



Board Report

File #: PC 18-079, **Version:** 1

REF180021 - OIL AND GAS EXPLORATION ZONING OVERLAY WORKSHOP

Public Workshop to consider and make a recommendation to the Board of Supervisors regarding options for developing zoning regulations to delineate whether and where to prohibit new oil and gas exploration in Monterey County.

Project Location: County Wide

Proposed CEQA Action: Statutorily Exempt per section 15262 of the CEQA Guidelines.

RECOMMENDATION:

It is recommended that the Planning Commission:

- a. Find that consideration of options for zoning is a feasibility or planning study for possible future actions the commission has not approved, which qualifies for a Statutory Exemption per Section 15262 of the CEQA Guidelines;
- b. Consider Board Referral No. 2018.15 regarding zoning changes to prohibit drilling for oil and gas north of King City;
- c. Receive a report on possible options for zoning overlays in Monterey County that would delineate where future oil and gas exploration may be permitted/prohibited;
- d. Recommend that the Board direct staff to prepare a zoning ordinance for Option 4, representing a combination of BOS referral area south of King City (Option 1) with existing permit parcel boundaries (Option 2).

PROJECT INFORMATION:

Planning File Number: REF180021

Project Location: County wide

SUMMARY:

On November 8, 2016, Monterey County voters adopted Measure Z, an initiative measure that prohibited land uses in support of well stimulation in oil and gas production or recovery, including hydraulic fracturing (fracking) (the so-called “fracking ban”), prohibited land uses in support of oil and gas wastewater injection and impoundment subject to an amortization period, and prohibited the drilling of new oil and gas wells in the County’s unincorporated areas. It also authorized the Monterey County Board of Supervisors to adopt ordinances to implement Measure Z. Litigation was filed challenging Measure Z. On January 25, 2018, the Superior Court issued a Final Statement of Decision, and on March 1, 2018, the court issued a judgment and peremptory writ. Under these rulings, the court invalidated and enjoined the County from enforcing Measure Z, except for the fracking ban which the court let stand. Measure Z’s fracking ban in the inland unincorporated area (i.e., its policies to prohibit land uses in support of well stimulation in oil and gas production or recovery) requires no further action of the Planning Commission or Board of Supervisors to become effective.

Accordingly, Monterey County Resource Management Agency (RMA) is inserting the Measure Z fracking ban policies into the 2010 General Plan and South County Area Plan, as adopted by the voters, and preparing to submit the fracking ban policies to the Coastal Commission and Fort Ord Reuse Authority (FORA) for certification as directed by Measure Z.

While the court invalidated the other policies of Measure Z, the court decision does not prohibit the County

from considering zoning amendments related to oil and gas exploration. In May 2018, the Monterey County Board of Supervisors issued Referral No. 2018.15 (Exhibit D) directing RMA and the Office of County Counsel to put on a future agenda for Board of Supervisors' consideration options for initiating amendments to County zoning to prohibit new oil and gas exploration in certain areas of the County. The purpose of the Board Referral is to address portions of Measure Z related to oil and gas drilling invalidated by the Court in a manner that complies with the law.

Staff has developed four possible options for the Planning Commission to consider and make a recommendation to the Board of Supervisors for how to draft an ordinance. Staff has provided options for where wells would be allowed, meaning all other areas would be prohibited:

- Option 1 Defined boundary of southern Salinas Valley south of King City and east of the Santa Lucia range
- Option 2 Outline of parcels with existing permits
- Option 3 Boundary defined by the geologic substructure where oil/gas is expected (Monterey Shale)
- Option 4 Combination of Option 1 and Option 2

In addition, the Commission could recommend other avenues for delineating where oil and gas exploration would be prohibited/allowed.

Option 1 represents the area defined by the Board of Supervisors referral, but does not take into account existing conditions or technical basis for delineating a boundary. Staff finds that Option 2 simply memorializes existing conditions and would require a legislative action to expand beyond that area. Option 3 would allow for exploration in specific, but currently unknown areas of the County based on technical data for the geologic substrata that is indicative of oil/gas exploration. Option 4 would combine two of the approaches, both of which include existing permitted wells. Staff recommends that the Planning Commission support Option 4, being representative of the total area where existing permits for oil wells have been approved. Any request for wells outside this area would be prohibited; however, new wells outside this area could be considered subject to both legislative and discretionary actions. Procedurally, staff is asking the Commission to make a recommendation to the Board, and the Board would then consider the options for initiation of zoning. No change to zoning would occur until staff then drafted an ordinance, conducted environmental review and the Planning Commission and Board then were to hold public hearings and make a decision on the proposal.

DISCUSSION:

The trial court let stand the fracking ban component of Measure Z. However, the Board of Supervisors submitted a Referral to consider initiating zoning to further the mission of the voters' initiative prohibiting new oil and gas exploration in specific areas of the County. This Referral specifically mentioned consideration of prohibition in all areas of the county except in the southern Salinas Valley, generally south of King City and east of the Santa Lucia range, as illustrated in **Exhibits A and D**.

Planning staff recommends creating a zoning overlay for specific properties/areas where exploration could be permitted within the County, similar to the approach used for regulating the emerging cannabis industry. To

accomplish this, a zoning overlay could be created based on data, such as parcels with existing permits for oil and gas wells, geological zones where oil is likely to be found, or other factors. Permissively allowing operations in certain zoning areas can be visually represented on a zoning map (overlay). This format would help make clear for staff and members of the public where those operations could take place with the benefit of a Use Permit.

A benefit of this approach is that a Use Permit could be processed for drilling outside of overlays, but only upon approval of a zoning designation change, which would require a recommendation by the Planning Commission and a decision by the Board on a zoning ordinance. This process would allow decision makers to consider unique circumstances on a case-by-case basis.

Options for creating zoning overlay districts for oil and gas exploration are summarized as follows:

Option 1 - Board Referral Boundary:

The Board referral suggested a boundary for oil and gas operations described as: the southern Salinas Valley south of King City and east of the Santa Lucia range. This boundary would generally follow the edges of the parcels that have existing permits in the County within this described area. This location includes San Lucas, San Ardo, and Bradley, but excludes areas with existing permitted wells that are currently operating outside of the Referral's boundary (**Exhibit A**). Creating a zoning overlay for this area would directly respond to the Referral, and would have the effect of limiting new oil and gas operations everywhere else in the County.

Option 2 - Current Permit Boundary:

If the Board's intent was to include all parcels where there are existing wells, **Exhibit B** is a map showing all parcels that currently have Use Permits for oil/gas wells. This overlay Option would include all parcels already permitted for oil and gas exploration/operation in the County, including parcels/wells not captured in the boundary defined in the Board Referral. However, there would be parcels without permits in the area specified by the Board Referral that would be excluded. This option would incorporate the King City, Greenfield, and Moss Landing areas along with the area south of King City. The rationale behind this option would be to continue allowing new oil and gas exploration on parcels where operations are already occurring.

Option 3 - Monterey Shale Formation:

Portions of Monterey County are thought to lie within what is known as the "Monterey Shale Formation", which is expected to hold large petroleum reservoirs in a geologic basin. With this in mind, the County could choose to use areas where the Formation exists as the basis for where new drilling would be permitted. The main issue with this approach is that there is little evidence about where this Formation actually exists. Although it is expected that the Monterey Shale Formation covers large areas of Monterey County, the confirmed existence of this Formation is relatively small (**Exhibit C**). Due to the difficulty and expense of boring holes, which must be extremely deep to reach the Formation, public information regarding the Monterey Formation outside of these small areas is sparse. Any data collected by individual operators through the land speculation process regarding the existence of the Formation is proprietary, and therefore unavailable to the County. As such, Planning staff cannot generate an accurate map of where the Monterey Formation may or may not exist in order to create an overlay. If this option were chosen, there would need to be requirements for information, studies and/or reports to be provided by applicants on a case-by-case basis to prove that their parcel was above an area of Monterey Shale. Due to this lack of concrete geographical information, staff concludes that creating a boundary based on the Monterey Shale Formation is not a good option for a zoning

overlay.

Option 4 - Combination (Staff Recommendation)

Option 1 (Board Referral-defined area) and Option 2 (Permit Boundary) could be combined to create a more complete zoning overlay. By combining these two options, the zoning overlay would fulfill the Board's initial direction, while not excluding any existing parcels with an approved permit for oil and gas operations. Staff is recommending this approach as the preferred option. A map representing this option is included as **Exhibit D**.

Other Considerations

Since the Referral represents the beginning of study of options, the Commission could recommend other avenues for delineating where oil and gas exploration would be permitted to take place in the County. In addition to the areas where overlays would clearly allow exploration with a permit, the County could elect to create an exception for allowing oil and gas exploration outside of the zoning overlay, rather than a zoning change. Zoning overlays could require specific criteria to be met before an exception could be applied, such as additional scientific studies provided by the applicant, previous disturbance, surrounding uses, or other unique qualifiers. This exception would be subject to the same requirements as other wells in the County, but would not require a legislative action to apply an overlay. This option would account for the geological diversity of the County, but not limit zoning overlays created without full knowledge of other potential reserves. Staff finds that this exception could be seen as a "catch-all" to ensure that new reserves may be exploited in the future.

OTHER AGENCY INVOLVEMENT:

No other agencies were involved in writing this report

FINANCING:

Funding for staff time associated with this project is included in the FY17-18 Adopted Budget for RMA-Planning.

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Approved by: John M. Dugan, FAICP, Deputy Director of RMA Land Use and Development Services.

The following attachments are on file with the RMA:

Exhibit A - Option 1/Board Referral Boundary Map

Exhibit B - Option 2/Current Permit Parcel Boundary Map

Exhibit C - Option 3/Monterey Shale Formation

Exhibit D - Option 4/Combination

Exhibit E - Board Referral

cc: Front Counter Copy; Brandon Swanson, RMA Services Manager; The Open Monterey Project (Molly Erickson); LandWatch (Michael DeLapa); John H. Farrow; Janet Brennan; Project File **REF180021**; Measure Z Mailing List