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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF MONTEREY

13 AERA ENERGY LLC, a California limited  
14 liability company,

15 Petitioner and Plaintiff,

16 vs.

17 COUNTY OF MONTEREY, a municipal  
18 corporation; and DOES 1 through 25,  
19 inclusive,

20 Respondents and  
21 Defendants.

22 Case No. 16CV003980

23 **VERIFIED PETITION FOR WRIT OF  
24 MANDATE AND COMPLAINT FOR  
25 DECLARATORY RELIEF, INJUNCTIVE  
26 RELIEF, AND FOR INVERSE  
27 CONDEMNATION**

28 **JURY TRIAL DEMANDED**

1 Petitioner and Plaintiff AERA ENERGY LLC (“Petitioner”) alleges:

2 **THE PARTIES**

3 1. Petitioner is a California limited liability company with its principal place of  
4 business in Bakersfield, California. At all times relevant to the allegations in this Petition for  
5 Writ of Mandate and Complaint for Declaratory Relief, Injunctive Relief, and for Inverse  
6 Condemnation (this “Petition”), Petitioner was engaged in the business of oil and gas exploration,  
7 development, and production in California.

8 2. Respondent and Defendant COUNTY OF MONTEREY (“County”) is a municipal  
9 corporation with its county seat in Salinas, California.

10 3. Petitioner is unaware of the true names and/or capacities of Respondents and  
11 Defendants DOES 1 through 25, inclusive, and therefore sues said Respondents and Defendants  
12 by such fictitious names. Petitioner will amend this Petition to insert the true names and/or  
13 capacities of DOES 1 through 25, inclusive, when the same have been ascertained. Petitioner is  
14 informed and believes and thereon alleges that each such fictitiously named Respondent and  
15 Defendant is, in some manner or for some reason, responsible for the damage caused to Petitioner  
16 and is subject to the relief being sought in this Petition.

17 **INTRODUCTION**

18 4. Petitioner is a lessee of mineral rights in Monterey County, including those within  
19 the Aurignac and Lombardi formations of an active oil field commonly known as and referred to  
20 in this Petition as the “San Ardo Field.”<sup>1</sup> The San Ardo Field is the only major oil field in  
21 Monterey County, consisting of over 2,500 acres located about six miles south of the community  
22 of San Ardo, California. It is the 13th largest oil field in California and the 46th largest in the  
23 United States.

24 5. Petitioner is in the business of oil and gas exploration, development, and  
25 production, and has produced oil and gas at the San Ardo Field as it and its predecessors have  
26

27 <sup>1</sup> For purposes of this Petition, the area of the “San Ardo Field” means the area within the administrative boundaries  
28 of the San Ardo Field as designated by the State of California Department of Conservation’s Division of Oil, Gas,  
and Geothermal Resources.

1 done since 1952. For decades Petitioner has invested in, planned, and carried out its intent to  
2 fully develop and produce its oil and gas resources at the San Ardo Field. Petitioner currently has  
3 hundreds of active wells operating at the San Ardo Field, and plans to install additional wells each  
4 year during the remaining productive life of the San Ardo Field, currently estimated to be several  
5 decades.

6 6. Measure Z, a countywide initiative passed on November 8, 2016, was promoted by  
7 its proponents as an “anti-fracking” initiative to address concerns about hydraulic fracturing.<sup>2</sup> In  
8 reality, Measure Z will end oil and gas production in the County by any means. In addition to  
9 banning specified well stimulation treatments, including fracking, Measure Z also immediately  
10 prohibits the drilling of any new oil wells, and ends (within five to fifteen years) the long-  
11 established, legally sanctioned practice of impounding and returning to the subsurface by  
12 injection water produced with extracted oil and gas.

13 7. The periodic installation of new wells and the regular impoundment and/or  
14 injection of water produced with extracted oil and gas are fundamentally necessary for oil and gas  
15 production in Monterey County. The effect of Measure Z will be to eliminate completely all  
16 existing and future oil and gas development and production in the County, along with eliminating  
17 hundreds of associated jobs and millions of dollars in tax revenue.

18 8. Petitioner is forced to file this Petition because Measure Z will bar Petitioner from  
19 reasonably continuing the implementation of Petitioner’s long-established plan to fully develop  
20 and produce its oil and gas resources at the San Ardo Field.

21 9. The Constitutions of both the United States and California protect property owners  
22 from having property taken without just compensation.

23 10. Just compensation here, however, is not ideal: Petitioner would be prevented from  
24 completing oil and gas development and production from a field in which it has invested  
25 hundreds of millions of dollars and decades of time and effort. The County would suffer the loss  
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27 <sup>2</sup> “Fracking” is shorthand for hydraulic fracturing, a process of loosening oil and gas trapped in rock formations  
28 beneath the surface. Petitioner is not now conducting and has no plan to conduct any fracking or “well stimulation  
treatments” as defined by Measure Z in the County.

1 of its third largest taxpayer, the loss of hundreds of jobs, and a judgment in an amount that would  
2 materially impair the ability of the County to meet its ongoing financial obligations, all negatively  
3 impacting County residents for decades.

4 11. Recognizing this, Petitioner prefers legal relief that would avoid the taking and  
5 damage to be inflicted by Measure Z without forcing the County—and its residents—to pay an  
6 extraordinary sum of money as just compensation that would be better used to serve the needs of  
7 County residents.

8 12. Petitioner's primary preferred relief is for the Court to find that Petitioner has a  
9 fully vested right to continue and to complete the development and production of its oil and gas  
10 resources at the San Ardo Field by virtue of Petitioner's permitted status, decades-long  
11 investment, planning, and carrying out of its intent to fully develop the San Ardo Field. That  
12 vested right is protected by Art. I. §§ 1 and 19 of the California Constitution, which thereby  
13 exempts Petitioner from the unconstitutional *per se* taking of its vested right to continue and to  
14 complete the development and production of the San Ardo Field that would otherwise be  
15 eliminated by Measure Z.

16 13. Petitioner's secondary preferred relief is for the Court to find that the State of  
17 California has preempted the regulation of the fields of drilling of oil and gas wells, wastewater  
18 impoundment and injection, and well stimulation treatments, within the State of California, such  
19 that Measure Z is invalid and without effect, including as to Petitioner's operations at the San  
20 Ardo Field.

21 14. If the Court denies Petitioner's preferred relief, in the alternative Petitioner  
22 requests that the Court find that Measure Z effects a taking of and/or damage to Petitioner's  
23 property—its fully vested right to continue and to complete the development and production of its  
24 oil and gas resources at the San Ardo Field, including without limitation, Petitioner's right to  
25 continue any and all activities prohibited or otherwise restricted by Measure Z—and to set the  
26 matter for a jury trial determination of the amount of just compensation necessary to offset the  
27 taking of and/or damage to Petitioner's property caused by Measure Z.

1 **GENERAL ALLEGATIONS**

2 15. On or about February 23, 2016, proponents filed the proposed initiative that  
3 became Measure Z with the Monterey County Registrar of Voters to restrict—and ultimately to  
4 end altogether—oil and gas exploration, development, and production operations in Monterey  
5 County.

6 16. On or about March 9, 2016, pursuant to the requirements of the California  
7 Elections Code, the Monterey County Counsel issued a title and summary of the initiative for  
8 purposes of petition circulation that was included verbatim on petitions for the measure, as  
9 follows:

10 "Title:

11 Initiative to Prohibit Fracking and Oil and Natural Gas Well  
12 Stimulation Treatments, Prohibit Oil and Natural Gas Wastewater  
13 Injection and Impoundment, and Limit New Oil and Natural Gas  
14 Operations in Unincorporated Monterey County

15 Summary:

16 An initiative to amend the Monterey County General Plan, Local  
17 Coastal Program Plans, and Fort Ord Master Plan to: (1) prohibit  
18 the use of land within the County's unincorporated (non-city) areas  
19 for hydraulic fracturing treatments ("fracking"), acid well  
20 stimulation treatments, and other well stimulation treatments; (2)  
21 prohibit new and phase out existing land uses that utilize oil and gas  
22 wastewater injection and impoundment; and, (3) prohibit the  
23 drilling of oil and gas wells in the County's unincorporated areas.  
24 The initiative does not otherwise affect existing oil and gas wells  
25 and operations in the unincorporated County, and does not apply to  
26 offshore oil and gas operations." [typographical errors in original]

27 17. On or about June 1, 2016, the Monterey County Board of Supervisors decided by a  
28 vote of 4-1 to submit Measure Z to a vote of the citizens of Monterey County.

18 18. On November 8, 2016, a majority of participating Monterey County voters  
19 approved Measure Z. The full text of Measure Z is attached hereto as Exhibit A.

20 19. Given the significant expenditures—amounting to hundreds of millions of  
21 dollars—Petitioner has invested over decades of work at the San Ardo Field, together with  
22 numerous permits Petitioner has obtained and will continue to obtain, including from not only  
23 Monterey County but also the Division of Oil, Gas, and Geothermal Resources ("DOGGR") of  
24 the State of California's Department of Conservation, and State and Regional Water Quality  
25

1 Control Boards (collectively, "CWQCB"), and work done pursuant to and in reliance upon the  
2 permits, Petitioner's right to continue and to complete the development and production of its oil  
3 and gas resources at the San Ardo Field now is fully vested.

4 20. Measure Z imposes an unconstitutional taking on its face, as it eliminates all of  
5 Petitioner's vested right to continue and to complete the development and production of its oil  
6 and gas resources at the San Ardo Field, including the rights to drill wells vested as of the  
7 effective date, all rights to drill wells that become vested after the effective date, all rights to  
8 impound and/or to inject wastewater vested as of the effective date, all rights to impound and/or  
9 to inject wastewater that become vested after the effective date, all pursuant to existing and future  
10 permits issued by the State of California and Monterey County, and all rights to conduct well  
11 stimulation treatments.

12 21. Measure Z acknowledges that it implicates vested rights and purports to address  
13 the issue by providing for a "reasonable" amortization period of five years, with up to ten years of  
14 additional extensions at the County's discretion, for implementation of the prohibition against  
15 wastewater injection and impoundment. The amortization period, which applies solely to  
16 wastewater injection and impoundment, and not to the drilling of new wells or well stimulation  
17 treatments, is wholly inadequate and in no way remedies the taking and/or injury caused by  
18 application of Measure Z because oil fields require extensive and ongoing capital expenditures in  
19 amounts that could not be recovered during the amortization period authorized by Measure Z.

20 22. Petitioner's vested rights cannot be taken without just compensation, and  
21 Petitioner has not received any such compensation.

22 23. As such, Measure Z constitutes an unconstitutional prohibition of Petitioner's  
23 exercise of its existing, lawful, and fully vested right to continue and to complete the development  
24 and production of its oil and gas resources at the San Ardo Field in Monterey County.

25 24. Pursuant to federal and state law, the power and authority to regulate drilling of oil  
26 and gas wells, wastewater impoundment and injection, and well stimulation treatments in  
27 California, lies exclusively in the State of California, including its DOGGR and the  
28 CWQCB. Measure Z's provisions purporting to prohibit well stimulation treatments, wastewater



1 resources at the San Ardo Field.

2 29. The laws of the State of California preempt the regulation of the fields of drilling  
3 of oil and gas wells, wastewater impoundment and injection, and well stimulation treatments,  
4 within the State of California. Measure Z also is in conflict, in whole or in part, with applicable  
5 state law.

6 30. The County has a clear, present, mandatory, nondiscretionary, and/or ministerial  
7 duty under the facts of this case to refrain from implementing and/or enforcing Measure Z to  
8 restrict or to halt Petitioner's development and production of its oil and gas resources at the San  
9 Ardo Field.

10 31. The County's implementation and/or enforcement of Measure Z to restrict or to  
11 halt Petitioner's continued development and production of its oil and gas resources at the San  
12 Ardo Field is unlawful, is in excess of the County's power, authority and jurisdiction, and is an  
13 abuse of the County's discretion. Petitioner is entitled to the issuance of a writ of mandate  
14 compelling the County to refrain from implementing and/or enforcing Measure Z to restrict or to  
15 halt Petitioner's plan to exercise its vested right to continue and to complete the development and  
16 production of its oil and gas resources at the San Ardo Field.

17 32. Petitioner has exhausted all available administrative remedies with respect to this  
18 facial challenge to Measure Z. Petitioner has no plain, speedy, and adequate remedy in the  
19 ordinary course of law. This Petition was filed timely.

20 **SECOND CAUSE OF ACTION**

21 **(Declaratory Relief—Petitioner's Vested Rights)**

22 33. Petitioner incorporates the allegations of paragraphs 1 through 32 as if fully set  
23 forth herein.

24 34. Petitioner contends that it has a fully vested right to continue and to complete the  
25 development and production of its oil and gas resources at the San Ardo Field, consistent with its  
26 long-established plans, including, without limitation, Petitioner's vested rights in DOGGR  
27 permits issued and to be issued to Petitioner, Petitioner's vested rights to impound and/or to inject  
28 wastewater pursuant to existing and future permits issued by the State of California, and



1 Petitioner's vested rights to proceed to develop and produce its oil and gas resources at the San  
2 Ardo Field in accordance with permitting procedures established by the State of California.

3 35. Petitioner is informed and believes, and thereon alleges, that the County disputes  
4 Petitioner's contention set forth above, and intends to prohibit Petitioner's oil and gas operations  
5 by way of Measure Z.

6 36. Judicial intervention in this dispute, and a declaration by the Court, is necessary to  
7 resolve whether Petitioner has a vested right to continue and to complete the development and  
8 production of its oil and gas resources at the San Ardo Field.

9 **THIRD CAUSE OF ACTION**

10 **(Declaratory Relief—U.S. Constitution, Fifth Amendment;  
11 California Constitution, Article 1, Section 19)**

12 37. Petitioner incorporates the allegations of paragraphs 1 through 36 as if fully set  
13 forth herein.

14 38. By purporting (a) to eliminate Petitioner's vested right to continue and to complete  
15 the development and production of its oil and gas resources at the San Ardo Field; (b) to eliminate  
16 Petitioner's vested right to continue impounding and/or injecting wastewater pursuant to existing  
17 and future permits issued by the State of California; and (c) to prevent all future oil and gas  
18 operations in the County, Measure Z effects a *per se* taking of and/or damage to Petitioner's  
19 property, without just compensation, in violation of the Fifth Amendment to the United States  
20 Constitution and Article I, § 19 of the California Constitution.

21 39. In the alternative, application of Measure Z effects a taking of Petitioner's property  
22 under the principles of *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104  
23 (1978). The economic impact of Measure Z will be severe, as it would virtually eliminate the  
24 economic value of Petitioner's property. Furthermore, Measure Z interferes with Petitioner's  
25 reasonable investment-backed expectations, as Petitioner reasonably expected it could continue to  
26 exercise its existing, lawful, and fully vested right to continue and to complete the development  
27 and production of its oil and gas resources at the San Ardo Field.

28 40. Measure Z will force Petitioner to bear public burdens which, in all fairness and

1 justice, should be borne by the public as a whole.

2 41. Pursuant to Section 6 of Measure Z, “[t]he provisions of this Initiative shall not  
3 apply to the extent, but only to the extent, that they would violate the constitution or laws of the  
4 United States or the State of California.” Therefore, because Measure Z would result in an  
5 unconstitutional, uncompensated taking, by Measure Z’s very terms the “Initiative shall not  
6 apply” to Petitioner’s San Ardo Field operations.

7 42. Petitioner is informed and believes, and thereon alleges, that the County disputes  
8 Petitioner’s contentions set forth above and intends to prohibit Petitioner’s oil and gas operations  
9 by way of Measure Z.

10 43. Judicial intervention in this dispute, and a declaration by the Court, is necessary to  
11 resolve whether Measure Z does not apply to Petitioner’s San Ardo Field operations by its terms  
12 given (a) that Measure Z effects a *per se* unconstitutional taking of Petitioner’s property without  
13 just compensation, and (b) the savings clause set forth in Section 6 of Measure Z expressly  
14 provides that Measure Z shall not apply if it violates the constitution or laws of the United States  
15 or the State of California.

16 44. Petitioner contends that Measure Z mandates the closure of Petitioner’s entire  
17 vested development in the San Ardo Field. While Section 6 of Measure Z purports to authorize  
18 the Board of Supervisors to grant an exemption to avoid an unconstitutional taking of property,  
19 granting Petitioner an exemption broad enough to avoid the taking of Petitioner’s vested right  
20 would essentially repeal Measure Z as to Petitioner. Petitioner is informed and believes, and  
21 alleges thereon, that no such exemption will be granted. Nevertheless, Petitioner intends to file  
22 an application for an exception to exempt Petitioner’s fully vested right to continue and to  
23 complete the development and production of its oil and gas resources at the San Ardo Field from  
24 the application of Measure Z. Petitioner reserves the right to amend and supplement this Petition  
25 to add an as-applied takings claim, as may be appropriate.

26 **FOURTH CAUSE OF ACTION**

27 **(Declaratory Relief—Preemption)**

28 45. Petitioner incorporates the allegations of paragraphs 1 through 44 as if fully set

1     forth herein.

2             46.     Pursuant to federal and state law, the power and authority to regulate drilling of oil  
3     and gas wells, wastewater impoundment and injection, and well stimulation treatments in  
4     California, lies exclusively in the State of California, including its DOGGR and the  
5     CWQCB. Measure Z's provisions purporting to prohibit well stimulation treatments, wastewater  
6     impoundment and injection, and the drilling of oil and gas wells also are in direct conflict with  
7     superior California law, including, without limitation, the sections of the California Public  
8     Resources Code and California Water Code relating to oil and gas production (including Oil and  
9     Gas Well Stimulation), Cal. S.B. 4 (2013), Chapt. 313 (Cal. Stat. 2013) (codified at Public  
10    Resources Code section 3150 *et seq.*), DOGGR and CWQCB regulations, and permits lawfully  
11    issued by the CWQCB and DOGGR.

12            47.     The County lacks the power, authority, and jurisdiction to prohibit well  
13    stimulation treatments, wastewater impoundment and injection, and the drilling of oil and gas  
14    wells, as those powers are exclusively functions of the State of California. The County lacks the  
15    power, authority, and jurisdiction to prohibit well stimulation treatments, wastewater  
16    impoundment and injection, and the drilling of oil and gas wells by way of Measure Z because  
17    Measure Z is in conflict, in whole or in part, with applicable state law. Moreover, the laws of the  
18    State of California preempt and fully occupy the regulation of the fields of drilling of oil and gas  
19    wells, wastewater impoundment and injection, and well stimulation treatments, within the State of  
20    California. Measure Z is preempted, in whole or in part, by federal and state law, and, as such,  
21    Measure Z is invalid and without effect, including as to Petitioner's operations at the San Ardo  
22    Field.

23            48.     Petitioner is informed and believes, and thereon alleges, that the County disputes  
24    the contentions set forth above and nevertheless intends to prohibit Petitioner's oil and gas  
25    operations via Measure Z's prohibition of well stimulation treatments, wastewater impoundment  
26    and injection, and the drilling of oil and gas wells.

27            49.     Judicial intervention in these disputes, and a declaration by the Court, is necessary  
28    to resolve whether Measure Z is preempted, in whole or in part, by federal and state law.

1 FIFTH CAUSE OF ACTION

2 (Inverse Condemnation—U.S. Constitution, Fifth Amendment;  
3 California Constitution, Article 1, Section 19)

4 50. Petitioner incorporates the allegations of paragraphs 1 through 49 as if fully set  
5 forth herein.

6 51. By purporting (a) to eliminate Petitioner's vested right to continue and to complete  
7 the development and production of its oil and gas resources at the San Ardo Field; (b) to eliminate  
8 Petitioner's vested right to continue impounding and/or injecting wastewater pursuant to existing  
9 and future permits issued by the State of California; and (c) to prevent all future oil and gas  
10 operations in the County, the County has *per se* taken Petitioner's property, without just  
11 compensation, in violation of the Fifth Amendment to the United States Constitution and Article  
12 I, § 19 of the California Constitution.

13 52. In the alternative, the County has effected a taking of Petitioner's property under  
14 the principles of *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). The  
15 impact of Measure Z is severe, as it deprives Petitioner of all of the economic value of  
16 Petitioner's property. Measure Z interferes with Petitioner's reasonable investment-backed  
17 expectations, as Petitioner reasonably expected it could continue its existing, lawful, and fully  
18 vested oil and gas operations at the San Ardo Field.

19 53. The County's Measure Z forces Petitioner to bear public burdens which, in all  
20 fairness and justice, should be borne by the public as a whole.

21 54. As a direct and proximate result of the unconstitutional taking and/or damage to  
22 Petitioner's property, Petitioner has suffered damages in an amount that exceeds the jurisdictional  
23 minimum, plus interest. The precise amount of Petitioner's damages will be proved at the time of  
24 trial.

25 55. Petitioner has been required to retain legal counsel to pursue legal remedies for the  
26 County's wrongful conduct. Accordingly, Petitioner is entitled to recovery of its attorneys' fees,  
27 costs of suit, and expenses.

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**PRAYER FOR RELIEF**

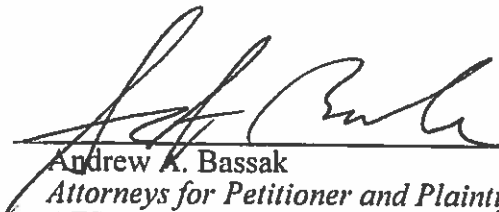
WHEREFORE, Petitioner prays for the following relief:

1. For a writ of mandate compelling the County to refrain from implementing and/or enforcing Measure Z to restrict or to halt Petitioner's exercise of its vested right to continue and to complete the development and production of its oil and gas resources at the San Ardo Field;
2. For a declaration that Petitioner's right to continue and to complete the development and production of its oil and gas resources at the San Ardo Field is fully vested;
3. For a declaration that Measure Z effects a per se taking of and/or damage to Petitioner's property, without just compensation, in violation of the Fifth Amendment to the United States Constitution and Article I, § 19 of the California Constitution, and thus, in accordance with its terms, Measure Z does not apply to Petitioner's San Ardo Field operations;
4. For a declaration that Measure Z is preempted, in whole or in part, by federal and state law, and is invalid and without effect, including as to Petitioner's San Ardo Field operations;
5. For a preliminary and permanent injunction prohibiting the County from implementing and/or enforcing Measure Z;
6. For damages and just compensation in an amount that exceeds the jurisdictional minimum, plus interest thereon, for the taking of and/or damage to Petitioner's property, the precise amount to be proven at the time of trial;
7. For costs of suit and attorneys' fees to the extent allowed by law; and
8. For such other relief as the Court determines is just and proper.

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Dated: December 13, 2016

MANATT, PHELPS & PHILLIPS, LLP

By:   
Andrew K. Bassak  
*Attorneys for Petitioner and Plaintiff*  
AERA ENERGY LLC

318014073.4

VERIFICATION

I, David Coppersmith, am a Senior Vice President of Aera Energy LLC ("Petitioner"), and I am authorized to execute this Verification on behalf of Petitioner. I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND FOR INVERSE CONDEMNATION**, and know the contents thereof. The matters stated therein are true and correct to my own personal knowledge, except those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I have executed this verification on the 13th day of December, 2016, at Bakersfield, California.

  
\_\_\_\_\_  
David Coppersmith

# **EXHIBIT A**



- Home
- Election Results
- Election Officials Needed!
- Where do I vote?
- Early Voting
- Have you moved?

#### Latest Election Results



## BALLOT MEASURE FULL TEXT OF MEASURE Z

To the Honorable Registrar of Voters of the County of Monterey: We, the undersigned, registered and qualified voters of the County of Monterey, hereby propose an initiative measure to amend the Monterey County General Plan, Monterey County Local Coastal Program, and Fort Ord Master Plan. We petition you to submit this measure to the Board of Supervisors of the County of Monterey for adoption of the measure outright, or for submission of the measure to the voters of the County of Monterey at the earliest special or general election for which it qualifies.

The measure provides as follows:

### Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative

The people of the County of Monterey do hereby ordain as follows:

#### 1. SECTION 1: PURPOSE, EFFECT, AND FINDINGS

- Purpose:** The purpose of this Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative ("Initiative") is to protect Monterey County's water, agricultural lands, air quality, scenic vistas, and quality of life by prohibiting the use of any land within the County's unincorporated area for well stimulation treatments, including, for example, hydraulic fracturing treatments (also known as "fracking") and acid well stimulation treatments. The Initiative also prohibits and phases out land uses in support of oil and gas wastewater (which the Initiative defines) disposal using injection wells or disposal ponds in the County's unincorporated area. The Initiative also prohibits drilling new oil and gas wells in the County's unincorporated area.
- Effect:** This Initiative amends Monterey County's land use plans, including the Monterey County General Plan, to prohibit the use of any land within the County's unincorporated area for hydraulic fracturing treatments, acid well stimulation treatments, and other types of well stimulation treatments, and tracks state law—SB 4 (Pavely 2013)—in defining those terms. The Initiative prohibits new, and phases out existing, land uses in support of oil and gas wastewater injection and oil and gas wastewater impoundment. The Initiative prohibits drilling new oil and gas wells in the County's unincorporated area.
- This Initiative does not prohibit oil and gas operations (other than well stimulation treatments) from using existing oil and gas wells in the County, which number over 1,500 at the time this Initiative was submitted, according to public records of the State Division of Oil, Gas & Geothermal Resources. This Initiative does not apply to offshore oil and gas operations. This Initiative includes reasonable provisions to protect property rights and any vested rights.

This Initiative does not confer any rights and does not prohibit the County from taking further action to prohibit, restrict, or otherwise regulate land uses or activities not prohibited by this Initiative.

- Findings:** The people of Monterey County find that this Initiative promotes and protects the health, safety, welfare, and quality of life of County residents, based upon the following findings, any one of which would be sufficient to support adoption of this Initiative:
  - Monterey County Does Not Have a Permitting Process and Regulations Specifically for Oil and Gas Production Operations.** Oil and gas production operations are different from other land uses. Yet, in contrast with other oil producing counties in California, Monterey County does not have a permitting scheme specifically designed to regulate these land uses. Instead, Monterey County for decades issued "blanket" use permits to oil and gas operators, allowing them to drill new wells without adequate County oversight or environmental review. This Initiative will provide Monterey County residents with needed protection from the land use impacts of hydraulic fracturing treatments ("fracking"), oil and gas wastewater disposal, and new oil and gas wells.
  - Monterey County Supervisors Have Failed to Enact Needed Protections.** In 2014, over 1800 people petitioned Monterey County officials to protect their community from risky oil and gas production operations. In response, the Monterey Planning Commission recommended that the County adopt a moratorium on fracking and acid well stimulation, and also draft specific oil and gas regulations like those in neighboring counties. In 2015, the Monterey County Board of Supervisors rejected the recommendations of its Planning Commission, and failed to enact protections for the county's water, air and land. This Initiative would provide needed protections.
  - Fracking Could Become Widespread in Monterey County.** Fracking and acid well stimulation treatments typically include high-pressure injections of solvents, acids, and other toxic and hazardous chemicals to

fracture or dissolve underground formations. Oil and gas production operations using fracking and other well stimulation treatments threaten our limited water resources. New advances in fracking and well stimulation technologies can also enable oil and gas extraction in fields and formations that were previously uneconomical to produce. The Monterey Shale Formation underlies substantial portions of the County. Future innovations in well stimulation treatments to extract oil and gas from the Monterey Shale could lead to an increase in the number of active oil and gas wells in the County.

Fracking and acid well stimulation treatments have been used in south Monterey County in the past, and residents must act now to ensure that their use does not expand. The impacts and risks associated with fracking and other well stimulation treatments are too great for County residents to accept. In order to protect local resources and interests, residents want to stop this land use before it spreads throughout the County. This Initiative prohibits land uses in support of fracking and other well stimulation treatments in the unincorporated areas of the County.

4. Oil and Gas Production Operations, Including Those Enabled by Fracking, Use Limited Water Supplies That Should Be Preserved for Agricultural and Municipal Uses. Water is a valuable and limited commodity in Monterey County. According to studies prepared for the Monterey County Resource Management Agency, groundwater is currently the source of nearly all agricultural and municipal water demands in the Salinas Valley, and agricultural use represents approximately 90 percent of all water used in the Basin. Currently, more water is being withdrawn from the Salinas River Groundwater Basin than is being replenished, resulting in saltwater intrusion.

Expanding oil and gas production operations in California, including those using fracking and other well stimulation treatments, will increase water consumption. According to a 2013 study by the University of California, Berkeley, fracking in California often requires hundreds of thousands of gallons per well. A study by the California Council on Science and Technology showed that approximately 90% of the water used in well stimulation operations could instead be used for irrigation or domestic use.

Forestalling water shortages in the County becomes especially challenging during drought conditions like those we are currently experiencing. Residents are already experiencing unprecedented increases in water rates and anticipate further rate increases. Monterey County voters want to ensure that our limited water supplies are preserved for local farmers and residents, not for fracking or expanded oil and gas production operations.

5. Oil and Gas Production Operations, Including Fracking, and Oil and Gas Wastewater Injection and Surface Disposal Present a Risk of Water Pollution and Soil Contamination That Monterey County Cannot Afford. Many oil and gas production operations, including those using well stimulation treatments, mix, transport, or store toxic and hazardous chemicals such as those used in fracking or acidizing fluid.

Operators in the San Ardo oilfield in Monterey County have reported several spills or hazardous releases in recent years. The wastewater and chemicals from these operations threaten to contaminate Monterey County's water supply through improper storage or disposal, surface spills, or other means. These impacts have been experienced in other states. Water and soil contamination poses a health risk both to humans and to livestock and wildlife.

6. Surface spills and leaks can also occur at wastewater injection sites. And in 2015, California state regulators revealed that oil and gas producers in Monterey County had been using injection wells to dispose of oil and gas wastewater into aquifers protected under the Safe Drinking Water Act (42 U.S.C. § 300(f) et seq.).

Given the County's heavy reliance on groundwater, and the importance of the Salinas River watershed to the region, water contamination could have devastating impacts on agriculture, our local economy, and our water supplies. Monterey residents are unwilling to accept the increased risk of water pollution posed by fracking and other well stimulation treatments and wastewater injection and wastewater disposal ponds.

This Initiative will reduce these risks by prohibiting fracking and other well stimulation treatments, phasing out oil and gas wastewater injection and the use of wastewater disposal ponds, and prohibiting new oil and gas wells. Oil companies in Monterey County have already explored options to treat oil and gas wastewater, and have begun implementing them. For example, according to an industry publication, a wastewater treatment facility constructed in 2007 at the San Ardo oil field could treat approximately one third of the wastewater produced in San Ardo, using reverse osmosis.

7. Expanding Oil and Gas Production Operations and Continuing to Drill New Oil and Gas Wells Is Incompatible With Monterey County's Vision for the Future. Oil and gas development projects are industrial operations at odds with the qualities and values that make Monterey County unique and prosperous. Oil and gas production operations, including fracking, and wastewater disposal activities can have considerable land use and environmental effects, including impacts on water supply, water quality, air quality, earthquake risk, scenic and biological resources, and our rural and agricultural way of life. These impacts threaten the health, safety, welfare, and quality of life of Monterey County residents. For these reasons, oil and gas production operations in the County should be limited to existing wells. These wells number over 1,500, according to public records of the State Division of Oil, Gas & Geothermal Resources.

Allowing new wells to be drilled will expand oil and gas production operations in Monterey County and threatens to increase the environmental impacts from these activities. This Initiative prohibits the drilling of new oil and gas wells within the unincorporated areas of the County.

8. **Expanding Oil and Gas Production Operations in Monterey County Is Inconsistent With Our Agricultural Heritage and Rural Character.** Monterey County takes pride in its agricultural heritage, the reputation of its agricultural products, and its wineries. Residents choose to live in Monterey County over neighboring urban areas because of the County's quiet, slower pace of life and its pastoral atmosphere.

According to the Monterey County General Plan Environmental Impact Report, the County's agricultural economy is the third largest in California. As of 2006, there were more than 1.3 million acres of agricultural lands in the county, representing more than 60% of the total land area. As the County's leading industry and one of its largest employers, agriculture is a vital part of our economy. According to a recent report cited in the Monterey County Legislative Program for 2015-2016, agriculture provides over 73,000 jobs in Monterey County. This is far more than local oil and gas production.

Monterey County's General Plan has a policy of prohibiting land uses that would interfere with ongoing agricultural operations. Expanding oil and gas production operations, including by allowing fracking and acid well stimulation treatments, threatens our agriculture-based economy. It could also lead to the conversion of agricultural lands and rangelands to oil fields, and fragmentation of existing agricultural and rangeland operations.

9. **Wastewater Injection and Fracking Will Increase the Already High Risk of Earthquakes in Monterey County.** Seismic activity is a matter of particular concern in Monterey County. Major active geologic faults, including the San Andreas fault, run through the County and numerous other faults have been mapped in the region. The Monterey County General Plan recognizes that the southeast County is a particularly active earthquake area with a regular cycle of moderately large earthquakes. Five earthquakes of magnitude 6.0 or greater have occurred on that segment of the San Andreas fault since 1901. Earthquake damage from these events has been significant.

Oil and gas production operations using fracking and other well stimulation treatments and associated wastewater injection wells have been shown to induce and/or exacerbate earthquakes. The risk of increased seismic activity in Monterey County from these activities threatens public health and safety and the built environment, including oil and gas infrastructure. County residents do not accept this heightened risk.

10. **Expanding Oil and Gas Production Operations Will Further Degrade Our Air Quality.** Studies suggest that oil and gas production operations using well stimulation treatments increase emissions of air pollutants linked to poor health outcomes and reduced agricultural yields. Air pollutants including benzene, toluene, ethylbenzene, xylene, radon, particulate matter, and others have been measured in elevated concentrations close to oil and gas production operations using well stimulation treatments. Ground-level ozone from emissions of nitrogen oxide, methane, and volatile organic compounds from oil and gas development have also been observed. Residents want to protect the air they breathe from these threats.
11. **Expanding Oil and Gas Production Operations Could Degrade Our Scenic Vistas and Reputation as a Destination.** The beautiful scenic qualities of Monterey County are a major attraction for both residents and visitors. Pinnacles National Park, Monterey Bay National Marine Sanctuary, Elkhorn Slough, Los Padres National Forest, Ventana Wilderness, Point Lobos, Jack's Peak, Silver Peak Wilderness, and Big Sur are popular destinations. Views of mountains, undeveloped rangelands, large agricultural fields and croplands, natural ridgelines of the Santa Lucia and Coast Ranges, and annual grasslands provide some of the prominent elements of the County's pastoral landscape. According to a recent report, tourism is the second largest industry in Monterey County, supporting 22,000 jobs—far more than local oil and gas production.

Failing to curtail the number of new oil and gas wells in Monterey County could increase the number of unsightly oil derricks in the County, along with conspicuous drill rigs, pumping units, and other surface equipment and facilities. Our rural roads could be increasingly used by heavy industrial trucks, which will degrade road conditions and heighten noise, traffic, and safety concerns. It could also negatively affect tourism in Monterey County.

12. **Expanding Oil and Gas Production Operations Could Harm the County's Biological Resources.** Monterey County is one of the richest biological regions in North America. The County contains a variety of habitats including aquatic habitats, grasslands, wetlands, and oak woodlands. There are numerous federally listed endangered and threatened species and state designated special-status species in the County. More than 70,000 acres in the County are designated as critical habitat by the U.S. Fish and Wildlife Service. These habitat types provide high conservation value for the preservation of rare, threatened, and endangered plant and wildlife species, such as the California condor, San Joaquin kit fox, steelhead, and southern sea otter.

Expanding the footprint of oil and gas production operations, including those using well stimulation treatments, threatens to harm valuable biological resources within the County. Industrial activity at well sites including well drilling, grading, surface pad and road construction, and the associated noise and air

pollution, can degrade and destroy habitat. The potential for water contamination poses a further threat to wildlife.

13. **We Must Protect the Monterey Bay National Marine Sanctuary.** The Monterey Bay National Marine Sanctuary is one of the nation's most prized marine areas, which is why it is already protected from off-shore oil and gas exploration. Oil and gas development poses unacceptable risks to these sensitive marine habitats, coastal species, fisheries, protected marine mammals, recreational activities, and scientific research. The Monterey Marine Sanctuary is intimately connected to the many watersheds that empty into it, including the Salinas River, and to the Salinas River Groundwater Basin. Any pollution of connected water drainage systems and the underlying aquifers could pollute the Bay and undermine its purpose as a protected Marine Sanctuary. This is a risk that Monterey residents cannot tolerate. This Initiative does not prohibit or regulate offshore oil and gas production operations, which are outside of the County's jurisdiction.
14. **Reliance on Oil and Gas Extraction Is Not the Way to Grow a Healthy Economy in Monterey County.** Oil and gas production operations, including those using well stimulation treatments like fracking, do not adequately provide the long-term local job opportunities that are necessary to sustain a healthy local economy. Rapid development of oil resources can lead to "boom-and-bust" growth that is ultimately harmful to the local economy. It is debatable whether oil and gas production operations will create a significant number of new jobs in Monterey County in the long term—and they threaten the assets and resources upon which a prosperous future for the County depends.

The people of Monterey County wish to create 21st century job opportunities in tourism, renewable and clean energy, and green technology, which are compatible with our existing economic strengths and the quality of our communities. Residents want a robust tourism sector that leverages our existing agricultural, historical, and environmental assets. A healthy, sustainable economy requires developing a diversity of energy resources, such as wind and solar. The County plans to meet California greenhouse gas reduction targets and stimulate local businesses and the economy by supporting new renewable energy development. Oil and gas production operations, including those using fracking and other well stimulation treatments, are non-renewable, carbon emitting, and use extractive technologies that are incompatible with these goals and with preserving what makes Monterey County a desirable place to live and work.

15. **Monterey County's Oil Is Particularly Carbon-intensive.** The oil in Monterey County is particularly thick and viscous, and requires a significant amount of energy to extract and refine. Operators frequently use "enhanced" oil recovery techniques such as steam injection to heat the heavy oil deposits in order to bring them to the surface. These operations require more surface equipment, including combustion engines that burn fossil fuels and release air pollution and greenhouse gasses, therefore reducing the net energy gain from extracting the oil. Crude oil from Monterey's San Ardo oilfield is the second most carbon-intensive in California, and some of the most carbon-intensive in the world, according to the California Air Resources Board.
16. **Expanded Oil and Gas Production Operations Will Contribute to Climate Change.** Greenhouse gas emissions, both from the production and the combustion of oil and gas produced in Monterey County, will contribute to global climate change and its negative effects. Climate change poses serious risks to California's natural resources, particularly in coastal counties like Monterey. These risks include changes in temperature, precipitation patterns, and water availability, as well as rising sea levels and altered coastal conditions. Monterey County residents wish to ensure that the County works to reduce greenhouse gas emissions and is a leader in the State's efforts to meet greenhouse gas reduction targets.

#### 17. SECTION 2: MONTEREY COUNTY GENERAL PLAN AMENDMENTS

1. This **Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative** ("Initiative") hereby amends the Monterey County General Plan, as amended through February 23, 2016 ("submittal date") ("General Plan"). Text to be inserted in the General Plan is indicated in bold type. The language adopted in the following amendments may be repealed or amended only by a vote of the people. The General Plan Land Use Element (which is a part of the General Plan) is hereby amended to add the following new Policies LU-1.21, LU-1.22, and LU-1.23:

##### LU-1.21 Land Uses in Support of Well Stimulation Treatments Are Prohibited.

1. **Prohibited Land Uses:** 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 is prohibited on all lands within the County's unincorporated area.

2. **Definitions:**

"Well stimulation treatments" means any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments. Well stimulation treatments do not include steam flooding, water flooding, or cyclic steaming and do not include routine well cleanout work, routine well maintenance, routine removal of formation damage due to drilling, bottom hole pressure surveys, or routine activities that do not affect the integrity of the well or the formation.

"Hydraulic fracturing treatment" means a well stimulation treatment that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid or fluids into an underground geologic formation in order to fracture or with the intent to fracture the formation, thereby causing or enhancing the production of oil or gas

from a well.

"Acid well stimulation treatment" means a well stimulation treatment that uses, in whole or in part, the application of one or more acids to the well or underground geologic formation. The acid well stimulation treatment may be at any applied pressure and may be used in combination with hydraulic fracturing treatments or other well stimulation treatments. Acid well stimulation treatments include acid matrix stimulation treatments and acid fracturing treatments. Acid matrix stimulation treatments are acid treatments conducted at pressures lower than the applied pressure necessary to fracture the underground geologic formation.

3. This Policy LU-1.21 was adopted by the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative and may not be amended or repealed except by a vote of the people.

**LU-1.22 Land Uses in Support of Oil and Gas Wastewater Injection and Oil and Gas Wastewater Impoundment Are Prohibited.**

1. **Prohibited Land Uses:** 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 is prohibited on all lands within the County's unincorporated area.

2. **Reasonable Amortization Period:** In order to provide a reasonable amortization or "phase-out" period, all nonconforming land uses under this Policy LU-1.22 shall be discontinued within five years of the Effective Date. The five-year amortization period may be extended on a case-by-case basis if the Planning Commission determines that the applicant: (a) had, as of the Effective Date, a vested right under State law to conduct land uses in support of oil and gas wastewater injection and/or oil and gas wastewater impoundment; and (b) makes a showing, based on substantial evidence, that five years is not a reasonable amortization period pursuant to State law. Any such extension may be granted only for the minimum length of time necessary to provide a reasonable amortization period pursuant to State law, and shall not exceed 10 years (in addition to the initial five-year period for a total of 15 years).

All Planning Commission determinations made under this Policy LU-1.22 must be made upon application by the property owner and after a duly noticed public hearing and may be appealed to the Board of Supervisors.

Nothing in this Policy LU-1.22 is intended to affect any existing County authority to terminate operations found to be a nuisance, or that are otherwise operating unlawfully.

3. **Definitions:**

"Oil and gas wastewater injection" means the injection of oil and gas wastewater into a well for underground storage or disposal.

"Oil and gas wastewater impoundment" means the storage or disposal of oil and gas wastewater in depressions or basins in the ground, whether manmade or natural, lined or unlined, including percolation ponds and evaporation ponds.

"Oil and gas wastewater" means wastewater brought to the surface in connection with oil or natural gas production, including flowback fluid and produced water.

"Effective Date" means the date that the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative became effective pursuant to State law.

4. Nothing in this Policy LU-1.22 is intended to prevent a party who holds a permit issued by the California Division of Oil, Gas & Geothermal Resources from complying with requirements or conditions of that permit (for example, maintaining minimum hydrostatic pressure levels to prevent subsidence).

5. This Policy LU-1.22 was adopted by the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative and may not be amended or repealed except by a vote of the people.

**LU-1.23 Land Uses in Support of Drilling New Oil and Gas Wells Are Prohibited**

1. **Prohibited Land Uses:** The drilling of new oil and gas wells is prohibited on all lands within the County's unincorporated area. This Policy LU-1.23 does not affect oil and gas wells drilled prior to the Effective Date and which have not been abandoned.

2. **Definitions:**

"Oil and gas wells" means wells drilled for the purpose of exploring for, recovering, or aiding in the recovery of, oil and gas.

"Effective Date" means the date that the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative became effective pursuant to State law.

3. This Policy LU-1.23 was adopted by the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative and may not be amended or repealed except by a vote of the people.

## 1. SECTION 3: LOCAL COASTAL PROGRAM AMENDMENTS

1. This Initiative hereby amends the North County Land Use Plan, Big Sur Coast Land Use Plan, Carmel Land Use Plan, and Del Monte Forest Land Use Plan, which Plans are part of the Monterey County Local Coastal Program, as amended through the submittal date. Text to be inserted in the Plans is indicated in bold type. The language adopted in the following amendments may only be repealed or amended only by a vote of the people. Amendments to the Local Coastal Program require certification by the Coastal Commission before they may take effect.
2. The North County Land Use Plan is hereby amended to add the following bold text as Land Use Plan and Development Specific Policy H on page 78, below existing Policy G; and
2. The Big Sur Coast Land Use Plan is hereby amended to add the following bold text as Land Use and Development Specific Policy P on page 100, below existing Policy O; and
3. The Carmel Area Land Use Plan is hereby amended to add the following bold text as Land Use and Development Specific Policy K on page 93, below existing Policy J; and
4. The Del Monte Forest Area Land Use Plan is hereby amended to add the following bold text as Land Use and Development Policy 97 on page 29, below existing Policy 96:

#### Land Uses in Support of Well Stimulation Treatments Are Prohibited.

1. **Prohibited Land Uses:** 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 is prohibited on all lands within the County's unincorporated area.

2. **Definitions:**

"Well stimulation treatments" means any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments. Well stimulation treatments do not include steam flooding, water flooding, or cyclic steaming and do not include routine well cleanout work, routine well maintenance, routine removal of formation damage due to drilling, bottom hole pressure surveys, or routine activities that do not affect the integrity of the well or the formation.

"Hydraulic fracturing treatment" means a well stimulation treatment that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid or fluids into an underground geologic formation in order to fracture or with the intent to fracture the formation, thereby causing or enhancing the production of oil or gas from a well.

"Acid well stimulation treatment" means a well stimulation treatment that uses, in whole or in part, the application of one or more acids to the well or underground geologic formation. The acid well stimulation treatment may be at any applied pressure and may be used in combination with hydraulic fracturing treatments or other well stimulation treatments. Acid well stimulation treatments include acid matrix stimulation treatments and acid fracturing treatments. Acid matrix stimulation treatments are acid treatments conducted at pressures lower than the applied pressure necessary to fracture the underground geologic formation.

3. This Policy was adopted by the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative and may not be amended or repealed except by a vote of the people.

1. The North County Land Use Plan is hereby amended to add the following bold text as Land Use Plan and Development Specific Policy I on page 78, below existing Policy G; and
1. The Big Sur Coast Land Use Plan is hereby amended to add the following bold text as Land Use and Development Specific Policy Q on page 100, below existing Policy O; and
2. The Carmel Area Land Use Plan is hereby amended to add the following bold text as Land Use and Development Specific Policy L on page 93, below existing Policy J; and
3. The Del Monte Forest Area Land Use Plan is hereby amended to add the following bold text as Land Use and Development Policy 98 on page 29, below existing Policy 96:

#### Land Uses in Support of Oil and Gas Wastewater Injection and Oil and Gas Wastewater Impoundment Are Prohibited.

1. **Prohibited Land Uses:** 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 is prohibited on all lands within the County's unincorporated area.

2. **Reasonable Amortization Period:** In order to provide a reasonable amortization or "phase-out" period, all nonconforming land uses under this Policy shall be discontinued within five years of the Effective Date. The five-year amortization period may be extended on a case-by-case basis if the Planning Commission determines that the applicant: (a) had, as of the Effective Date, a vested right under State law to conduct land uses in support of oil and gas wastewater injection and/or oil and gas wastewater impoundment; and (b) makes a showing, based on substantial evidence, that five years is not a reasonable amortization period pursuant to State law. Any such extension may be granted only for the minimum length of time necessary to provide a reasonable amortization

period pursuant to State law, and shall not exceed 10 years (in addition to the initial five-year period for a total of 15 years).

All Planning Commission determinations made under this Policy must be made upon application by the property owner and after a duly noticed public hearing and may be appealed to the Board of Supervisors.

Nothing in this Policy is intended to affect any existing County authority to terminate operations found to be a nuisance, or that are otherwise operating unlawfully.

3. Definitions:

"Oil and gas wastewater injection" means the injection of oil and gas wastewater into a well for underground storage or disposal.

"Oil and gas wastewater impoundment" means the storage or disposal of oil and gas wastewater in depressions or basins in the ground, whether manmade or natural, lined or unlined, including percolation ponds and evaporation ponds.

"Oil and gas wastewater" means wastewater brought to the surface in connection with oil or natural gas production, including flowback fluid and produced water.

"Effective Date" means the date that the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative became effective pursuant to State law.

4. Nothing in this Policy is intended to prevent a party who holds a permit issued by the California Division of Oil, Gas & Geothermal Resources from complying with requirements or conditions of that permit (for example, maintaining minimum hydrostatic pressure levels to prevent subsidence).

5. This Policy was adopted by the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative and may not be amended or repealed except by a vote of the people.

1. The North County Land Use Plan is hereby amended to add the following bold text as Land Use Plan and Development Specific Policy J on page 78, below existing Policy G; and

1. The Big Sur Coast Land Use Plan is hereby amended to add the following bold text as Land Use and Development Specific Policy R on page 100, below existing Policy O; and

2. The Carmel Area Land Use Plan is hereby amended to add the following bold text as Land Use and Development Specific Policy M on page 93, below existing Policy J; and

3. The Del Monte Forest Area Land Use Plan is hereby amended to add the following bold text as Land Use and Development Policy 99 on page 29, below existing Policy 96:

#### Land Uses in Support of Drilling New Oil and Gas Wells Are Prohibited

1. Prohibited Land Uses: The drilling of new oil and gas wells is prohibited on all lands within the County's unincorporated area. This Policy does not affect oil and gas wells drilled prior to the Effective Date and which have not been abandoned.

2. Definitions:

"Oil and gas wells" means wells drilled for the purpose of exploring for, recovering, or aiding in the recovery of, oil and gas.

"Effective Date" means the date that the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative became effective pursuant to State law.

3. This Policy was adopted by the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative and may not be amended or repealed except by a vote of the people.

#### 1. SECTION 4: FORT ORD MASTER PLAN AMENDMENTS

1. This Initiative hereby amends the Fort Ord Master Plan, as amended through the submittal date. Amendments to the Fort Ord Master Plan must be submitted to the Fort Ord Reuse Authority for certification before they may take effect. Text to be inserted in the Plan is indicated in bold type. The language adopted in the following amendments may be repealed or amended only by a vote of the people. The Fort Ord Master Plan is hereby amended to add the following new section on page FO-25, below Institutional Land Use Program C-2.2, which new section will include General Land Use Policies A-1, A-2, and A-3:

#### General Land Use Policies and Programs

Objective A: Implement the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative.  
General Land Use Policy A-1: Land Uses in Support of Well Stimulation Treatments Are Prohibited.

1. Prohibited Land Uses: 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 is prohibited on all lands within the County's unincorporated area.

2. Definitions:

"Well stimulation treatments" means any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments. Well stimulation treatments do not include steam flooding, water flooding, or cyclic steaming and do not include routine well cleanout work, routine well maintenance, routine removal of formation damage due to drilling, bottom hole pressure surveys, or routine activities that do not affect the integrity of the well or the formation.

"Hydraulic fracturing treatment" means a well stimulation treatment that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid or fluids into an underground geologic formation in order to fracture or with the intent to fracture the formation, thereby causing or enhancing the production of oil or gas from a well.

"Acid well stimulation treatment" means a well stimulation treatment that uses, in whole or in part, the application of one or more acids to the well or underground geologic formation. The acid well stimulation treatment may be at any applied pressure and may be used in combination with hydraulic fracturing treatments or other well stimulation treatments. Acid well stimulation treatments include acid matrix stimulation treatments and acid fracturing treatments. Acid matrix stimulation treatments are acid treatments conducted at pressures lower than the applied pressure necessary to fracture the underground geologic formation.

3. This Policy was adopted by the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative and may not be amended or repealed except by a vote of the people.  
General Land Use Policy A-2: Land Uses in Support of Oil and Gas Wastewater Injection and Oil and Gas Wastewater Impoundment Are Prohibited.

1. Prohibited Land Uses: 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 is prohibited on all lands within the County's unincorporated area.

2. Reasonable Amortization Period: In order to provide a reasonable amortization or "phase-out" period, all nonconforming land uses under this Policy shall be discontinued within five years of the Effective Date. The five-year amortization period may be extended on a case-by-case basis if the Planning Commission determines that the applicant: (a) had, as of the Effective Date, a vested right under State law to conduct land uses in support of oil and gas wastewater injection and/or oil and gas wastewater impoundment; and (b) makes a showing, based on substantial evidence, that five years is not a reasonable amortization period pursuant to State law. Any such extension may be granted only for the minimum length of time necessary to provide a reasonable amortization period pursuant to State law, and shall not exceed 10 years (in addition to the initial five-year period for a total of 15 years).

All Planning Commission determinations made under this Policy must be made upon application by the property owner and after a duly noticed public hearing and may be appealed to the Board of Supervisors.

Nothing in this Policy is intended to affect any existing County authority to terminate operations found to be a nuisance, or that are otherwise operating unlawfully.

3. Definitions:

"Oil and gas wastewater injection" means the injection of oil and gas wastewater into a well for underground storage or disposal.

"Oil and gas wastewater impoundment" means the storage or disposal of oil and gas wastewater in depressions or basins in the ground, whether manmade or natural, lined or unlined, including percolation ponds and evaporation ponds.

"Oil and gas wastewater" means wastewater brought to the surface in connection with oil or natural gas production, including flowback fluid and produced water.

"Effective Date" means the date that the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative became effective pursuant to State law.

4. Nothing in this Policy is intended to prevent a party who holds a permit issued by the California Division of Oil, Gas & Geothermal Resources from complying with requirements or conditions of that permit (for example, maintaining minimum hydrostatic pressure levels to prevent subsidence).

5. This Policy was adopted by the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative and may not be amended or repealed except by a vote of the people.  
General Land Use Policy A-3: Land Uses in Support of Drilling New Oil and Gas Wells Are Prohibited

1. Prohibited Land Uses: The drilling of new oil and gas wells is prohibited on all lands within the County's unincorporated area. This Policy does not affect oil and gas wells drilled prior to the Effective Date and which have not been abandoned.



2. Definitions:

"Oil and gas wells" means wells drilled for the purpose of exploring for, recovering, or aiding in the recovery of, oil and gas.

"Effective Date" means the date that the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative became effective pursuant to State law.

3. This Policy was adopted by the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative and may not be amended or repealed except by a vote of the people.

1. SECTION 5: CONFORMING AMENDMENTS

1. In order to promote internal consistency among the various sections of the documents amended by this Initiative, the Initiative makes the following conforming amendments. Text to be inserted in the relevant document is indicated in bold type. Non-bolded text currently appears in the relevant document and is not changed or readopted by this Initiative. The language adopted in the following amendments may be further amended as appropriate without a vote of the people, during the course of further updates and revisions to the documents amended by this Initiative.
2. The South County Area Plan (which is a part of the General Plan) is hereby amended to add the following new language to Policy SC-3.1, on page SC-1:

SC-3.1: Co-generation facilities may be allowed in conjunction with other industrial uses and oil and gas removal, as a means of energy conservation, on lands designated for industrial use, subject to a use permit in each case, provided, however, that drilling new oil and gas wells and land uses in support of well stimulation treatments and oil and gas wastewater injection or impoundment are prohibited on these and all other designations, in accordance with General Plan Policies LU-1.21, LU-1.22, and LU-1.23.

1. The Big Sur Coast Land Use Plan is hereby further amended to add the following new Mineral Resources General Policy 6, on page 49, after Policy 5:
1. 6. In all cases, mineral resources development shall be consistent with Land Use and Development Specific Policies P, Q, and R, which prohibit the drilling of new oil and gas wells and land uses in support of well stimulation treatments and oil and gas wastewater injection or impoundment.
  1. The Fort Ord Master Plan is hereby further amended to add the following language to Soils and Geology Objective B on page FO-35:

Objective B: Provide for mineral extraction and reclamation activities that are consistent with the surrounding natural landscape, proposed future land uses, and soil conservation practices, provided, however, that drilling new oil and gas wells and land uses in support of well stimulation treatments and oil and gas wastewater injection or impoundment are prohibited in all land use designations in accordance with General Land Use Policies A-1, A-2, and A-3.

1. SECTION 6: EXEMPTIONS FOR CERTAIN PROJECTS

1. Nothing in this Initiative shall apply to prohibit any person or entity from exercising a vested right, obtained pursuant to State law, as of the Effective Date of this Initiative. Notwithstanding the foregoing, the Initiative provides a reasonable amortization period intended to phase out, consistent with state vested rights law, land uses in support of oil and gas wastewater injection and oil and gas wastewater impoundment.
2. The provisions of this Initiative shall not apply to the extent, but only to the extent, that they would violate the constitution or laws of the United States or the State of California.
3. In the event a property owner contends that application of this Initiative effects an unconstitutional taking of property, the Board of Supervisors may grant, upon request of the affected property owner, an exception to application of any provision of this Initiative if the Board of Supervisors finds, based on substantial evidence, that both (1) the application of that provision of this Initiative would constitute an unconstitutional taking of property, and (2) the exception will allow additional or continued land uses only to the minimum extent necessary to avoid such a taking.

2. SECTION 7: IMPLEMENTATION

1. Effective Date: "Effective Date" means the date that the Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative became effective pursuant to State law.
2. Monterey County General Plan: Upon the Effective Date of this Initiative, the provisions of Section 2 of the Initiative are hereby inserted into the Monterey County General Plan, as an amendment thereof; except that if the four amendments of the mandatory elements of the General Plan permitted by State law for any given calendar year have already been used in the year in which the Initiative becomes effective, this General Plan amendment shall be the first amendment inserted into the Monterey County General Plan on January 1 of the following year. Upon the Effective Date of this Initiative, any provisions of the County Code or any other Monterey County ordinance or resolution that are inconsistent with the provisions adopted by this Initiative shall not be enforced in a manner inconsistent with this Initiative.
3. Monterey County Local Coastal Program and Coastal Commission Certification: Following the Effective Date of this Initiative, the County of Monterey is hereby authorized and directed to submit the

Initiative's amendments to the Coastal Land Use Plans, along with any necessary supporting documents, to the California Coastal Commission for certification as an amendment to the Monterey County Local Coastal Program. If the three amendments to the Monterey County Local Coastal Program permitted by State law for any given calendar year have already been used in the year in which the Initiative becomes effective, this amendment to the Monterey County Local Coastal Program shall be the first amendment submitted to the California Coastal Commission for certification on January 1 of the following year. The voters further intend that the Initiative's amendment to the Local Coastal Program will take effect automatically upon the California Coastal Commission's approval.

4. **Fort Ord Reuse Authority Certification:** Following the Effective Date of this Initiative, Monterey County is hereby authorized and directed to submit the Initiative's amendments to the Fort Ord Master Plan, along with any necessary supporting documents, to the Fort Ord Reuse Authority for certification as consistent with the Fort Ord Reuse Plan. The voters further intend that the Initiative's amendment to the Fort Ord Master Plan will take effect automatically upon the Fort Ord Reuse Authority's certification of the amendments to the Fort Ord Master Plan as consistent with the Fort Ord Reuse Plan.
5. **Interim Amendments:** The date that the notice of intention to circulate this Initiative was submitted to the elections official of the County of Monterey is referenced herein as the "submittal date." The Monterey County General Plan in effect on the submittal date as amended by this Initiative comprises an integrated, internally consistent, and compatible statement of policies for the County of Monterey. In order to ensure that nothing in this Initiative measure would prevent the General Plan from being an integrated, internally consistent, and compatible statement of the policies of the County, as required by State law, and to ensure that the actions of the voters in enacting this Initiative are given effect, any amendment or update to the General Plan that is adopted between the submittal date and the date that the General Plan is amended by this Initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions adopted by this Initiative, be amended as soon as possible to ensure consistency between the provisions adopted by this Initiative and other provisions of the General Plan.
6. **Other County Plans, Ordinances, and Policies:** The County of Monterey is hereby authorized and directed to amend the Monterey County General Plan, all Area Plans, the Coastal Land Use Plans, the Fort Ord Master Plan, the County Code including the Inland Zoning Ordinance and the Coastal Zoning Ordinance, and other ordinances and policies affected by this Initiative as soon as possible and periodically thereafter as necessary to ensure consistency between the provisions adopted in this Initiative and other sections of the General Plan, Area Plans, the Coastal Land Use Plans, the Fort Ord Master Plan, the County Code including the Inland Zoning Ordinance and the Coastal Zoning Ordinance, and other County plans, ordinances, and policies.
7. **Reorganization:** The General Plan, Local Coastal Program, and Fort Ord Master Plan may be reorganized or readopted in different format, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the General Plan, Local Coastal Program, Fort Ord Master Plan, and County Code, provided that the provisions of Sections 2, 3, and 4 of this Initiative shall remain in the General Plan, Local Coastal Program, and Fort Ord Master Plan, respectively, unless earlier repealed or amended by vote of the people of the County.
8. **Implementing Ordinances:** The Board of Supervisors is authorized, after a duly noticed public hearing, to adopt implementing ordinances, guidelines, rules, and/or regulations, as necessary, to further the purposes of this Initiative.
9. **Enforcement and Defense of Initiative:** The Board of Supervisors shall take all steps reasonably necessary to enforce this Initiative and to defend it against any challenge to its validity.
10. **Project Approvals:** Upon the Effective Date of this Initiative, the County and its departments, boards, commissions, officers, and employees shall not grant, or by inaction allow to be approved by operation of law, any general plan amendment, rezoning, specific plan, subdivision map, use permit, development plan, exploration plan, production plan, coastal development permit, building permit, development agreement, or any other discretionary entitlement which is inconsistent with this Initiative.

### 3. SECTION 8: EFFECT OF COMPETING OR ALTERNATIVE MEASURE ON THE SAME BALLOT

This Initiative adopts a comprehensive scheme prohibiting land uses in support of well stimulation treatments and oil and gas wastewater injection or impoundment and the drilling of new oil and gas wells within the County's unincorporated areas. By voting for this Initiative, the voters expressly declare their intent that any other measure which appears on the same ballot as this Initiative and addresses land uses in support of well stimulation treatments and oil and gas wastewater injection or impoundment and the drilling of new oil and gas wells within the County's unincorporated areas, or conflicts with any provision of this Initiative, shall be deemed to conflict with the entire cohesive scheme adopted by this Initiative. Because of this conflict, if this Initiative and any such other Monterey County measure receive a majority of votes by the voters voting thereon at the same election, then the measure receiving the most votes in favor shall prevail and no provision of the other measure shall take effect. For the purposes of this Section 8, any other measure that appears on the same ballot as this Initiative and purports to amend any provision of this Initiative shall be deemed to directly conflict with this entire Initiative.

### 1. SECTION 9: SEVERABILITY AND INTERPRETATION

This Initiative shall be broadly construed in order to achieve its purpose. This Initiative shall be interpreted so as to be consistent with all applicable Federal, State, and County laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative that can be given effect without the invalid application. Any singular term shall include the plural and any plural term shall include the singular. The title and captions of the various sections in this Initiative are for convenience and organization only, and are not intended to be referred to in construing the provisions of this Initiative.

#### 1. SECTION 10: AMENDMENT OR REPEAL

Except as otherwise provided herein, this Initiative may be amended or repealed only by the voters of the County.

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