

# Attachment A

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## ATTACHMENT A DISCUSSION

### **State and Federal Actions**

In 2013, the state adopted SB 4, relating to oil and gas well stimulation. Pursuant to SB4, the State Division of Oil Gas and Geothermal Resources (DOGGR), which regulates the operation of oil and gas wells in California, has completed its rulemaking process for oil well stimulation. New state regulations for well stimulation treatment were adopted on December 30, 2014 and will take effect on July 1, 2015. We have attached a summary of that action as Attachment B. In the meantime, DOGGR is finalizing an Environmental Impact Report (EIR) that analyzes the potential environmental impacts from well stimulation activities including direct, indirect, and cumulative effects. Pursuant to Public Resources Code section 3161 enacted by SB 4, DOGGR is required to certify the EIR no later than July 1, 2015. In addition, SB 4 requires the State Water Resources Control Board to develop model groundwater monitoring criteria by July 1, 2015.

The Bureau of Land Management (BLM) is preparing an Environmental Impact Statement (EIS) to address oil and gas development on federal public land and federal mineral estates. This production is tied to a lease auction program administered by BLM. The EIS will potentially lead to the establishment of additional provisions, best management practices, and responsible lease development management for well stimulation practices. As part of this development, the BLM Hollister Field Office hosted a Social and Economic Workshop in February to discuss the social and economic issues associated with well stimulation. The workshop was attended by representatives of the industry and interested residents from both Monterey and San Benito Counties. Discussion topics focused on how leasing of federal lands for oil and gas development can affect local populations, businesses, and community values. Residents spoke about a desire to ensure oil and gas production would hire locally to help educate and retain the younger population in the Monterey area. Other comments addressed the potential for oil and gas production to impact competing economic interests in Monterey such as agriculture and tourism, specifically in southern Monterey County where existing oil and gas production and potential future leases are predominantly located. The Environmental Impact Statement being prepared by BLM may address these concerns and develop measures to help avoid or reduce negative effects of oil and gas leasing and development.

### **Update on pending amendments to Title 21 for Oil and Gas**

The draft ordinance amending Monterey County Code (Title 21) that was presented to, and recommended for adoption by, the Planning Commission in April of 2014 would require property owners that propose the use of well stimulation treatments on new or existing wells to obtain a use permit from the County prior to utilizing well stimulation treatments. The proposed amendments would also change the appropriate hearing body from the Zoning Administrator to the Planning Commission for any oil and gas application, and additionally would disallow exploration for and removal of oil and gas (of any kind) in residential zoning districts. Currently, Title 21 allows exploration and removal of oil and gas as an allowed use with a use permit in residential zoning districts. The ordinance also provided some new definitions.

After receiving comments from multiple oil and gas companies and other stakeholders, staff is revising the ordinance. Staff intends to return to the Planning Commission with a revised ordinance. Staff is currently conducting a set of stakeholder meetings to gather input for that revised ordinance work. The discussions have centered on whether to modify the following components of the draft ordinance:

- Removing oil and gas extraction as an allowed use with a use permit in residential districts
- Changing the hearing body from Zoning Administrator to Planning Commission

- Removing the use permit requirement for existing wells that propose well stimulation treatments
- Adding a process for application requirements and development standards for new oil and gas projects in the inland zoning ordinance

The presentation by the DOC to the Board of Supervisors in September of 2014 confirmed staff's understanding that, regardless of the permitting requirements set forth in Senate Bill 4 (SB4), the local land use authority maintains discretion over land use matters. This would include continuing to require a discretionary use permit, as is currently the case under Title 21, and conducting environmental review and the analysis and disclosure of environmental impacts to aesthetics, biology, traffic, noise, water, etc. For any discretionary permit, staff is obligated to review these impacts for new oil and gas projects whether they propose well stimulation treatments or not. In conducting a review of some of our historic use permits for oil extraction, it would be very difficult to determine if those permits are entitled for the use of well stimulation treatments. Instead, staff is conducting a series of stakeholder meetings to discuss the potential codification of a process for the review of new use permits for oil and gas applications. This process would apply to all new oil and gas applications, and would not be exclusive to applications that propose the use of well stimulation treatments. This may include the establishment of development standards and application requirements with the goal of providing staff criteria for the review of new oil and gas projects and the need to submit sufficient materials to conduct environmental review.

The first of these stakeholder meetings took place on January 15, 2015 in King City with over 70 members of the oil and gas industry, interested residents, and representatives of organizations in attendance. The purpose of the meeting was to make available information regarding recent state regulations, clarify the County's role in review of oil and gas applications, and request feedback regarding the draft ordinance. Having a diverse range of stakeholders at one meeting provided a healthy dialogue between opposing views regarding oil and gas. Initially, many concerned citizens spoke out against hydraulic fracturing and as information was exchanged from the oil industry, it became understood that fracking is not likely to occur within Monterey County at this time. Staff reviewed the previous draft ordinance presented to the Planning Commission and the components that staff is considering going forward, and the group responded with varying feedback. Many residents were in favor of changing the hearing body from the Zoning Administrator to the Planning Commission, while others worried that the change of hearing body would politicize the decision of oil and gas applications and advocated keeping the decision with the Zoning Administrator. We received comments in support of removing oil extraction as an allowed use with a use permit in residential districts, as well as the request to review other zoning districts for incompatibility of the use. Others spoke out against restricting oil and gas removal from any zoning districts. In general, the oil industry and some residents were concerned that, given the existing regulations imposed by other agencies for oil extraction, the County should not consider any additional regulations that would affect the oil and gas industry. Conversely, others were concerned that the existing regulations by the state and regional agencies do not address all the potential impacts of oil and gas production, particularly hydraulic fracturing.

The second stakeholder meeting was held on February 24, 2015 at the Government Center in Salinas. There were about 50 members of the public representing the industry, residents, and representatives of organizations. This meeting centered on two topics: 1) should the County allow oil and gas production in residential districts, and 2) the development of standards for review of new oil and gas applications. Staff researched the permitting process and regulations for oil and gas development in some surrounding counties (Kern, Santa Barbara, and San Luis Obispo) and presented these regulations at the meeting. This research helped form a healthy, focused discussion on the topics. Many comments from concerned residents centered on not allowing oil and gas production at all in

residential districts, and comments from the industry and other stakeholders contended the use should still be allowed in only rural residential areas, and not higher density residential districts. The potential development standards were presented to discuss what criteria could be used, and why, to review future oil and gas projects, regardless of the technique used to extract the material. The industry had concerns regarding additional regulation, but also recommended that potential development standards be consistent with other regulatory agencies.

This stakeholder process will continue with the development of a draft ordinance that reflects the comments received from the stakeholder meetings. The next stakeholder meeting will be held at the South County Land Use Advisory Committee venue to gather input on the draft ordinance. Taking into consideration any direction provided by the BOS, staff will continue developing the amendments to Title 21, and conduct environmental review. To ensure consistency with the State, the draft ordinance would be taken to the Planning Commission for consideration only after the DOC has certified the final EIR and regulations.

### **Update on pending Planning Commission recommendation to adopt interim urgency ordinance**

During the Planning Commission hearing in April of 2014, the Commission unanimously recommended the Board of Supervisors adopt an interim urgency ordinance on well stimulation treatments, which include hydraulic fracturing, acid matrix stimulation and acid fracturing stimulation. These treatments are designed to stimulate the geologic formation to increase permeability of oil and gas. At this time staff has not drafted this ordinance. This report will describe what the ordinance could look like, who it could affect, and the benefits and implications to considering such an ordinance. Adoption of an interim urgency ordinance would require a four fifths vote by the Board of Supervisors pursuant to Government Code Section 65858 and would expire 45 days after its adoption. At that time, the BOS could extend the interim urgency ordinance for 10 months and 15 days, and subsequently extend for one additional year, with each ordinance subject to a four-fifths vote by the Board of Supervisors. Alternatively, Government Code section 65858 allows for the first extension to be 22 months and 15 days if the initial 45-day interim ordinance is adopted at a noticed public hearing. Under either alternative, the interim urgency ordinance and any extension must include legislative findings that there is a current and immediate threat to the public health, safety, or welfare and that the approval of use permits, or any other entitlement for use which is required in order to comply with a zoning ordinance, would result in that threat to public health, safety, or welfare.

### **Why adopt an interim urgency ordinance?**

The purpose of an interim urgency ordinance would be to protect the public health, safety and welfare by preventing any type of well stimulation in Monterey County prior to completion of the state's environmental review and development of regulations and procedures. As discussed above, SB4 requires DOGGR to coordinate with multiple state and regional agencies to develop regulations, prepare an environmental impact report (EIR), and complete an independent scientific study on any potential environmental impacts of well stimulation in the state, prior to varying deadlines in 2015 and 2016. It should be noted that SB4 requires the well stimulation treatment regulations to be adopted *prior* to the completion of the EIR and scientific study. Those regulations were adopted in December. Groundwater monitoring criteria are to be developed by July 1, 2015. The EIR and scientific study information are pertinent to understanding the effects of hydraulic fracturing. Adoption of an interim urgency ordinance on the utilization of well stimulation treatments within Monterey County would ensure that the County does not locally permit an action that has not been thoroughly reviewed and vetted for environmental impacts and monitoring at a state level. It also will enable the state regulatory process to be completed before County issues permits for oil and gas well operations that propose to use the types of well stimulation that are the subject of the EIR and regulations required by SB 4. After state

regulations are in place and the EIR completed, the County can understand the full context of how to locally permit and regulate well stimulation applications.

The main benefit of adopting an interim urgency ordinance is that it is a temporary action; the ordinance could be effective for a limited time of 45 days to a maximum of two years. Other counties in California have taken action against well stimulation treatments in the form of permanent bans. San Benito, Mendocino, and Santa Barbara County all had ballot measures in their recent election to ban hydraulic fracturing, among other well stimulation treatments. These measures passed in both San Benito and Mendocino County. In San Benito County, the ban was expanded from well stimulation treatments to encompass other extraction methods, including steam injection. It is not the intent of Monterey County staff, including the Planning Commission recommendation, to affect ongoing oil and gas activities and methods currently used, like steam injection. It is understood that current oil production and fields, like San Ardo, are a cornerstone of our local economy and job market. The interim ordinance would enable the County temporarily not to approve new oil and gas wells that propose well stimulation, while the state is completing its EIR and regulatory process and the County is revising its regulations.

The implication of adopting such an ordinance is that hydraulic fracturing, acid fracturing, and acid matrix stimulation would not be allowed during the life of the ordinance. Although this County currently does not have any known activity using these methods, an operator would be precluded from starting such an operation during the moratorium period. If an oil boom were to occur that triggered the need to use these well stimulation techniques, those activities would have to wait for the moratorium to expire.

#### **Who/what would be affected by an interim urgency ordinance?**

Subject to today's Board direction, an interim urgency ordinance would temporarily prohibit the utilization of all well stimulation treatments, which include hydraulic fracturing, acid matrix stimulation and acid fracturing stimulation. These treatments are designed to stimulate the geologic formation to increase permeability of oil and gas. Staff would defer to the state public resources code for definition of these terms; however, the ordinance would not include, nor impact, existing permitted oil and gas activities such as steam injection or other conventional well extraction methods. Additionally, the ordinance would not impact new applications for oil and gas activities involving steam injection or other conventional well extraction methods. Currently, there is not any permitted or proposed well stimulation in Monterey County. The ordinance, while in effect, would likely prohibit the submittal of new discretionary permit applications for oil and gas activities that propose the use of well stimulation treatments. If the Board directed staff to develop an interim urgency ordinance, staff would continue to develop the draft ordinance for Title 21, as the draft ordinance would apply to all new oil and gas applications, and would not be exclusive to applications that propose well stimulation activities.

#### **Conclusion**

Staff requests that the Board provide direction on the development of an interim urgency ordinance that would temporarily prohibit well stimulation treatments. If the Board wishes to move forward with an interim urgency ordinance, staff could return in approximately month with a draft ordinance for consideration.