



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

PLANNING DEPARTMENT

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MEMORANDUM

TO: Board of Supervisors' Transportation and Planning Committee

FROM: Chris Bazar, Director, Community Development Agency

DATE: February 2, 2015

SUBJECT: PROPOSED GENERAL PLAN AMENDMENT AND ZONING ORDINANCE AMENDMENT - Modify specific text in the East County Area Plan (ECAP) and the Alameda County Zoning Ordinance (ACZO) to remove all references to oil, gas, petroleum, and drilling, exploration, and extraction thereof. This would have the effect of prohibiting all new permits for this land use where it is currently permitted as a Conditional Use, and rendering all existing permitted operations nonconforming.

BACKGROUND

The Board of Supervisors Transportation and Planning Committee has directed staff to develop amendments to County General Plan and Zoning documents that would enable the County to reduce and potentially prohibit oil and gas exploration and extraction as a land use in the County. The Board Committee directed staff to develop the proposal after community members expressed concerns regarding enhanced well stimulation techniques commonly referred to as "fracking."

After examining the issues, Planning Staff and the Office of the County Counsel have tentatively concluded that an effective and legally defensible way to achieve the goals defined by the Board T&P Committee would be to remove the language addressing oil and gas activities from the documents governing land use, thereby making these activities nonconforming uses; this way, the existing uses would be able to continue to proceed as originally approved, but could not expand or change significantly, and no new permits could be issued. Expired permits and activities at facilities that have not been operated for at least six months would be considered abandoned as uses and could not be reinstated. If well stimulation techniques were to be proposed for existing wells, it would require a modification of the existing permit, and in addition to the other findings required for such an approval, findings would need to be made that the new procedures neither significantly altered nor expanded the existing nonconforming use.

The Office of the County Counsel has advised that any new ordinance language specifically banning all oil extraction activity (including existing uses) or enhanced well stimulation techniques could place the County at risk of legal action. Lawsuits have been brought in other California jurisdictions, although staff knows of no conclusive decisions as of this date.

STAFF ANALYSIS

Based on continued progress in the oil industry to increase extraction of existing oil and gas resources and expand into new areas, there is a need to address the potential for this activity to expand in Alameda County. Oil and gas exploration and development raises the following public health, safety and welfare concerns: pollution of air, soil, surface water, and groundwater; the

depletion of water supplies; noise pollution; and seismic hazards. In addition, greenhouse gas emissions resulting from oil and gas exploration and burning fossil fuel are warming the planet and contributing to climate change with potential public health, safety, welfare, economic, and social impacts in Alameda County, including increased risk of flooding and inundation, extreme storm events, erosion, water shortages, loss of biodiversity, heat waves, and wildfires.

Oil and gas exploration and extraction has taken place in the County for many decades. Although several parcels in various places in the East County have been affected by exploration, the majority of activity has been located in two groups – the first, the Hospital Nose gas field in the South Livermore area (now abandoned), and the Livermore Oil Field covering about 3 square miles of land east of the Lawrence Livermore National Laboratory on the eastern side of the intersection of Greenville Road and Patterson Pass Road. Several dozen permits have been issued to many operators in the area over the last 4 decades, and possibly more than 100 wells have been drilled in that period of time. Most of them were either dry or only very low producers, and the vast majority of them have been abandoned and the sites closed.

As of today, only three permits remain active for the area: One permit (2014, no expiration date) held by E&B Natural Resources, the other two held by a now-defunct company USA Exploration and Production (2007 and 2008, each to expire in 10 years). Of these, only the first permit involves active wells, while the latter two are all presently inactive. E&B Natural Resources operates four wells on its site (Mr. Shams Hasan, Health, Safety and Environmental Manager, E&B Natural Resources, telephone conversation, January 14, 2015), with a collective total production of about 30 barrels per day (estimated by County Staff from data shown on website <http://www.drillingedge.com/california/alameda-county>).

Mr. Shams indicated that these wells do not require any forms of fracking and that none was envisioned during the life of the operation. He did indicate that these wells yield mineral brine water (which is reinjected at low pressure) and that acid is occasionally used to remove scale buildup on the conduit from natural minerals in the water; but this is not the same as acidization of the oil-bearing formation for matrix opening.

The use of chemicals for well stimulation or well maintenance is generally regulated by the State Department of Conservation, Division of Oil, Gas and Geothermal resources (DOGGR). The DOGGR both inspects and regulates well operations, and also regulates both the content and concentrations of chemicals that are used in oil well practice. The content of chemical mixtures used in well stimulation and maintenance can vary by manufacturer, and in some cases the content is proprietary - that is, content and especially proportion is known the manufacturer and the State, but is not divulged in detail to either the well operator or the general public (S. Hasan, E&B Natural Resources, telephone conversation, January 28, 2015). Water quality on the site is also regulated by SB 4, passed in California in 2013, which SB 4 directs the State Water Boards to develop groundwater monitoring criteria in oil and gas production areas as draft regulations, to be finalized in July 2015. Among other things, SB 4 and DOGGR require the following practices (<http://legal-planet.org/2013/11/18/state-releases-new-fracking-regulations-amid-sb-4-criticism-controversy/>):

- Requiring 30 days advance notice to all property owners and residents in the vicinity of planned hydrofracturing sites;
- Conducting groundwater testing and monitoring before and after every hydrofracturing event;
- Mandatory reporting on the volume of water used and disposition of hydrofracturing wastewater;

- Requiring full disclosure of all chemicals used in hydrofracturing, with reporting to a publicly accessible, searchable website;
- Requiring seismic testing and mapping of all fault zones prior to any hydrofracturing event;
- Greater coordination among agencies to ensure information sharing and accountability; and
- Requiring an independent, peer-reviewed scientific study that evaluates the risks of hydrofracturing.

As stated above, no hydrofracturing is not currently practiced or foreseen as necessary by existing operators in Alameda County.

If the proposed amendments are approved, the net effect on the active operation would be virtually nil; E&B would be able to continue to extract oil as they currently do until the oil is gone, and to perform any activities currently permitted. No new previously unpermitted wells could be drilled, and operations in existing wells could not be altered without permit revisions and findings that the alterations neither expand nor modify the nonconforming use. Once the oil is gone and the wells are dry, if no new operations occur for six months, the permit would be considered expired and the use ended.

The currently permitted but idle wells could be reactivated within 6 months by another operator, and then could continue to operate as originally approved if permit renewals could be obtained; however, after that any stoppage for six months would terminate the permit. When these permits are fully expired, Alameda County would no longer have any oil or gas extraction land uses, including potential enhanced well stimulation.

Conformance with the General Plan

No other passages in the General Plan support oil or gas exploration or extraction, and the removal of Policy 167 would allow the General Plan to remain internally consistent.

Environmental Review

This action would be exempt from the requirements of the California Environmental Quality Act (CEQA), CEQA Guidelines Section 15308, Class 8, “Actions by Regulatory Agencies for Protection of the Environment.” The action would result in no new physical impacts to the environment.

Planning Commission Action:

The Planning Commission is scheduled to hear this item on February 17, 2015, and to possibly provide a recommendation at that time.

CONCLUSION

Staff recommends that the Transportation and Planning Committee recommend to the Board of Supervisors the following proposed amendments to the East County Area Plan and the Alameda County Zoning Ordinance:

Remove Policy 167 of the East County Area Plain its entirety, which reads as follows:

*Policy 167: The County shall impose conditions of approval on new **Petroleum Resource Exploration and Extraction** conditional use permits to protect future onsite and nearby uses from potential impacts resulting from petroleum exploration or extraction; potential impacts include but are not limited to*

traffic, noise, dust, health and safety, and visual impacts, as well as land contamination, surface and groundwater contamination, improper disposal of petroleum wastes, and improper site reclamation. The conditions should at least include, but not be limited to, those developed through the California Environmental Quality Act review process, and shall be monitored accordingly.

and remove Alameda County Code of Ordinances, Title 17 - Zoning, Section 17.06.040, Conditional uses—Board of zoning adjustments, Paragraph I, which reads as follows:

I. Drilling for and removal of oil, gas or other hydrocarbon substances;

Attachment:

- List of Existing Active Permits for Oil and Gas Operations in Alameda County, January 2015

Application#	Approved Date	Termination Date	Applicant	Owner	Address	APN
C-8688	1/24/2008	1/24/2018	USA Exploration and Production, LLC	Maximilian East LLC	8617 Patterson Pass Road, Livermore	099A-1650-003-09
C-8653	11/8/2007	11/8/2017	USA Exploration and Production, LLC	RPM Holdings LP	8477 Patterson Pass Road, Livermore	099A-1650-001-05
					8421 Patterson Pass Road, Livermore	099A-1650-001-04
					2120 Greenville Road, Livermore	099A-1650-001-07
PLN2014-00043	6/26/2014	Review	Flessatti & Schenone/E&B Natural Resources	Paula M Flessatti & M L Schenone	Patterson Pass Road, Livermore	099B-5600-003-04