



# County of Monterey

Item No.

## Board Report

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

Legistar File Number: PAR 25-004

February 25, 2025

Introduced: 2/11/2025

Current Status: Agenda Ready

Version: 1

Matter Type: Preliminary Analysis  
Report

- a. Receive a preliminary response to **Board Referral Number 2025.01 (Alejo)** regarding the proposed creation of an ordinance that prohibits hydraulic fracturing (“fracking”) in Monterey County; and
- b. Provide direction to staff.

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive a preliminary response to **Board Referral Number 2025.01 (Alejo)** regarding the proposed creation of an ordinance that prohibits hydraulic fracturing (“fracking”) in Monterey County;
- b. Provide direction on a preferred referral processing option:
  - i. Proceed with completion of referral as outlined in preliminary report;
  - ii. Proceed with completion of referral based on modifications by Board;
  - iii. Return to Board with a more comprehensive analysis of referral and anticipated effort for completion; or
  - iv. Rescind referral.
- c. Provide further direction, as appropriate.

### SUMMARY/PRELIMINARY ANALYSIS:

On January 21, 2025, Supervisor Alejo submitted a referral (Referral Number 2025.01) regarding the proposed creation of an ordinance that prohibits hydraulic fracturing (“fracking”). (Attachment 1). This Referral is in response to Assembly Bill 3233, which enacted Public Resources (“PRC”) Code section 3106.1. Effective January 1, 2025, PRC section 3106.1 permits a county, by ordinance, to prohibit oil and gas operations or development in its jurisdiction or impose regulations, limits, or prohibitions on oil and gas operations or development that are more protective of public health, the climate, or the environment than those prescribed by a state law, regulation, or order. These limitations or prohibitions may include, but are not limited to, limitations or prohibitions related to the methods of oil and gas operations or development and the locations of oil and gas operations or development. The Office of the County Counsel has reviewed this matter. As detailed below, as a result of the Measure Z litigation, the fracking portions of Measure Z remain in place; therefore, only certain limited steps need to be taken.

Measure Z is an initiative measure adopted by the voters of Monterey County on November 8, 2016. (Attachment 2). The Measure applies exclusively to oil and gas operations, and contains three prohibitions that apply to the County’s unincorporated areas. Measure Z made these changes through amendments to the 2010 Monterey County General Plan, the Local Coastal Plan, and Fort Ord

Master Plan. The three prohibitions include: (1) well stimulation treatments, including fracking; (2) the development, construction, installation, or use of any facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal, in support of oil and gas wastewater injection or oil and gas wastewater impoundment; and (3) the drilling of new oil and gas wells.

Beginning in December 2016, oil operators and a consortium of mineral rights and royalty rights owners (“plaintiffs”) sued the County alleging a variety of claims, but primarily testing the validity and constitutionality of Measure Z. Protect Monterey County (“PMC”) intervened in the lawsuit. Plaintiffs alleged that Measure Z was preempted by federal and state law, and would result in an unconstitutional taking of their property. The trial court stayed the effective date of Measure Z after the County and plaintiffs stipulated to a stay. The trial court found that the wastewater injection/impoundment and drilling of new wells portions of Measure Z are preempted by PRC section 3106. The trial court dismissed plaintiffs’ action as to the fracking ban portion of Measure Z on ripeness and standing grounds because no plaintiff was using or proposing to use the fracking process Measure Z banned. Plaintiffs did not challenge that decision. PMC appealed the trial court’s decision as to the preemption to the Sixth Appellate District.

On October 12, 2021, the Sixth District Court of Appeal issued its decision and affirmed the trial court's judgment, holding that the two provisions of Measure Z at issue in the appeal are preempted by PRC section 3106. The Court of Appeal did not consider whether Measure Z is also preempted by federal law or constituted a facial taking of plaintiffs’ property. Measure Z's ban on well stimulation treatments, which includes fracking was not invalidated by the trial court and was also not at issue in the appeal. PMC then appealed the Court of Appeal’s decision to the California Supreme Court.

On August 3, 2023, the California Supreme Court issued its opinion, which upheld the Sixth Appellate District’s decision. (Attachment 3). Specifically, the California Supreme Court held that Measure Z’s two provisions are preempted by PRC section 3106. Again, the fracking portion of Measure Z was not at issue.

Given above, the fracking provisions of Measure Z still stand and an ordinance is not necessary because fracking is already prohibited in the unincorporated portions of Monterey County. Measure Z added Land Use Policy 1.21 to the 2010 Monterey County General Plan, which prohibits the development, construction, installation, or use of any facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal, in support of well stimulation treatments.

Measure Z also amended the North County Land Use Plan, Big Sur Coast Land Use Plan, Carmel Land Use Plan, and Del Monte Forest Land Use Plan. However, these amendments require certification by the California Coastal Commission. This has not yet been done, but staff intends to prepare a Final Local Action Notices (“FLAN”) for Coastal Commission consideration of these amendments.

Lastly, Measure Z requires amendments to the Ford Ord Master Plan. When Measure Z was written the Fort Ord Reuse Authority (“FORA”) was still in existence and Measure Z required that FORA

certify the amendments. Because FORA is no longer a legal entity, the County will note the amendments the Fort Ord Master Plan and certification is no longer necessary.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Mark a check to the related Board of Supervisors Strategic Initiatives

- ☐ Economic Development
- ☒ Administration
- ☐ Health & Human Services
- ☐ Infrastructure
- ☐ Public Safety

Prepared and Approved by: Kelly L. Donlon, Chief Assistant County Counsel x5313

Attachments:

1. *Board Referral No. 2025.01*
2. *Measure Z*
3. *Chevron U.S.A. Inc., et al. v. County of Monterey, Protect Monterey County (2023) 15 Cal.5th 135*