

ATTACHMENT H: CASE NO. 14ORD-00000-00009
ARTICLE II COASTAL ZONING ORDINANCE AMENDMENT

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE SANTA BARBARA COUNTY COASTAL ZONING ORDINANCE, ARTICLE II OF CHAPTER 35, ZONING, OF THE SANTA BARBARA COUNTY CODE BY AMENDING DIVISION 1, IN GENERAL, AND DIVISION 9, OIL AND GAS FACILITIES, TO IMPLEMENT NEW PROCEDURES REGARDING DETERMINATIONS OF EXEMPTION FROM MEASURE P2014: INITIATIVE TO BAN “HIGH-INTENSITY PETROLEUM OPERATIONS.”

Case No. 14ORD-00000-00009

The Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1.

DIVISION 1, In General, of Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Subsection B.3, of Section 35-57C, Authority for Land Use and Zoning Decisions, to read as follows:

3. This Section shall not apply to applications for:
 - a. Coastal Development Permits that do not require a public hearing in compliance with Section 35-169 (Coastal Development Permits).
 - b. Design Review submitted in compliance with Section 35-184 (Board of Architectural Review).
 - c. Emergency Permits submitted in compliance with Section 35-171 (Emergency Permits).
 - d. Land Use Permits submitted in compliance with Section 35-178 (Land Use Permits).
 - e. Zoning Clearances submitted in compliance with Section 35-179A (Zoning Clearance).
 - f. Determinations of Exemption submitted in compliance with Section 35-150.3 (Determination of Exemption). See Section 35-150.3 for specific requirements.

SECTION 2.

DIVISION 9, OIL AND GAS FACILITIES, of Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Section 35-150, Purpose and Intent, to add a new Section 35-150.3 titled “Determination of Exemption” and to read as follows:

Section 35-150.3 Determination of Exemption

A. Purpose and Intent. The purpose and intent of this Section is to provide an administrative process for determining whether a land use that is normally not allowed in compliance with Section 35-144O (High Intensity Petroleum Operations Prohibited) or Section 35-150.2 is exempt from the prohibitions of those Sections as allowed by Measure P2014: Initiative to Ban “High-Intensity Petroleum Operations” (“the Initiative”). This Section only codifies an administrative process for claims of exemption that neither enlarges nor narrows the exemptions contained in Section 5 (Exemptions for Certain Projects) of the Initiative which provides that:

1. The provisions of the Initiative shall not be applicable 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;
2. In the event a property owner contends that application of the Initiative effects an unconstitutional taking of property, the property owner may request, and the Board may grant, an exception to the application of any provision of the Initiative if the Board finds, based on substantial evidence, that both (1) the application of any aspect of the 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; and
3. The provisions of the Initiative shall not be applicable to any person or entity that has obtained, as of the effective date of the Initiative, a vested right, pursuant to State law, to conduct a High Intensity Petroleum Operation.

B. Applicability.

1. Persons subject to the Initiative may, but are not required to, file applications for exemption determinations associated with Subsections A.2 and A.3, above. This Section 35-150.3 (Determination of Exemption) applies to any person seeking such exemption determinations.
2. **Decision-maker.** The decision-maker for a Determination of Exemption is identified in Table 9-1 (Determination of Exemption Decision-Makers) below.

Table 9-1 Determination of Exemption Decision-Makers

<u>Type of Exemption</u>	<u>Role of Decision-Maker</u>		
	<u>Director</u>	<u>Planning Commission</u>	<u>Board of Supervisors</u>
<u>Determination of Exemption associated with Subsection 35-150.3.A.2</u>			<u>Decision</u>
<u>Determination of Exemption associated with Subsection 35-150.3.A.3</u>	<u>Decision</u>	<u>Appeal</u>	<u>Appeal</u>

- a. **Applications.** A separate application for a Determination of Exemption shall be filed for each type of exemption requested.

C. Contents of Application. Any application for a Determination of Exemption allowed in compliance with Subsection B. (Applicability) shall be submitted by the applicant seeking the exemption in compliance with Section 35-57A (Application Preparation and Filing).

- 1. The applicant for any exemption shall submit as part of the application any and all evidentiary support reasonably available sufficient to establish the basis for the claim of exemption.
 - a. The filing of an application for a Determination of Exemption associated with Subsection 35-150.3.A.2 shall be accompanied by an application for the development project for which the exemption determination is requested.
 - 1) The Director may waive the requirement to submit the application for the development project for good cause.
 - 2) Where the Director has waived the requirement for a development application, if the Board determines such an application is necessary to determine if the exemption applies, the Board may require such application to be filed and processed before the County will take a final action on the application for the exemption.

D. Processing.

- 1. **Applications under the jurisdiction of the Board.** The following applies to the processing of applications for Determinations of Exemption associated with Subsection 35-150.3.A.2.
 - a. **Determination of Exemptions processed in conjunction with a development project.** When an application for a Determination of Exemption is filed concurrently with an application for a development project in compliance with Subsection C.1.a, above, then the application for the Determination of Exemption shall be processed in conjunction with the application for the development project and shall be subject to the same processing requirements and timelines of the development project except as follows:
 - 1) Notwithstanding the provisions of Table 1-1 (Decision-Maker Authority), the Board shall approve or deny the application for the Determination of Exemption and the application for the development project, and the decision-maker identified in Table 1-1 (Decision-Maker Authority) as having decision authority on the application for the development project shall instead make a recommendation to the Board on the application.
 - b. **Determination of Exemptions not processed in conjunction with a development project.** The following applies to applications for Determinations of Exemption where the Director has waived the requirement to submit the application for the development project for good cause in compliance with Subsection C.1.a.1, above.

- 1) Notice of the application for the Determination of Exemption shall be given in compliance with Section 35-181.2 (Notice of Public Hearing and Decision-Maker Action.)
- 2) The Board shall hold at least one noticed public hearing on the application and approve or deny the request.
- 3) The hearing shall be held within 180 days after the application is determined to be complete. The application shall be processed in compliance with Section 35-57A (Application Preparation and Filing).
 - a) For good cause the Director may delay the holding of the hearing for an additional 180 days.
- 4) Notice of the time and place of the hearing shall be given and the hearing shall be conducted in compliance with Section 35-181 (Noticing).
- 5) The Board may continue the hearing to allow or require the applicant or Department to submit additional information or legal analysis.
- 6) The action of the Board shall be final.

2. Applications under the jurisdiction of the Director. The following applies to the processing of applications for Determinations of Exemption associated with Subsection 35-150.3.A.3.

- a. The Director shall approve or deny the application for the Determination of Exemption. A public hearing is not required.
- b. The Director shall act on the application within 60 days after the application is determined to be complete. However, the Director may extend this period of time to allow or require the applicant or Department to submit additional information or legal analysis or other good cause.
- c. The action of the Director is final subject to appeal in compliance with Section 35-182 (Appeals).
- d. Notice of the action of the Director shall be given as follows:
 - 1) **Newspaper publication.** Notice of the action of the Director shall be published in a least one newspaper of general circulation.
 - 2) **Mailed notice.** Notice of the action of the Director shall be to any person who has filed a written request for notice and has supplied the Department with self-addressed stamped envelopes.
 - 3) The Department's website shall reflect the action of the Director.

E. Findings Required for Approval. A Determination of Exemption application shall be approved

only if the decision-maker first makes one of the following findings, as applicable.

- 1. Applications for Determinations of Exemption associated with Section 35-150.3.A.2.**
There is sufficient evidence in the record to determine that approving or conditionally 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.
 - 2. Applications for Determinations of Exemption associated with Section 35-150.3.A.3.**
There is sufficient evidence in the record to establish that the applicant obtained prior to [effective date of the Initiative] a vested right to conduct a High Intensity Petroleum Operation.
- F. Enforcement.** The Director shall not take any action under Section 35-185 (Enforcement, Legal Procedures, and Penalties) to enforce the Initiative against any owner or operator of an existing facility if an application for a Determination of Exemption has been filed in compliance with this Section 35-150.3 (Determination of Exemption) or final action to deny the application has not occurred.

SECTION 3:

All existing indices, section references, and figure and table numbers contained in the Santa Barbara County Coastal Zoning Ordinance, Article II of Chapter 35, Zoning, of the Santa Barbara County Code, are hereby revised and renumbered as appropriate to reflect the revisions enumerated above. The Board further directs and authorizes the Planning and Development Department to specify the effective date of the Initiative where this Ordinance makes reference to “[effective date of the Initiative]” in the Article II Coastal Zoning Ordinance at the time this Article is updated to reflect the certification of this Ordinance by the California Coastal Commission.

SECTION 4:

Except as amended by this Ordinance, Division 1, In General, and Division 9, Oil and Gas Facilities, of the Santa Barbara County Coastal Zoning Ordinance, Article II of Chapter 35, Zoning, of the Santa Barbara County Code, shall remain unchanged and shall continue in full force and effect.

SECTION 5.

This ordinance and any portion of it approved by the Coastal Commission shall take effect and be in force upon the date that the Initiative becomes effective pursuant to State law or upon the date that it is certified by the Coastal Commission pursuant to Public Resources Code 30514, whichever occurs later, and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this 7th day of October, 2014 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

STEVE LAVAGNINO, CHAIR
BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

ATTEST:

MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By _____
Deputy Clerk

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
COUNTY COUNSEL

By _____
Deputy County Counsel