



COUNTY OF SANTA CRUZ 0437

PLANNING DEPARTMENT

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January 28, 2013

Agenda: February 12, 2013

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

SUBJECT: REPORT BACK ON HYDRAULIC FRACTURING

Members of the Board:

On December 18, 2012, the Department of Conservation/Division of Oil, Gas, and Geothermal Resources released a "discussion draft" of regulations for the oil and natural gas production technique known as hydraulic fracturing, commonly known as fracking. On January 8, 2013, your Board accepted a report on the draft regulations and directed the Planning Director to coordinate the efforts of staff in the Planning Department and Public Works as appropriate, to review the Pre-Rulemaking Discussion Draft document and return to our Board on or before February 12, 2013, with recommendations to submit to the State regarding these new rules.

The Planning Department, with input from the Public Works Department, the Environmental Health Water Quality Resources Division, and County Counsel, have reviewed the draft regulations and have made the following preliminary determinations.

- While there is a substantial potential for hydraulic fracturing for oil within the Monterey Shale formation statewide, it is unclear to what extent that potential exists within the County of Santa Cruz. Only minor amounts of hydrocarbons have been extracted in the County primarily from quarrying oil-impregnated beds, and no viable extraction of oil has occurred in the County within the last 50 years.
- While the State of California has jurisdiction over subsurface exploration and resource extraction, local governments may regulate related activities on the surface.
- Numerous local jurisdictions across the state are researching this issue, as well as statewide organizations such as the California State Association of Counties (CSAC) and the County Engineers Association of California (CEAC). Most Counties do not yet have local regulations, but several were reviewed, including those from the counties of Kern, Inyo, Monterey and Santa Barbara.
- Reports from across the United States where hydraulic fracturing has taken place have cited environmental, social, economic, and community impacts. Primary concerns are pollution of surface water and groundwater, and exhaustion of local aquifers. Other issues include air pollution, lack of information, biotic impacts, noise, truck traffic, aesthetics, surface/mineral rights conflicts, worker safety, and earthquakes.

- The proposed state regulations need to be strengthened to adequately address these issues. Staff have prepared the attached resolution that describes the issues that need to be addressed.
- The County of Santa Cruz has existing regulations that would provide some protection from the impacts of fracking, but these could be strengthened.
- Further investigation is needed to adequately determine the potential ramifications of hydraulic fracturing in the County of Santa Cruz.
- Although offshore oil drilling is prohibited within the waters of the Monterey Bay National Marine Sanctuary, onshore activities could have adverse impacts on waters draining to the Sanctuary. The County could work with the Sanctuary and other regional agencies to develop a regional approach to oversight of fracking.

County Authority over Fracking Operations

The State Department of Conservation Division of Oil and Gas has authority over wells and other subsurface activities related to oil and gas exploration and production. However, Counties retain authority over surface activities, including grading, building and construction. In the process of permitting overlying land use activities, as the lead agency, the County must also comply with the California Environmental Quality Act (CEQA) and take into consideration all potential impacts on the environment, including subsurface impacts. To that end, Counties such as Monterey and Santa Barbara have developed extensive submittal requirements regarding the surface and subsurface aspects of proposed fracking operations.

Counties also have authority to regulate the location of oil and gas exploration activities through their zoning authority. Since the early 1950's, California courts have generally held that zoning ordinances could regulate, including prohibit in certain zones, the exploration and production of oil and gas. One court concluded that "there is no question that the County has the right to regulate the drilling and operation of oil wells within its limits and to prohibit their drilling and operation within particular districts if reasonably necessary for the protection of the public health, safety and general welfare." Drilling for oil and gas is a use which may be regulated under the police power. Such authority is not dependent upon the delegation of zoning powers. A municipality may, under the police power, regulate the number, size, and operation of oil and gas wells, such regulation being justified on the basis of the fire potential, the noise of drilling, the unpleasant odors, and the noxious gases produced in the process of extracting oil and gas. Ordinances have been upheld which limited landowners to one well per 16-acre district, and to one well in each city block, with appropriate provision for division of the profits.

Staff have reviewed the County Code and have identified the following sections that may provide authority for regulation of fracking activities:

- The Zoning Ordinance (Chapter 13.10) includes provisions for energy facilities on land zoned Public and Community Facilities, Commercial, Industrial, Timber Production, and Agriculture with a Zoning Administrator or higher-level discretionary approval, which would be subject to CEQA review. An energy facility is defined as "... any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal or other energy resource ...".

- The Grading Ordinance (Chapter 16.20) would require a grading permit for any grading over 100 cubic yards, which would be needed for berms, pads, or roads needed for fracking or oil or gas exploration.
- The Hazardous Materials Ordinance (Chapter 7.100) would require a permit and proper handling of all hazardous materials associated with fracking operations. This would include a full (confidential) disclosure of chemicals involved.
- The Runoff and Pollution Control Ordinance (Chapter 7.79) includes broad prohibitions on any nonstormwater discharge to surface or groundwater.
- The Water Well Ordinance (Chapter 7.70) specifically exempts oil and gas wells drilled under the jurisdiction of the Department of Conservation.

Based on the above list, it would appear that the County does have general authority and oversight over the overlying land use activities that could be invoked in the event fracking was proposed in the County. However, if there is a likelihood of fracking activities in this County, consideration should be given to strengthening these requirements. It is also important to work to ensure the State regulations regarding subsurface activities are adequately strengthened.

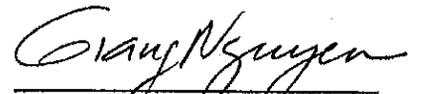
Recommendation:

We therefore recommend that your Board accept this report and consider approval of the attached Resolution.

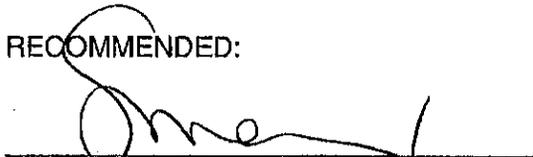
Sincerely,


 KATHY M. PREVISICH
 Planning Director


 JOHN J. PRESLEIGH
 Director of Public Works


 GIANG T. NGUYEN
 Health Services Agency Director

RECOMMENDED:


 SUSAN A. MAURIELLO
 County Administrative Officer

Attachments:

1. Resolution
2. Pre-Rulemaking Discussion Draft