

ATTACHMENT B: NOTICE OF EXEMPTION

TO: Santa Barbara County Clerk of the Board of Supervisors

FROM: Noel Langle, Senior Planner
Planning and Development Department

The project or activity identified below is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970 as defined in the State and County guidelines for the implementation of CEQA.

APN(s): Not applicable.

Case Nos.: 14GPA-00000-00010 Agricultural Element Amendment
14GPA-00000-00011 Conservation Element Amendment
14GPA-00000-00012 Land Use Element Amendment
14GPA-00000-00013 Coastal Land Use Plan Amendment
14ORD-00000-00008 County Land Use and Development Code Amendment
14ORD-00000-00009 Article II Coastal Zoning Ordinance Amendment
14ORD-00000-00010 Montecito Land Use and Development Code Amendment

Location: The proposed amendments would apply solely to the unincorporated area of Santa Barbara County.

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

Project Description:

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 unincorporated portions of 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.”

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 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. This process is procedural in nature and neither enlarges nor narrows the exemptions in Section 5 of the Initiative.

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.

In order to provide vertical consistency between the Comprehensive Plan, Coastal Land Use Plan, and the zoning ordinances, the Comprehensive Plan and Coastal Land Use Plan must be amended to add language that provides that exemptions to the prohibition may be granted by the County in compliance with the process which would be added to the zoning ordinances. Therefore, the proposed County amendments to the Agricultural, Conservation and Land Use Elements of the Comprehensive Plan, and the 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.

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. A person subject to the Initiative may seek an exemption determination pursuant to Sections 5.B or 5.C of the Initiative but is not required to do so. As proposed, the process 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.
- The Board of Supervisors is the review authority for Determinations of Exemption associated with a claim of unconstitutional taking of property. The Director is the review authority for Determinations of Exemption based on an assertion of vested rights.
- A public hearing is only required for Determinations where the Board of Supervisors is the review authority.
- 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.
- 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 submittal of an application for the Determination of Exemption and any public hearing is required for Determinations where the Board of Supervisors is the review authority. The proposed amendments also require that notice of the decision of the Director on Determinations where the Director is the review authority be provided by (1) publishing a notice of the decision in a local newspaper, (2) providing mailed notice to any person who has requested notice of the decision, and (3) listing the decision on the Planning and Development Department's website.
- 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.

Exempt Status:

- Ministerial
- Statutory (Section 15265)
- Categorical Exemption
- Emergency Project
- No Possibility of Significant Effect (Section 15061(b)(3))
- Not a Project Under CEQA (Section 15378(b)(5))

Cite specific CEQA Guideline Sections:

Section 15265 - Adoption of Coastal Plans and Programs

Reasons to support exemption finding:

Section 15265, the 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.

Section 15061(b)(3) - No possibility of significant effect.

Reasons to support exemption finding:

These amendments only provide a process whereby the County may approve an exemption to the prohibition of High-Intensity Petroleum Operations as allowed by Measure P2014: Initiative to Ban “High-Intensity Petroleum Operations” that will be added to the Coastal Land Use Plan, the Comprehensive Plan and the County zoning ordinance if Measure P2014 is approved by the voters in November. In particular, these amendments only codify a process for requesting acknowledgement of an exemption that neither enlarges nor narrows the exemptions contained in Section 5 of the Initiative.

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, policy consistency and environmental review 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. Also, for exemptions that are approved to allow existing well activities to continue, it must be determined that these activities are within the scope of and are consistent with existing permits and permit conditions.

Therefore, no significant environmental impacts would occur as a result of these amendments.

Section 15378(b)(5) - Not a Project Under CEQA

Reasons to support exemption finding:

Section 15378(b)(5) provides that organizational or activities of governments that will not result in direct or indirect physical changes in the environment are not a project as that term is used in CEQA, and therefore are not subject to CEQA.

Department/Division Representative _____ Date _____

Acceptance Date (date of final action on project): _____

Date Filed by County Clerk: _____

Note: A copy of this form must be posted at Planning and Development six days prior to a decision on the project. Upon project approval, this form must be filed with the County Clerk of the Board and posted by the Clerk of the Board for a period of 30 days.

Distribution: (for posting six days prior to action, and posting original after project approval)
Hearing Support Staff