

Attachment B

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**ATTACHMENT B
DRAFT RESOLUTION**

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No.

Resolution of the Monterey County Board of Supervisors to:)
)
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)
(PLN140395/Porter Estates. 72327 Jolon Road, Bradley, South County Area Plan))

The appeal by the Center for Biological Diversity from the Planning Commission’s approval of the temporary Use Permit (Porter Estates (Trio Petroleum) PLN140395) came on for public hearing before the Monterey County Board of Supervisors on June 23, 2015 and July 7, 2015. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors hereby finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – The project is a temporary use permit to allow the use of an existing oil well, Bradley Minerals 2-2, for the exploration for oil for a period of one year with limits placed on the amount of oil that can be produced.
- EVIDENCE:** a) The project is located at 72327 Jolon Road, Bradley (Assessor’s Parcel Number 424-081-082-000). The owner of the real property is Porter Estate Company Bradley Ranch, Inc. The mineral rights for the subsurface portion of this property are owned by Bradley Mineral Rights, Inc. Trio Petroleum, LLC (applicant) holds a lease with Bradley Minerals Inc for the use of the subsurface portion of the property.
- b) The applicant requests to test an existing borehole to determine whether there is a commercial quantity of oil at a certain depth. To the extent there is sufficient oil available to commercially extract, a Use Permit for long term production of the well will be required.
- c) Bradley Minerals Well 2-2 that has an approximate depth of 10,400 feet,

was drilled under a prior temporary use permit (PLN070173) in 2008 for production testing; this use permit expired in 2009. No additional drilling, grading, or construction is permitted with this temporary use permit. This current use permit only allows testing using an existing well. The project has been conditioned to limit the production testing to one year and will not include the use of hydraulic fracturing or any other form of well stimulation treatments.

- d) The quantity of oil which can be extracted during this temporary testing period is capped by a condition of approval limiting the number of truck trips to and from the site.
- e) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN140395.

2. **FINDING:** **PROCEDURAL BACKGROUND** – The project has been processed in compliance with County regulations.

- EVIDENCE:**
- a) On May 13, 2014, Monterey County Resource Management Agency issued a Notice of Violation to Trio Petroleum for working on an existing oil well with expired permits (14CE00123).
 - b) On May 28, 2015, the applicant applied for a temporary Use Permit (PLN140395) to allow production testing on an existing well (Bradley Minerals Well 2-2).
 - c) The temporary Use Permit application was deemed complete on June 27, 2014.
 - d) The project was brought to public hearing before the Monterey County Planning Commission on July 30, 2014 with a proposed categorical exemption under the California Environmental Quality Act (CEQA). During this public hearing, the Planning Commission continued the hearing to a date uncertain, and directed the preparation of an Initial Study for the temporary Use Permit application (PLN140395).
 - e) The Initial Study determined that any potentially significant impacts can be mitigated to less than significant, resulting in the preparation of a Mitigated Negative Declaration. The draft Mitigated Negative Declaration (“MND”) for the temporary use permit was prepared in accordance with CEQA and circulated for public review from February 27, 2015 through April 1, 2015 (SCH#: 2015021091) Two comments were received during this time, see Finding 7, none of the comments substantially change the analysis in the MND.
 - f) The Planning Commission considered the project and MND at a public hearing on April 29, 2015. During this public hearing, the Planning Commission adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan, and approved the temporary Use Permit application (PC Resolution No. 15-030) with a 5-4 vote.
 - g) An appeal from the Planning Commission’s approval of the temporary Use Permit (PLN140395) was timely filed by the Center for Biological Diversity (“appellant”), on May 11, 2015.
 - h) The appeal was brought to public hearing before the Board of Supervisors on June 23, 2015. At least 10 days prior to the public hearing, notices of the public hearing were published in the Monterey County Weekly and were posted on and near the property and mailed to the property owners

within 300 feet of the subject property as well as interested parties.

- i) On June 23, 2015, staff recommended that the public hearing be continued to July 7, 2015 to allow additional time to prepare responses to the appellant's contentions and applicant and appellant did not object to the continuance. The County is required to bring appeals to hearing before the Board of Supervisors within 60 days of receiving the appeal. The Board of Supervisors continued the hearing to July 7, 2015, which was within the 60 day period. On July 7, 2015, the Board of Supervisors conducted the public hearing, at which the applicant, appellant, and all members of the public wishing to be heard had the opportunity to testify.
- j) Staff Report, minutes of the Planning Commission and Board of Supervisors, information and documents in Planning file PLN140395 and Clerk of the Board file.

3. **FINDING:** **CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for a temporary Use Permit to determine if oil and gas can be commercially extracted at this location.

- EVIDENCE:**
- a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
 - the 2010 Monterey County General Plan;
 - South County Area Plan;
 - Agricultural Winery Corridor Plan;
 - Monterey County Zoning Ordinance (Title 21);

No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

- b) The property is located at 72327 Jolon Rd, Bradley (Assessor's Parcel Number 424-081-082-000), South County Area Plan. The parcel is zoned F/40 and PG/40 [Farming and Permanent Grazing, 40 acres per unit], both zoning districts allow for the exploration for and removal of oil and gas; however, the proposed development is predominantly located in the portion of the property zoned Permanent Grazing. The project is an allowed land use with a Use Permit on this site.
- c) The project site is an existing well pad site containing two existing oil wells, Bradley Minerals Well 1-2 and 2-2. The original well, Well 1-2, was drilled in 1985, and approved for a temporary use permit in 2004 (PLN040283) for re-drilling of the well. Bradley Minerals Well 2-2 was drilled in 2007 under a temporary use permit (PLN070173), and the Use Permit was granted an extension in 2009 under PLN080457. All use permits have expired.
- d) The project planner conducted a site inspection on July 14, 2014 to verify that the project on the subject parcel conforms to the plans listed above. There is an access road off of Jolon Road with a locked gate controlling access. The site contained a temporary trailer and a port-a-potty restroom. Both the Bradley Minerals Well 1-2 and 2-2 were not in use. The temporary Use Permit would allow temporary steel tanks to be brought onsite, a pumping unit to be placed on top of Bradley Minerals Well 2-2, and production testing of the well.
- e) The installation of previous test wells onsite has resulted in site

improvements necessary for this proposed project. 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 temporary use permit.

- f) The project is located within the Jolon Road Segment of the Agricultural Winery Corridor Plan (AWCP). This plan designates corridor segments within Monterey County that encourage winery related development in support of the growing industry. The AWCP is designed to apply only to projects related to the wine industry. This particular parcel has been permitted for oil exploration, and the project as proposed does not conflict with the goals of the Agricultural Winery Corridor Plan because of the limited visibility of the well pad.
- g) The project was referred to the South County Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedures adopted by the Monterey County Board of Supervisors per Resolution No. 15-043, this application warranted referral to the LUAC because the permit application and land use matter may raise significant land use issues that necessitate review prior to a public hearing by the Planning Commission or Board of Supervisors.
- h) The South County LUAC met on June 18, 2014 to discuss the application and any potential issues. The applicant gave a short presentation on the project and necessary equipment for production testing. The applicant responded to questions from the Southern Monterey County Rural Coalition regarding the use of hydraulic fracturing and other well stimulation treatments, which are not proposed or permitted as part of this temporary use permit. The LUAC voted 5-0 for a recommendation of project approval.
- i) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN140395.

4. **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.

- EVIDENCE:**
- a) The project has been reviewed for site suitability by the following departments and agencies: RMA- Planning, Cal Fire South County Fire Protection District, RMA-Public Works, Environmental Health Bureau, and Monterey County Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions have been incorporated from the Environmental Health Bureau to address handling of hazardous materials. RMA-Planning added conditions to limit the life of the permit, require full restoration of the site if commercial quantities are not found, and to clarify that this permit does not allow any use of well stimulation treatments.
 - b) Potential impacts to Biological Resources have been identified and mitigated to a level of less than significant. The following report has been prepared:
 - “Biological Assessment” (LIB140218) prepared by Robert A Booher Consulting, Bakersfield, CA in May of 2014.An outside consultant reported in the above mentioned document that

there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff has independently reviewed this report and concurs with its conclusions.

- c) The site has been used for oil and gas exploration dating back to 1985. Bradley Minerals Well 2-2 was permitted in 2007 (PLN070173) to allow the drilling of the well and the exploration for oil and gas. An extension of the Use Permit for the exploration of oil and gas was granted in 2009 under file PLN080457, which expired in 2010. This application will allow the exploration for oil and gas on Bradley Minerals Well 2-2, for which the site has been permitted in the past.
- d) The project has been conditioned to require full restoration of the site if the applicant does not seek a Use Permit for production and to require the applicant to submit a performance bond equal to the cost of full site restoration.
- e) Staff conducted a site inspection on July 14, 2014 to verify that the site is suitable for this use.
- f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN140395.

5. **FINDING:**

HEALTH AND SAFETY - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE:

- a) The project was reviewed by RMA- Planning, Cal Fire South County Fire Protection District, RMA-Public Works, Environmental Health Bureau, and Monterey County Water Resources Agency. The respective agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
- b) Cal Fire South County Fire Protection District, RMA-Public Works, and Water Resources Agency did not recommend conditions.
- c) The County conditioned the temporary permit to allow testing for one year from the date the resolution is mailed to the applicant and require the applicant to apply for a subsequent use permit to convert the exploratory oil well site to full production if commercial quantities of oil and gas are found. The applicant is required to submit monthly logs of truck trips to ensure the produced fluids from production testing will remain under the trips estimated in the Initial Study. The project has been conditioned to allow specific uses, which do not include the use of hydraulic fracturing or any other form of well stimulation treatments. The project has been conditioned to require full restoration of the site if no commercial quantities of oil or gas are found. To ensure compliance the applicant is required to submit a performance bond equal to the cost of full site restoration.
- d) The Environmental Health Bureau has conditioned the project to require the applicant to maintain an up-to-date Business Response Plan, submit

an inventory of any hazardous waste expected to be generated on site for review and acceptance, and submit a Spill Prevention and Control Plan that will describe all onsite containment measures for fluids and tanks that will prevent any spills and clean up measures if spills occur. All plans shall be compliant with state and federal regulations.

- e) Necessary public facilities will be provided and will be temporary in nature. The applicant has contracted a licensed rental company to provide temporary restroom facilities and a portable 500 gallon tank of fresh water for onsite needs.
- f) The project site will be equipped with a natural gas flare to burn off natural gas if it is found during production testing, in accordance with Monterey Bay Unified Air Pollution Control District requirements. The project has been conditioned to ensure compliance with Monterey Bay Unified Air Pollution Control District requirements.
- g) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA - Planning for the proposed development found in Project File PLN140395.

6. **FINDING:** **VIOLATIONS** - The subject property is not in compliance with rules and regulations pertaining to zoning uses in the County's zoning ordinance. The approval of this permit will correct the existing violation and bring the property into compliance.

- EVIDENCE:**
- a) The proposed project corrects an existing violation, 14CE00123. With the approval of this permit, the subject property will be compliant with all rules and regulations. The violation exists because the applicant began working on the existing oil well (Bradley Minerals Well 2-2) under an expired use permit for exploratory drilling. This temporary use permit allows the exploratory work to be conducted on the existing oil well for up to one year from the mailing of the resolution to the applicant. Bradley Minerals Well 1-2 exists on the same project site and was permitted under file PLN040283. That permit expired, and the well site was never restored to its predevelopment state. This is a second violation on the property. The project is conditioned to require a performance bond in the full amount of estimated site restoration which will include the abandonment of Bradley Minerals Well 1-2 & 2-2, removal of all temporary structures, and re-contouring of the land.
 - b) Pursuant to Section 21.84.140 of Monterey County Code, permit applications for uses which have been established or initiated prior to the application for permit shall require a fee of twice the amount normally charged for the application. The applicant has paid in full all retroactive permit fees for this project.
 - c) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN140395.

7. **FINDING:** **CEQA (Mitigated Negative Declaration)** - On the basis of the whole record before the Monterey County Board of Supervisors, there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and

- analysis of the County.
- EVIDENCE:**
- a) Public Resources Code Section 21080.d and California Environmental Quality Act (CEQA) Guidelines Section 15064.a.1 require environmental review if there is substantial evidence that the project may have a significant effect on the environment.
 - b) Monterey County RMA-Planning prepared an Initial Study pursuant to CEQA. The Initial Study is on file in the offices of RMA-Planning and is hereby incorporated by reference (PLN140395).
 - c) The Initial Study analyzed several environmental factors potentially affected by the project including aesthetics, biological resources, greenhouse gas emissions, land use/planning, transportation/traffic, agriculture resources, cultural resources, hazards/hazardous materials, mineral resources, public services, utilities/service systems, air quality, geology/soils, hydrology/water, and noise. The applicant has agreed to proposed mitigation measures relevant to biological resources that avoid the effects or mitigate the effects to a point where the impacts are less than significant. All other potentially significant effects identified in the Initial Study were determined to be less than significant.
 - d) All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval. A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with CEQA and Monterey County regulations, is designed to ensure compliance during project implementation, and is incorporated herein by reference. The applicant must enter into an “Agreement to Implement a Mitigation Monitoring and/or Reporting Plan” as a condition of project approval.
 - e) The Draft Mitigated Negative Declaration (“MND”) for this project was prepared in accordance with CEQA and circulated for public review from February 27, 2015 through April 1, 2015 (SCH#: 2015021091).
 - f) Due to the existing disturbed condition of the project site, lack of prey base, and limited vegetation cover in the project area, special status wildlife are not expected to be resident in the project footprint, but some special status wildlife may move through the site and buffer area while hunting or foraging. The 500 foot buffer area that surrounds the project site has the potential to support the San Joaquin whipsnake, coast horned lizard, burrowing owl, San Joaquin Kit Fox, American badger, and Salinas pocket mouse, and it is possible that these species could move through the project site. Activities within the project site could also impact breeding of these species should they take up residence nearby in the surrounding habitats. The site is also within the range of California condor, and although the site lacks conditions optimal for foraging, it is possible that this species could occur in the vicinity. There are protected blue oak trees located on the project site, and an ephemeral stream located adjacent to the site. The following mitigation measures, which have been incorporated as conditions of approval, reduce these potential impacts to biological resources to a less than significant level:

MM1 – Worker Environmental Awareness Program: A County approved biological monitor shall prepare and present a worker

environmental awareness program (WEAP) training for all personnel working on the site. The environmental training will reduce potential impacts to special status species that have the potential to occur within the buffer area and project site.

MM2 – Pre-disturbance surveys for special status species: In order to minimize potential biological impacts to special status species that have the potential to occur within the project site, a qualified biologist shall conduct two pre-disturbance surveys to determine if special status species have moved onto the project site or within the 500 foot buffer area.

MM3 – San Joaquin Kit Fox (SJKF) Avoidance and Minimization Measures – Due to the disturbed nature of the site, SJKF are not expected to reside within the project site; however, the species has been documented within the vicinity of the project site. To reduce potential impacts to SJKF that could den in the buffer area, the SJKF avoidance and minimization measures shall be included with the Worker Environmental Awareness Training (MM1).

MM4 – Prepare a Burrowing Owl Mitigation Plan: Western burrowing owls are not expected to reside within the project site but have been historically documented within the vicinity of the project site. The project would not result in removal of suitable burrowing owl habitat, but impacts could occur directly and indirectly if burrowing owls occurred in or around the project site. If pre-disturbance surveys (required by MM2) determine that burrowing owls are present within the site or project buffer area, then a burrowing owl mitigation plan shall be prepared consistent with the California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation.

MM5 – Remove Microtrash: The project site does not contain features suitable for the California condor roosting or nesting; however, the project could generate microtrash that could spread into surrounding habitats and potentially impact condor foraging. The mitigation measure requires that removal of microtrash shall occur weekly, and shall be included in WEAP training (MM1), to reduce potential impacts to condors.

MM6 – Work Limitations: California Tiger Salamander (CTS) breeding habitat does not occur on or immediately adjacent to the project site; however CTS could occur transiently at night during rain storms while moving to breeding ponds. To reduce potential impacts to CTS to less than significant, limitations of vehicular access and non-automated work shall be restricted at night during rain storms.

MM7 – Relocate Species of Special Concern (SSC) reptiles out of work area: Coast horned lizard and San Joaquin whipsnake are known to occur in the vicinity though not documented on the project site. If pre-disturbance surveys (required by MM2) find SSC reptiles, they shall be

relocated by the qualified biologists to reduce potential impacts to less than significant.

MM8 – Badger Avoidance Measures: The American badger could occur in the buffer area surrounding the project site and could move through the project area. If the pre-disturbance surveys (required by MM2) discover dens within 100 feet of the project onsite, exclusion zones shall be established to prevent intrusion of workers on foot, vehicles, and equipment near the dens to reduce potential impacts to a level of less than significant.

MM9 – Preconstruction Nesting Bird Survey: Immediately adjacent to the project site are oak woodland and grassland that could potentially be nesting habitat for a variety of birds. Project activity that commences during the avian nesting season (February 1 to September 15) could potentially impact nesting birds that may inhabit the oak woodland. To reduce potential impacts to a less than significant level, pre-disturbance surveys (required by MM2) conducted by a qualified biologist shall observe and, if necessary, move nests from the project buffer area during nesting season.

MM10 - Spill Containment/Prevention Plan: The project site does not contain riparian habitat or sensitive natural communities; however, an ephemeral stream channel is present approximately 90 feet north of the project site. The project site would not result in direct impacts to the stream, but because it is downslope of the project, this mitigation measure requires that a spill containment/prevention plan shall be developed according to performance criteria included in the MND to avoid potential impacts of the project to the ephemeral stream.

MM11 – Tree Protection: The project does not require removal of any blue oak trees that exist onsite; however, some ground disturbing activities (such as creation of berm for spill containment) may occur adjacent to trees. Implementation of tree protection measures will reduce potential impacts to blue oaks to a less than significant level.

- g) Evidence that has been received and considered includes: the application, technical studies/reports (see Finding 4/Site Suitability), staff reports that reflect the County’s independent judgment, and information and testimony presented during public hearings. These documents are on file in RMA-Planning (PLN140395) and are hereby incorporated herein by reference.
- h) All land development projects that are subject to environmental review are subject to a State filing fee plus the County recording fee, unless California Department of Fish and Wildlife (CDFW) determines that the project will have no effect on fish and wildlife resources. (Fish and Game Code Section 711.4)

The project site itself lacks potential for supporting special status species; however, the 500 foot buffer area surrounding the project site has the potential to support San Joaquin whipsnake, coast horned lizard, burrowing owl, San Joaquin Kit Fox, American Badger, Salinas Pocket

Mouse, and is in the range of the California Condor. For purposes of the Fish and Game Code, the project may have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends. The Initial Study was sent to CDFW for review, comment, and to recommend necessary conditions to protect biological resources in this area. Mitigation measures identified above have been required to ensure the project has a less than significant effect on these resources that have the potential to occupy the site.

- i) The County has considered the comments received during the public review period and they do not alter the conclusions in the Initial Study and Mitigated Negative Declaration. Neither the comments received on the MND nor the appeal by Center for Biological Diversity present a fair argument supported by substantial evidence that the project may have a significant effect on the environment. The comments received from the Monterey Bay Unified Air Pollution Control District ask for clarification on the estimated truck trips and reference the newest data for the Air Quality Management Plan as the 2013 Triennial Update, while the Mitigated Negative Declaration referenced the 2008 Air Quality Management Update. Review of the 2013 data compared to the 2008 demonstrate that the use of the newer information would not change the determination of the Initial Study, and impacts to air quality would remain less than significant.
- j) An errata to the MND (Attachment D) has been prepared presenting an updated analysis of greenhouse gas emissions of the project utilizing new data found in the 2013 Intergovernmental Panel on Climate Change report. The MND previously used data from the 2007 Intergovernmental Panel on Climate Change report, which had a lower global warming potential for methane. The updated analysis does not show a significant change in total carbon dioxide (CO₂) equivalent emissions from the project; emissions remain under the daily threshold utilized by California Air Resources Board (CARB) for CEQA analysis, and impacts to greenhouse gases remain less than significant. The errata also addresses the appropriateness of thresholds used within the MND and clarification of the cumulative impacts analysis.
- k) Subsequent to the comment period for the MND, changes have been made to one of the Mitigation Measures (#10) for Biological Resources. The Mitigation Measure as revised is equivalent or more effective than the Mitigation Measure presented in the MND and has been considered by the Board of Supervisors at a public hearing. Mitigation Measure #10 for Biological Resources has been revised and will be implemented through a condition of approval (#26). The condition will require the applicant submit a Spill Prevention Control Plan that will address the containment and spill prevention of all onsite fluids and tanks. The condition includes performance criteria contained in the Mitigation Measure for the containment of onsite fluids that will prevent any potential impacts to the adjacent ephemeral stream. Secondly, the condition requires containment of onsite tanks as required by the California Health and Safety Code. This condition, with revisions made since the Planning Commission hearing will be equivalent or more effective than the originally written mitigation measure to reduce

potential impacts to the ephemeral stream adjacent to the project site, pursuant to CEQA Guidelines section 15074.1(d).

- l) Recirculation of the MND is not required. The revision or replacement of mitigation measures does not require recirculation of the Mitigated Negative Declaration, pursuant to CEQA Section 15073.5(c)(1) if the mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1. Also, the errata to the MND amplifies and clarifies information in the MND but does not make a substantial revision of the MND within the meaning of CEQA Guidelines Section 15073.5.
- m) A Notice of Determination (NOD) was filed with the Monterey County Clerk/Recorder on April 30, 2015 subsequent to previous project approval the Planning Commission and all state and local fees were paid for processing and recording. The project has been conditioned to require filing of a new Notice of Determination following approval by the Board of Supervisors.
- n) Monterey County RMA-Planning, located at 168 W. Alisal, 2nd Floor, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the negative declaration is based.

8. **FINDING: APPEAL AND APPELLANT CONTENTIONS**

The appellant, Center for Biological Diversity, requests that the Board of Supervisors grant the appeal and deny the temporary use permit application (PLN140395). The appeal alleges that the Mitigated Negative Declaration prepared for the project does not comply with the requirements of CEQA and the Planning Commission's actions are not consistent with state law. The contentions are contained in the Notice of Appeal (Attachment F of the July 7, 2015 Board of Supervisors Staff Report) and listed below with responses. The Board of Supervisors finds that there is no substantial evidence to support the appeal and makes the following findings regarding the appellant's contentions:

EVIDENCE: a) Contention 1 - 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.

b) **Contention 2 - 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 to 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.

c) **Contention 3 - 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.

d) **Contention 4 - 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.

e) **Contention 5 - 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 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).

f) **Contention 6 - 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.

- g) **Contention 7 - Further Deficiencies of the MND:** 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.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors does hereby:

- 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, in general conformance with the sketch, and attached hereto as Exhibit 1, and subject to the conditions of approval, attached hereto as Exhibit 2, both attached hereto and incorporated herein by reference; and
- d. Adopt the Mitigation Monitoring and Reporting Program, attached hereto as Exhibit 2.

PASSED AND ADOPTED upon motion of Supervisor ____, seconded by Supervisor __ and carried this 7th day of July, 2015, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book__ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy