

## ATTACHMENT Q: MONTECITO PLANNING COMMISSION STAFF REPORT

### SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION

#### Measure P2014: Initiative to Ban “High-Intensity Petroleum Operations” Comprehensive Plan and Ordinance Amendments

Hearing Date: August 25, 2014

Assistant Director: Dianne Black

Staff Report Date: August 18, 2014

Staff Contact: Noel Langle

Case Nos. 14GPA-00000-00010, -00011, -00012 & -00013  
14ORD-00000-00009 & -00010

Phone No.: (805) 568-2067

#### Environmental Documents:

Comprehensive Plan and Montecito LUDC - CEQA Guidelines Section 15061(b)(3)

Coastal Land Use Plan and Article II CZO - CEQA Guidelines Sections 15061(b)(3) and Section 15265

## 1.0 REQUEST

Hearing on the request of the Planning and Development Department that the Montecito Planning Commission:

- 1.1 Case Nos. 14GPA-00000-00013 and 14ORD-00000-00009.** Adopt a Resolution recommending that the County Planning Commission adopt a Resolution recommending that the Board of Supervisors adopt a Resolution (Case No. 14GPA-00000-00013) and an Ordinance (Case No. 14ORD-00000-00009) amending the Coastal Land Use Plan and the Coastal Zoning Ordinance as described in Attachment C;
- 1.2 Case Nos. 14GPA-00000-00010, -00011 and -00012.** Adopt a Resolution recommending that the County Planning Commission adopt a Resolution recommending that the Board of Supervisors adopt Resolutions (Case Nos. 14GPA-00000-00010, 00011 & -00012) amending the Agricultural, Conservation and Land Use Elements of the Comprehensive Plan as described in Attachment D; and,
- 1.3 Case No. 14ORD-00000-00010.** Adopt a Resolution recommending that the Board of Supervisors adopt an Ordinance (Case No. 14ORD-00000-00010) amending Montecito Land Use and Development Code, Section 35-2 of Chapter 35, Zoning, of the Santa Barbara County Code as described in Attachment E.

If approved by the voters, Measure P2014: Initiative to Ban “High-Intensity Petroleum Operations” would become effective within weeks of the November 2014 election. County Counsel’s attached statutory Impartial Analysis (Attachment G) describes: that Measure P2014 would generally prohibit land uses in support of many oil and gas production methods; and the three categories of exemptions that Measure P2014 would provide from that general prohibition. Therefore, in order to provide certainty for the community and to reduce litigation risks for the County, the purpose of these amendments is to codify a County process for considering and applying the exemptions stated in Section 5 of Measure P2014; these amendments would become operative only if and immediately upon Measure P2014 becoming effective. In order to implement Measure P2014, Section 6 of Measure P2014 authorizes the Board of Supervisors to amend the Comprehensive Plan and County Code, and to adopt implementing ordinances to further the purposes of Measure P2014. County staff takes no position on whether or not the voters should approve Measure P2014.

## **2.0 RECOMMENDATION AND PROCEDURES**

**2.1 Case Nos. 14GPA-00000-00013 and 14ORD-00000-00009.** Follow the procedures outlined below and recommend that the County Planning Commission adopt a Resolution recommending that the Board of Supervisors approve Case Nos. 14GPA-00000-00013 and 14ORD-00000-00009 as described in Attachment C based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Make the findings for approval, including CEQA findings, and recommend that the County Planning Commission and Board of Supervisors adopt the findings for approval of the proposed amendment (Attachment A);
2. Recommend that the County Planning Commission and the Board of Supervisors determine that this project is statutorily exempt from the California Environmental Quality Act pursuant to Sections 15061(b)(3) and 15265 of the Guidelines for Implementation of CEQA (Attachment B); and,
3. Adopt a Resolution recommending that the County Planning Commission adopt a Resolution recommending that the Board of Supervisors adopt a Resolution (Case No. 14GPA-00000-00013) amending the Coastal Land Use Plan, and an Ordinance (Case No. 14ORD-00000-00009) amending the Coastal Zoning Ordinance, Article II of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment C).

**2.2 Case Nos. 14GPA-00000-00010, -00011 and -00012.** Follow the procedures outlined below and recommend that the Board of Supervisors adopt Resolutions (Case Nos. 14GPA-00000-00010, 00011 & -00012) as shown in Attachment D based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Make the findings for approval, including CEQA findings, and recommend that the County Planning Commission and Board of Supervisors adopt the findings for approval of the proposed amendment (Attachment A);
2. Recommend that the County Planning Commission and the Board of Supervisors determine that this project is statutorily exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and,
3. Adopt a Resolution recommending that the County Planning Commission adopt a Resolution recommending that the Board of Supervisors adopt Resolutions amending the Agricultural Element (Case No. 14GPA-00000-00010), Conservation Element (Case No. 14GPA-00000-00011) and Land Use Element (Case No. 14GPA-00000-00012) of the Comprehensive Plan (Attachment D).

**2.3 Case Nos. 14ORD-00000-00010.** Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 14ORD-00000-00010 as shown in Attachment E based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Make the findings for approval, including CEQA findings, and recommend that the Board of Supervisors adopt the findings for approval of the proposed amendment (Attachment A);

2. Recommend that the Board of Supervisors determine that this project is statutorily exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and,
3. Adopt a Resolution recommending that the Board of Supervisors adopt an Ordinance (Case No. 14ORD-00000-00010) amending the Montecito Land Use and Development Code, Section 35-2 of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment E).

Please refer the matter to staff if your Commission takes other than the recommended action for the development of appropriate materials.

### **3.0 JURISDICTION**

**3.1 Case Nos. 14GPA-00000-00010, -00011, -00012 and -00013 and 14ORD-00000-00009.** These projects are being considered by the Montecito Planning Commission in compliance with Section 2-25.2 of Chapter 2 of the Santa Barbara County Code that provides that the Montecito Planning Commission may make recommendations to the County Planning Commission on amendments to the Comprehensive Plan and the Article II Coastal Zoning Ordinance that will affect land use decisions within the Montecito Community Plan area.

**3.2 Case No. 14ORD-00000-00010.** This project is being considered by the Montecito Planning Commission based upon Sections 65854 to 65857, inclusive, of the California Government Code and Chapter 35.494 of the Santa Barbara County Montecito Land Use and Development Code (Montecito LUDC). The Government Code and the Montecito LUDC require that the Montecito Planning Commission, as the designated planning agency for the unincorporated area of the County within the Montecito Community Plan Area, review and consider proposed amendments to the Montecito LUDC and provide a recommendation to the Board of Supervisors.

### **4.0 BACKGROUND AND PROJECT DESCRIPTION**

#### **4.1 General Information.**

The Board of Supervisors placed Measure P2014: Initiative to Ban “High-Intensity Petroleum Operations” (the Initiative) on the upcoming November ballot as a result of a petition signed by the requisite number of voters. If approved by a majority of the voters, the Initiative would generally prohibit throughout the County the “development, construction, installation, or use” of any facility or above-ground equipment that supports what the Initiative labels as “High-Intensity Petroleum Operations” including:

- “Well Stimulation Treatments” which the Initiative defines as methods that are “designed to enhance oil and gas production or recovery by increasing the permeability of the formation,” including hydraulic fracturing treatments and acid well stimulation treatments; and/or,
- Operations where the flow of hydrocarbons into a well are aided or induced by the introduction or injection of water, natural gas, steam, air, carbon dioxide, nitrogen, chemicals or any other substance. Per the Initiative, examples of such operations include: “waterflood injection,” “steam flood injection” and “cyclic steam injection.”

The Initiative is attached to this staff report as Attachment F. Attachment G of this staff report is the County Counsel’s Impartial Analysis of the Initiative.

The Initiative would amend the Agricultural Element, Conservation Element and Land Use Element of the Comprehensive Plan, the Coastal Land Use Plan, the Petroleum Code (Chapter 25 of the County Code), the Coastal Zoning Ordinance (Article II of Chapter 35 of the County Code), the County Land Use and Development Code (Section 35-1 of Chapter 35 of the County Code), and the Montecito Land Use and Development Code (Section 35-2 of Chapter 35 of the County Code) by adding language that prohibits High-Intensity Petroleum Operations. This prohibition would apply to all land uses in the unincorporated area of the County that support onshore exploration and onshore production, but would not apply to onshore facilities that support offshore exploration or production from offshore wells.

The Initiative also directs the County to amend County ordinances, plans and policies as necessary to ensure consistency with the Initiative.

The Initiative does provide that certain activities may be exempt from the general prohibition of High-Intensity Petroleum Operations if the prohibition would:

- Violate the constitution or laws of the United States or the State of California; or
- Constitute an unconstitutional taking of property; or
- Apply to a person or entity that has obtained, as of the effective date of the Initiative, a vested right pursuant to State law to conduct High-Intensity Petroleum Operations.

The Initiative states that Board of Supervisors may grant an exemption based on a claim of unconstitutional taking of property, but is otherwise silent as to how the other two exemptions are applied, or any procedures as to how requests for exemptions are approved. The purpose of the subject amendments, therefore, is to codify a process by which these exemptions may be requested and, if appropriate, granted by the County.

On July 29, 2014, the Board of Supervisors directed the Planning and Development Department to begin processing amendments to the Coastal Land Use Plan, the Comprehensive Plan, and the County zoning ordinances to codify a process that will allow the County to review and grant applications for exemptions, if appropriate, from the Initiative. The attached amendments implement that direction and are written so that they will become operative only if the Initiative is approved by the voters this November.

These amendments will have limited effect within the Montecito Community Plan area since there are no active oil and/or gas operations within the Montecito Community Plan area and oil and gas operations are not allowed in any zone within Montecito.

## **4.2 Project Description.**

### Comprehensive Plan and Coastal Land Use Plan Amendments

The actual process to grant exemptions to the prohibition on High-Intensity Petroleum Operations is proposed to be added to the County zoning ordinances: Coastal Zoning Ordinance (Article II), County Land Use and Development Code (County LUDC) and the Montecito Land Use and Development Code (Montecito LUDC). The following section (Zoning Ordinance Amendments) provides a summary of the proposed process.

The Initiative would amend the Agricultural, Conservation and Land Use Elements of the Comprehensive Plan, and the Coastal Land Use Plan, to add the prohibition on High-Intensity Petroleum Operations as policy language. However, the policy language as included in the Initiative does not contain any reference to the ability of the County to grant exemptions to the prohibition. Therefore, in order to provide vertical consistency between the Comprehensive Plan, Coastal Land Use Plan, and the zoning ordinances, the proposed County amendments to the Agricultural, Conservation and Land Use Elements of the Comprehensive Plan, and Coastal Land Use Plan, each contain the following language that addresses Policy 6-5D of the Coastal Land Use Plan and Policy 14 of the Land Use Element that would be added by the Initiative:

*However, land uses in support of High-Intensity Petroleum Operations that are prohibited in accordance with Policy 6-5D of the Coastal Land Use Plan of the Local Coastal Program or Policy 14 of the Land Use Element of the Comprehensive Plan may be allowed provided an Exemption from Measure P2014: Initiative to Ban “High-Intensity Petroleum Operations” allowing said uses applies as provided in compliance with either the Article II Coastal Zoning Ordinance, or the County Land Use and Development Code, or the Montecito Land Use and Development, all of Chapter 35, Zoning, of the Santa Barbara County Code, as applicable.*

Please refer to Attachment 1 of Attachment C, and Attachments 1, 2 and 3 of Attachment D, for the specific sections of the Comprehensive Plan and Coastal Land Use Plan that are proposed to be amended by adding this language. These amendments will become operative only if the Initiative is approved by the voters this November.

#### Zoning Ordinance Amendments

The County LUDC, Montecito LUDC, and Article II are all proposed to be amended to add a new process titled Determination of Exemption that will provide the procedures whereby any person subject to the Initiative may submit an application requesting recognition of an exemption under Sections 5.B or 5.C of the Initiative from the prohibition on High-Intensity Petroleum Operations. No administrative process is proposed for exemptions claimed pursuant to Section 5.A of the Initiative.

On August 8, 2014, the Director of the Planning and Development Department held a workshop on the amendments, and, in response to the comments and questions posed at the workshop, two additional modifications to the proposed ordinances have been made and are discussed below. As proposed, the procedure would provide that:

- An application for a Determination of Exemption, including the required processing fee, is submitted to the Planning and Development Department by an applicant seeking an exemption.
- Following submittal, the Director reviews the application to determine if it contains sufficient information to determine whether the granting of an exemption is appropriate. The Director may request that additional information be submitted if necessary. See Attachment G for a list of materials that may be required to be submitted with the application.
- The Board of Supervisors is the review authority for Determinations of Exemption

associated with a claim of unconstitutional taking of property, and the Director is the review authority for Determinations of Exemption based on an assertion of vested rights.

In order for the Board of Supervisors to approve an application for an exemption based on a claim of unconstitutional taking, the Board would have to find that there is sufficient evidence in the record to determine that approving the application is required in order to avoid an unconstitutional taking of property, and that the application, as approved, will allow additional or continued land uses only to the minimum extent necessary to avoid such a taking.

In order for the Director to approve an application for an exemption based on an assertion of vested rights, the Director would have to find that there is sufficient evidence in the record to establish that the applicant obtained, prior to the effective date of the Initiative, a vested right to conduct a high intensity petroleum operation.

The third category of exemption included in the Initiative provides that the high intensity petroleum operations are exempt from the prohibitions of the Initiative if the prohibition would violate the constitution or laws of the United States or the State of California. The proposed procedures do not include a process for reviewing claims of exemptions under this category since such claims should be addressed through a judicial proceeding.

- An application for a Determination of Exemption where the Board of Supervisors is the review authority must be accompanied by an application for the development project for which the exemption is requested unless this requirement is waived by the Director for good cause. However, if the Board determines that such an application for a development project is necessary to determine if the exemption applies, then the Board may require that the application for the development project be filed and processed before the Board takes a final action on the application for the exemption.

If an application for the development project is processed with the application for the Determination of Exemption, then the review authority that would normally approve or deny the application for the development would instead make a recommendation on the application to the Board of Supervisors.

- A public hearing is only required for Determinations of Exemption where the Board of Supervisors is the review authority. For applications for Determinations that are accompanied by an application for a development project, the processing timelines are the same as those for the development project. For applications that are not accompanied by an application for a development project, then the hearing shall be held within 180 days after the application is determined to be complete; however, the Director may extend this period by 180 days for good cause.

Applications under the jurisdiction of the Director shall be acted on within 60 days after the application is determined to be complete; the Director may extend this period to allow or require the applicant or the Department to submit additional information or legal analysis, or for other good cause.

- Notice of the application for the Determination of Exemption and public hearing is only required for Determinations where the Board of Supervisors is the review authority. The

proposed amendments do not require that notice be provided for Determinations where the Director is the review authority.

- The action of the Director to approve or deny an application for a Determination of Exemption is subject to appeal to the Planning Commission; the action of the Planning Commission is subject to appeal to the Board of Supervisors. The action of the Board of Supervisors to approve or deny an application for a Determination is final.
- The Director shall not take any action to enforce the Initiative against any owner or operator of an existing facility if an application for a Determination of Exemption has been filed with the Department and the application has not expired or final action to deny the application has not occurred.
- In response to public comment at the August 8, 2014, the proposed ordinances have been modified from the draft originally made available to the public as follows:
  - The “Purpose and Intent” sections (e.g., Section A in Exhibit 1 of Attachment E) have been revised to add language to clarify that the purpose is to codify an administrative process for claims of exemption that neither enlarges nor narrows the exemptions in Section 5 of the Initiative.
  - The “Applicability” sections (e.g., Section B in Exhibit 1 of Attachment E) have been revised to make clear that a person subject to the Initiative may seek an exemption determination pursuant to the ordinances (e.g., Subsections A.2 and A.3 in Exhibit 1 of Attachment E) but is not required to do so.

The proposed process provides that applications are under the jurisdiction of either the Board of Supervisor or the Director; however, your Commission may want to recommend other options (e.g., the Planning Commission instead of the Director) or that all requests for exemptions are heard by the Board of Supervisors.

Except for a grant of exemption from Land Use Permits for the repair of a nonconforming structure, the existing zoning ordinances do not require notice for Director-level determinations. As proposed, the process for approving applications for Determinations of Exemption under the jurisdiction of the Director does not require notice of either the submittal of the application or the Director’s action on the application; however, your Commission may want to consider that some level of noticing be required for such applications. Current Planning and Development Department administrative practice provides that a person or entity may request to be notified if an application is submitted for specific properties.

The Department’s current application fee resolution (as approved by the Board of Supervisors) does not include a specific category for Determinations of Exemption since they would be a new type of application. However, the fee resolution does allow that in situations where a project does not fall within any of the listed categories, the Director may determine the appropriate application fee or deposit based on similarity of processing requirements with other types of projects. Should the Initiative be adopted by the voters in November, then the Department will amend the fee resolution to add an appropriate fee or deposit to cover the cost of application processing. Until amended, the Department proposes to use the existing Energy and Minerals Division category for Pre-Applications that requires an initial deposit of \$5,000 and processing

on a cost reimbursement basis.

### Petroleum Code (Chapter 25 of the County Code)

The purpose of the Petroleum Code is to reasonably regulate onshore petroleum operations including operations, abandonment and site restoration. The Petroleum Code is a regulatory tool for well and facility operational compliance that the County implements for all above-ground operations; all underground operations are under the sole authority of the State Division of Oil, Gas and Geothermal Resources (DOGGR). Any permit issued pursuant to Chapter 25 is contingent upon the permittee first obtaining the requisite planning land use permit. This procedural safeguard ensures that wells are not permitted in a manner that is inconsistent with the provisions of the Coastal Land Use Plan, Comprehensive Plan and County zoning ordinances.

The Petroleum Code does address secondary and enhanced operations that are addressed by the Initiative, sets standards for these types of operations, and allows the County to impose reasonable conditions upon such operations as deemed necessary to reduce the potential for impacts to public safety and the environment, primarily fresh water. The definition of these processes in the Petroleum Code is identical to those included in the Initiative.

The Initiative would add language similar to the language that would be added to the Coastal Land Use Plan, Comprehensive Plan and County zoning ordinances, and would require that all County actions taken under Chapter 25 shall be consistent and in compliance with the provisions of the Initiative. However, there are no sections of the Petroleum Code that conflict with the Initiative, and the provisions of the Petroleum Code do not allow the County to issue permits that would conflict with the language of the Initiative. Therefore, the County does not need to amend the Petroleum Code to add a process to grant exemptions from the prohibitions of the Initiative.

**4.3 County Planning Commission.** A similar package of amendments will be reviewed by the County Planning Commission at their September 3, 2014 meeting. Staff will provide a summary of your comments and recommendations to the County Planning Commission at that hearing.

## **5.0 ENVIRONMENTAL REVIEW**

**5.1 Case Nos. 14GPA-00000-00013 and 14ORD-00000-00009.** The proposed amendments to the Coastal Land Use Plan and the Article II Coastal Zoning Ordinance are procedural in nature and neither enlarge nor narrow the exemptions in Section 5 of the Initiative. Therefore, they are recommended to be determined to be exempt from environmental review pursuant to Sections 15061(b)(3) and 15265 of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA).

- Section 15061(b)(3), the general rule exemption, states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment that the activity is not subject to CEQA. As explained further in Attachment B, no significant environmental impacts would occur as a result of these amendments.
- Section 15265, the statutory exemption for the adoption of coastal plans and programs, including amendments thereto, provides that compliance with CEQA is the responsibility of the California Coastal Commission.



**5.2 Case Nos. 14GPA-00000-00010, -00011 and -00012; Case Nos. 14ORD-00000-00010.** The proposed amendments to the Agricultural, Conservation and Land Use Elements of the Comprehensive Plan and the Montecito Land Use and Development Code are recommended to be determined to be exempt from environmental review pursuant to Section 15061(b)(3) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15061(b)(3), the general rule exemption, states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment that the activity is not subject to CEQA. As explained further in Attachment B, the amendments are procedural in nature; no significant environmental impacts would occur as a result of these amendments.

## **6.0 POLICY CONSISTENCY**

The proposed ordinance amendments do not alter the purpose and intent of any policies or development standards of the Coastal Land Use Plan or the Comprehensive Plan, including the Community and Area Plans, and the adoption of the proposed amendments will not result in any inconsistencies with existing policies and development standards. These amendments only provide a process by which the County may approve an exemption to the prohibitions against High-Intensity Petroleum Operations that will be added to the Coastal Land Use Plan and the Comprehensive Plan should Measure P2014 be approved by the voters in November.

The granting of an exemption to this prohibition does not in and of itself grant any entitlement for actual development, enhanced or otherwise, of oil and gas resources. In order for a development permit to be approved for oil and gas development projects based on an approved exemption, it still must be determined that the project is consistent with the policies and development standards of the Coastal Land Use Plan and the Comprehensive Plan, including the Community and Area Plans, as applicable. As part of this process, a policy consistency analysis will be performed during the review of the project application, and projects will not be approved unless they are determined to be consistent with applicable policies and the findings required for approval can be made. Therefore, these amendments may be found consistent with the adopted Comprehensive Plan, including the Community and Area Plans, and the Coastal Land Use Plan.

Also, for exemptions that are approved to allow existing well activities to continue, it must be determined that these activities are either within the scope of and are consistent with existing permits and permit conditions, or, for nonconforming activities, are consistent with the applicable regulations.

## **7.0 ORDINANCE COMPLIANCE**

The proposed ordinance amendments are consistent with the remaining portions of the Article II Coastal Zoning Ordinance and the Montecito Land Use and Development Code that would not be revised by these ordinances. In order to approve any development project that may be allowed to proceed in reliance on an approved Determination of Exemption as provided by the ordinances amending Article II Coastal Zoning Ordinance and the Montecito Land Use and Development Code, it still must be determined that the project is consistent with the whole of the Article II Coastal Zoning Ordinance and the Montecito Land Use and Development Code as applicable.

## **8.0 PROCEDURES**

- 8.1 Coastal Land Use Plan, Comprehensive Plan and Article II Coastal Zoning Ordinance:** The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed amendments and ordinance to the County Planning Commission.
- 8.2 Montecito Land Use and Development Code:** The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the Board of Supervisors.

## **9.0 APPEALS PROCEDURE**

Coastal Land Use Plan, Comprehensive Plan and Ordinance amendments are automatically forwarded to the Board of Supervisors for final action, therefore no appeal of the action by the Montecito Planning Commission is required.

## **10.0 ATTACHMENTS**

- A. Findings
- B. Notice of Exemption
- C. 14GPA-00000-00013 and 14ORD-00000-00009
  - Exhibit 1
  - Exhibit 2
- D. 14GPA-00000-00010, 00011 and -00012
  - Exhibit 1
  - Exhibit 2
  - Exhibit 3
- E. 14ORD-00000-00010
  - Exhibit 1
- F. Measure P2014: Initiative to Ban “High-Intensity Petroleum Operations”
- G. County Counsel’s Impartial Analysis of Measure P2014
- H. Materials Required to be Submitted With an Application for a Determination of Exemption