  
11 districts nor CARB could do under the Health and Safety Code. *Halaco Engineering Co. v. South*  
12 *Central Coast Regional Com.*, 42 Cal.3d 52, 74, fn. 20 (1986) (holding “that the Coastal Act did  
13 not give the Commission the power to regulate existing industrial and commercial operations in  
14 the coastal zone [as] [t]hat authority lies in other local and state agencies”).) In sum, SB 1137  
15 cannot be reconciled with the Health and Safety Code.

16 42. The internal logic of SB 1137 is also patently irrational. SB 1137 allows existing  
17 wells to operate while prohibiting the permitting of new wells and, if enforcement of SB 1137  
18 would constitute a taking, then SB 1137 allows the State an option to permit operation. The  
19 import is obvious: the law targets oil operators and seeks to curtail as much oil production as  
20 possible without any compensation for the taking of valuable property rights, rather than actually  
21 targeting documented health and safety impacts.

22 43. SB 1137 further violates due process rights because it is impermissibly vague.  
23 The void-for-vagueness doctrine is an essential component of the constitutional requirement of  
24 due process of law. (U.S. Const., 5th & 14th Amends.) The doctrine prevents the government  
25 “from enforcing a provision that ‘forbids or requires the doing of an act in terms so vague’ that  
26 people of ‘common intelligence must necessarily guess at its meaning and differ as to its  
27 application.’” *People v. Hall*, 2 Cal.5th 494, 500 (2017) (cleaned up). A statute can be  
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1 impermissibly vague for either of two independent reasons: (1) if it fails to provide people of  
2 ordinary intelligence a reasonable opportunity to understand what conduct it prohibits, or (2) if it  
3 authorizes or even encourages arbitrary and discriminatory enforcement. *United States v. Nunez-*  
4 *Soberanis*, 406 F.Supp.3d 835, 840-841 (S.D. Cal. 2019). Here, SB 1137 includes vague  
5 classifications of sensitive receptors that can make it very difficult to identify the scope of any  
6 HPZ. Further, these vague descriptions could impermissibly allow for CalGEM to enforce SB  
7 1137 in an arbitrary or discriminatory manner, particularly in connection with the broad  
8 regulations that it has adopted.

9 44. Worse, SB 1137 sets forth no procedural process by which to challenge the  
10 applicability of the law to any given operator, property, or property right owner, nor is there any  
11 mechanism to seek a variance to obtain relief from its illegal mandates.

12 45. SB 1137 further violates due process rights because it creates a one-way setback  
13 requirement for property owners like Petitioners. On the one hand, royalty owners and their oil  
14 and gas operators are purportedly bound by the law and cannot develop new wells or  
15 maintain/develop existing wells within 3,200 feet of “sensitive receptors.” However, owners of  
16 “sensitive receptors” are not similarly bound. Nowhere does SB 1137 prevent the construction of  
17 new sensitive receptors within 3,200 feet of oil properties and production facilities, nor does it  
18 require any individual or entity to provide notice to anyone before establishing such a “sensitive  
19 receptor.” The result: an unfair, arbitrary and discriminatory statute which violates due process –  
20 and essentially permits the construction of brand new “sensitive receptors” within 3,200 feet of  
21 existing oil facilities without any prior notice to the owner of the oil property, and no recourse  
22 from the ensuing impacts of SB 1137.

23 46. SB 1137 and the State’s related actions thereby deprive Petitioners of due process  
24 of law and, without the relief sought herein, will irreparably injure Petitioners.

## 25 26 **SECOND CAUSE OF ACTION**

### 27 **(Petition for Writ of Mandate For Violation of Equal Protection Clause**

1                   **Against the California Department of Conservation, Geologic Energy Management**  
2   **Division; and Does 1-25)**

3           47.     Petitioners incorporate by reference the allegations contained in paragraphs 1  
4 through 46, above.

5           48.     U.S. Supreme Court cases have recognized successful equal protection claims  
6 brought by a “class of one,” where the plaintiff alleges that it has been intentionally treated  
7 differently from others similarly situated and that there is no rational basis for the difference in  
8 treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

9           49.     The Equal Protection clause is violated if (1) plaintiff was treated differently from  
10 other similarly situated individuals or groups; (2) the difference in treatment was intentional; and  
11 (3) there was no rational basis for the difference in treatment. *Genesis Environmental Services v.*  
12 *San Joaquin Valley Unified Air Pollution Control Dist.*, 113 Cal.App.4th 597, 605 (2003). If a  
13 rational classification is applied unevenly, the reason for singling out a particular individual or  
14 group must be rational and not the product of intentional and arbitrary discrimination. (*Id.*)  
15 While courts tend to defer to Legislative policy decisions, the State may not irrationally single out  
16 a property owner “to bear the burden of remedying the problems California sought to correct.”  
17 *See Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 920 F.2d 1496, 1509 (9th Cir. 1990).

18           50.     SB 1137 violates the Equal Protection clause because it treats royalty owners,  
19 including Petitioners, differently from other similarly situated persons: it (1) irrationally targets  
20 oil production operations as the cause of respiratory based health problems in an HPZ, rather than  
21 the many other sources of emissions that are present in the area; and (2) irrationally prohibits oil  
22 production operations from expanding within an HPZ, but takes no action to prevent the  
23 continued encroachment of alleged “sensitive receptors” into the existing oil production  
24 operations in an HPZ.

25           51.     SB 1137 also violates the Equal Protection clause for the same reasons above, as to  
26 the following similarly situated groups: (i) operators with active wells in a HPZ, who do not  
27 currently need Notices of Intention to Drill (or NOIs); (ii) operators with active wells in HPZs  
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1 that are in need of repair or additional maintenance, particularly those with pending Notices of  
2 Violation (NOVs) which cannot be cured without work prohibited under SB 1137; and  
3 (iii) operators who own properties in HPZs that do not yet have wells thereon. These violations  
4 also target Petitioners and function to deprive Petitioners of their royalty rights. SB 1137 also has  
5 no rational basis because the sole motivation underlying the enactment is unfounded prejudice  
6 against a politically unpopular group.

7 52. SB 1137 further violates equal protection because it creates a one-way setback  
8 requirement for property owners like Petitioners. On the one hand, royalty owners and their oil  
9 and gas operators are purportedly bound by the law and cannot create new wells or  
10 maintain/develop existing wells within 3,200 feet of “sensitive receptors.” However, owners of  
11 “sensitive receptors” are not bound by the law. Nowhere does SB 1137 prevent the construction  
12 of new sensitive receptors within 3,200 feet of oil properties and production facilities, nor does it  
13 require any individual or entity to provide notice to anyone before establishing such a “sensitive  
14 receptor.” The result: an unfair, arbitrary and discriminatory statute which violates equal  
15 protection – and essentially permits the construction of brand new “sensitive receptors” within  
16 3,200 feet of existing oil facilities without any prior notice to the owner of the oil property.

17 53. SB 1137 and the State’s related actions thereby deprive Petitioners of equal  
18 protection under the law and, without the relief sought herein, will irreparably injure Petitioners.

### 19 20 **THIRD CAUSE OF ACTION**

21 **(For Inverse Condemnation, U.S. Constitution, Fifth Amendment; California Constitution,**

22 **Article 1, Section 19 Against All Defendants/Respondents and Does 1-25)**

23 54. Petitioners incorporate by reference the allegations contained in paragraphs 1  
24 through 53, above.

25 55. The state and federal Constitutions prohibit government from taking private  
26 property for public use without just compensation. Cal. Const., Art. I, § 19; U.S. Const., 5th  
27 Amend.; *Chicago, Burlington &c. RR v. Chicago*, 166 U.S. 226, 239 (applying the federal takings  
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1 clause to the states) (1897).

2 56. Through the passage of SB 1137, the State has effectively taken Petitioners' rights  
3 leaving no economically productive use of their royalty rights and mineral interest. The State has  
4 thereby effected a *per se* taking of Petitioners' property without just compensation. The taking  
5 violates the takings clause of the Fifth Amendment of the United States Constitution and Article  
6 1, Section 19 of the California Constitution. Indeed, Petitioners' only property rights are for  
7 subsurface real property interests in their hydrocarbon reserves pursuant to their leases with  
8 Operators.

9 57. In the alternative, the State has effected a taking of Petitioners' property rights in  
10 violation of the U.S. and California Constitutions under the principles established by the United  
11 States Supreme Court, including in *Penn Central Transportation Co. v. City of New York*, 438  
12 U.S. 104 (1978). The economic impact of SB 1137 on the value of Petitioners' property rights is  
13 catastrophic. In effect, SB 1137 is designed to eviscerate Petitioners' use of their property rights  
14 and to entirely thwart their reasonable investment-backed expectations as they relate to drilling  
15 and production of hydrocarbons from their property. The United States Supreme Court has  
16 recognized that, even if a regulation does not deny a property owner all economically productive  
17 uses of their land, if the regulation "goes too far" in depriving the property owner of its property  
18 interest, it constitutes a taking of that property. *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415  
19 (1922) (*Penn. Coal*). Regulations which significantly limit the uses of private property meet this  
20 standard and require the payment of just compensation.

21 58. In addition, the United States Supreme Court has definitively established that a  
22 regulation amounts to a taking of property where it denies an owner "economically beneficial or  
23 productive options for its use." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1018  
24 (1992). This occurs where a regulation, by implementation alone, leaves the property owner  
25 without "substantial economic use" of the affected property.

26 59. By purporting to eliminate the maintenance, development and production of  
27 Petitioners' oil and gas resources, SB 1137 effects a temporary and permanent taking of property  
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1 without just compensation as to Petitioners. Ultimately, SB 1137 entirely eliminates the  
2 economic value of Petitioners' property rights. Furthermore, SB 1137 interferes with Petitioners'  
3 reasonable investment-backed expectations, as Petitioners reasonably expected they could  
4 continue to benefit from their existing, lawful, and fully vested rights to the hydrocarbons in their  
5 property and the continued work of their contracted Operators to continue and complete the  
6 development and production of their oil and gas resources on the subject properties based on the  
7 many decades of productive use of the properties.

8 60. SB 1137 gives rise to a claim for just compensation by Petitioners and other  
9 mineral fee owners, oil well operators, and royalty owners. SB 1137 initially severely restricts,  
10 and eventually entirely restricts, the ability of mineral fee owners, operators and royalty owners,  
11 including Petitioners, to use their property rights and would materially infringe on their property  
12 rights and interests, up to and including completely eliminating the entire value of those rights.  
13 Therefore, SB 1137 constitutes a taking for which compensation must be made.

14 61. SB 1137 will force Petitioners to bear public burdens which, in all fairness and  
15 justice, should be borne by the public as a whole. In enacting SB 1137 the State violates Article  
16 1, Section 19 of the California Constitution, which prohibits the taking or damaging of private  
17 property for public use without just compensation. The State also violates the takings clause of  
18 the Fifth Amendment to the United States Constitution, as applied to the states through the due  
19 process clause of the Fourteenth Amendment.

20 62. Respondents hope to avoid a taking by purporting to permit the approval of a  
21 notice of intention to commence drilling in order to comply with a court order specifying that  
22 denying approval would amount to a taking of property. However, the belated approval of a  
23 notice of intention fails to account for the damage caused by the delay which, by itself, is a  
24 temporary taking prohibited by the same constitutional guarantees. It also seeks to undermine  
25 Petitioners' right to just compensation for the taking of and damage to their property rights.

26 63. Significantly, SB 1137 provides for no relief or variance from its impacts.

27 64. As a direct result of the State's actions as alleged herein, SB 1137 constitutes a  
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1 taking. To date, Petitioners have not received any compensation as a result of the above alleged  
2 taking or damage to Petitioners' property rights.

3 65. Petitioners have been and will be damaged from the taking of their property rights  
4 and will suffer damages in an amount to be determined at trial.

5  
6 **FOURTH CAUSE OF ACTION**

7 **(Petition for Writ of Traditional Mandate**

8 **Against All Defendants/Respondents and Does 1-25)**

9 66. Petitioners incorporate by reference the allegations contained in paragraphs 1  
10 through 65, above.

11 67. Petitioners seek a writ of traditional mandate pursuant to Code of Civil Procedure  
12 § 1085, or, alternatively, a writ of administrative mandate pursuant to Code of Civil Procedure  
13 § 1094.5.

14 68. "Mandamus under section 1085 is the appropriate vehicle to challenge the  
15 constitutionality or validity of statutes or other official acts." *City of Redondo Beach v. Padilla*,  
16 46 Cal.App.5th 902, 909 (2020).

17 69. For the reasons alleged herein, the adoption of SB 1137 must be vacated as SB  
18 1137 and its adopted findings are arbitrary, capricious, entirely lacking in evidentiary support,  
19 contradicting the available evidence, and contrary to established public policy.

20 70. There is no legitimate public purpose, reasonable basis in fact, or substantial  
21 evidence to support the enforcement or threatened enforcement of SB 1137, or to compel the  
22 termination of Petitioners' right to underground hydrocarbons in the Wilmington Field.

23 71. Respondents' enforcement or threatened enforcement of SB 1137 will invariably  
24 force the termination of Petitioners' right to receive revenues from oil and gas production  
25 activities in the Property. There is no legitimate public purpose, reasonable basis in fact, or  
26 substantial evidence to support the enforcement or threatened enforcement of SB 1137 that by its  
27 very terms would result in the cessation of oil and gas production activities at the Property.

1 Indeed, SB 1137 imposes arbitrary, capricious and unsupported requirements without any  
2 consideration of existing or potential mitigation of the purported health, safety, and  
3 environmental concerns, much less any credible scientific basis for the purported health, safety,  
4 and environmental concerns that were stated as justification for SB 1137. Health assessments  
5 purportedly supporting SB 1137 have shown no health impacts to surrounding communities that  
6 exceed regulatory thresholds, particularly as to Petitioners' operations.

7 72. Respondents' actions in enforcing or threatening to enforce SB 1137 contravene  
8 the State's policy of "encourag[ing] the wise development of oil and gas resources," and "to  
9 permit" the use of "all" practices that will increase the recovery of oil and gas. Cal. Pub. Res.  
10 Code § 3106.

11 73. As alleged above, SB 1137 will also result in violations of substantive and  
12 procedural due process, violations of equal protection rights, and constitute a taking of property  
13 without just compensation.

14 74. Petitioners have no plain, speedy, and adequate remedy at law to challenge SB  
15 1137 other than the relief sought herein. The language of SB 1137 itself contains no alternative  
16 remedy available for Petitioners to bring all of the challenges alleged herein, nor have  
17 Respondents made available any other remedy at law that will adequately determine the merits of  
18 Petitioners' challenge to SB 1137. Without resolution of these challenges, Petitioners will be  
19 permanently and irreparably harmed by the implementation of SB 1137.

20 75. Because the enactment of SB 1137 is legislative in nature and not adjudicatory,  
21 Petitioners bring this action under Code of Civil Procedure § 1085. In the alternative, however,  
22 Petitioners also seeks a writ of mandate under Code of Civil Procedure § 1094.5 to the extent, if  
23 any, that the Court concludes § 1094.5 is applicable here.

## 24 **PRAYER FOR RELIEF**

25 WHEREFORE, Petitioners pray for the following relief:  
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27  
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1           1.       For issuance of a writ of mandate under Code of Civil Procedure § 1085 or, in the  
2 alternative, Code of Civil Procedure § 1094.5, ordering nonenforcement of SB 1137, compelling  
3 issuance of all necessary permits and entitlements for well operations notwithstanding SB 1137,  
4 and finding SB 1137 unconstitutional and unenforceable, because: (i) it denies Petitioners and  
5 others due process of law under Article 1, Section 7 of the California Constitution and the  
6 Fourteenth Amendment to the United States Constitution; (ii) it denies Petitioners equal  
7 protection under the law in violation of Article 1, Section 7 of the California Constitution and the  
8 Fourteenth Amendment to the United States Constitution; (iii) it takes Petitioners' property for  
9 public use without just compensation; and (iv) it violates Petitioners' and Operators' vested rights  
10 to maintain existing oil and gas infrastructure and to erect new infrastructure.

11           2.       For temporary, preliminary, and permanent injunctive relief enjoining the State  
12 and CalGEM from enforcing SB 1137, in whole or in part.

13           3.       For a declaration and/or order from the Court that SB 1137 (i) denies Petitioners  
14 and others due process of law under Article 1, Section 7 of the California Constitution and the  
15 Fourteenth Amendment to the United States Constitution and (ii) denies Petitioners equal  
16 protection under the law in violation of Article 1, Section 7 of the California Constitution and the  
17 Fourteenth Amendment to the United States Constitution.

18           4.       For just compensation in an amount to be proven at trial;

19           5.       For damages in an amount to be proven at trial;

20           6.       For costs of suit and attorneys' fees to the extent allowed by law; and

21           7.       For such other relief as the Court determines is just and proper.

22 Dated: April \_\_, 2025

MAYNARD NEXSEN LLP

23  
24 By:

*Attorneys for Petitioners and Plaintiffs*  
MONTE BEARD, SR.; MERRY  
VANDERWAAL

1 **DEMAND FOR JURY TRIAL**

2 Petitioners and Plaintiffs hereby demand a trial by jury for each and every cause of action so  
3 triable.

4 Dated: April \_\_, 2025

MAYNARD NEXSEN LLP

6 By:  
7 *Attorneys for Petitioners and Plaintiffs*  
8 MONTE BEARD, SR.; MERRY  
9 VANDERWAAL  
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