

# Attachment A

This page intentionally left blank.

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,  
ADDING CHAPTER 16.58 TO THE MONTEREY COUNTY CODE RELATING TO  
EXEMPTION PROCEDURES FOR LAND USES ASSOCIATED WITH OIL AND GAS  
OPERATIONS**

**County Counsel Summary**

*This ordinance adds Chapter 16.58 to the Monterey County Code to establish procedures to implement exemptions under Measure Z, an initiative measure adopted by the voters of Monterey County on November 8, 2016. Measure Z prohibits land uses in support of well stimulation treatments in oil and gas production or recovery including hydraulic fracturing, prohibits land uses in support of oil and gas wastewater injection and impoundment subject to a five-year phase-out period, and prohibits the drilling of new oil and gas wells in the County's unincorporated areas. Measure Z contains exemptions from these prohibitions based on a case-case determination to prevent an unconstitutional taking as applied, to protect vested rights, and to extend the phase out period for land uses in support of oil and gas wastewater injection and impoundment. Measure Z authorizes the Board of Supervisors to adopt implementing ordinances as necessary to further the purposes of the initiative. This ordinance implements Measure Z by establishing administrative procedures for the County of Monterey to implement the Measure Z exemptions.*

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Chapter 16.58 is added to the Monterey County Code to read as follows:

**Chapter 16.58-- EXEMPTION PROCEDURES FOR LAND USES ASSOCIATED WITH  
OIL AND GAS OPERATIONS**

**16.58.010– Findings and purpose.**

A. The purpose of this Chapter is to establish administrative procedures to ensure the lawful application of Measure Z, an initiative measure adopted by the voters of Monterey County on November 8, 2016.

B. Measure Z amends the Monterey County General Plan, as amended through February 23, 2016, to: 1) prohibit uses of land within the County's unincorporated areas in support of certain well stimulation treatments in oil and gas production or recovery including hydraulic fracturing (known as "fracking"); 2) prohibit land uses in support of oil and gas wastewater injection and impoundment after a phase-out period; and 3) prohibit the drilling of new oil and gas wells in the County's unincorporated areas. Measure Z makes the same amendments to the Monterey County Local Coastal Program and the Fort Ord Master Plan provided that the California Coastal Commission and Fort Ord Reuse Authority respectively certify those amendments.

C. Measure Z expressly provides that the policies enacted by Measure Z 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. Measure Z, by its terms, shall not apply to effect an unconstitutional taking or to prohibit any person or entity from exercising a vested right. Measure Z also provides for reasonable amortization of land uses in support of oil and gas wastewater injection and oil and gas wastewater impoundment, consistent with state vested rights law.

D. Measure Z authorizes the Board of Supervisors, after a duly noticed public hearing, to adopt implementing ordinances, guidelines, rules, and regulations as necessary to further the purposes of the initiative.

E. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

F. In accordance with the authority granted by the California Constitution and Measure Z, the Board of Supervisors has adopted this Chapter to provide administrative procedures to implement the exemptions set forth in Measure Z.

G. The procedures in this Chapter are intended to provide a full and fair opportunity for affected persons to present their claims for exemption, to ensure fair and impartial determination of such claims by the County, and to provide for a transparent public process for the implementation of Measure Z.

#### **16.58.020—Definitions**

For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meanings.

“Appropriate Authority” means the person, official, or body designated to hear, grant, deny, modify, condition, or otherwise act on the exemption determinations under this Chapter.

“Claimant” means a person, as defined herein, who applies for an exemption from Measure Z pursuant to this Chapter.

“County” means the County of Monterey.

“Director of the Resource Management Agency” and “Director” means the Director of the Resource Management Agency of the County of Monterey or his or her designee.

“Effective Date” means the date that the applicable provision of Measure Z became effective. For the unincorporated area of the County within the coastal zone and former Fort Ord, the Effective Date shall be thirty days after certification by the California Coastal Commission and Fort Ord Reuse Authority respectively.

“Hearing Officer” means a person appointed by the County to conduct an administrative hearing under this Chapter whose selection and qualifications meet the requirements of this Chapter.

“Interested Person” means a person as that term is defined herein, other than the Claimant and the County and their agents, who meets the requirements of this Chapter to participate in the hearings conducted by the Hearing Officer under this Chapter.

“Measure Z” means an initiative measure adopted by the voters of Monterey County on November 8, 2016 entitled “Initiative to Prohibit Fracking and Oil and Natural Gas Well Stimulation Treatments, Prohibit Oil and Natural Gas Wastewater Injection and Impoundment, and Limit New Oil and Natural Gas Operations in Unincorporated Monterey County.”

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

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

“Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, non-profit public benefit corporation, or any other group or entity or combination acting as a unit and includes the plural as well as the singular number.

“Property Owner” means any person having a record title interest in real property or person having a contractual or other documented interest in property other than real property.

“Resource Management Agency (“RMA”)” means the Resource Management Agency of the County of Monterey, as defined in Chapter 2.27 of the Monterey County Code.

### **16.58.030—Lawful application of Measure Z**

This Chapter is intended to provide an administrative remedy to prevent the unlawful application of the policies of Measure Z. Any affected person who contends that the application of a provision of Measure Z impairs their vested rights, effects an unconstitutional taking of their property, or provides for an insufficient amortization period may, in accordance with the procedures of this Chapter, apply for an exemption from such provision of Measure Z as applied to that person. These administrative procedures are required to exhaust administrative remedies in order to provide County decision-makers the opportunity to apply Measure Z’s exemptions on a case-by-case basis to ensure the lawful application of Measure Z. To allow for feasible administration of the procedures under this Chapter, County will begin to accept applications under this Chapter 16.58 no sooner than ninety (90) days after adoption of the ordinance enacting this Chapter 16.58 or March 1, 2018, whichever is later.

## **16.58.040—Vested Rights Determination**

A. Measure Z provides that nothing in the policies enacted by Measure Z shall apply to prohibit any person from exercising a vested right, obtained pursuant to California law as of the date of the Effective Date of Measure Z. This section provides the procedures for the vested rights determination. Notwithstanding a vested rights determination, land uses in support of oil and gas wastewater injection and oil and gas wastewater impoundment are subject to the reasonable amortization provisions set forth in Section 16.58.060 of this Chapter.

B. Any person claiming a vested right, obtained pursuant to state law, as of the Effective Date of Measure Z and seeking an exemption from the policies of Measure Z on the basis of that vested right shall apply for a vested rights determination as provided by this Chapter. Any Claimant must produce evidence that its application meets the standards for a determination of a vested right.

C. To determine that a person has a vested right based on a County-issued permit, the Appropriate Authority must make all of the following findings, based on substantial evidence:

1. That the vested right has been established with respect to a specific parcel or parcels of land or within specifically described boundaries and for a specifically described development or use;
2. That each development or use as to which a vested right is claimed was done in reliance upon a permit validly issued by the County and that permit has not expired;
3. That each development or use as to which a vested right is claimed does not exceed the scope authorized by the terms and conditions of the County-issued permit upon which the Claimant is relying;
4. That the person claiming a vested right performed substantial work and incurred substantial liabilities in good faith reliance upon the County-issued permit;
5. That each development or use as to which a vested right is claimed has not been abandoned prior to the Effective Date of Measure Z.

D. Any Claimant seeking an exemption from the policies of Measure Z on the basis of a vested right shall file an application with the Resource Management Agency for a vested rights determination. The Claimant may elect to file a single application or multiple applications for a vested rights determination but shall be guided by whether multiple vested rights claims share the same factual basis (for example, claims that are based on the same County permit or relate to the same operational oil and gas field) or are factually unrelated (for example, claims that are based on separate County permits for separate oil fields). If the same Claimant has filed multiple applications for vested right determinations, the County may, in its discretion, elect to consolidate the hearings on the applications to consider the applications together.

1. Each application for a vested rights determination shall be on such form as the Resource Management Agency may prescribe and shall include the following information:

- a. Name of Claimant; Claimant's contact information (address, telephone number, and e-mail address); and Claimant's legal relationship to the property that is the subject of the claim of vested right.
- b. Name of Claimant's agent, if any; agent's contact information (address, telephone number, and e-mail address); and written authorization by Claimant of any agent acting on behalf of Claimant.

- c. Identification of the Claimant or agent on behalf of Claimant for purposes of receiving notices and official communications in connection with proceedings under this Chapter, including the street mailing address, as well as email address, where such notices and mailings are to be sent.
- d. Description of the development and use claimed to be exempt from Measure Z pursuant to a vested right, including all incidental improvements such as utilities, road, and other infrastructure, description of the scope of the claimed vested right, and description of the specific parcel(s) and boundaries of land for which the claim of vested rights is made.
- e. A legal description of the real property that is the subject of the claim of vested right and list of all owners of record of the real property.
- f. A list of all owners of real property as shown on the latest equalized assessment roll within 1500 feet of the real property that is the subject of the vested right claim.
- g. A copy of the permits validly issued by the County upon which the claim of vested rights is based.
- h. Documentation upon which Claimant is relying to demonstrate that Claimant has performed substantial work and incurred substantial liabilities in good faith reliance on validly issued County permits.
- i. Documentation that Claimant is relying upon to demonstrate the scope of the vested right.
- j. Documentation demonstrating that the use as to which a vested right is claimed has not been abandoned.
- k. Payment of such application fee as has been duly adopted by the Board of Supervisors.
  1. A certification by the Claimant or Claimant's authorized agent as to documents and information provided in the application and in support of the application; and.
  - m. Such other information as requested on the application form prescribed by the Resource Management Agency.
    2. The information and documentation required to be submitted with the application, listed above, shall be sufficient for RMA to prepare an evaluation of the claim(s) of vested rights but does not preclude the Claimant from submitting additional evidence to the Hearing Officer.
    3. Applications including documents and evidence supporting the applications are public records subject to public disclosure under the California Public Records Act, unless a specific exemption under the Public Records Act applies. Claimant should endeavor to the maximum extent possible to provide evidence in a form that is disclosable to the public. To the extent that Claimant asserts that any portion of the application or supporting documentation is exempt from disclosure, Claimant shall disclose the information to the County as part of the application submittal and identify in writing the specific information claimed to be exempt from disclosure and the factual and legal justification for the exemption. Exemption from disclosure shall be determined in accordance with the confidentiality procedures set forth in this Chapter.
    4. Completeness determination: The application completeness determination shall be based on whether Claimant has supplied the information required for the application as listed in this Chapter. Within 60 calendar days after receipt of the application, the Resource Management Agency shall determine whether the application is complete and shall transmit the completeness determination in writing to the Claimant. RMA may extend the 60-day period by an additional 30 days if Claimant files multiple exemption applications simultaneously, combines multiple vested rights claims into a single application, or files a Combined Exemption

application. If RMA determines the application is not complete, the determination shall specify the information that is needed to render the application complete. Within 30 calendar days of Claimant providing the missing information, the Resource Management Agency shall transmit its completeness determination to the Claimant. The time limits herein may be extended by mutual agreement of RMA and Claimant. Following a determination that the application is complete, RMA shall post a notice of application completeness on the Resource Management Agency website.

E. As soon as feasible after receiving the application and within the completeness review period, RMA shall post on RMA's publicly accessible application database the application and the documents accompanying the application; however, if Claimant has identified a portion of the application submittal as exempt from public disclosure, RMA shall post the Claimant's index of such information instead of the exempt information.

F. Following a determination that the application is complete, the Director shall prepare a staff report with a written evaluation of the vested right claim(s) and documentation in support thereof and include evidence submitted by the Claimant as part of the application. The Director shall also schedule a hearing before the Hearing Officer. The hearing shall be set on a date mutually acceptable to the County, the Claimant, and the Hearing Officer. The hearing date shall be no later than 180 days from the date the application was deemed complete, unless good cause exists for an extension of time. Good cause includes, but is not limited to, complexity of the application, need to search for historical records, assertion of exemptions from public disclosure, and volume of applications. The Hearing Officer and date of hearing shall be selected at least 60 days prior to the scheduled hearing date.

G. If a person other than Claimant, County, and others appearing on their behalf wishes to participate in the hearings conducted by the Hearing Officer under this Chapter, the person must obtain leave to participate as an Interested Person in accordance with the procedure set forth in section 16.58.080.

H. At least thirty days prior to the hearing before the Hearing Officer, the Director shall provide notice of the hearing to the Claimant and Interested Persons. Notice of hearing pursuant to section 16.58.090 is not required for the Hearing Officer hearing. At the same time as the Director provides the notice of hearing to the Claimant, the Director shall transmit a copy of the staff report to the Hearing Officer, the Claimant, and Interested Persons. If the Claimant desires to submit a written response to the staff report to the Hearing Officer in advance of the hearing, the Claimant shall provide a copy of its written response to the Hearing Officer, with service on the Director of Resource Management Agency and Interested Persons, at least fifteen days ahead of the hearing. If an Interested Person has leave from the Hearing Officer to present a written submission to the Hearing Officer, the Interested Person shall provide that written submission to the Hearing Officer, with service on the Director of the Resource Management Agency and Claimant, at least fifteen days ahead of the hearing.

I. The Hearing Officer shall conduct the hearing in accordance with the hearing procedures set forth in Section 16.58.100 of this Chapter. The Hearing Officer shall issue a written report with a recommendation, based on substantial evidence, addressing each of the findings required by this Chapter for the requested exemption and identifying the evidence in support of the Hearing Officer's recommendation.

J. After receipt of the Hearing Officer's written report, the Director of the Resource Management Agency shall set a public hearing before the Board of Supervisors on a date mutually acceptable to the County and the Claimant. The date for the hearing shall be no later



than 90 days from the Resource Management Agency's receipt of the Hearing Officer's report, unless good cause exists for an extension of time. The Director shall provide notice of the public hearing in accordance with Section 16.58.090. Notice shall include the date, time, and place of the public hearing, the identity of the hearing body, a general explanation of the matter to be considered, including a general summary of the Hearing Officer's recommendation, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the public hearing.

K. The Board of Supervisors shall hold a noticed public hearing to consider the recommendation of the Hearing Officer and the administrative record before the Hearing Officer, and the Board may adopt, modify or reject the recommendation of the Hearing Officer. Prior to making its decision, the Board shall, in addition to receiving a staff presentation, provide the Claimant and the public the opportunity to address the Board of Supervisors. In making its decision, the Board shall consider the staff presentation, comments received, the Hearing Officer's recommendation, and the administrative record before the Hearing Officer. The Board may continue the hearing from time to time as needed to render a decision, and the Board may, in its discretion, remand the matter to the Hearing Officer for further recommendation. The Board shall render a written decision, based on substantial evidence, addressing each of the required findings. The decision of the Board of Supervisors shall be final.

#### **16.58.050—Exemption to Prevent a Taking**

A. Measure Z provides that the Board of Supervisors may grant, upon request of an affected property owner, an exception to the application of any provision of Measure Z if the Board of Supervisors finds, based on substantial evidence that both: (1) the application of the provision of Measure Z 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. This section provides the procedures to implement this exemption.

B. Any Property Owner who contends that the application of Measure Z effects an unconstitutional taking of their property shall apply for an exception to Measure Z as provided in this Chapter. Any Claimant must produce evidence that its application meets the standards for the takings exception.

C. To grant the exception, the Appropriate Authority must specify the provision(s) of Measure Z from which the Claimant is exempt, specify the additional or continued land uses that will be allowed pursuant to the grant of exemption, and find, based on substantial evidence, that both:

1. The application of the specific provision of Measure Z 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.

D. Any Property Owner who contends that the application of Measure Z effects an unconstitutional taking of his/her/its property shall file an application with the Resource Management Agency for a takings exemption. The Claimant may elect to file a single application or multiple applications for a takings exemption. If the same Claimant files multiple applications for takings exemptions, the County may, in its discretion, elect to consolidate the hearings on the applications to consider the applications together.

1. Each application for a takings exemption shall be on such form as the Resource Management Agency may prescribe and shall include the following information:
  - a. Name of Claimant; Claimant's contact information (address, telephone number, and e-mail address); and Claimant's legal relationship to the property that is the subject of the claim of vested right.
  - b. Name of Claimant's agent, if any; agent's contact information (address, telephone number, and e-mail address); and written authorization by Claimant of any agent acting on behalf of Claimant.
  - c. Identification of the Claimant or agent of Claimant for purposes of receiving notices and official communications in connection with proceedings under this Chapter, including the street mailing address, as well as email address, where such notices and mailings are to be sent.
  - d. A legal description of the real property that is the subject of the claim for takings exemption and a list of all owners of record of the real property, and/or, as applicable, a description and documentation of a property interest other than real property that is the subject of the claim for takings exemption and a list of all owners of said property interest.
  - e. A list of all owners of real property as shown on the latest equalized assessment roll within 1500 feet of the real property or other property interest that is the subject of the takings exemption claim.
  - f. Identification of the specific provision of Measure Z that Claimant contends would constitute an unconstitutional taking of Claimant's property.
  - g. Documentation upon which Claimant is relying to demonstrate that the identified provision of Measure Z would constitute an unconstitutional taking of property.
  - h. Description and documentation of the uses of the subject property prior to the Effective Date of Measure Z and any County entitlements granted for such uses.
  - i. Description of the minimum additional or continued uses of the subject property that are necessary to avoid a taking under Measure Z, and documentation upon which Claimant is relying to demonstrate such contention.
  - j. Payment of such application fee as has been duly adopted by the Board of Supervisors.
  - k. A certification by the Claimant or Claimant's authorized agent as to documents and information provided in the application and in support of the application.
    1. Such other information as requested on the application form prescribed by the Resource Management Agency.
    2. The information and documentation required to be submitted with the application, listed above, shall be sufficient for RMA to prepare an evaluation of the takings claim(s) but does not preclude the Claimant from submitting additional evidence to the Hearing Officer.
    3. Applications including documents and evidence supporting the applications are public records subject to public disclosures under the California Public Records Act, unless a specific exemption under the Public Records Act applies. Claimant should endeavor to the maximum extent possible to provide evidence in a form that is disclosable to the public. To the extent that Claimant asserts that any portion of the application or supporting documentation is exempt from disclosure, Claimant shall disclose the information to the County as part of the application submittal and identify in writing the specific information claimed to be exempt from disclosure and the factual and legal justification for the exemption. Exemption from disclosure shall be determined in accordance with the confidentiality procedures set forth in this Chapter.

4. Completeness determination: The application completeness determination shall be based on whether Claimant has supplied the information required for the application as listed in this Chapter. Within 60 calendar days after receipt of the application, the Resource Management Agency shall determine whether the application is complete and shall transmit the completeness determination in writing to the Claimant. RMA may extend the 60-day period by an additional 30 days if Claimant files multiple exemption applications simultaneously, combines multiple takings claims into a single application, or files a Combined Exemption application. If RMA determines the application is not complete, the determination shall specify the information that is needed to render the application complete. Within 30 calendar days of Claimant providing the missing information, the Resource Management Agency shall transmit its completeness determination to the Claimant. The time limits herein may be extended by mutual agreement of RMA and Claimant. Following a determination that the application is complete, RMA shall post a notice of application completeness on the Resource Management Agency website.

E. As soon as feasible after receiving the application and within the completeness review period, RMA shall post on RMA's publicly accessible application database the application and the documents accompanying the application; however, if Claimant has identified a portion of the application submittal as exempt from public disclosure, RMA shall post the Claimant's index of such information instead of the exempt information.

F. Following a determination that the application is complete, the Director shall prepare a staff report with a written evaluation of the takings claim(s) and documentation in support thereof and include evidence submitted by the Claimant as part of the application. The Director shall also schedule a hearing before the Hearing Officer. The hearing shall be set on a date mutually acceptable to the County, the Claimant, and the Hearing Officer. The hearing date shall be no later than 180 days from the date the application was deemed complete, unless good cause exists for an extension of time. Good cause includes, but is not limited to, complexity of the application, need to search for historical records, assertion of exemptions from public disclosure, and volume of applications. The Hearing Officer and date of hearing shall be selected at least 60 days prior to the scheduled hearing date.

G. If a person other than Claimant, County, and others appearing on their behalf wishes to participate in the hearings conducted by the Hearing Officer under this Chapter, the person must obtain leave to participate as an Interested Person in accordance with the procedure set forth in section 16.58.080.

H. At least thirty days prior to the hearing before the Hearing Officer, the Director shall provide notice of the hearing to the Claimant and Interested Persons. Notice of hearing pursuant to section 16.58.090 is not required for the Hearing Officer hearing. At the same time as the Director provides the notice of hearing to the Claimant, the Director shall transmit a copy of the staff report to the Hearing Officer, the Claimant, and Interested Persons. If the Claimant desires to submit a written response to the staff report to the Hearing Officer in advance of the hearing, the Claimant shall provide a copy of its written response to the Hearing Officer, with service on the Director of Resource Management Agency and Interested Persons, at least fifteen days ahead of the hearing. If an Interested Person has leave from the Hearing Officer to present a written submission to the Hearing Officer, the Interested Person shall provide that written submission to the Hearing Officer, with service on the Director of the Resource Management Agency and Claimant, at least fifteen days ahead of the hearing.

I. The Hearing Officer shall conduct the hearing in accordance with the hearing procedures set forth in Section 16.58.100 of this Chapter. The Hearing Officer shall issue a written report with a recommendation, based on substantial evidence, addressing each of the findings required by this Chapter for the requested exemption and identifying the evidence in support of the Hearing Officer's recommendation.

J. After receipt of the Hearing Officer's written report, the Director of the Resource Management Agency shall set a public hearing before the Board of Supervisors on a date mutually acceptable to the County and the Claimant. The date for the hearing shall be no later than 90 days from the Resource Management Agency's receipt of the Hearing Officer's report, unless good cause exists for an extension of time. The Director shall provide notice of the public hearing in accordance with Section 16.58.090. Notice shall include the date, time, and place of the public hearing, the identity of the hearing body, a general explanation of the matter to be considered, including a general summary of the Hearing Officer's recommendation, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the public hearing.

K. The Board of Supervisors shall hold a noticed public hearing to consider the recommendation of the Hearing Officer and the administrative record before the Hearing Officer, and the Board may adopt, modify or reject the recommendation of the Hearing Officer. Prior to making its decision, the Board shall, in addition to receiving a staff presentation, provide the Claimant and the public the opportunity to address the Board of Supervisors. In making its decision, the Board shall consider the staff presentation, the comments received, the Hearing Officer's recommendation, and the administrative record before the Hearing Officer. The Board may continue the hearing from time to time as needed to render a decision, and the Board may, in its discretion, remand the matter to the Hearing Officer, for further recommendation. The Board of Supervisors shall render a written decision based on substantial evidence addressing each of the required findings. The decision of the Board of Supervisors shall be final.

#### **16.58.060—Extension of Reasonable Amortization Period**

A. Measure Z prohibits 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 on lands within the County's unincorporated area. Measure Z also provides that such uses must be discontinued within five years of the Effective Date; however, the amortization or "phase out" period for nonconforming land uses under this policy may be extended on a case-by-case basis for up to ten additional years if certain findings are made. This section provides the procedures to implement the exemption from the five-year amortization period in favor of a longer amortization period as allowed by Measure Z.

B. A Property Owner seeking an extension of the five-year amortization period for nonconforming land uses in support of oil and gas wastewater injection or oil and gas wastewater impoundment on lands within the County's unincorporated area shall apply for an extension of the amortization period as provided in this Chapter. Any Claimant must produce evidence that its application meets the standards for an extension of the reasonable amortization period.

C. The five-year amortization period may be extended only for the minimum length of time necessary to provide a reasonable amortization period pursuant to California law. The

extension shall not exceed ten years in addition to the initial five-year period, for a total of fifteen years. To grant the extension, the Appropriate Authority must find:

1. that the Claimant had, as of the Effective Date, a vested right under California law to conduct land uses in support of oil and gas wastewater injection and/or oil and gas wastewater impoundment; and

2. that the Claimant has made a showing, based on substantial evidence, that five years is not a reasonable amortization period pursuant to state law.

D. A Board of Supervisors' determination pursuant to this Chapter that the Claimant has a vested right to conduct land uses in support of oil and gas wastewater injection and/or oil and gas wastewater impoundment is a prerequisite to filing an application for extension of the reasonable amortization period. The Claimant may elect to combine requests for extension of the five-year amortization period into a single application or file a separate application for each request for extension but shall be guided in this election by the scope of the prior vested rights determination.

1. Each application shall be on such form as the Resource Management Agency may prescribe and shall include the following information:

a. Name of Claimant; Claimant's contact information (address, telephone number, and e-mail address); and Claimant's legal relationship to the property that is the subject of the claim of vested right.

b. Name of Claimant's agent, if any; agent's contact information (address, telephone number, and e-mail address); and written authorization by Claimant of any agent acting on behalf of Claimant.

c. Identification of the Claimant or agent on behalf of Claimant for purposes of receiving notices and official communications in connection with proceedings under this Chapter, including the street mailing address, as well as email address, where such notices and mailings are to be sent.

d. The final vested rights determination made pursuant to this Chapter.

e. A legal description of the real property that is the subject of the claim of vested right and list of all owners of record of the real property.

f. A list of all owners of real property as shown on the latest equalized assessment roll within 1500 feet of the real property that is the subject of the vested right claim.

g. Description of the minimum length of time necessary, in addition to the automatic five year phase out and not to exceed fifteen years total, to provide a reasonable amortization period pursuant to state law, and documentation upon which Claimant is relying to demonstrate such contention.

h. Payment of such application fee as has been duly adopted by the Board of Supervisors.

i. A certification by the Claimant or Claimant's authorized agent as to documents and information provided in the application and in support of the application.

j. Such other information as requested on the application form prescribed by the Resource Management Agency.

2. The information and documentation required to be submitted with the application, listed above, shall be sufficient for RMA to prepare an evaluation of the request(s) for extension but does not preclude the Claimant from submitting additional evidence to the Hearing Officer.

3. Applications including documents and evidence supporting the applications are public records subject to public disclosure under the California Public Records Act, unless a

specific exemption under the Public Records Act applies. Claimant should endeavor to the maximum extent possible to provide evidence in a form that is disclosable to the public. To the extent that Claimant asserts that any portion of the application or supporting documentation is exempt from disclosure, Claimant shall disclose the information to the County as part of the application submittal and identify in writing the specific information claimed to be exempt from disclosure and the factual and legal justification for the exemption. Exemption from disclosure shall be determined in accordance with the confidentiality procedures set forth in this Chapter.

4. Completeness determination: The application completeness determination shall be based on whether Claimant has supplied the information required for the application as listed in this Chapter. Within 60 calendar days after receipt of the application, the Resource Management Agency shall determine whether the application is complete and shall transmit the completeness determination in writing to the Claimant. RMA may extend the 60-day period by an additional 30 days if Claimant files multiple exemption applications simultaneously, combines multiple extension requests into a single application, or files a Combined Exemption application. If RMA determines the application is not complete, the determination shall specify the information that is needed to render the application complete. Within 30 calendar days of Claimant providing the missing information, the Resource Management Agency shall transmit its completeness determination to the Claimant. The time limits herein may be extended by mutual agreement of RMA and Claimant. Following a determination that the application is complete, RMA shall post a notice of application completeness on the Resource Management Agency website.

E. As soon as feasible after receiving the application and within the completeness review period, RMA shall post on RMA's publicly accessible application database the application and the documents accompanying the application; however, if Claimant has identified a portion of the application submittal as exempt from public disclosure, RMA shall post the Claimant's index of such information instead of the exempt information.

F. Following a determination that the application is complete, the Director shall prepare a staff report with a written evaluation of the extension request(s) and documentation in support thereof and include evidence submitted by the Claimant as part of the application. The Director shall also schedule a hearing before the Hearing Officer. The hearing shall be set on a date mutually acceptable to the County, the Claimant, and the Hearing Officer. The hearing date shall be no later than 180 days from the date the application was deemed complete, unless good cause exists for an extension of time. Good cause includes, but is not limited to, complexity of the application, need to search for historical records, assertion of exemptions from public disclosure, and volume of applications. The Hearing Officer and date of hearing shall be selected at least 60 days prior to the scheduled hearing date.

G. If a person other than Claimant, County, and others appearing on their behalf wishes to participate in the hearings conducted by the Hearing Officer under this Chapter, the person must obtain leave to participate as an Interested Person in accordance with the procedure set forth in section 16.58.080.

H. At least thirty days prior to the hearing before the Hearing Officer, the Director shall provide notice of the hearing to the Claimant and Interested Persons. Notice of hearing pursuant to section 16.58.090 is not required for the Hearing Officer hearing. At the same time as the Director provides the notice of hearing to the Claimant and Interested Persons, the Director shall transmit a copy of the staff report to the Hearing Officer, the Claimant, and Interested Persons. If the Claimant desires to submit a written response to the staff report to the

Hearing Officer in advance of the hearing, the Claimant shall provide a copy of its written response to the Hearing Officer, with service on the Director of Resource Management Agency and Interested Persons, at least fifteen days ahead of the hearing. If an Interested Person has leave from the Hearing Officer to present a written submission to the Hearing Officer, the Interested Person shall provide that written submission to the Hearing Officer, with service on the Director of the Resource Management Agency and Claimant, at least fifteen days ahead of the hearing.

I. The Hearing Officer shall conduct the hearing in accordance with the hearing procedures set forth in Section 16.58.100 of this Chapter. The Hearing Officer shall issue a written report with a recommendation, based on substantial evidence, addressing each of the findings required by this Chapter for the requested exemption and identifying the evidence in support of the Hearing Officer's recommendation.

J. After receipt of the Hearing Officer's written report, the Director of the Resource Management Agency shall set a public hearing before the Planning Commission on a date mutually acceptable to the County and the Claimant. The date for the hearing shall be no later than 90 days from the Resource Management Agency's receipt of the Hearing Officer's report, unless good cause exists for an extension of time. The Director shall provide notice of the public hearing in accordance with Section 16.58.090. Notice shall include the date, time, and place of the public hearing, the identity of the hearing body, a general explanation of the matter to be considered, including a general summary of the Hearing Officer's recommendation, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the public hearing.

K. The Planning Commission shall hold a noticed public hearing to consider the recommendation of the Hearing Officer and the administrative record before the Hearing Officer, and the Planning Commission may adopt, modify or reject the recommendation of the Hearing Officer. Prior to making its decision, the Planning Commission shall, in addition to the staff presentation, provide the Claimant and the public the opportunity to address the Planning Commission. In making its decision, the Planning Commission shall consider the staff presentation, comments received, the Hearing Officer's recommendation, and the administrative record before the Hearing Officer. The Planning Commission may continue the hearing from time to time as needed to render a decision, and the Planning Commission may, in its discretion, remand the matter to the Hearing Officer, for further recommendation. The Planning Commission shall render a written decision, based on substantial evidence, addressing each of the required findings. The Director of the Resource Management Agency shall transmit a copy of the Planning Commission's decision to the Claimant and Interested Persons.

L. Any person may appeal the decision of the Planning Commission. The appeal shall be filed in writing with the Clerk of the Board of Supervisors within ten days of the Director's transmission of the Planning Commission decision to the Claimant. At the time of the filing of the appeal, the appellant shall pay the required filing fee for the appeal to the Clerk to the Board of Supervisors.

M. The appeal shall include the following information:

1. The identity of the appellant and its interest in the decision;
2. The identity of the decision appealed or the conditions appealed;
3. A clear, complete, but brief, statement of the reasons why, in the opinion of the appellant, the decision is not justified because either: there was a lack of a fair and impartial

hearing, the findings or decision is not supported by the evidence, or the decision was contrary to law; and

4. The specific reasons the appellant disagrees with the findings, or decision made by the Planning Commission, if the appellant disagrees with such findings or decision.

5. The notice of appeal shall set forth specific facts of the matter and reasoning in sufficient detail to notify the County and Claimant (if not the appellant) of the nature of the appeal so that they may formulate their response without being subjected to surprise. The Board of Supervisors will not accept an appeal stated in generalities, legal or otherwise.

N. The Clerk of the Board of Supervisors shall schedule a public hearing on the appeal on a date within 90 days of receipt of the appeal and shall provide notice of the public hearing in accordance with Section 16.58.090. If the appellant or Claimant, if different than the appellant, submits a written request to continue the hearing to a different date, such request for continuance shall be presented to the Board of Supervisors for the Board's determination.

O. The Board of Supervisors shall hold a noticed public hearing on the appeal. The Board shall consider the decision of the Planning Commission, the appeal, the recommendation of the Hearing Officer, and the administrative record before the Hearing Officer. Prior to making its decision, the Board of Supervisors shall, in addition to the staff presentation, provide the appellant the opportunity to present the appeal, provide the Claimant, if different than the appellant, the opportunity to respond to the appeal, and provide the public the opportunity to comment. In making its decision, the Board shall consider the staff presentation, appeal of the Planning Commission decision, the comments it received, the Hearing Officer's recommendation, and the administrative record before the Hearing Officer. The Board of Supervisors may continue the hearing from time to time as needed to render a decision, and the Board of Supervisors may, in its discretion, remand the matter to the Hearing Officer, for further recommendation. The Board shall render a written decision, based on substantial evidence, addressing each of the required findings. The decision of the Board of Supervisors shall be final.

#### **16.58.070 –Combined Exemption Applications**

It is recognized that a Claimant's request for a vested rights determination, request for takings exemption, and request for extension of the reasonable amortization period may, or may not, overlap factually. Accordingly, the Claimant may submit a Combined Exemption Application to combine applications for vested rights determination, takings exception, and/or reasonable amortization extension if the requests are based on common facts and circumstances, such as pertaining to the same entitlements and same real property. If the Claimant files a Combined Exemption Application, the Claimant must provide all of the information required for each of the applications as if they were separately filed and shall remain responsible for land use application fees as if each application were separately filed, with no discount given for combining applications. The same procedures for processing of separate exemption applications shall apply to Combined Exemption Applications.

#### **16.58.080 –Interested Persons**

If a person other than Claimant, County, and others appearing on their behalf wishes to participate in the hearings conducted by the Hearing Officer for any application for exemption



filed under this Chapter, the person must qualify as an Interested Person and obtain leave to participate in the hearings in accordance with the procedures below.

A. Any such person shall submit a written request to the Director of the Resource Management Agency no later than thirty days from the date of posting of the notice of application completeness on the RMA website. The request shall include a mailing address and an e-mail address for receipt of notices.

B. After the Hearing Officer and date of hearing have been selected, but no later than sixty days prior to the scheduled hearing date, RMA shall provide notice of the hearing date and contact information of Hearing Officer to the persons who filed a written request under section 16.58.080.A. Within fourteen days of the date that RMA provides such notification, the person shall submit to the Hearing Officer a written request to participate in the hearing and state the basis for the request and shall serve a copy of the written request on Claimant and the Director of the Resource Management Agency. Claimant shall have seven days from service of the written request to submit a response in writing to the Hearing Officer, with service of said response on the person making the request and the Director of the Resource Management Agency.

C. Upon receipt of the written request and Claimant's response, if any, the Hearing Officer shall determine whether and the extent to which the person may participate as an Interested Person. The Hearing Officer shall render his/her determination more than 30 days ahead of the scheduled hearing date. As part of the determination, the Hearing Officer may set reasonable limits on the participation of Interested Persons in order to manage and not unduly lengthen the hearing process, including such restrictions as requiring individuals belonging to a group to participate as a group, limiting the overall number of Interested Persons, or limiting the extent of written and oral testimony of Interested Persons. If the Interested Person has requested to participate in hearings on multiple exemption applications by the same Claimant to be heard by the same Hearing Officer, that Hearing Officer may, in his or her discretion, decide upon the request without requiring multiple applications by the Interested Person. The Hearing Officer shall provide written notification to the person making the request of the Hearing Officer's determination, with service on the Claimant and the Director of the Resource Management Agency.

### **16.58.090—Notice of Hearing**

A. When this Chapter requires notice of public hearing pursuant to this section, notice shall be given in all of the following ways:

1. Notice of the hearing shall be published in at least one newspaper of general circulation within the County at least ten days prior to the hearing;
2. Notice of the hearing shall be mailed by first class mail at least ten days prior to the hearing to the Claimant identified on the application as the recipient of notice;
3. Notice of the hearing shall be mailed by first class mail at least ten days prior to the hearing to Interested Persons; and
4. Notice of the hearing shall be mailed by first class mail to the owners and residents of real property as shown on the latest equalized assessment roll within 1500 feet of the real property that is the subject of the hearing at least ten days prior to the hearing, unless the number of such persons exceeds 1000, in which case the County may instead provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the County at least ten days prior to the hearing.

B. Notice may be e-mailed in lieu of first class mail if the person requesting notice does not object to e-mail notice.

C. In addition to the notice required by this section, the County may give notice of the hearing in any other manner it deems necessary or desirable.

### **16.58. 100—Hearing Procedures for Hearing Officer**

A. When this Chapter requires a hearing before a Hearing Officer, the hearing shall be conducted in accordance with the procedures set forth in this section.

B. The County shall appoint a Hearing Officer to conduct the hearings and make recommendations on the applications for exemptions as provided by this Chapter.

1. The appointed Hearing Officer shall be an impartial decision-maker selected by a process that eliminates risk of bias, such as:

a. An administrative law judge provided by the State of California Office of Administrative Hearings to function as the County Hearing Officer pursuant to [Chapter 14](#) of Part 3 of [Division 2](#) of [Title 3](#) of the California Government Code; or

b. An independent contractor assigned by an organization or entity which provides hearing officers.

2. The Hearing Officer must have the following minimum qualifications:

a. Be a retired judge from a California state court or federal court; and

b. Have experience in civil judicial proceedings, including land use matters.

3. The Hearing Officer may be disqualified for bias, prejudice, or interest in the proceeding.

C. The Hearing Officer is authorized to conduct hearings; make procedural determinations for the conduct of the hearing; issue subpoenas; receive evidence; administer oaths; rule on the admissibility of evidence; grant continuances for good cause shown; make recommendations concerning findings of fact and legal conclusions; consider evidence, including evidence that is exempt from public disclosure; provide recommendations to the Appropriate Authority; prepare a written report containing a written recommendation and the evidence in support thereof; and prepare an administrative record. These Hearing Procedures do not authorize discovery by Claimant, County, or any other person as part of the application or hearing process.

D. At the place and time set forth in the notice of hearing or, at such place and time to which a hearing has been continued, the Hearing Officer shall conduct the hearing. The order of the hearing shall generally be as listed below, although the Hearing Officer may, in his or her discretion, determine the order of the proceedings, allow additional testimony, provide for questioning, and provide for additional rebuttal:

1. Claimant presentation;

2. County staff presentation;

3. Interested Persons presentations;

4. Staff response;

5. Claimant response.

Technical rules relating to evidence and witnesses shall not apply to such hearings. The Hearing Officer may impose reasonable time limits upon testimony and accept written statements in lieu of oral statements. The Hearing Officer is authorized to request additional information and continue the hearing as the Hearing Officer determines is necessary. The hearing

shall be recorded electronically or, if electronic recording is not feasible, then by court reporter. At the close of the hearing, the Hearing Officer shall take the matter under submission.

E. The hearing shall be open to public observation except as provided herein. The public may participate by following the procedures for Interested Persons specified in this Chapter. The Hearing Officer shall close to the public that portion of the hearing involving evidence that has been determined to be exempt from disclosure pursuant to the confidentiality procedures of this Chapter. During the time the hearing is closed to the public, only that portion of the hearing involving the confidential information may be conducted.

F. The County and the Claimant shall have 30 days after the close of the hearing to submit post-hearing briefs to the Hearing Officer. The County and Claimant shall cause said briefs to be served on each other. Interested Persons may submit a post-hearing brief to the Hearing Officer within 30 days after the close of the hearing if given leave to do so by the Hearing Officer; Interested Persons shall serve any such brief on the County and Claimant.

G. Within 90 days after the close of the hearing, the Hearing Officer shall issue a written report with a recommendation, based on substantial evidence, addressing each of the findings required by the Chapter for the requested exemption(s) and identifying the evidence in support of the Hearing Officer's recommendation. To the extent the Hearing Officer is basing his/her recommendation on evidence determined to be exempt from public disclosure pursuant to this confidentiality procedures of this Chapter, the Hearing Officer shall provide a summary of that portion of the evidence in lieu of disclosing the confidential evidence. The Hearing Officer shall file an official copy of the report with the Resource Management Agency and shall lodge the administrative record of the hearing, including evidence and any briefing, with the Resource Management Agency, except for any documents or portion thereof officially delineated as exempt from public disclosure, which shall be lodged with the Office of County Counsel. The Hearing Officer shall cause a copy of the report to be sent by certified mail to the Claimant and to be mailed first class to Interested Persons.

H. The cost of the Hearing Officer and court reporter shall be borne by the Claimant. The Board of Supervisors may, by resolution, establish the fees and fee schedule for recovery of this cost, separate from or as part of application fees.

### **16.58.110—Confidentiality Procedures**

A. The records submitted by any party to the proceedings are public records, unless exempt from disclosure pursuant to the California Public Records Act (California Government Code section 6250 et seq.). The presumption is that information and records submitted by a Claimant or the public in the proceedings under this Chapter are disclosable to the public because of the right of the public to access to information concerning the conduct of the people's business. Accordingly, any Claimant asserting an exemption from public disclosure for a record or any portion thereof submitted by Claimant in proceedings under this Chapter shall bear the burden and expense of establishing and defending an exemption from public disclosure and must follow the protocols set forth in this Chapter.

B. If a Claimant claims an exemption from public disclosure for information that Claimant intends to submit to support a claim of exemption under Measure Z, the Claimant shall disclose the information to the County as part of the application submittal and identify in writing the specific information claimed to be exempt from disclosure and the factual and legal justification for the exemption. If an entire document is asserted to be exempt from public

disclosure, the document shall be submitted under seal to the County. If only a portion of a document contains exempt information, the Claimant must provide two copies of that document to the County: a copy submitted under seal, with the exempt information specifically identified, for use in the Hearing Officer proceedings; and a public disclosure copy that redacts the exempt portion, so as to enable public disclosure of the remainder of the document. The Claimant shall supply an index that summarizes in a manner that is publicly disclosable, for each document or portion of document that contains exempt information, the type of information that has been designated as exempt. The County shall determine whether the information is exempt from disclosure and notify the Claimant in writing of its determination.

C. If the County determines the information is exempt, the following procedures apply:

1. The County and its officers, agents, employees, including counsel for the County, shall have access to the exempt information, and the County may disclose the information to any person necessary for the representation of the County in proceedings under this Chapter, provided that the County shall store and manage the exempt information with due regard to preventing disclosure of the exempt information to persons not authorized to receive the information.

2. The exempt information may be submitted into evidence before the Hearing Officer. The Hearing Officer shall close to the public that portion of the hearing involving the exempt information. During the time the hearing is closed to the public, only that portion of the hearing involving the exempt information may be conducted. If a record of the hearing before the Hearing Officer is prepared, the County shall take steps to ensure that the record of the closed portion of the hearing is handled in a manner that protects its confidentiality.

3. To the extent the Hearing Officer bases his/her recommendation on the exempt information, the Hearing Officer shall provide a summary of that portion of the evidence in lieu of disclosing the exempt evidence. The Hearing Officer may provide an analysis of the data in aggregate form or in a manner which does not disclose the exempt information. The Hearing Officer shall lodge with the Office of County Counsel the portion of the administrative record that contains the exempt information. Nothing in this Chapter precludes the County from including the exempt information in a judicial proceeding, subject to such protective orders as may be applicable in that proceeding.

4. The Claimant shall defend, indemnify, and hold the County harmless from any and all claims, actions, liabilities and losses arising out of the withholding of the information.

D. If the County determines that the information is not exempt from disclosure, the following procedures apply:

1. The County shall notify the Claimant in writing that the County will disclose the information, but will not disclose earlier than 21 days after the date of notification. If the Claimant has no objection to the release of the information, the Claimant shall notify the County to allow disclosure, whereupon the remaining procedures shall not apply. If the Claimant does not so notify the County, the procedures below apply.

2. The County shall make the information publicly available as part of the proceedings under this Chapter but not earlier than 21 days after the date of mailing or e-mailing of the County's determination to the Claimant, unless, prior to the expiration of the 21-day period, the Claimant files a motion or action in an appropriate court for an order or declaratory judgment that the information is subject to protection or an injunction prohibiting disclosure of the information to the public. Claimant shall defend, indemnify, and hold the County harmless from

all claims, actions, liabilities, and losses arising from any third party challenge to the withholding of the information.

3. If Claimant is a party to litigation challenging Measure Z at the time of the adoption of the ordinance enacting this Chapter, a court order in that pending litigation resulting from a motion that the information is subject to protection will meet the requirements of this Section but do not relieve the Claimant of the obligation to defend, indemnify, and hold the County harmless in any third party action challenging the withholding of the information.

E. An exemption claim shall not be made after the fact for particular information already disclosed to the County without a claim of exemption.

#### **16.58.120 --Fees**

Fees for applications, appeals, and costs specified by this Chapter shall be as established by the Board of Supervisors by resolution and as set forth in the Monterey County Fee Resolution, pursuant to [Chapter 1.40](#) of the Monterey County Code, as amended from time to time.

#### **16.58.130– Reconsideration of denial**

Nothing in these procedures prevents the Board of Supervisors from rescinding, reconsidering, or altering a prior denial of an exemption application as a result of a judicial determination of a takings or impairment of a vested right.

SECTION 2. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this \_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote:


AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mary L. Adams, Chair  
Monterey County Board of Supervisors

ATTEST

GAIL T. BORKOWSKI  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
  
WENDY S. STRIMLING  
Senior Deputy County Counsel