

MONTEREY COUNTY PLANNING COMMISSION

Meeting: April 30, 2014 Time: 9 A.M.	Agenda Item No.: 2
Project Description: Ordinance amending the non-coastal zoning ordinance to 1) remove subsections that allow the exploration for and the removal of oil and gas with a use permit in residential districts; 2) change the appropriate hearing body from the Zoning Administrator to the Planning Commission for permits proposing the exploration for and removal of oil and gas; 3) require a use permit for the utilization of well stimulation treatments on new and existing wells; and 4) define new terms.	
Project Location: Inland Area Only (Non-coastal)	APN: Inland Area Only (Non-coastal)
Planning File Number: REF130051	Owner: N/A Agent: N/A
Planning Area: Inland Area Only (Non-coastal)	Flagged and staked: N/A
Zoning Designation: Inland Area Only (Non-coastal)	
CEQA Action: Categorically Exempt per CEQA guidelines Section 15308	
Department: RMA - Planning	

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution (Exhibit B) recommending that the Board of Supervisors take the following actions:

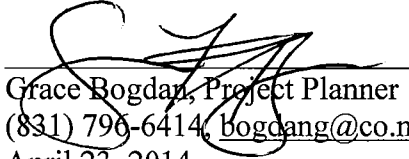
- 1) Find the ordinance Categorically Exempt per Section 13508 of the CEQA Guidelines; and
- 2) Recommend adoption of an ordinance that will amend the non-coastal zoning ordinance to 1) remove subsections that allow the exploration for and the removal of oil and gas with a use permit in residential districts; 2) change the appropriate hearing body from the Zoning Administrator to the Planning Commission for permits proposing the exploration for and removal of oil and gas; 3) require a use permit for the utilization of well stimulation treatments on new and existing wells; and 4) define new terms.

TOPIC OVERVIEW:

Due to recent activity and trends in the oil and gas industry, RMA- Planning recommends a series of amendments to the non-coastal zoning ordinance (Title 21). The exploration for and the removal of oil and gas is currently allowed in most inland zoning districts with a use permit. The proposed ordinance will amend County zoning to disallow the exploration for and the removal of oil and gas in non-coastal residential zoning districts and will render existing oil and gas wells in non-coastal residential districts legal non-conforming. Additionally, the proposed ordinance defines treatments such as hydraulic fracturing and acid fracturing which are utilized to enhance the removal of oil and gas. The proposed ordinance will require a discretionary review process for properties that wish to use well stimulation treatments. These stimulation treatments are being utilized by properties that hold existing entitlements for the exploration for and removal of oil and gas; if the existing entitlements do not specify any treatment for the recovery of oil and gas, the ordinance proposes requiring existing wells to obtain a use permit to use well stimulation treatments. This will enable the County to address the land use impacts and perform environmental review for well operators that plan to utilize such treatments.

The proposed ordinance in Exhibit B will assist current planning staff in the review of oil and gas applications.

OTHER AGENCY INVOLVEMENT: A copy of this staff report and ordinance was reviewed by the Environmental Health Bureau and Water Resources Agency.


Grace Bogdan, Project Planner
(831) 796-6414, bogdan@co.monterey.ca.us
April 23, 2014

cc: Fire Protection Districts; RMA-Public Works Department; Parks Department; Environmental Health Bureau; Water Resources Agency; Agricultural Commissioner, Attn: Christina McGinnis; Monterey County Sheriff; Ed Mitchell, Tom Shields, Protect Salinas Valley; Neon Energy Corporation; Ron Chambers, Aera; Bruce Carter, Veneco; Halt Oil Drilling Now, Steve Craig; Sustainable Pacific Grove; Maureen Wruck Consultants; Andrea Weber, Center for Biological Diversity; Tupper Hull, Western Stations Petroleum Association; Sean Welch, Nielsen Merksamer; Vaughan Williams, Salinas Energy Corporation; Tia Lebherz, Food and Water Watch; Nancy Isakson, Salinas Valley Water Coalition; Beverly Bean, League of Women Voters; Paula Getzelman, Southern Monterey County Rural Coalition; Luana Conley, Monterey County Against Fracking; Jacqueline R. Onciano, Planning Services Manager; Grace Bogdan, Project Planner; Wendy Strimling, Senior Deputy County Counsel; Mike Novo, Director of Planning; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); Refinement Group (Nancy Isakson); John H. Farrow; Janet Brennan; Ernie Mil; Planning File REF130051.

Attachments: Exhibit A Discussion
 Exhibit B Draft Resolution and Ordinance
 Exhibit C Monterey County RMA – Planning comment letter to DOGGR
 Exhibit D Comment Letters

This report was reviewed by Jacqueline R. , Planning Services Manager, Long Range Planning.

EXHIBIT A DISCUSSION

Background

“Well stimulation treatment” is a blanket term used to describe multiple variations of treatments used on wells to enhance the recovery of oil and gas. These treatments include hydraulic fracturing and acid stimulation, both of which push chemical and acid fluids deep underground to create cracks in geologic formations to release oil and gas.

Well stimulation treatments, particularly hydraulic fracturing (fracking), have sparked controversy throughout the state of California and the nation. The Division of Oil, Gas, and Geothermal Resources (DOGGR or ‘division’) of the State Department of Conservation regulates the drilling, operation, maintenance and abandonment of oil and gas wells in California. The Public Resources Code and the California Code of Regulations provide the state law framework.

Recent legislation, Senate Bill 4 (SB4), was signed by Governor Brown in September of 2013. It requires operators to obtain a state permit prior to performing well stimulation treatments and requires DOGGR to finalize and implement regulations governing well stimulation, including well construction and disclosure of the composition and disposition of well stimulation fluids. It also requires the state to prepare an EIR “to provide the public with detailed information regarding any potential environmental impacts of well stimulation in the state.” (Public Resources Code sec. 3161(b)(3).)

DOGGR issued a draft of proposed regulations in November of 2013 and is currently in the proposed rulemaking process. The division has also sent out a notice of preparation and scope of work for the related environmental impact review (EIR). SB4 requires the regulations to be adopted by January 15, 2015 and the EIR to be certified by July 15, 2015. Monterey County staff has been closely following this process and has submitted comments on the draft regulations and attended public meetings.

Local Importance:

A layer of shale exists deep under Monterey County land that may be a vast source of natural gas. Until recently, accessing the shale formation was unworkable. Well stimulation treatments will create access to the natural gas, but the treatment involves toxic chemicals and a significant amount of water. There are existing oil fields in the county operating under use permits that have been issued dating back to the 1940’s. Stimulation treatments may be utilized by few companies at this point; however due to the Monterey Shale potential, the County should be prepared for a future of oil and gas removal applications that will utilize well stimulation treatments.

Incompatible Uses

Currently Title 21 allows the exploration for and the removal of oil and gas in almost every zoning district throughout the inland portion of Monterey County, including all residential districts. The purpose of residential districts (at varying densities) is to accommodate residential development and necessary uses such as public facilities and services. The removal of oil and gas, along with accessory structures to this use are not consistent with the purpose of residential districts. The proposed ordinance will remove this use (the exploration for and the removal of oil and gas) from all residential districts in the inland areas of Monterey County. There are existing use permits that allow drilling for oil and gas within low density residential (LDR) districts. This ordinance would not disrupt operations on these parcels, however the use will become legal non-conforming, and

only the operations allowed under the existing use permit may continue. This ordinance is not proposing to add the utilization of well stimulation treatments on new or existing wells as a new use in residential districts.

Appropriate Authority & Hearing Body

Chapter 21.04 of Monterey Municipal Code establishes the Zoning Administrator and defines the position's powers. Section 21.04.030.F provides a list of factors that, if a permit were to involve, would require the application to be referred to the Planning Commission as the appropriate authority. The factors are:

- 1) Significant public policy issues
- 2) Unmitigable significant adverse environmental impacts
- 3) Significant changes in the nature of a community
- 4) Establishment of precedents or standards by which other projects will be measured

Currently, applications for "the exploration for and the removal of oil and gas" are heard and decided by the Zoning Administrator. These applications typically embody one or more factors listed above. Staff recommends that all applications for the exploration for and removal of oil and gas be referred to the Planning Commission.

Well Stimulation Treatments & Responsible Agencies

Authority over the drilling of oil and gas wells is currently split between the County of Monterey (the local authority) and DOGGR (the lead agency). An applicant must apply for a use permit with the county to establish a new use for the removal of oil and gas, and then apply for well permits from the state for every well proposed on the site. Monterey County is responsible for reviewing the proposed uses relevant to the surrounding land use, general plan, zoning district, and how the operation will affect the surrounding environment. DOGGR is responsible for oversight of the drilling, operation, maintenance and abandonment of wells, and state law preempts the County from regulating aspects of the activity addressed by state law and regulation. Counties are not, however, preempted from prohibiting oil and gas wells through zoning or requiring a conditional use permit to address aspects of the use not covered by state law, such as land use and public safety impacts like traffic, noise, hours of operation, and aesthetics, provided the county regulation does not conflict with state law. This ordinance respects DOGGR's authority over oil and gas operations while preserving the County's traditional land use authority over land use impacts of oil and gas exploration.

The existing subsections in Title 21 allow use permits for the exploration for and the removal of oil and gas. As mentioned before, many existing oil fields in Monterey County operate under existing use permits that were issued several decades ago. To the extent these permits do not specify the use of treatments to remove oil and gas, but merely allow "drilling for oil and gas," the ordinance takes the position that the use permit does not allow for the utilization of well stimulation treatments, with its unique impacts and issues that were not permitted or analyzed as part of the original use permit. Accordingly, the ordinance requires existing permittees to obtain new permits for well stimulation. This requirement would be applied on a case by case basis, where each existing use permit will be evaluated on its own facts and circumstances.

Defining New Terms

The term 'well stimulation treatment' is inclusive of hydraulic fracturing and acid well stimulation. The proposed definitions listed below are taken directly from state law, and it is recommended to add the terms to Chapter 21.06 of Title 21 and define them with reference to the definitions of these terms in the California Public Resources Code to ensure consistency with state law. These definitions apply only to wells used for the removal of oil and gas. The County oversees the

construction and maintenance of wells for domestic and agricultural water; however these well stimulation treatments are not similar and do not apply to domestic and agricultural wells.

“Acid matrix stimulation” treatments are acid treatments conducted at pressures lower than the applied pressure necessary to fracture the underground geologic formation. *California Public Resources Code section 3158*

“Acid well stimulation” treatment means a well stimulation treatment that uses, in whole or in part, the application of one or more acids to the well or underground geologic formation. The acid well stimulation treatment may be at any applied pressure and may be used in combination with hydraulic fracturing treatments or other well stimulation treatments. Acid well stimulation treatments include acid matrix stimulation treatments and acid fracturing treatments. *California Public Resources Code section 3158*

“Hydraulic fracturing” means a well stimulation treatment that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid or fluids into an underground geologic formation in order to fracture or with the intent to fracture the formation, thereby causing or enhancing, for the purposes of this division, the production of oil or gas from a well. *California Public Resources Code section 3152*

“Well stimulation treatment” means any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments.

(b) Well stimulation treatments do not include steam flooding, water flooding, or cyclic steaming and do not include routine well cleanout work, routine well maintenance, routine removal of formation damage due to drilling, bottom hole pressure surveys, or routine activities that do not affect the integrity of the well or the formation. *California Public Resources Code section 3157*

Environmental Review

The proposed amendments to Title 21 are categorically exempt per Section 15308 of the CEQA guidelines which exempts actions taken by regulatory agencies to assure the protection of the environment where the regulatory process involves procedures for protection of the environment. The proposed amendments would require a use permit for the utilization of well stimulation treatments to facilitate environmental review and evaluation and control of land use impacts.

Conclusion/Recommendation

Staff recommends adoption of the ordinance (Exhibit B) that will amend the non-coastal zoning ordinance to 1) remove subsections that allow the exploration for and the removal of oil and gas with a use permit in residential districts; 2) change the appropriate hearing body from the Zoning Administrator to the Planning Commission for permits proposing the exploration for and removal of oil and gas; 3) require a use permit for the utilization of well stimulation treatments on new and existing wells; and 4) define new terms.

EXHIBIT B- DRAFT RESOLUTION

Before the Planning Commission in and for the County of Monterey, State of California

RESOLUTION NO. ----

Resolution by the Monterey County Planning Commission recommending that the Board of Supervisors take the following action:

- 1) Find the ordinance Categorically Exempt per Section 13508 of the CEQA Guidelines; and
- 2) Recommend adoption of an ordinance that will amend the non-coastal zoning ordinance to 1) remove subsections that allow the exploration for and removal of oil and gas with a use permit in residential districts; 2) change the appropriate hearing body from the Zoning Administrator to the Planning Commission for permits proposing the exploration for and removal of oil and gas; 3) require an additional use permit for the utilization of well stimulation treatments on new and existing wells; and 4) define new terms.

[REF130051, Ordinance for Well Stimulation Treatments, Title 21, Inland Areas Only]

The proposed ordinance (REF130051) amending Title 21 (Non-coastal zoning ordinance) of the Monterey County Code relating to zoning regulation of the exploration for and the removal of oil and gas, came on for public hearing before the Monterey County Planning Commission on April 30, 2014. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission forwards the following recommendation to the Board of Supervisors with reference to the following facts:

RECITALS

1. A shale formation exists underneath Monterey County, and access to natural gas resources is possible through the utilization of well stimulation treatments. These treatments can be performed on new or existing wells.
2. There are over 12,000 known oil and gas wells in Monterey County. Many existing wells within oil fields operate under use permits that were issued dating back to the 1940's, and unless the permit explicitly authorizes the well stimulation treatments, a new use permit shall be required for the use of well stimulation treatments. This requirement will be applied on a case by case basis, where each existing use permit will be evaluated on its own facts and circumstances.

3. This ordinance is intended to provide a process to review projects that propose well stimulation treatments on any new or existing well in order to address land use and environmental impacts not covered under state law. Discretionary review of well stimulation treatments will allow the county to protect the public health, safety and welfare of its citizens, pursuant to Article XI, section 7 of the California Constitution.
4. This ordinance is Categorical Exempt per Section 13508 of the CEQA Guidelines because the proposed amendments would require a use permit for the utilization of well stimulation treatments to facilitate environmental review and evaluation and control of land use impacts.
5. A public hearing on the proposed ordinance was duly noticed for April 30, 2014 in the Monterey County Weekly at least ten days prior to the hearing. Notice was also given to interested parties.
6. The current draft ordinance is attached.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby recommend that the Board of Supervisors:

- 1) Find the ordinance Categorical Exempt per Section 13508 of the CEQA Guidelines; and
- 2) Recommend adoption of an ordinance that is substantially in the same form as the attached ordinance, that will amend the non-coastal zoning ordinance to 1) remove subsections that allow the exploration for and removal of oil and gas with a use permit in residential districts; 2) change the appropriate hearing body from the Zoning Administrator to the Planning Commission for permits proposing the exploration for and removal of oil and gas; 3) require a use permit for the utilization of well stimulation treatments on new and existing wells; and 4) define new terms.

PASSED AND ADOPTED this 30th day of April, 2014 upon motion of _____, seconded by _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mike Novo, Secretary

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING TITLE 21 (NON-COASTAL ZONING ORDINANCE) OF THE MONTEREY
COUNTY CODE RELATING TO ZONING REGULATION OF THE EXPLORATION FOR
AND THE REMOVAL OF OIL AND GAS**

County Counsel Summary

This ordinance amends Title 21 (non-coastal zoning ordinance) of the Monterey County Code to revise County zoning regulations relating to oil and gas exploration and removal. This ordinance updates current County zoning to address well stimulation treatments, including but not limited to hydraulic fracturing. This ordinance defines well stimulation terms and clarifies County use permit requirements for the use of well stimulation treatments for the exploration for and the removal of oil and gas. This ordinance also requires existing wells utilizing well stimulation treatments for the exploration for and the removal of oil and gas to obtain a new County use permit, unless the well has an existing use permit explicitly authorizing the proposed treatment. The ordinance also amends County zoning to disallow the exploration for and the removal of oil and gas in non-coastal residential zoning districts and renders existing oil and gas wells in non-coastal residential districts legal non-conforming. The ordinance changes the hearing body to consider use permits for the exploration for and the removal of oil and gas from the Monterey County Zoning Administrator to the Monterey County Planning Commission. This ordinance applies in the non-coastal unincorporated area of Monterey County.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. This ordinance protects the public health, safety and welfare by disallowing new permits for the exploration for and the removal of oil and gas in all residential districts in the inland unincorporated area of the County and rendering existing use permits for the exploration and removal of oil and gas legal non-conforming. The Board finds that exploration for and removal of oil and gas and accessory structures for this use are not compatible with residential use.

C. Existing County zoning requires discretionary permits for the exploration for and the removal of oil and gas. This ordinance protects the public health, safety and welfare by updating current County zoning to take account of well stimulation treatments which have grown in use and evolved since County zoning was adopted. This ordinance defines well stimulation terms and clarifies that new wells utilizing well stimulation treatments for the exploration for and the removal of oil and gas require use permits. This ordinance is not intended to infringe upon vested rights of existing permittees but recognizes that existing permits, due to their age and the evolution of techniques used for oil and gas exploration, may not have authorized nor evaluated the use of well stimulation treatments. Accordingly, this ordinance requires existing wells utilizing well stimulation treatments for the exploration for and the removal of oil and gas to obtain a new permit, unless the well's existing use permit specifically allows the proposed treatment. Due to the potential public interest and environmental impacts of well stimulation treatment, this ordinance

also designates the Planning Commission rather than the Zoning Administrator as the Appropriate Authority to consider such use permits.

D. This ordinance is intended to be consistent with and to be implemented consistent with state and federal law. The County recognizes that state law regulates the drilling, operation, maintenance, and abandonment of oil and gas wells in the state of California and preempts County from regulating aspects of oil and gas exploration and removal that are regulated by state law, while County has authority to adopt regulations relating to oil and gas exploration and removal not in conflict with state law to address traditional land use and environmental protection issues not otherwise addressed by state regulation of oil and gas drilling. County regulation has traditionally worked in tandem with state law, and County's intent is to continue to harmonize County regulation with state law. Pursuant to the County's police power to regulate land use, the County's non-coastal zoning ordinance has long required a County use permit for wells for oil and gas exploration to address traditional land use impacts of the proposed use. In furtherance of the exercise of its police power, the County adopts this ordinance to update its zoning regulations to disallow new oil and gas wells within residential districts and clarify the applicability of zoning to wells utilizing well stimulation treatments.

E. CEQA. This ordinance is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15308 because it clarifies that discretionary review by the County is required for wells proposing to utilize well stimulation for the exploration for and removal of oil and gas, and such discretionary review will enable the County to address land use and environmental impacts of such wells.

SECTION 2. The Table of Contents of Chapter 21.06 of the Monterey County Code is amended to add section 21.06.002, section 21.06.003, section 21.06.685, and section 21.06.1345 as follows:

21.06.002 Acid Matrix Stimulation Treatment
21.06.003 Acid Well Stimulation Treatment
21.06.685 Hydraulic Fracturing
21.06.1345 Well Stimulation Treatment

SECTION 3. Section 21.06.002 is added to the Monterey County Code to read as follows:

"Acid matrix stimulation treatment" has the same meaning as that term is defined by California Public Resources Code section 3158, as may be periodically amended.

SECTION 4. Section 21.06.003 is added to the Monterey County Code to read as follows:

"Acid well stimulation treatment" has the same meaning as that term is defined by California Public Resources Code section 3158, as may be periodically amended.

SECTION 5. Section 21.06.685 is added to the Monterey County Code to read as follows:

"Hydraulic fracturing" has the same meaning as that term is defined by California Public Resources Code section 3152, as may be periodically amended.

SECTION 6. Section 21.06.1345 is added to the Monterey County Code to read as follows:

"Well stimulation treatment" has the same meaning as that term is defined by California Public Resources Code section 3157, as may be periodically amended.

SECTION 7. Subsection Q of Section 21.10.050 of the Monterey County Code is repealed.

SECTION 8. Subsection S of Section 21.12.050 of the Monterey County Code is repealed.

SECTION 9. Subsection W of Section 21.14.050 of the Monterey County Code is repealed.

SECTION 10. Subsection LL of Section 21.16.050 of the Monterey County Code is repealed.

SECTION 11. Subsection AA of Section 21.18.060 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; ~~(ZA)~~

SECTION 12. Subsection HH of Section 21.18.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 13. Subsection II of Section 21.18.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. _____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 14. Subsection GG of Section 21.20.060 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; ~~(ZA)~~

SECTION 15. Subsection OO of Section 21.20.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 16. Subsection PP of Section 21.20.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. _____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 17. Subsection V of Section 21.22.060 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; ~~(ZA)~~

SECTION 18. Subsection X of Section 21.22.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 19. Subsection Y of Section 21.22.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. ____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 20. Subsection CC of Section 21.24.060 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; ~~(ZA)~~

SECTION 21. Subsection EE of Section 21.24.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 22. Subsection FF of Section 21.24.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. ____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 23. Subsection GG of Section 21.26.060 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; ~~(ZA)~~

SECTION 24. Subsection II of Section 21.26.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 25. Subsection KK of Section 21.26.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. ____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 26. Subsection FF of Section 21.28.060 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; ~~(ZA)~~

SECTION 27. Subsection KK of Section 21.28.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 28. Subsection LL of Section 21.28.060 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. _____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 29. Subsection EE of Section 21.30.050 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; ~~(ZA)~~

SECTION 30. Subsection JJ of Section 21.30.050 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 31. Subsection KK of Section 21.30.050 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. _____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 32. Subsection GG of Section 21.32.050 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; ~~(ZA)~~

SECTION 33. Subsection KK of Section 21.32.050 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 34. Subsection LL of Section 21.32.050 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. _____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 35. Subsection EE of Section 21.34.050 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; ~~(ZA)~~

SECTION 36. Subsection EE of Section 21.34.050 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 37. Subsection II of Section 21.34.050 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. _____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 38. Subsection FF of Section 21.36.050 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; (~~ZA~~)

SECTION 39. Subsection JJ of Section 21.36.050 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 40. Subsection JJ of Section 21.36.050 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. _____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 41. Subsection I of Section 21.38.050 of the Monterey County Code is amended to read as follows:

The exploration for and the removal of oil and gas; (~~ZA~~)

SECTION 42. Subsection K of Section 21.38.050 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas.

SECTION 43. Subsection L of Section 21.38.050 of the Monterey County Code is added to read as follows:

The use of well stimulation treatments for the exploration for and the removal of oil and gas in a well existing as of the effective date of Ordinance No. _____, unless the use permit for the existing well explicitly authorized the proposed treatment.

SECTION 44. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have

passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 45. EFFECTIVE DATE. This Ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ____ day of _____, 2014, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Louis R. Calcagno, Chair
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM BY:

Wendy S. Strimling
Senior Deputy County Counsel

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Benny J. Young, Director



Michael A. Rodriguez, C.B.O., Chief Building Official
Michael Novo, AICP, Director of Planning
Robert K. Murdoch, P.E., Director of Public Works

168 W. Alisal Street, 2nd Floor
Salinas, CA 93901
<http://www.co.monterey.ca.us/rma>

January 13, 2013

Department of Conservation
801 K Street, MS 24-02
Sacramento, CA 95814
ATTN: Well Stimulation Regulations

RE: Public Comment – SB4 Well Stimulation Treatment Regulations

On behalf of Monterey County, we would like to provide comments regarding DOGGR's proposed regulations noticed on November 15, 2013. Of all our comments below, Monterey County believes the following issues are of utmost importance for the protection of our County's resources, citizens, and stakeholders:

- 1) We believe the State has the responsibility to monitor inspections and testing prior to well stimulation treatments. The draft regulations were written to give DOGGR the option, not mandatory obligation, to supervise testing and evaluations and should be revised.
- 2) The review process by DOGGR should include notification to the public and local agencies *prior to* permit approval to allow an opportunity for comments and request for public hearing, and the ability to appeal decisions of the division. We do not see any opportunity to request a hearing on any of these applications in the draft regulations. A process for hearing should be included.
- 3) Monterey County requests that any regulations adopted by the State of California and DOGGR will preserve local land use authority over traditional land use matters including, but not limited to, the following:
 - Use of water
 - Source of water
 - Wastewater disposal methods
 - Traffic
 - Aesthetics
 - Biological impacts
- 4) Our region has competing industries, all of which have economic importance to the County, and to protect the interests of all, we believe the application for well stimulation treatments should not only identify the source of water, but the aquifer source and water basin as well. Furthermore, the regulations should include a process to deny a permit that identifies aquifers that are overdrawn or may become overdrawn as a result of well stimulation techniques. Using water from over drafted basins potentially impacts other property and business owners.

EXHIBIT C

- 5) Senate Bill 4 calls for the State Water Board to develop groundwater monitoring model criteria and an independent scientific study on well stimulation treatments. That information is not yet available. Without having all information presented at one time affects our ability to understand the potential impacts and provide substantial comments.

- 6) The State of California and Monterey County have a responsibility to protect their resources and citizens from uses and activities that may impact their livelihood, and provide emergency procedures in the case of an environmental hazard. We ask that DOGGR consider adding an article to SubChapter 2 that references the procedures for long term reclamation and monitoring in the case of a breach and need for environmental remediation. If this is already written into Chapter 4 or other California Code, it should be referenced in Subchapter 2.

Additionally, the County has generated specific comments in the table below.

Section	Concern	Monterey County Comments
General	Adequate staffing levels	Please provide clarification on any application fees. There is nothing written in Subchapter 2 for fees. Monterey County requires several inspections of every structure we issue permits for; which entails thousands of inspection per year over a large area. The state can do the same. Sufficient staff can be funded to inspect each well stimulation treatment permit site through fees that provide full cost recovery.
		The regulations cited in 1784 and 1784.1 require testing and evaluation to be completed by the Operator. DOGGR should be supervising these actions. 1784.1(a)(2)(b) "The operator shall notify the Division at least 24 hours prior to conducting the pressure testing required under this section so that Division staff may witness." Revise to state "shall witness."
General	Public Comment	Unless the proposed regulations are to be completely ministerial, they should be revised to state how public or local agencies can request a public hearing for the approval of certain permits. If they are ministerial, then criteria for denial should be outlined.
		If DOGGR receives an overwhelming amount of public comment on well permits the application should not be ministerially approved. There should be a channel for public comment and testimony to be heard and questions to be answered. Public comment received by DOGGR and applicant should be included in 1788, Required Public Disclosures, and posted to the public website.

		The HF1 form referenced in previous draft regulations should be included in this text as well. The form should be required to be submitted electronically, and the submittal system should be set up so that the form is automatically put on the web through that submittal action. Provide more than a 10-day period for notice. Provide notice to the property owner if they are not the applicant. At minimum, require posting of the notice in public areas in the vicinity of the site.
General	Air Quality	Public Resources Code Section 3160(b)(1)(A) calls for the division (DOGGR) to consult with the State Air Resources Board, among others, to adopt rules and regulations. Did the Air Resources Board request any air quality monitoring to be included in the proposed draft?
General	Consultation with other Agencies	Public Resources Code 3160(c)(1-4) state that DOGGR must consult with other state agencies to delegate agency authority and responsibilities through formal agreements prior to January 2015. These agreements should be made prior to, or concurrent with, the approval of the draft regulations. It also states that regulations should be revised appropriately to incorporate the agreements. The purpose of Subchapter 2 is to set forth the rules and regulations for environmental protection. As the lead agency, DOGGR's regulations should reflect the agreements in Subchapter 2, in a codified manner.
General	Penalties	Public Resources Code Section 3236.5 states that any person who violated this section of the code is subject to fines. This section should be referenced within the proposed regulations.
General	Groundwater monitoring	The proposed regulations do not specify where in the process groundwater sampling should take place for baseline and follow up testing. This should be mandatory as part of the groundwater monitoring plan, not just when requested by property owners.

EXHIBIT C

1782	Application Review	The proposed regulations skip from application requirements (1783.1) to Notice of availability for water sampling (1783.2). The regulations do not describe the review process or other regulations that govern the review process. Public Resources Code Section 3160(d)(2&3) references discretionary actions from DOGGR's supervisor to review environmental impacts and quantifiable risks of proposed permits. This discretion or review is not reflected in DOGGR's regulations and is a significant omission. 3160(d)(2)(C) states that the time period available for approval of the portion of the combined authorization applicable to well stimulation treatment is subject to terms of this section and not Section 3202; however that section did not describe the time parameters for review and should be clarified in Subchapter 2.
1783.2&3	1784(a)(2)(ii) "The well stimulation treatment radius analysis shall include a review of all wells and faults (active or inactive) within a radius of twice the anticipated well stimulation treatment length from each point of well stimulation treatment to ensure the geologic and hydrologic isolation of the oil and gas formation during and following well stimulation."	<p>This radius will oversee well stimulation isolation which poses the same risks to property owners that need the availability for water sampling. 1783.2 should be revised to state "...required to provide to surface property owners and tenants of legally recognized parcels of land situated within a radius of twice the anticipated well stimulation treatment length from each point of well stimulation treatment, or 1500 foot, whichever is greater."</p> <p>Proposed regulations should be revised to notify and provide a copy of the approved permit to the RWQCB and the local planning entity as referenced in Public Resources Code Section 3160(d)(5). 1783.2 does not reference the property owners right to request baseline AND follow up testing after well stimulation treatment. Language needs to be revised to reflect Public Resources Code Section 3160 (7)(A)(i&ii)</p>
1783.1(a)(23)	Application requirements	1783.1(a)(23) requires the applicant to submit the anticipated source of the water to be used in the treatment. This should be revised to state the aquifer source and sub basin as well. Review of the water source would reduce the risk of over drafting aquifers in the future, or at least inform the public of the risk.
1783.1(a)(19)	Spill Contingency Plan	1783.1(19) should be revised to reference the Section number that defines the Spill Contingency Plan. The regulations should be revised to require notification to an appropriate oversight agency (Department of Toxic Substances Control) and a process to release trade secret information for chemicals that require a Material Safety Data Sheet.

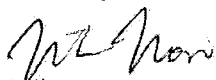
<p>1784(a)(1)</p>	<p>Evaluation prior to well stimulation treatment: "The Division may waive the requirement of doing a cement evaluation if the supervisor is satisfied that, based on geologic and engineering information available from previous drilling or producing operations in the area where the well stimulation treatment will occur, well construction and cementing methods have been established that ensure that there will be no voids in the annular space of the well."</p>	<p>Monterey County supports this section only if the division intends to be present for other evaluations and testing prior to well stimulation treatments, i.e. no well stimulation treatments should be performed on a well that has not physically been inspected by the DOGGR.</p>
<p>1784.1</p>	<p>Pressure Testing Prior to Well Stimulation Treatment (a)(1) - All cemented casing strings and all tubing strings to be utilized in the well stimulation treatment operations shall be pressure tested for at least 30 minutes at a pressure equal to 125% of the maximum surface pressure anticipated during the well stimulation treatment. If during testing there is a pressure drop of 10% or more from the original test pressure, then the tested casing or tubing shall not be used until the cause of the pressure drop is identified and corrected. No casing or tubing shall be used unless it has been successfully tested pursuant to this section. The pressure tests allow a loss of 10% of the pressure.</p>	<p>Please provide comments and documentation to explain why a pressure drop of up to 10% is protective of the public health and environment. Specifically, address protection of the groundwater aquifers from both well stimulation fluids and oil and gas. We want to understand why the value of 10 percent is chosen. For example, was it based on a study that we can review?</p>
<p>1786</p>	<p>(a)(2) "Operators shall be in compliance with all applicable testing, inspection, and maintenance requirements for production facilities containing well stimulation treatment fluids." (a)(7) "Operators shall be in compliance with all applicable requirements of the Regional Water Quality Control Board, the Department of Toxic Substances Control, and the Air Quality Management District, <u>and the Local Certified Unified Program Agencies</u> with jurisdiction over the location of the well."</p>	<p>These applicable standards should be referenced (Section #). The Local Certified Unified Program Agency is responsible to assure compliance with a variety of local, state and federal regulations and must be listed in the referenced section. Local agencies maintain Business Response Plans, Hazardous Materials and Waste inventories, etc. on file, which are immediately available to first responders in the event of emergency.</p>

<p>1788.1</p>	<p>Trade Secret Claims</p>	<p>DOGGR's regulations governing trade secret refers to a code, which refers to three other codes. This is not consistent with the plain english requirement. What governs should be written and then referenced.</p> <p>A process to release trade secret information should be included in the Spill Contingency Plan</p> <p>Public Resources Code Section 3160(j)(5-7) describes the process to substantiate trade secret. This section does not penalize applicants for making invalid claims, there needs to be some restraint otherwise many companies will take advantage of this process. Additionally, substantiating trade secret as described in Section 3160(j) is not reflected in DOGGR's proposed regulations, which should be along with the procedures for public request of trade secret information (Public Resources Code Section 3160(j)(9&10).</p>
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Thank you for the opportunity to comment on the proposed regulations for Subchapter 2, Environmental Protection. We hope these comments will help in the process of creating a clear set of regulations for Well Stimulation Treatments.

If you have questions regarding these comments, please contact Grace Bogdan, Resource Management Agency / Project Planner for Monterey County at (831) 796-6414 or bogdang@co.monterey.ca.us.

Sincerely,



Mike Novo
 Planning Director
 Resource Management Agency

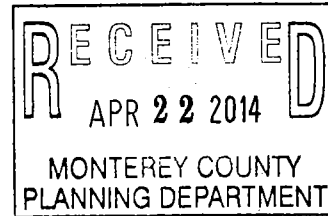


LEAGUE OF WOMEN VOTERS®
OF MONTEREY COUNTY

EXHIBIT D

April 22, 2014

Amy Roberts, Chair
Monterey County Planning Commission
168 West Alisal Street, Second Floor
Salinas, CA 93901



Via email

Dear Chair Roberts and Members of the Commission:

The League of Women Voters of Monterey County supports a moratorium on hydraulic fracturing and acidization operations in Monterey County until the risks are fully analyzed to understand their impacts on agriculture, tourism, the environment, and the health and safety of workers and our communities. Studies throughout the nation have identified geologic hazards and air and water quality impacts. These issues must be fully addressed prior to allowing oil production using hydraulic fracturing and acidization to be used in our county.

The massive amounts of water used for these extreme well stimulation methods will stress water supplies for agriculture, especially in our ongoing and worsening drought conditions. The highly toxic chemicals added to fracking water threaten to contaminate underground and surface water supplies. Air pollution due to the release of volatile organic compounds and greenhouse gases will threaten the quality of life in the Salinas Valley. The use of hydraulic fracturing and acidization contradicts California's existing climate change policies. Increased earthquake activity due to fracking is a real possibility in an area already containing major fault lines.

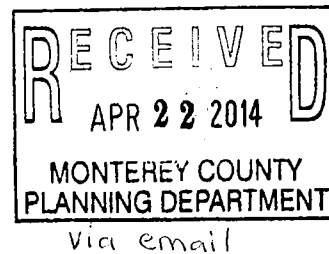
We do not think the moratorium should include thermally enhanced oil recovery as practiced by major oil producers in South Monterey County. Current practices include reclamation and recycling of produced water. Chevron Oil Company treats produced water to tertiary levels and re-injects it into the Salinas Valley Groundwater Basin. While we support reclamation and recycling, we urge the County to monitor water use and the quality of the water re-entering the Basin.

Thank you for your consideration.

Sincerely,

Beverly Bean
President

EXHIBIT D



WATER RESOURCES AGENCY

MEMORANDUM

Monterey County

DATE: April 11, 2014

TO: Grace Bogdan

FROM: Howard Franklin, PG, Peter Kwiek, PG

SUBJECT: Comments for Planning Commission Well Stimulation Use Permit Hearing

The Agency supports the proposed adoption of an additional use permit process for the implementation of well stimulation methodologies on proposed and existing wells. In particular, the quantities of water typically utilized in modern hydraulic fracturing operations warrants ongoing assessment of potential impacts of such operations to Monterey County water supply sources. The proposed use permit process would facilitate ongoing accounting of water usage to ensure prudent planning and management of county water resources.

Additionally, potential deleterious impacts to Monterey County's water supply aquifers as a result of interactions with waste fluids warrants case-by-case review of proposed well stimulation operations, including disclosure of chemicals to be used, monitoring and protection of water supply aquifers, planned disposal methods and locations, and contingency plans for accidental spills, leaks, well and equipment failures, etc.

Finally, in the context of the proposed use permit, protection of Monterey County water resources requires appropriate expertise for the evaluation of proposed well stimulation operations. The employment of such expertise, whether in-house or by contract, should be considered as part of this planning process.

Bogdan, Grace x6414

From: Food & Water Watch [act@fwwatch.org] on behalf of Andrea Hodges [andrea.hodges@sbcglobal.net]
Sent: Wednesday, April 23, 2014 3:11 PM
To: 100-District 2 (831) 755-5022
Subject: Don't Frack Monterey County

Apr 23, 2014

Mr. Louis Calcagno
240 Church Street
Salinas, CA 93901-2695

Dear Mr. Calcagno,

I urge you to protect our community, economy and environment by banning fracking in Monterey County.

Fracking and other extreme well stimulation techniques such as acidizing and cyclic steam injection are harmful to our county.

The toxic results of using hydraulic fracturing have led to the contamination of drinking water, cattle being quarantined in Pennsylvania, and dangerous explosions in states across the country, among other issues.

Fracking puts Monterey's thriving agricultural economy and world-class tourism industry at risk. The process is not only water intensive but also puts what little water we do have at risk for contamination. And fracking for oil and gas will exacerbate climate change, leaving future generations to bear the costs and increased extreme weather.

There is no such thing as "safe fracking," as regulations fall short of fully addressing all the impacts of this industrialized process.

I will do everything within my power to make sure that this does not happen to our beautiful area!

I urge you to protect your constituents by calling for a ban on hydraulic fracturing in Monterey County.

Sincerely,

Miss Andrea Hodges
8770 Carmel Valley Rd
Carmel, CA 93923-9578