Attachment A

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ATTACHMENT A
PROJECT DISCUSSION

Background

Trio Petroleum (the applicant) submitted an application for a temporary Use Permit to allow production testing of an existing well located on a parcel in South County owned by the Porter Estate Company. As with many oil and gas permits, typically a property owner holds surface rights, and a mineral rights owner holds rights to the subsurface. In this particular application, the owner of the real property is Porter Estates Company Bradley Ranch Inc, the mineral rights owner is Bradley Minerals Inc, and the applicant, Trio Petroleum Inc, holds a lease to the mineral rights.

It has been the practice of the County to issue separate Use Permits respectively for testing of oil and gas and long term production of oil and gas. In this case, the temporary Use Permit would allow use of an existing well to test for commercial quantities of oil and gas. This temporary Use Permit is conditioned to require abandonment of the test wells and full site restoration if commercial quantities of oil and gas are not found at the site. If commercial quantities of oil and gas are found, a subsequent Use Permit with appropriate environmental review would be required to develop the site for long term production. The proposed temporary Use Permit would allow production testing of an existing oil and gas test well (Bradley Minerals Well 2-2) located off Jolon Road near Bradley in South County. This request for a test well would be conditioned to be for a temporary period and to allow only limited quantities of extraction.

This well site contains two wells: Bradley Minerals Well 1-2 which was drilled by the present applicant, Trio Petroleum, in 2004 under a temporary Use Permit (PLN040283) that expired in 2005. Trio did not restore the site upon completion of their testing. Well 1-2 is not included in this application for testing. Bradley Minerals Well 2-2 was drilled in 2007 by Venoco under temporary Use Permit (PLN070173), and was granted an extension in 2009. The permit expired in 2010. The well site was never restored to its predevelopment state and presently sits idle, which is a violation of the conditions of approval. The approval of this temporary Use Permit would resolve the violations of the two prior permits. If the testing of well 2-2 determines there is not commercial quantities of oil and gas, a condition of approval requires restoration of both well 1-2 and 2-2.

Trio Petroleum acquired Bradley Minerals well 2-2 in March of 2014 with the intent to conduct additional production testing. Trio Petroleum received permits from the California Division of Oil, Gas, and Geothermal Resources (DOGGR) in April of 2014 to rework the existing oil well. RMA- Planning and Building Services received a complaint in late April that the oil company was working on an existing well with an expired use permit. A stop work notice was issued to Trio Petroleum that stated two options: 1) restore the site to its predevelopment state, or 2) submit an application for a temporary use permit. The applicant complied with the Monterey County citation by closing the well and submitted an application for a temporary Use Permit to allow production testing for oil and gas on Bradley Minerals Well 2-2.

The Planning Commission held a duly noticed public hearing on the application on July 30, 2014. Staff recommended approval of the temporary Use Permit application with a finding that

the project was categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guideline Section 15301. A letter submitted by the Center for Biological Diversity (CBD) challenged the use of a Categorical Exemption and requested denial of the proposed temporary use permit. The Planning Commission directed staff to prepare an Initial Study and continued the hearing to a date uncertain.

An Initial Study was prepared finding that, with mitigation, there would be no significant adverse impacts associated with the temporary Use Permit. A Mitigated Negative Declaration (MND) was prepared and circulated for public review from February 27 through April 1, 2015. Two comment letters were received, one from the Monterey Bay Unified Air Pollution Control District and one from Citizen Planning Alliance. Following circulation of the MND, the project was scheduled and noticed for the Planning Commission hearing on April 29, 2015. Responses to these comments were addressed in the staff report to the Planning Commission for the April 29, 2015 hearing. A letter from the Center for Biological Diversity was received the morning of April 29, 2015 requesting the Planning Commission to deny the application and require an EIR. The letter stated that insufficient time had been granted to allow public comment, and that the Mitigated Negative Declaration failed to fully disclose or mitigate impacts to water, climate, air quality, endangered species, and seismicity. Staff provided responses to each of these comments during the public hearing. No members from the public or Center for Biological Diversity were in attendance at the public hearing. The Planning Commission voted to approve the project with a vote of 5-4 on April 29, 2015.

The Center for Biological Diversity timely appealed the decision of the Planning Commission on May 11, 2015. The appeal letter (Attachment F) contends that the Mitigated Negative Declaration failed to address several issues. The specific items contained in the appeal and responses to these issues are discussed in detail below. (See section on Appeal Contentions and Responses).

Project Description

Production testing (Exploration for oil and gas):

The temporary Use Permit would allow production testing on the existing Bradley Minerals Well 2-2. The site has already been previously disturbed. The previous planning permits allowed improvements to the site including removal of vegetation from the area surrounding the well, grading the well pad flat, installation of an access drive, temporary surfacing the site (gravel) to support vehicular movement, and drilling the two wells. Both wells are located on the southern edge of the gravel pad, and a work trailer and porta potty currently sit on the site.

The proposed production testing on Bradley Minerals Well 2-2 will involve opening specific zones within the existing well borehole that is approximately 10,400 feet in depth. The work done by Trio Petroleum, prior to being issued a citation by Monterey County Code enforcement, included re-opening of the well, cleaning of the borehole and the creation of perforations in the existing well borehole. There is no additional drilling or well stimulation proposed as part of the temporary use permit. Production testing involves creating perforations in specific zones of the existing well followed by pumping of the well to determine if commercial quantities of oil and gas can be produced. The previous applicant (Venoco Inc) tested certain zones within the well borehole; however Trio Petroleum proposes testing of a zone in the existing borehole that was not previously tested by Venoco.

DOGGR's records for this well indicate that Venoco used well stimulation treatments such as acid stimulation and hydraulic fracturing. These treatments were performed in February and June of 2008 and were not prohibited by the County's Use Permits. The first treatment used acid injection and recovered nominal amounts of oil followed by two idle months. The second treatment in May of 2008 included acid and hydraulic fracturing. During this treatment the inner casing split at a depth of approximately 1,700 feet, but did not affect the outer casing. The water table for this area reaches a depth of approximately 1,900 feet. Repair to the inner casing was made, and testing of the well continued through early 2009.

Though Venoco utilized stimulation treatments in the past on this well, proposed production testing will not involve stimulation. The applicant does not propose the use of well stimulations, and staff is recommending a condition of approval to prohibit the use of well stimulation treatments. If oil does exist in the subsurface formation, oil at this depth is expected to naturally flow to the well perforations. The applicant anticipates that the well will recover salt water (brine/brackish fluids) mixed with oil. The project description submitted by Trio Petroleum cites the potential use of acid as a form of well maintenance. Acid of low concentration levels is used for ongoing maintenance for oil and domestic water wells to clean calcium and other build up on the perforations of the well. The California Department of Conservation does not view use of acid for well maintenance as a well stimulation treatment because the acid is of low concentration and put down the well with the intent to clean, not to permeate geologic formations. This process is referred to in the recently adopted state regulations for well stimulation treatments, which differentiates between use of acid for well maintenance and use of acid for well stimulation (Public Resources Code Section 1761 & 1777).

New state regulations, which were not in place during the permitting of past use permits on this site, require DOGGR to notify the local planning entity when well stimulation treatment permits are issued. This communication will ensure that Monterey County is notified when, and if, a site were permitted for well stimulation and would give RMA-Planning the opportunity to review records to ensure project sites have the necessary land use entitlements. If not, enforcement action can be taken. In this case, staff proposes a condition which would prohibit the use of well stimulation treatments at this well site. Accordingly, if the applicant were to want to use well stimulation, a new permit or permit amendment would be required.

There are no site improvements necessary for this project, as any improvements that would typically be necessary already exist onsite. There is an existing access road that leads to the existing well pad. There will be no additional drilling, grading or vegetation removal necessary for the proposed exploration. All essential equipment will be temporary in nature such as portable fresh water, bathroom facilities, temporary tanks to recover fluids, and the pumping unit.

The applicant anticipates that pumping of the well will recover predominantly salt water mixed with oil and states that it is unlikely that residue from the past fracturing jobs exist. The fluids will be pumped directly from the well into steel enclosed tanks. Oil at this depth will likely be of a high gravity, between 32 and 38 degrees, and will naturally separate from the salt water.

Vacuum trucks will be used to recover the oil, which will be sold onsite and trucked directly to the purchasers. Similarly, the salt water will be collected by a licensed contractor and disposed of offsite. The salt water that is produced from deep wells is typically brackish and contains a high amount of total dissolved solids (TDS). Fluids would need to be disposed of by transportation to an Environmental Protection Agency (EPA) certified Class II injection well or to a hazardous waste facility. Comments were received from the appellant that these disposal sites have been found to be out of compliance and this could pose an environmental impact. In response to these comments, staff recommends a condition of approval requiring the salt water to be disposed of only at sites that are in compliance with all regulations and consistent with a set of performance criteria established in the condition. The criteria requires the applicant to dispose of water only in permitted injection wells that are confirmed to be located in exempted aquifers by DOGGR and the EPA, or at a certified hazardous waste facility. The applicant will be required to disclose the licensed contractor responsible for disposal and disposal locations prior to commencement of production testing. Environmental Health Bureau staff proposes conditions that will require the applicant to abide by all applicable state and federal regulations relative to the handling, storage and disposal of hazardous waste, including but not limited to production fluids. Additionally, the Mitigated Negative Declaration resulted in mitigations that will reduce potential impacts to the adjacent ephemeral stream by requiring submission of a spill prevention plan. This is included in the conditions of approval under Condition 26.

Regulatory Setting

The County and the State share permitting authority over oil and gas wells. As the local land use authority, the County has the authority to permit land for the use of oil and gas extraction and the responsibility to analyze and disclose the environmental impacts of oil and gas projects. This is reviewed through a Use Permit process. After a Use Permit has been obtained by an applicant, the applicant must obtain permits from the State Division of Oil, Gas, and Geothermal Resources (DOGGR) for the drilling, operation, and maintenance of the well. DOGGR also reviews and regulates the Underground Injection Control program for disposal wells. Any produced fluids from the oil well that will be injected back into the formation are required to be disposed of in a well or facility approved by DOGGR. Additionally, the applicant may need to obtain permits from other state agencies such as the Monterey Bay Unified Air Pollution Control District and the Regional Water Quality Control Board.

Temporary nature:

This temporary Use Permit is conditioned to allow production testing on an existing oil well for a period of only one year to determine if the well contains commercial quantities of oil and gas.

Project Issues

Consistent with County practice, previous entitlements for this site were approved to allow the drilling of test wells for production testing to determine if the well can produce commercial quantities of oil and gas. This entitlement would allow additional testing on the existing well, expiring one year after the permit is approved. At that time the applicant can request an extension to allow for more testing, apply for a Use Permit for permanent oil and gas production, or the applicant will be required to abandon the well and restore the site to its predevelopment state.

The fact that the site has not previously been restored as part of the prior permits makes restoration at the end of this use an important consideration. For the current permit, the Planning Commission approved conditions requiring a performance bond in the full amount of the estimated cost for restoration of the well site be submitted to RMA-Planning prior to the commencement of production testing. This would include the removal of all temporary equipment, abandonment of Bradley Minerals Well 1-2 & 2-2, and re-contouring of the land to match the surrounding area as permanent grazing land. Staff recommends this condition to ensure compliance with past permits, correct past violations and minimize the likelihood of future violations.

If the applicant does find commercial quantities of oil, a subsequent Use Permit will be required to develop the site for full oil production. That Use Permit application would be subject to further environmental review and consideration of the potential effects of opening up a new area of the county, along the wine corridor to this use, which can significantly change the landscape without careful site planning. That permit would also be conditioned to restore the site upon completion of oil and gas extraction.

Environmental Review

The Mitigated Negative Declaration prepared for the project considered the proposed project and the reasonably foreseeable impacts of long term production, if commercially viable quantities of oil and gas were found at the site. The following environmental factors were analyzed: aesthetics, biological resources, greenhouse gas emissions, land use/planning, transportation/traffic, agricultural resources, cultural resources, hazards/hazardous materials, mineral resources, public services, utilities/service systems, air quality, geology/soils, hydrology/water quality, and noise, including potential cumulative impacts. Evaluation of these impacts resulted in the determination that, with the exception of biological resources, the project as proposed would not result in significant impacts to any of the analyzed environmental factors. It was determined that with incorporated mitigation, the project would not result in significant impacts to biological resources.

The project site is highly altered, consisting of an existing gravel pad, two oil wells, a temporary trailer, and lacks vegetation. The MND concluded that due to the existing conditions of the project site, no special status plants are expected to occur or become established in the project site, and secondly, due to the disturbed nature of the project site, lack of prey base, and limited vegetation cover, special status wildlife are not expected to reside in the project footprint, but may move through the site while foraging. The project buffer area surrounding the project site contains habitat that could support sensitive species; however no signs of sensitive species were found in the area. The MND provides mitigation to reduce the potential impacts to these potential sensitive species to a level of less than significant. These mitigations require the applicant to hold Worker Environmental Awareness Program (WEAP) training to all employees onsite, implement avoidance/minimization measures for the San Joaquin Kit Fox, and conduct pre-construction surveys to ensure no endangered species are in the project area. The MND found that there are protected trees in the vicinity of the project site and requires mitigation that would implement tree protection measures to reduce impacts to a level of less than significant. The MND also found an ephemeral stream adjacent to the project site and requires mitigation to

prepare a Spill Prevention Control Plan that would prevent any spills or fluids onsite from impacting the adjacent stream.

Comments received on Mitigated Negative Declaration
The Monterey Bay Unified Air Pollution Control District (MBUAPCD) provided three comments on the MND, which do not change the analysis of the project. The Mitigated Negative Declaration utilized the 2008 Air Quality Management Plan, and MBUAPCD commented that the newest data available is in the 2013 Triennial Update. The project has since been analyzed with data from the 2013 update, and this analysis does not change the conclusions related to air quality impacts. The district also asked for clarification on estimated truck trips and emissions for production testing. The Mitigated Negative Declaration estimated four roundtrip trucks per week for production testing, which includes trucks carrying waste fluid and also oil. Information for the production related truck emissions can be found in Appendix A of the Mitigated Negative Declaration.

A second comment letter was received from Citizen Planning Alliance. This letter generally addresses air quality, aesthetics, well integrity, and waste disposal. The comment letter includes suggestions for well casing integrity, waste disposal, and air quality, which are regulated by the MBUAPCD and DOGGR. Additionally, the comment letter describes Bradley Minerals Well 2-2 as an 'acid injection' well. This characterization is incorrect. The project description states that an acid wash may be used on the well for the purposes of maintenance, and the concentration level of this acid is disclosed in the Hazardous Materials section of the document. Use of acid wash for maintenance is not considered acid injection or well stimulation, and the project has been conditioned to not allow any well stimulation treatments on the well. The letter also requests a distinction between a test well and permanent production well. The project is to allow production testing which requires several months of monitoring to determine results. In response, a condition was added to the Planning Commission action that established the testing threshold to the number of truck trips necessary for the project. This condition remains in the draft resolution before the Board of Supervisors (Attachment B). The project description in the Initial Study stated that approximately three truck trips per week would be necessary to haul away fluids, including both wastewater and oil. For the purposes of this project, production testing would be determined by the truck trips assumed within the Initial Study. The project has been conditioned to require the submittal of monthly logs of truck trips made for the hauling away of produced fluids. If the truck trips exceed an average of 13 truck trips per month, the applicant will be required to submit an application for permanent production, as the truck trips would exceed what was analyzed for the project and expected for testing only.

Appeal

On May 11, 2015, the Center for Biological Diversity timely appealed the Planning Commission's decision to adopt the Mitigated Negative Declaration and approve the temporary Use Permit. The appellant requests that the Board of Supervisors grant the appeal and deny the temporary Use Permit. The appellant states that the MND prepared for the project does not comply with the requirements of CEQA and the Planning Commission's actions are not consistent with state law. Each contention presented by the appellant is addressed below.

Appeal Contentions & staff response

1. *Contention: The MND fails to consider reasonably foreseeable impacts from the project:* The appellant contends that the MND did not consider impacts of all phases of the project including project planning, implementation, operation, and future development and refining and combustion of fossil fuels.

   Response: The project description in the MND (Pages 2-9 of Exhibit C) specifies that the Initial Study would analyze the reasonably foreseeable impacts of production testing and long term production of the project. That includes the assumption that if commercial quantities of oil and gas were found during production testing of Bradley Minerals Well 2-2, it is reasonably foreseeable that the second well on the property, Bradley Minerals Well 1-2, would also be used for production. The project description includes the necessary activities for preparing the site for testing, production testing, and the reasonably foreseeable activities that would be necessary for converting the site for long term production, and the impact of long term production for both wells. The MND analyzes the reasonably foreseeable impacts of production testing of Bradley Minerals Well 2-2, and long term production of both Bradley Minerals Well 1-2 & 2-2 for impacts to aesthetics, biological resources, greenhouse gas emissions, land use/planning, transportation, agricultural resources, cultural resources, hazardous materials, mineral resources, public services, utilities, air quality, geology, hydrology, and noise, including potential cumulative impacts. Anything beyond this analysis is not reasonably foreseeable and would be mere speculation. The previous tests on this well did not result in a permanent production facility, so it is not known if the well will yield commercially viable quantities of oil. If commercial quantities are found, a new Use Permit will be required to develop the site for long term production, which will require environmental review based upon what is known and proposed at that time.

2. *Contention: The MND fails to consider the harm from Well Stimulation or Enhanced Oil Recovery Techniques:*
   The appellant contends that unless the project approval is expressly conditioned upon a permanent prohibition on well stimulation and enhanced oil recovery techniques, CEQA requires that the impacts of those techniques be fully disclosed and analyzed. The appellant cites potential impacts of enhanced recovery techniques such as acidizing, steam injection, and hydraulic fracturing.

   Response: The project description in the MND states that no well stimulation, including steam injection or hydraulic fracturing, is proposed and that any long term production of Bradley Minerals Well 2-2 & 1-2 would not include any well stimulation. The temporary Use Permit approved by the Planning Commission was conditioned (#22 – NO WELL STIMULATION TREATMENTS) to prohibit the use of any well stimulation on Bradley Minerals Well 2-2, and this draft condition remains in the conditions of approval before the Board of Supervisors. The project description discloses the possibility of using acid for ongoing well maintenance, which is not considered well stimulation, as the acid is intended to clean, not stimulate, the borehole. Acid is used to clean the perforations of the well, and is immediately pumped out of the well. The concentration of the acid chemical and impacts

were analyzed on page 48 of the MND, concluding that impacts would be less than significant.

3. *Contention: The MND fails to consider the harm resulting from produced water:*
The appellant contends that the MND fails to consider the impact of the produced water because the document did not disclose where exactly the produced water will be transported to. Secondly, the appellant states that impacts resulting from produced water have not been fully evaluated in the MND because recent assessments by the EPA have determined numerous deficiencies with the Underground Injection Control (UIC) program.

   Response: The Hazardous Materials section of the MND states that the produced fluids will be treated as hazardous materials, as fluids from deep in the ground naturally contain harmful chemicals and a high amount of total dissolved solids (TDS). The MND states that the produced fluids would be transported according to the regulations of the following responsible agencies: California Department of Transportation, California Environmental Protection Agency, California Department of Toxic Substances Control (DTSC), and California State Fire Marshal. The MND states in the project description that the produced fluids will be delivered to an approved disposal well or wastewater disposal facility. All disposal wells are regulated by the US Environmental Protection Agency's (EPA) Underground Injection Control (UIC) Program. In 1983 the EPA gave the State of California Department of Conservation (DOC) the primary authority to regulate all Class II injection (disposal) wells. The County is entitled to rely on compliance with state and federal regulations to determine that impacts will be less than significant. The MND determined that compliance with the above mentioned agency's regulations would result in less than significant impacts due to Hazardous Materials (produced water).

   The reliance on compliance with state and federal regulations to conclude the impact is mitigated is reasonable, notwithstanding the EPA finding that there are numerous injection (disposal) wells injecting into non-exempt aquifers. Both the EPA and the DOC have been actively communicating over the past year to work toward compliance. The DOC has initiated a rulemaking process to address compliance with injection wells in non-exempt aquifers, establish penalties for failure to comply, and has required the 'shut in' of several wells to evaluate impacts to surrounding water supply wells. Due to the recent assessments, communication, and plan of action agreed upon by the EPA and DOC, the County can continue to rely on compliance with state regulations to determine impacts of produced water would be less than significant. However, in order to be extraordinarily cautious, a condition is proposed for the Board of Supervisors' consideration which will require the disposal well sites to be sites that are in compliance with state and federal regulations, are in an exempted aquifer, and that an after the fact report be provided showing that the authorized disposal sites were utilized.

4. *Contention: The MND fails to consider significant impacts on water resources:*
The appellant contends that even though the project description states that all produced fluids will be contained in enclosed steel tanks, the County did not expressly prohibit the use of sumps or any kind storage pit, and that it is reasonably foreseeable that the applicant would

dig a storage pit, leading to impacts on water resources. The appellant also contends that the MND unlawfully defers the preparation of a spill prevention plan as a mitigation measure.

Response: The MND analyzed impacts based on the project description, which includes the use of fully enclosed steel tanks to hold all produced fluids and that the project would not include any additional grading. The resolution approved by the Planning Commission was conditioned to allow only specific uses that are described in the project description, which includes a statement that no additional grading is necessary for the project (Finding1). This finding and evidence remains in the draft resolution before the Board of Supervisors (Attachment B). Any activity that would involve additional grading for the project would be in violation of the temporary Use Permit. In order to be very conservative, condition #26 of the project has been modified to make abundantly clear that no sump or storage pit may be excavated on the project site and all fluids must be contained in a manner which precludes spills from being absorbed into the soil or released into the environment.

The preparation and submittal of a spill prevention plan is Mitigation Measure #10 for biological resources, which has been incorporated into the conditions of approval for the project (Condition #26). The condition requires the Spill Prevention Plan to be developed according to a set of performance criteria (included in condition) that will reduce potential impacts of any spill onsite from draining into the adjacent ephemeral stream. Since the Planning Commission hearing, Condition #26 has been clarified and amplified to spell out in more detail the requirements for the Spill Prevention Plan. Because the mitigation measure and condition of approval include performance criteria to achieve the reduction of impacts, the County is not deferring mitigation. The requirement provides secondary containment which is a standard practice in situations addressing potential spill of material which could be detrimental to the environment. Secondly, the condition requires the submittal of a spill prevention control plan for compliance with existing regulations of the California Health and Safety Code.

5. *Contention: The MND fails to consider significant impacts of greenhouse gas emissions:* The appellant states that the MND made two errors in its approach to calculating greenhouse gas emissions and determining the significance. First, the appellant contends that the threshold used (10,000 MT CO2E-metric tons of carbon dioxide equivalent-per year) is too high and not adequately supported. The second contention is that the global warming potential for methane used in the MND did not specify a timeframe and that the potential is 'woefully' below current data for global warming potential, referencing a 2013 report.

   Response: The MND utilized thresholds recommended by the Monterey Bay Unified Air Pollution Control District (MBUAPCD) for stationary source projects, the threshold for stationary source projects is the appropriate threshold for this project. Stationary source projects are projects that are not portable and are only operated at a single facility. This threshold of 10,000 MT CO2E per year is utilized by MBUAPCD, as well as San Luis Obispo Air Pollution Control District (SLOAPCD), and the Bay Area Air Quality Management District (BAAQMD). The MND calculated that the emissions estimated from the project would result in 835 MT CO2E per year for the testing phase, which is significantly under the threshold recommended by MBUAPCD. The MND determined that

the emissions for long term production would result in 1,609 MT CO2E per year for long term production. After the Planning Commission hearing, it was determined this calculation was in error, and the actual emissions for long term production would result in 1,586.83 MT CO2E per year, which is lower than what was originally analyzed in the MND and significantly under the threshold recommended by MBUAPCD.

The global warming potential that was used to analyze the project was based on the 2007 Intergovernmental Panel on Climate Change (IPCC) Report, which California Air Resources Board (CARB) uses as a CEQA threshold. The global warming potential is used to determine how much carbon dioxide equivalent (CO2E) the methane and nitric oxides contribute to greenhouse gas emissions. The 2007 IPCC report stated the global warming potential for methane was 23, meaning every unit of methane is multiplied by 23 and added to the total CO2 emissions. The 2013 IPCC report increased the global warming potential to 28 (meaning every unit of methane is multiplied by 28). The global warming potential was analyzed for a 100 year time frame, which CARB uses as the standard practice for CEQA analysis. In response to this comment, additional analysis has been done using the 2013 data for global warming potential (28). The emissions estimated from the project would result in 837 MT CO2E per year (as opposed to 835 MT CO2E) for the testing phase, and 1,587.25 MT CO2E per year (as opposed to 1,586.83 MT CO2E) for long term production. The analysis resulted in only a negligible change in total exploration and production emissions (less than 1%) which does not change the significance conclusion of the MND. This analysis is included in the errata to the Mitigated Negative Declaration (Attachment D).

6. *Contention: The environmental document is deficient in its mitigation of impacts on biological resources:*
The appellant contends that the MND mitigations for biological resources do not sufficiently reduce the impacts of special status species to "less than significant."

Response: The appellant incorrectly contends that the project site supports the San Joaquin kit fox, that the California condor inhabits the area, and that the vicinity of the project site is used by numerous special status animals. The MND and previous biological reports conducted in 2007 and 2014 by Booher Consulting indicate, based on literature review and onsite surveys, that no special status species have been previously documented within the boundaries of the proposed project site, no special status species were observed during the biological surveys, and special status species are not anticipated to occur in the project site as a result of the existing conditions of the site. The biological reports depict the site as a highly disturbed site, with an existing gravel pad, and lacking vegetation. The reports did indicate that the project vicinity has the potential to support special status plant species and wildlife species. The MND developed mitigations that would reduce impacts to these potentially occurring special status species to "less than significant." Regarding the appellant's reference to the California condor, the California condor has been reintroduced in Big Sur (50 miles west) and the Pinnacles National Park (45 miles north), and the closest sighting of a condor was 3.55 miles east of the project. The MND states that the project site does not contain any known or potential nesting sites; however because potential foraging habitat was observed in the project vicinity, mitigations are provided. According to California Department of Fish and Wildlife, the San Joaquin kit fox has been recorded in proximity to the project site;

however no species or any suitable denning were observed in the project site. The MND states that the project vicinity may support foraging for the San Joaquin kit fox, therefore mitigations are provided to reduce impacts to "less than significant." The mitigations provided in the MND sufficiently reduce impacts to special status species. The project site clearly does not contain habitat to support sensitive species, however due to habitat in the vicinity that could potentially support sensitive species, mitigations have been provided to reduce potential impacts that the project could have on potentially occurring sensitive species in the larger vicinity.

7. *Contention: Further Deficiencies – Cumulative Impacts:*
The applicant contends that the MND does not contain a "real or adequate" cumulative impacts analysis.

Response: The MND addresses cumulative impacts to air quality, noise, transportation/traffic, and utilities. It concludes that, when considered in combination with the effects of past and probable future projects, the project would result in less than significant impacts. The analysis of this project's contribution demonstrates that its impact is not cumulatively considerable. This permit would only allow testing for a temporary period of one year of one existing well on a previously disturbed site. At the conclusion of this time, the applicant is required to restore the site or, if commercial quantities of oil and gas are found, the applicant may apply for a subsequent Use Permit to develop the site for long term production, which will require environmental review. Any contribution of this project to greenhouse gas emissions or climate change would be negligible. The analysis also shows the reasonably foreseeable impact if the well were to be used for production. This contribution to greenhouse gases and climate change would be substantially below MBUAPCD thresholds.

Subsequent to the preparation of the Initial Study and release of the Mitigated Negative Declaration, Trio Petroleum submitted three separate application requests for additional test wells within approximately 5 miles of this project site in the Hames Valley. These applications are in the preliminary stage and are distinctly different in nature than the proposed Use Permit for Bradley Minerals Well 2-2, and therefore do not belong in the cumulative impact analysis. These wells would not be intended to test for the production of oil from the same geologic formation as the Bradley Minerals Well 2-2, but are wells targeting different geologic layers at some distance from the project site. The location of the proposed wells in Hames Valley was determined using geologic and seismologic information that shows anomalies in the underlying geologic layers approximately 4,000-6,000 feet below surface, as compared to the subject project to test an existing well at 10,400 feet in depth. These future applications will be processed separately and environmental review of these proposed test wells will review the cumulative effects of those wells. The Bradley Minerals Well is different in nature because it is an existing well looking at a particular geologic formation while the potential future wells would look at geologic anomalies which would be a different source of oil.

Staff Recommendation

Oil and gas exploration has become a contentious issue, primarily resulting from the controversy associated with well stimulation or fracking. This project is different. This project is a temporary

Use Permit to allow production testing within an existing borehole on a previously developed site. This application does not propose the use of well stimulation, and staff recommends conditions to prohibit the use of well stimulation treatments at this site. At the time of the Planning Commission consideration, conditions were added to define production testing in terms of volume (truck trips per month) and duration of the temporary Use Permit (12 months with a potential 6 month extension). It is not foreseeable to know whether this well will ever produce commercial quantities of oil or gas. Testing to date would not indicate the presence of oil and gas. If the well proves to support oil and gas production then a separate discretionary Use Permit and environmental document will be required.

Modifications of the project conditions approved by the Planning Commission are recommended in response to some of the appellant's contentions. For the Board of Supervisors consideration, condition #26 has been modified to clarify that spill containment will be accomplished in a manner that does not allow additional excavation or permit spilled liquids to infiltrate soil or the surrounding environment, and condition #23 has been added to ensure waste disposal will be in compliance with the Safe Water Drinking Act and California's Class II Underground Injection Control (UIC) program for injection wells. The County is required, as lead agency, to analyze the impacts of the entire project; however, the state regulates the operations of the well. The operation of the well is regulated by the state Division of Oil, Gas, and Geothermal Resources, the Monterey Bay Unified Air Pollution Control District, and the Regional Water Quality Control Board. The temporary Use Permit is a land use entitlement from the County that will allow the site to be temporarily used for exploration and removal of oil and gas.

Staff recommends that the Board of Supervisors consider the facts of the case, the actions of the Planning Commission, and take the following actions:

a. Deny the appeal by Center for Biological Diversity from the Planning Commission's decision to adopt a Mitigated Negative Declaration, approve a temporary Use Permit to allow production testing for oil and gas using an existing well, and adopt a Mitigation Monitoring and Reporting Program;
b. Adopt a Mitigated Negative Declaration;
c. Approve a temporary Use Permit to allow the production testing for oil and gas using an existing well subject to conditions of approval; and
d. Adopt the Mitigation Monitoring and Reporting Program