

Measure P2014:

Initiative to Ban “High-Intensity Petroleum Operations”

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**Comprehensive Plan, Coastal Plan & Zoning Ordinance Amendments
October 7, 2014 Santa Barbara County Board of Supervisors Hearing**



Purpose of This Hearing

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- ❑ Consider the recommendations of the County and Montecito Planning Commissions, and adopt ordinances and resolutions amending the:
 - Agricultural, Conservation, and Land Use Elements of the Comprehensive Plan
 - Coastal Land Use Plan
 - County Land Use and Development Code
 - Montecito Land Use and Development Code
 - Article II Coastal Zoning Ordinance

Background

Measure P2014

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- ❑ Measure P2014 Initiative will be voted on November 4, 2014
- ❑ If approved, the Initiative would generally prohibit all on-shore “High-Intensity Petroleum Operations”:
 - Well stimulation treatments: methods designed to enhance oil and gas production and recovery by increasing the permeability of the formation
 - Operations where the flow of hydrocarbons into the well are aided by the introduction or injection of water, natural gas, steam, air, carbon dioxide, nitrogen, chemicals or other substances

Background

Measure P2014

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- ❑ The Initiative implements this general prohibition by amending the following County planning documents:
 - Comprehensive Plan Agricultural, Conservation and Land Use Elements
 - Coastal Land Use Plan
 - Article II Coastal Zoning Ordinance
 - County Land Use and Development Code
 - County Code Chapter 25: Petroleum Code
- ❑ The Initiative also requires the County to amend other plans, policies and ordinances as necessary to ensure consistency with the Initiative

Background

Measure P2014

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- Section 5 of the Initiative includes certain exemptions from the general prohibition on High-Intensity Petroleum Operations if the prohibition would:
 - A. Violate the constitution or laws of the United States or the State of California; or
 - B. Constitute an unconstitutional taking of property; or
 - C. Apply to a person or entity that has obtained prior to the Initiative taking effect a vested right under State law to conduct High-Intensity Petroleum Operations

Background

Measure P2014

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- ❑ The Initiative states that the Board of Supervisors may grant an exemption based on a claim of an unconstitutional taking of property
- ❑ The Initiative does not provide processes for the County to consider and apply the exemptions stated in the Initiative
- ❑ **Purpose of these amendments:** To codify an administrative process that will allow the County to review and determine exemptions from the Initiative

Project Description

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- ❑ The amendments are written so that they will:
 - Take effect 30 days following adoption by the Board (except in Coastal Zone)
 - Become operative only if the Initiative is approved by the voters
- ❑ The amendments are procedural in nature and neither enlarge nor narrow the exemptions contained in the Initiative
- ❑ Adoption of these amendments does not presuppose that the Initiative will be approved
- ❑ County staff is not taking a position on whether or not the voters should approve the Initiative

Project Description

Zoning Ordinance Amendments

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- ❑ The zoning ordinance amendments only address exemptions based on claims of:
 - Unconstitutional takings (Section 5.B of the Initiative)
 - Vested rights (Section 5.C of the Initiative)
- ❑ The amendments do not address exemptions based on claims of violation of the constitution or laws of the United States or the State of California (Section 5.C of the Initiative)
 - Such claims should be addressed through a judicial proceeding

Project Description

Zoning Ordinance Amendments

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❑ **Constitutional takings claims:**

- **Review authority:** Board of Supervisors
- **Public hearing:** Required
- **Findings:** To approve the Board must find that:
 - Sufficient evidence exists to establish claim of unconstitutional taking
 - Limited to allowing land uses only to the minimum extent necessary to avoid a taking
- **Appeal:** Decision not subject to appeal
- **Notice:** Required notice of application submittal and public hearing

Project Description

Zoning Ordinance Amendments

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- ❑ **Constitutional takings claims (cont.):**
 - **Companion application:** Must submit application for the development project that is the subject of the exemption
 - Director may waive the submittal for good cause
 - Board may require the submittal and processing of companion application prior to Board action if necessary to determine if the exemption applies
 - Review authority that normally makes a decision on the companion application instead makes a recommendation to the Board
 - Review authority does not make a recommendation on the exemption

Project Description

Zoning Ordinance Amendments

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- ❑ **Constitutional takings claims (cont.):**
 - **Timeline:**
 - **Companion application:** Same processing timelines as the companion application
 - **No companion application:** Board hearing within 180 days after application determined complete; Director may extend for an additional 180 days for good cause

Project Description

Zoning Ordinance Amendments

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- ❑ **Vested rights claim:**
 - **Review authority:** Director
 - **Public hearing:** Not required
 - **Findings:** To approve the Director must find that sufficient evidence exists to establish that the applicant has obtained a vested right prior to the effective date of the Initiative
 - **Appeal:** Decision subject to appeal to the Planning Commission and the Board

Project Description

Zoning Ordinance Amendments

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❑ **Vested rights claim (cont):**

- **Notice:** Notice of the Director's decision is:
 - Published in a local newspaper
 - Mailed to all persons who have requested notice
 - Listed on the Planning and Development website
- **Timeline:** Director decision within 60 days after application determined complete; Director may extend to allow/require the submittal of additional information or legal analysis, or for other good cause.

Project Description

Coastal Land Use Plan and Comprehensive Plan Amendments

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- ❑ The Initiative amends the Coastal Land Use Plan and Comprehensive Plan to generally prohibit High-Intensity Petroleum Operations
 - The new language does not reference the exemptions contained in the Initiative
- ❑ The County Coastal Land Use Plan and Comprehensive Plan amendments add language that allows High-Intensity Petroleum Operations if an exemption applies as provided in the zoning ordinances
 - This provides vertical consistency between the Comprehensive Plan and the Coastal Land Use Plan, and the zoning ordinances

Project Description

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❑ Enforcement

- The ordinance includes language that provides that the Director will not take any action to enforce the Initiative against an existing facility if an application for an exemption has been submitted and has not expired or final action to deny the application has not occurred

❑ Fees

- New type of application, therefore not included on existing fee schedule
- Use existing Energy and Minerals Division Pre-Applications Other Energy Projects category for (\$5,000 initial deposit; processing on a cost reimbursement basis)

Planning Commission Proposed Revisions

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- ❑ Noticing Director's decisions on vested rights claims:
 - Provide published and mailed notice, and list on Department website
 - This revision is incorporated in the attached ordinances
- ❑ Planning Commission reviews and provides a recommendation on unconstitutional takings claims
 - Could lead to unnecessary dual hearings before the Planning Commission and the Board
 - Potentially very expensive and lengthy hearing
 - Department does not recommend following this recommendation

CEQA Review

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- ❑ Latham & Watkins letter September 2, 2014 asserts under CEQA County that must look at “whole of the action,” including possible impacts from the Initiative
- ❑ CEQA exempts initiatives placed on ballot via voter petition (CEQA 15378(b)(3))
- ❑ Implementing ordinances are exempt because:
 - They neither expand nor change the initiative (CEQA 15378(b)(5))
 - Purely procedural ordinances are under CEQA “common sense” exemption. (CEQA 15061(b)(3))
- ❑ No evidence in the record suggests any environmental impact from these purely procedural ordinances

Recommendation

- ❑ Follow the recommended actions in the Board letter for each amendment and
 - Make the findings for approval;
 - Determine that this project is exempt from CEQA; and
 - Adopt four resolutions amending the Coastal Land Use Plan and the Agricultural, Conservation and Land Use Elements of the Comprehensive Plan
 - Adopt three ordinances amending the County's zoning ordinances