Exhibit G

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February 13, 2018

Via Hand Delivery

Clerk of the Board
County of Monterey
168 West Alisal St.
1st Floor
Salinas CA 93901

RE: **Porter Estate Bradley Ranch LLC/Trio Petroleum LLC Appeal (PLN 160146)**
File No.: 5877.001

Dear Clerk of the Board:

Enclosed are the following documents for your review and processing:

1. Porter Estate Bradley Ranch LLC/Trio Petroleum LLC Notice of Appeal of Planning Commission's Denial of Use Permit (PLN 160146)
2. Check in the amount of $1728.07 to cover the appeal processing fee, and,
3. Pre-addressed stamped envelopes for surrounding property owners and interested parties based on the Notice List that Bob Schubert emailed to me.

Please call me at (831) 269-7127 or email me at jason@jrgattorneys.com if you have any questions regarding the enclosures.

Very truly yours,

Jason Retterer
JRG Attorneys at Law

Enclosures

NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

RECEIVED
MONTEREY COUNTY
2018 FEB 13 PM 2:47
CLERK OF THE BOARD
DEPUTY

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before February 15, 2018 ***(10 days after written notice of the decision has been mailed to the applicant). Date of decision*** February 5, 2018 .

1. Please give the following information:
   a) Your name Johnson, Rovella, Retterer, Rosenthal & Gilles, LLP (c/o Jason Retterer)
   b) Phone Number (831) 269-7127
   c) Address 318 Cayuga St. City Salinas Zip 93901
   d) Appellant's name (if different) Porter Estate Company Bradley Ranch LLC/Trio Petroleum LLC

2. Indicate the appellant's interest in the decision by checking the appropriate box:
   - ■ Applicant
   - Neighbor
   - Other (please state) _____

3. If you are not the applicant, please give the applicant's name:
   _____

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

		File Number	Type of Application	Area
a)	Planning Commission:	PLN 160146	Use Permit	South County
b)	Zoning Administrator:			
c)	Subdivision Committee:			
d)	Administrative Permit:			

5. What is the nature of the appeal?

   a) Is the appellant appealing the approval ☐ or the denial ☒ of an application? (Check appropriate box)

   b) If the appellant is appealing one or more conditions of approval, list the condition number and state the condition(s) being appealed. (Attach extra sheets if necessary).

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for the appeal:

   ☐ There was a lack of fair or impartial hearing; or

   ■ The findings or decision or conditions are not supported by the evidence; or

   ■ The decision was contrary to law.

   You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will ***not*** accept an application for appeal that is stated in generalities, legal or otherwise. If the appellant is appealing specific conditions, you must list the number of each condition and the basis for the appeal. (Attach extra sheets if necessary).

   See Attachment A

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning). In order to file a valid appeal, you must give specific reasons why the appellant disagrees with the findings made. (Attach extra sheets if necessary).

   See Attachment A

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency – Planning will provide you with a mailing list.

9. Your appeal is accepted when the Clerk of the Board's Office accepts the appeal as complete on its face, receives the filing fee (Refer to the most current adopted Monterey County Land Use Fees document posted on the RMA Planning website at http://www.co.monterey.ca.us/planning/fees/fee_plan.htm) and stamped addressed envelopes.

APPELLANT SIGNATURE _____ **DATE** 2/13/18

ACCEPTED _____ **DATE** _____

(Clerk to the Board)

ATTACHMENT A

THE PLANNING COMMISSION'S FINDINGS ARE NOT SUPPORTED BY THE EVIDENCE AND THE DECISION IS CONTRARY TO LAW

The Planning Commission's decision reflects at best, a complete misunderstanding of Trio Petroleum LLC's project, or, at worst, a blatant disregard of the facts surrounding Trio's project and the area surrounding the project.

The Agency's determination must be supported by "substantial evidence." Substantial evidence "means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion." *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 288-289. Substantial evidence does not include argument, speculation, or unsubstantiated opinions or concerns about a project's environmental impact. Id. Substantial evidence "shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts," but "in the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence." *Id.*

In this matter, County Staff and its consultants put together extensive evidence in support of Staff's recommendation to approve the Project. At an earlier hearing, the Planning Commission rejected Staff's recommendation and directed Staff to prepare finding that would support a denial of the Project. The revised findings from Staff lack any evidentiary support whatsoever, and the change in findings was driven by politics, not the evidence. The findings must be stricken because they are not supported by substantial evidence.

A. FINDING NO. 2, WHICH STATES THAT THE PROJECT WOULD BE DETRIMENTAL TO THE HEALTH AND SAFETY OF PEOPLE WORKING IN THE VICINTY IS NOT SUPPORTED BY ANY EVIDENCE

Finding No. 2 of the proposed resolution purports to identify evidence to support a finding that Trio's proposed Use Permit is somehow detrimental to the health and safety of persons residing or working in the vicinity of the proposed use. However, this evidence consists entirely of unsubstantiated opinions and speculation that is contradicted by the conclusions of the Initial Study and Mitigated Negative Declaration. Noticeably missing from the "evidence" to support Findings No. 2 are references to any technical reports, studies, data, or other expert opinion that are typically identified and, in fact, legally required to support findings. For example, the "evidence" in subsection "a)" is simply a political statement that broadly slanders oil and gas exploration in general and suggests that Trio's exploratory wells will be injurious to County residents because it results in carbon emissions and groundwater contamination. However, there is no such evidence in the record, quite to the contrary, in fact, as reflected in the findings (see Section 4.1) of draft Resolution of approval that Staff presented to the Planning Commission at their December 13, 2017 hearing, which was based in great part on the Initial Study conducted by Rincon Consultants Inc., the third party environmental planning firm that was chosen and approved by RMA Planning.

As it relates to carbon emissions and the suggestion that the use permit will have adverse air quality impacts, the Initial Study undertook a comprehensive analysis of potential air quality impacts (See Section 3, pps. 33-41 and Section 7, pp.s 61-65, relating to Greenhouse Gas Emissions) and concluded that all impacts were either less than significant or could be mitigated to a less than significant level. Moreover, the Monterey Bay Air Pollution Control District wrote a letter regarding the project (attached as Exhibit G to your Dec. 13, 2017 Staff Report) and did not identify any potentially significant air quality impacts that would be injurious to Monterey County residents. Therefore, the "evidence" of potential air quality and climate change impacts which is described in subsections "a)," "b)," and "c" that purportedly supports denial of Trio's use permit does not exist and is contradicted by the Initial Study.

Similarly, the Initial Study concluded that the project would not contaminate or otherwise impact hydrology or surface or groundwater quality (*See* Section 9, pp.s 69 – 74). As it relates specifically to potential impacts to groundwater, the Initial Study explains:

> "The proposed project would drill and test wells at a depth of 4,000 to 6,500 feet. Public-supply wells are typically drilled to depths of 200 to 650 feet, which is intended to approach the bottom of the groundwater basin (Source: IX.57). All four wells would be at depths lower than the groundwater table, which would protect the groundwater table from potential water quality degradation. Furthermore, as discussed above, the wells would be required to be sealed from the groundwater table using casing. Casing lines the inside of the borehole to ensure that materials within the borehole would not contact groundwater and water quality would not be affected. In addition, the applicant must comply with State standards for casing. Therefore, based on the applicant's compliance with all federal, State, and local regulations regarding oil well construction, the oil wells would be sealed from the groundwater table and water that may be pumped to the surface during exploration and production activities would not be drawn from the public supply sources (as noted above, groundwater wells are located at far shallower depths than the proposed exploratory wells). **Therefore, the pumping of oil during exploration and production would not affect the availability or quality of groundwater drawn from the public supply wells."** (Emphasis added)

Therefore, the "evidence" in subsection "d)" that states "Oils coming up from the wells from the productive underground geologic zone could escape the zone and migrate into other geologic zones that might contain fresh or usable water" is not true, not substantiated by any oral or written testimony in the record, and is again contradicted by expert opinion and analysis in the Initial Study. Moreover, if there was any potential for this project to impact the Salinas Valley Groundwater Basin then surely the Central Coast Regional Water Quality Control Board and the County's Health Department would have expressed concerns about this project, but no such concerns were raised or expressed to the County.

Finally, the draft resolution cites Measure Z as "evidence" to support denial in section "e)" based on comments made to the Planning Commission at its December 13, 2017 hearing.

At the time of the Planning Commission hearing, the superior court had not made a decision on Measure Z. However, on December 28, 2017, the superior court invalidated several policies in Measure Z, including Policy LU-1.23, which prohibited the drilling of new wells such as the exploratory wells that are the subject of Trio's use permit application. (See "Intended Decision," attached as **Exhibit A**). The superior court ruled that this provision was preempted by state and federal law, including the federal Safe Drinking Water Act ("SDWA"). As part of its ruling, Judge Wills disagreed with the proponents of Measure Z that Measure Z is "essential" to protect drinking water from endangerment based on a finding they cited in Measure Z. The Judge concluded that the County is not authorized to make such a finding because "when as here, the EPA has conferred primacy of a state, the SDWA expressly charges the state with determining whether a regulation is essential to protect drinking water."

Moreover, the declaration of Steven Bohlen that was submitted in the Measure Z litigation provides expert opinion that refutes all of the Measure Z findings that the Planning Commission is being asked to rely upon as evidence to support a denial of Trio's Use Permit (attached as **Exhibit B)**. Accordingly, the Measure Z findings are not "evidence" to support a denial of Trio's Use Permit.

In addition to the Bohlen declaration, numerous expert declarations were submitted to the court regarding the extensive regulation of oil well construction and production. Burton R. Ellison, who is a registered professional geologist in the State of California and former District Deputy for the State of California, Division of Oil, Gas, and Geothermal Resources ("DOGGR") provided declaration regarding the extensive regulations that apply to well drilling and construction, including applicable regulatory requirements that ensure that water quality is protected (attached as **Exhibit C**). Accordingly, there is no legal basis for denying the use permits on the grounds that the project will adversely affect groundwater quality.

The Commissioners comments during their deliberations, which attempted to explain their reasoning for denial, were equally unsupported by any evidence in the record and were based on erroneous assumptions about the project. For example, the Commission Chair, in explaining why he could not support the application, stated that oil in Monterey County is "extremely carbon intensive" and "requires a lot energy to get it out of the ground" and referred to the need for "cyclic steam injection" to extract "heavy crude" and has a greater impact on climate than other oil. However, as Trio explained at the hearing and in its application, the areas proposed for exploration are isolated from San Ardo oilfield, which is in fact a heavy crude oil accumulation, whereas the wells Trio will drill are to a depth of over 4,000 feet into the ground, far deeper than the wells at the San Ardo oilfield. At this depth, the oil, if present, will not be "heavy crude," but a much lighter (i.e., higher API gravity) and less viscous oil that does not require the type of thermal extraction processes, such as cyclic steaming, that are utilized at the San Ardo oilfield. Furthermore, the oil, if present, at the wells that Trio proposes to drill will be at depths (i.e., 4,000 feet or deeper) that are too deep for the use of steam in the extraction process.

Similarly, two other Commissioners who voted to deny the permit, speculated that if the project area ultimately became **an active, full production field**, should the test wells prove

successful, that there could be an accident at the site that could contaminate the San Antonio or Nacimiento reservoirs, both of which are located miles away from the project site. However, as noted in the original draft Resolution of approval that was presented to the Commission, Trio's application for a use permit does not allow the site to become a full production field. Trio's application "authorizes **exploration only**; the applicant must apply for a subsequent use permit to convert any of the exploratory well sites to full production if commercial quantities of oil and gas are found." In the event Trio wanted to proceed with full production, a new use permit would be required and extensive environmental review would be undertaken to evaluate the impacts of full production. Moreover, and as explained and documented in the Initial Study, the proposed temporary exploratory wells will not impact surface or subsurface water quality, including either of the distant reservoirs referenced by the two Commissioners.

All of the evidence that was before the Commission supported approval of Trio's use permit and a finding that this use permit would not be detrimental to public health and safety. This evidence was cited and explained in the original resolution approving the Trio's use permit that County staff recommended that the County adopt (see **Exhibit D**).

B. THE PLANNING COMMISSION'S DENIAL OF THE PERMIT IS AN UNCONSTITUTIONAL "TAKING" OF PRIVATE PROPERTY WITHOUT COMPENSATION.

Regulation of the use of property that goes too far constitutes a taking under the Fifth Amendment to the Unites States Constitution as well as the California Constitution. (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014. Regulation "goes too far" and effects a taking if it "denies an owner economically viable use of his land." (*Keystone Bituminous Coal Ass'n v. DeBenedictis* (1987) 480 U.S. 470, 495).

California mineral rights owners have a property right in oil and gas beneath the surface, not in the nature of an absolute title to the oil and gas in place, but as an exclusive right to drill upon property for these substances. (*Braly v. Board of Fire Com'rs of City of Los Angeles* (1958) 157 2 Cal.App.2d 608, 612; see also *Cassinos v. Union Oil Co* (1993) 14 Cal.App.4th 1770, 1782) Typical oil and gas leases such as those presented here create a freehold estate in the nature of a qualified or determinable fee. (*Dabney v. Edwards* (1935) 5 Cal.2d 1, 17.) California law recognizes the right to extract oil and gas from a property "is as much entitled to protection as the properly itself, and the undue restriction of the use thereof is as much a taking for constitutional purposes as appropriating or destroying it." (*Braly, supra*, at p. 614)

The Planning Commission's denial of Trio's temporary use permit prevents Trio from exercising its lease right to extract and produce oil and gas resources on the property and is an unconstitutional taking of Trio's property rights. Under *Maples v. Kern Cty. Assessment Appeals Bd,* (2002) 103 Cal. App. 4th 172, 186, "[t]he right to remove oil and gas from the ground is a property right." See also *Pennsylvania Coal Co. v. Mahon*, (1922) 260 U.S. 393, 415-416 (recognizing a landowner's right to extract oil from a property) and *Model v. Virginia Surface Min. and Reclamation Ass 'n, Inc.*, (1981) 452 U.S. 264, 296-297. Accordingly, the holder of

such interest is entitled to the same constitutional protections against takings as any other property owner.

The only interest possessed by a mineral rights owner or an oil and gas lessee, such as Trio, is a right to extract oil and gas. Mineral ownership does not entitle the holder to build houses, construct and operate a factory, a hotel, or an amusement park, or operate a retail facility on the surface. The Planning Commission's denial eliminates Trio's legal rights. The fact that others may be able to use the portions of the property that Trio does not own for something else does not lessen the impact on Trio, nor does it mean Trio's property rights have not been taken. Accordingly, the proposed denial of Trio's application renders worthless Trio's significant investment in securing the oil and gas rights on this property, including, for example, the millions of dollars spent acquiring and processing the sophisticated 3D geophysical data that enable imaging of the underlying subsurface geology of the property in order to identify potential oil bearing zones for possible exploration, as well as many additional millions of dollars expended in lease rentals, environmental studies, drilling, testing and evaluating other wells in the local area as part of the overall exploratory effort.

Judge Thomas Wills in the Measure Z litigation confirmed that a prohibition on new wells, when applied to mineral rights owners, would be an unconstitutional taking without compensation. (See Intended Decision, p. 46 – 47 ["Policy LU-1 .23 prohibits the drilling of any new wells countywide. **Consequently, should it take effect, Measure Z would effect a facial regulatory taking of CRC's and some members of NARO's property**"]).

Even though Judge Wills invalidated this provision of Measure Z, the Planning Commission effectively enforced this blanket prohibition on new wells by denying Trio's application. As noted in section (A) above, the Planning Commission had no lawful basis for denying Trio's application because the Planning Commission's findings regarding Trio's application are entirely unsupported by any evidence in the record.

C. THE FINDINGS ARE BASED ON IRRELEVANT EVIDENCE, WHICH CANNOT FORM A PART OF THE "SUBSTANTIAL EVIDENCE" TO SUPPORT THE DECISION

As noted above, the County's determination must be based on "substantial evidence." Substantial evidence is limited to the "relevant" evidence contained in the record. See California Youth Authority v. State Personnel Bd. (2002) 104 Cal.App.4th 575, 584; *Apte v. Regents of Univ. of Cal.* (1988) 198 Cal.App.3d 1084, 1091. Irrelevant evidence, on the other hand, cannot be used to support a determination of "substantial evidence."

In this matter, the Planning Commission relied on evidence concerning potential environmental impacts that may arise from oil drilling operations. Consideration of these potential impacts, however, is an area ***solely*** of state – and not local – concern. For purposes of this application, consideration of these potential impacts constitutes reliance on impermissible, irrelevant evidence, and cannot be used to support the County's decision.

Oil and gas operations in California are governed by Division 3 of the Public Resources Code (Pub. Resources Code, § 3000, *et seq.*) and its implementing regulations (Cal. Code Regs., tit. 14, § 1712, et seq.). Division 3 addresses oil and gas exploration and extraction in detail, including notices of intent to drill and abandon(§§ 3203, 3229); bonding(§§ 3204-3207); abandonment of wells(§ 3208); recordkeeping (§§ 3210-3216); blowout prevention(§ 3219); use of well casing lo prevent water pollution(§ 3220); protection of water supplies(§§ 3222, 3228); repairs(§ 3225); regulation of production facilities(§ 3270); waste of gas(§§ 3300- 3314); subsidence(§ 3315-3347); well spacing(§§ 3600-3609); unit operations(§§ 3635-3690); and regulation of oil sumps(§§ 3780-3787).

The State of California Department of Conservation's Division of Oil, Gas, and Geothermal Resources (DOGGR) is the stale agency appointed lo administer oil and gas activities. (See Pub. Resources Code, § 3100, et seq.) DOGGR has a dual mandate to promote the development of the state's oil and gas resources, and to supervise such operations "to prevent, as far as possible, damage to life, health, property, and natural resources," including the water supply. (Pub. Resources Code, § 3106.) DOGGR regulations arc extensive. (*See, e.g.* Cal. Code Regs., tit. 14, §§ 1 722- 1 722.9, 1723, 1723. 7, 1 724, 1724.1, 1775.) These regulations are intended to be "statewide in application for onshore drilling, production and injection operations." (*Id.* at § 1712.)

Under article XI, section 7 of the California Constitution, "a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (*Sherwin-Williams Co. v City of Los Angeles* (1993) 4 Cal.4th 893, 897-898.) However, "[l]ocal legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*Alorehart v. County a/Santa Barbara* (1994) 7 Cal.4th 725, 747, internal citations omitted.)

State regulation of the oil and gas industry evinces the Legislature's intent to occupy the field of oil and gas regulation. (*See, e.g., Pub. Resources Code*, §§ 3130-3132, 3150-3161; Cal. Code Regs., tit. 14, §§ 1761, 1780-1789.) This was made clear in a 1976 California Attorney General opinion, which noted that State oil and gas law

> [preempts] nearly all local regulations of oil and gas production because local regulation of such resources "would subject development of the state's fuel resources to [a] checkerboard of regulations. . . . Such local regulation could obviously interfere with and frustrate the state's conservation and protection regulatory scheme
>
> . . . Where the statutory scheme or Supervisor specifics a particular method, material or procedure by a general rule or regulation or gives approval to a plan of action with respect to a particular well or field or approves a transaction at a specified well or field, it is difficult to see how there can be any room for local regulation. We observe that these statutory and administrative provisions appear

to occupy fully the underground phases of oil and gas activities." (59 Ops. Cal. Atty. Gen 461, 469, 477-78 (1976).

Finally, while the County retains certain jurisdiction concerning surface land use issues, it cannot use that authority to indirectly regulate subsurface activities. This was precisely the problem with Measure Z and was a critical reason why similar provisions contained in Measure Z were struck down by Judge Wills. *See* Intended Opinion at 28, 37 ("Measure Z's purported prohibition on certain "land uses" is clearly a pretextual attempt to do indirectly what it cannot do directly. (See 59 Ops.Cal.Atty.Gen at p. 478 ["there will ... be a conflict with stale regulation when a local entity, attempting to regulate for a local purpose, directly or indirectly attempts to exercise control over subsurface activities"].)

The Planning Commission's determination in this matter was an indirect attempt to exercise control over the subsurface activities of Trio. The Planning Commission was not concerned with traditional land use issues, but rather expressed concern about the environmental impacts caused by subsurface activities. This was improper and prejudicial. The Board of Supervisors, in considering Trio's appeal herein, may not rely on, or even cite to, these factors.

D. THE INITIAL STUDY AND NEGATIVE DECLARATION'S FOCUS ON IMPACTS FROM THE TEST WELLS, WITHOUT ALSO ADDRESSING POTENTIAL FUTURE IMPACTS FROM A SPECULATIVE COMMERCIAL OIL PRODUCTION FIELD, WAS PROPER

Some commenters at the Planning Commission meeting contended that the negative declaration was inadequate because it was limited to an analysis of the environmental impacts from the test wells and that it should have included an analysis of the impacts from the proposed production well field. That argument is wrong.

An EIR should include an analysis of the impacts of commercial oil production (and not just the impacts from the test wells themselves) when the public agency "has sufficient reliable data to permit preparation of a meaningful and accurate report on the impact of commercial production." *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 77, fn. 5. In this case, the initial study and negative declaration for the exploratory project need not consider within the scope of the project the potential environmental impacts should the oil field be commercially developed. Without exploratory drilling, the full development remained a "mere contingency," and that meaningful, accurate environmental review could not take place until the exploratory drilling is complete. See Lake County Energy Council v. County of Lake (1977) 70 Cal. App. 3d 856.

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

CHEVRON U.S.A., INC, et al. **Plaintiffs/Petitioners** **vs.** **COUNTY OF MONTEREY** **Defendant/Respondent**	**Case No.: 16CV003978** **INTENDED DECISION**
Protect Monterey County; Dr. Laura Solorio, M.D., **Intervenors**	

This matter came on for court trial on November 13, 14, and 15, 2017. All sides were represented through their respective attorneys. The matter was argued and taken under submission.

This intended decision resolves factual and legal disputes, and shall suffice as a statement of decision as to all matters contained herein. (Cal. Rules of Court, rule 3.1590(c)(1).)

Factual Background

This action involves challenges to a Monterey County ordinance, known as "Measure Z," a County initiative approved by the electorate in the November 2016 election. The measure, which relates to oil and gas operations exclusively, prohibits on all lands within the County's

unincorporated area 1) well stimulation treatments — measures by which oil-producing companies render underground formations more permeable to facilitate the extraction of oil (including but not limited to hydraulic fracturing, aka "fracking"), effective immediately; 2) underground wastewater injection and impoundment of wastewater, with a five-year phase out period; and 3) drilling any new wells for the recovery of, or to aid in the recovery of, oil or gas, effective immediately. It also provides for two possible extensions of the five-year underground injection and impoundment phase-out period, for a total possible extension of 15 years.

To understand the meaning and effect of Measure Z, as well as its potential interplay with existing state and federal regulations, evidence on the background and nature of oil operations in Monterey County was not only appropriate but also necessary.

There is no fracking currently taking place in Monterey County. Because of the sandy nature of oil bearing strata in Monterey County oil fields, fracking is not necessary to extract oil. There are only two or three reported instances of fracking ever occurring in Monterey County, all of which occurred approximately a decade ago.

The oil producing fields in Monterey County are principally located in the southern Monterey County areas of San Ardo and Lynch Canyon,[1] arid, sparsely populated regions well inland from the coastline. Oil drilling and production has been carried on in San Ardo for nearly 70 years and in Lynch Canyon for nearly 55 years. The oil deposits are highly viscous (i.e., thick), and exist at levels in the range of 1,800-2,200 feet or more underground. There are two oil-bearing formations in San Ardo: the Lombardi Sands Formation which currently produces oil, and the Aurignac Sands Formation, which lies at a level below the Lombardi and is sufficiently depleted of its oil reserves that it is now used to dispose of water extracted from the Lombardi. The oil-producing formation in Lynch Canyon is the Lanigan sand, a porous, highly permeable sand that occurs at approximately 1,700 feet underground.

There exists naturally in these formations, accompanying the oil deposits, a huge volume of water laden with salt and hydrocarbons (95% water volume for every 5% of oil, by

[1] Petitioner Trio Petroleum LLC operates primarily at the Hangman Hollow Oil Field, just west of Lynch Canyon. Other Petitioners own mineral rights in oil and gas leases in areas such as the Monroe Swell Oil Field, which is northwest of the San Ardo Field and produces from similar formations (Sunset Exploration, Inc.); Hames Valley (Bradley Minerals, Inc.); and the Paris Valley and McCool Ranch oil fields (California Resources Corporation).

one expert's estimation). Because of the highly viscous nature of the oil deposits, the oil must be heated by injecting steam underground in order to make it more fluid so that it can be pumped out. In San Ardo, as oily water is pumped out of the ground, it is placed into storage tanks where the oil and water settle out and separate. The extracted water is then dealt with in one of three different ways. It is either 1) purified, in part (and the purified water placed back into the ground to recharge the water table and maintain wetlands); 2) treated and injected into the ground as steam at the Lombardi formation level to heat the viscous oil deposits; or 3) reinjected — with the oil removed but otherwise untreated and in its natural state — along with the saline brine extracted in the reverse osmosis purification process, into the Aurignac Formation. As the pumped out water is subjected to these processes, it must be stored temporarily.[2]

All of the water used for steam injection comes from the underground, pumped-out water (after some treatment). The process of removing oil and naturally occurring water necessarily results in less volume to occupy the space previously occupied by the extracted oil/water and, consequently in colder, naturally occurring water encroaching into that space. This in turn requires extraction of the encroaching cold oil/water and further steam injection to maintain the temperature (and lower viscosity) of the oil so that it can be removed. As the oil/water is extracted, the perimeter of the area that needs to be heated expands — necessitating further steam injection and new wells at the increasing periphery of the area from where the recoverable oil lies.

Oil cannot be extracted without the continuous drilling of new steam injection wells. Unless steam is continuously added, the underground steamed area (known as a "steam chest") cools and the oil is no longer extractable. Oil production would then decline relatively quickly and come to a complete halt in five years or less.

[2] Oil producers such as Eagle Petroleum, LLC (Eagle), which operates out of the Lynch Canyon, also inject steam and produced water into underground formations. Eagle injects steam into the Lanigan Formation and produced water into either the Lanigan Formation or the Santa Margarita Formation.

Procedural Background

Measure Z's effective date was initially set to be December 16, 2016. However, on December 14, 2016, Petitioners Chevron, U.S.A., et al., and other associated Petitioners[3] (Chevron), and Aera Energy LLC (Aera), filed petitions for writ of mandate alleging that Measure Z 1) was preempted by state and federal law; 2) effected a facial taking of their property; and 3) violated their due process rights. On that same date, the court approved separate stipulations between Chevron and the County and Aera and the County to stay implementation of Measure Z indefinitely. Separate suits by 1) the California Resources Corporation (CRC); 2) National Association of Royalty Owners-California, Inc., plus 61 individual and corporate entities (NARO); 3) Trio Petroleum LLC, Bradley Minerals, Inc., Monroe Swell Prospect, J.V., and Sunset Exploration, Inc. (Trio); and 4) Eagle Petroleum, LLC (Eagle) followed.[4] Those parties made similar arguments, but also advanced claims that Measure Z created inconsistencies within the County General Plan, and that Measure Z violated the "single-subject" rule.

On March 17, 2017, the court granted a petition for intervention from Protect Monterey County (PMC), the advocacy group responsible for drafting Measure Z and the bulk of the campaign in its favor, and from Dr. Laura Solorio, a founding member of the group and signatory of the Measure (collectively, Intervenors). On April 18, 2017, the court ordered that the case be split into several phases. "Phase I" was "limited to challenges to the validity of the ordinance on its face. And that includes interpretation." (RT 3:14-17.) On June 7, 2017, the court consolidated all six cases for purposes of "Phase I" trial only. On June 14, 2017, the court designated the Chevron case (case number 16CV003978) as the lead case, and ordered that all pleadings related to the trial and briefing of "Phase I" be filed in that case.[5]

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[3] Besides Chevron, other Petitioners in 16CV003978 include Key Energy Services, LLC, Ensign United States Drilling (California) Inc., Maureen Wruck, Gazelle Transportation, LLC, Peter Orradre, Martin Orradre, James Orradre, Thomas Orradre, John Orradre, Stephen Maurice Boyum, and the San Ardo Union Elementary School District.

[4] Unless otherwise noted, the Plaintiffs and Petitioners in all six cases are referred to collectively herein as "Petitioners."

[5] The other case numbers consolidated include 16CV003980 (Aera); 17CV000790 (CRC); 17CV000871 (NARO); 17CV001012 (Trio); and 17CV000935 (Eagle).

Standing

Intervenors' positions regarding standing — which bear directly upon the relevance of certain evidence submitted by Petitioners (and to which Intervenors object) — have ranged from non-opposition to vacillation to equivocation to opposition.

At the case management conference held on June 7, 2017, the County stated, "as [standing] relates to the mineral rights owners . . ., we would need to see documents" (RT 29:17-19), and added that it "would prefer to defer any fight, if it's necessary, over standing, to a later phase (RT 29:21-25) . . . . [F]or purposes of Phase I . . ., without prejudicing our rights to later argue standing, we will not raise it" (RT 30:20-22). The court next inquired of Intervenors as to their position, and Intervenors' counsel stated, "[s]o I just want to be clear about the standing issue. Clearly, if they show us documents that we have mineral rights and therefore we have some kind of financial interest to come into court, we're not going to have an objection to that. But we should distinguish the standing issue from the broader issue of pursuit of exclusive remedies; therefore, standing to sue at this point. So we're happy to defer that issue as well because there are exclusive remedy provisions in the measure we have talked about, the vested rights procedure before the County." (RT 31:4-16.)

In support of their opening briefs, Petitioners submitted declarations reciting the nature of their respective ownership interests and attaching a large number of exhibits such as deeds and conveyances of mineral rights. Intervenors, after having stated at the case management conference that they demanded proof of the Petitioners' interests and arguing that Petitioners lacked standing, then objected repeatedly to Petitioners' proofs of ownership and lease interests on the ground that they were "irrelevant to this stage of the proceedings." Additionally, in their merits brief, Intervenors argued, ". . . Petitioners have no standing to obtain relief from the Court on this issue [of the preemption of the Measure's provisions regarding well stimulation treatments and fracking]." (Intervenors' Opposition Brief (Phase I Facial Claims) at p. 34:18-19 and fn. 27.)

Next, at a trial management conference held on November 6, 2017, one week before the Phase I trial commenced, the Court asked Intervenors to clarify their position regarding standing — pointing out that if there was a challenge to one or more Petitioners' standing to raise the

Phase I claims, it should be resolved at this stage of the proceedings, not left for debate later on. (RT 5:21-6:21.) The morning of trial, Petitioners and the County filed a joint statement in which they concurred that Petitioners had standing to pursue the claims briefed in the Phase I trial. That same morning, Intervenors filed a supplemental trial management conference statement in which they announced that they "do not concede that [Petitioners] has [*sic*] submitted evidence sufficient to establish their standing either during Phase 1 proceedings or in any subsequent phases."

Intervenors then submitted a brief mid-trial which stated that not only did they challenge Petitioners' standing to challenge the well stimulation treatment portion of the Measure, but also objected to their standing to contest *any* portion of Measure Z: "As to Petitioners' challenges to LU-1.22 [the underground injection and impoundment prohibitions] and LU-1.23 [the no new wells prohibitions], Petitioners have not submitted supporting evidence to demonstrate standing as to each and every one of the named parties, and thus Intervenors do not concede their standing for any purpose." (Intervenors' Brief Re Plaintiffs' Standing to Challenge Measure Z LU-1.21, at p. 3:9-11.) Intervenors thus further placed in issue each Petitioner's practice of, and need to utilize, 1) underground injection and storage; and 2) new well drilling to aid in the recovery of oil and gas.

Whether this is deliberate obfuscation or genuine confusion on the part of Intervenors, it renders highly relevant numerous declarations and exhibits submitted by Petitioners that go to the issue of standing.

Administrative Record

The court admitted the administrative record into evidence.

Additional Evidence Presented

In addition to the administrative record, the parties offered evidence in support of their briefing, requests for judicial notice, and stipulated facts. The parties raised myriad objections.

Before addressing the parties' objections, particularly those on relevance grounds, the court notes that the scope of the Phase I facial challenges trial was not limited to the issue of

facial takings challenges.[6] It also included standing (as discussed *ante*, Intervenors raised this issue), preemption, due process procedural and vagueness challenges, a single-subject rule challenge, and general plan consistency challenges.

The court rules on the parties' objections as follows:

1.0 Intervenors' objections to evidence submitted by Chevron

1.1 Declaration of Burton Ellison (Ellison Dec.)

The following objections are overruled: 1, 3, 5 (as to the first sentence), 6 (as to lack of foundation), 7, 8 (an agency's interpretation of its own regulations is accorded deference), 9-10, 11 (as to the first sentence only), 12-24, and 25 (overruled as to the first sentence).

The following objections are sustained: 2, 4, 5 (as to the second sentence only as argumentative), 6 (as a legal opinion), 11 (as to the last sentence on the grounds that the declarant's opinion of the true purpose of Measure Z is irrelevant), 25 (as to the last sentence), 26-27, and 28 (as to the words "to the detriment of the citizens of California").

1.2 Declaration of Dallas Tubbs (Tubbs Dec.)

The following objections are overruled: 1-21, 22 (except as to the words "this prohibition would also prevent Chevron from engaging . . .," since it would interpret the ordinance); 23-27, and 29-33.

The following objections are sustained: 22 (only as to the words "this prohibition would also prevent Chevron from engaging . . .," which amounts to an interpretation of the ordinance), 28 (as to the words "Measure Z would have substantial impacts on the ability to continue capital investment within the current field . . ." as irrelevant to this stage of the proceeding), 34 (as to the words "the impending shutdown of the field precludes the necessary capital investment needed to operate an oil field of this size" as irrelevant to this stage of the proceeding).

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[6] Contrary to Intervenors' claims, facial regulatory takings claims *do* permit the presentation of some evidence. (See *Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 495-496; *NJD, Ltd. v. City of San Dimas* (2003) 110 Cal.App.4th 1428, 1448 ["we are not holding that no evidence may be received in a facial regulatory takings case"].) Evidence is necessary to determine whether a statute "deprive[s] an owner of '*all* economically beneficial use' of her property. [Citation.]" (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 538, italics in original.)

1.3 Declaration of James Latham (Latham Dec.)

The following objections are overruled: 1-2, 3 (except as to the words " . . . thus condemning all such resources," an improper legal opinion), 4-8, 10 (except as to the second sentence concerning the purported economic damage Measure Z's implementation could cause, irrelevant to this stage of the proceedings), 11, 12 (on the ground stated), 13, 16-17, 18 (as to the words "[g]iven the large volume of produced water that is extracted as part of Chevron's operations, any disposal method other than reinjection would be completely unworkable"; sustained as to the balance), and 19.

The following objections are sustained: 2, 3 (as to the words "thus condemning all such resources" as an improper legal opinion), 9 (improper legal opinion), 10 (irrelevant to the extent it references damage to the local and regional economies; otherwise relevant), 14 (improper legal argument and opinion), 15 (same), 18 (except for the words "[g]iven the large volume of produced water that is extracted as part of Chevron's operations, any disposal method other than reinjection would be completely unworkable"; the balance is a legal opinion), 20 (not relevant for purposes of this stage of the proceedings), 21 (same), 22 (same), 23 (same), and 26 (same).

There are no objections numbered 24 or 25 to this declaration.

1.4 Declaration of John Orradre

All three objections are overruled.

1.5 Declaration of Catherine Reimer

The following objections are overruled: 1-8, and 14.

Objection number 9 is sustained.

There are no objections numbered 10-13 to this declaration.

1.6 Declaration of Nathaniel Johnson

The only objection is overruled.

1.7 Declaration of Myron Backhaus

This declaration essentially was offered to authenticate six different bottled samples of water collected from different phases of the oil recovery, injection, storage, and disposal process at the San Ardo field. These bottles were used as demonstrative evidence during Chevron's presentation of the case, but were of limited probative value. Intervenors' objections on the

grounds that evidence is beyond the scope of what is allowed at the Phase I proceeding is overruled. The evidence was submitted late, however, and its only probative value is to underscore what is already in the evidence presented by Petitioners. Sustained on these grounds.

2.0 Objections to Petitioner CRC's evidence submitted in its opening brief

2.1 Declaration of Kimberly Bridges (Bridges Dec.)

The following objections by Intervenors are overruled: 1, 2 (to the extent the words "[t]oday, CRC is California's largest oil and natural gas producer on a gross-operated basis" are subject to the objection), 3, 4, 5, and 8-30.

The following objections are sustained for purposes of Phase I of these proceedings: 2 (except for the words "[t]oday, CRC is California's largest oil and natural gas producer on a gross-operated basis"), and 6-7.

2.2 Declaration of Justin McMahon (McMahon Dec.)

The following objections of Intervenors are overruled: 1, 2 (except as to the sentence "[t]his would give CRC a peak oil rate of ~2,800 barrels per day"), and 3-6.

The following objection is sustained: 2 (only as to the words "[t]his would give CRC a peak oil rate of ~2,800 barrels per day").

2.3 Declaration of Richard Miller (Miller Dec.)

All objections are overruled.

2.4 Declaration of Adam Smith

The following objections are overruled: 1, 2, and 4-10.

The following objection is sustained: 3.

2.5 Declaration of Heather Welles (Welles Dec.)

All objections are overruled.

2.6 Supplemental Declaration of Heather Welles

The objections on the grounds stated are sustained; this proceeding occurred after the filing deadline for Petitioners' reply briefs.

3.0 Intervenors' objections to the evidence submitted by Petitioner Aera

All objections are overruled.

4.0 Intervenors' objections to Evidence submitted by Petitioner Eagle

4.1 Declaration of Mary Jane Wilson. (Wilson Dec.)

The following objections are overruled: 1, 6 (although it is cumulative and of little additional probative value in light of other evidence presented by the parties), 7, 23-24, 25 (relevant to lack of standing), 26, 28-30, 32-34, 35 (as to the paragraph beginning "nor does it let the reader know . . ."), 38 (the secondary evidence rule is the only ground stated for objection), and 39.

The remaining objections are sustained; much of the material is objectionable because it is argumentative, not relevant, cumulative, or not the proper subject of expert opinion.

4.2 Declaration of Samuel Allen Monroe.

Intervenors' objection to paragraph 23 is sustained. All other objections are overruled.

5.0 Intervenors' objections to evidence submitted by Petitioner NARO

5.1 Declaration of Wayman T. Gore, Jr. (Gore Dec.)

Objection 8 is sustained. All other objections are overruled.

5.2 Declaration of Steven Bohlen

The following objections are overruled: 1, 2, 4, 9-13, and 20 (only as to the words "Oil and Gas operators are required by law to report spills, even small spills of a gallon or two of hazardous substances. Once reported, the operator is required to remediate the spill immediately and to demonstrate remediation to an inspector"), 22, 32, 33, 40, and 42. The remaining objections are sustained.

5.3 Supplemental Declaration of Wayman T. Gore, Jr.

All objections are overruled.

6.0 Objections to the Petitioners' Joint Request for Judicial Notice (JRJN)

Intervenors' objections are largely blanket; Intervenors fail to pinpoint specific objections to particular items in an orderly fashion. While Intervenors voice many generalizations regarding what is and is not properly the subject of judicial notice, these generalizations are not helpful. Moreover, many of the documents proffered are the official acts of governmental agencies, while some are statements made on behalf of the County and thus qualify as admissions of a party

opponent, both of which overcome Intervenors' hearsay objections. Yet others are in themselves documents constituting acts having legal significance without regard to their truth.

With the foregoing in mind, the court sustains objections to the following items for which Petitioners request judicial notice: 1, 2 (only to the extent of emails contained therein; the report by Supervising Appraiser McFarlane of the Monterey County Assessor's Office and the Fiscal Impact statement of the County Assessor are allowed), 3 (not relevant), 6, 16, 21-22, 36 (not relevant), 37-55, 66 (no date; relevance not shown), and 67-68.

The remaining objections are overruled.

7.0 Petitioners' objections to the County's and Intervenors' Requests for Judicial Notice

Both objections are sustained.

8.0 The County's objections to Petitioners' use of the deposition of the County's expert declarant Alan Burzlaff

The court was clear that no discovery was to take place, yet Petitioners ignored this direction and took Mr. Burzlaff's deposition. For both this reason, and because Mr. Burzlaff's interpretation of Measure Z is not relevant, all objections are sustained.

Discussion

Petitioners challenge Measure Z on several grounds. Petitioners argue that 1) Measure Z violates the California Constitution's single-subject rule; 2) Measure Z is preempted, in whole or in part, by state and/or federal law; 3) Measure Z effects a facial regulatory taking of Petitioners' property; 4) Measure Z creates internal inconsistencies in Monterey County's General Plan; and 5) Measure Z violates Petitioners' substantive and procedural due process rights.

1. The Single-Subject Rule

Petitioner CRC argues that Measure Z violates the California Constitution's single-subject rule. CRC contends that Measure Z's main purpose was to ban fracking and that Policies LU-1.22 and LU-1.23, the Measure's additional two prohibitions on 1) wastewater injection and impoundment; and 2) new wells, respectively, are not "reasonably germane" to that purpose. CRC further contends that Intervenors purposely used fracking — a technique not currently employed in Monterey County — as a political hook to deceive voters into approving the remainder of Measure Z, which it asserts would end oil and gas production in the County.

1.1 Legal Background

The California Constitution provides, "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect." (Cal. Const. art. II, § 8(d).) This "single-subject rule" — itself, adopted by initiative — "is a constitutional safeguard adopted to protect against multifaceted measures of undue scope." (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 253.) The rule was intended "to attempt to avoid confusion of either voters or petition signers and to prevent the subversion of the electorate's will. [Citation.]" (*Senate of State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1156 ["*Jones*"].)

The single-subject rule is liberally construed to sustain initiatives that "fairly disclose a reasonable and common sense relationship among their various components in furtherance of a common purpose." (*Brosnahan, supra*, 32 Cal.3d at p. 253.) "An initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, *all of its parts are reasonably germane* to each other, and to the general purpose or object of the initiative." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 512, italics in original, internal citations omitted.) Notwithstanding this language, it is not *necessary* that a measure's several provisions be "reasonably germane" *to each other*. (*Californians For An Open Primary v. McPherson* (2006) 38 Cal.4th 735, 764, fn. 29.) In fact, the test requires only that the separate provisions of an initiative "be reasonably germane *to a common theme, purpose, or subject*." (*Ibid.*, italics added.) Nor is it necessary for an initiative proponent to show "that each one of a measure's several provisions was capable of gaining voter approval independently of the other provisions." (*Brosnahan, supra,* 32 Cal.3d at p. 253.) Nevertheless, the single-subject rule "obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or 'public welfare.'" (*Ibid.*)

Measure Z passes the reasonably germane test. The three provisions prohibit land uses in support of well stimulation treatments (such as fracking) and wastewater injection and impoundment, together with barring the drilling of new oil and gas wells. All three prohibitions pertain to specific production techniques the oil and gas industry uses in production operations. The common theme among these measures is stated by the official title of the initiative, the "Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative." (AR 152.)

Measure Z's 15 findings detail the significant environmental, "health, safety, welfare, and quality of life" impacts these practices assertedly have in the County. (AR 152-154.) Measure Z's provisions are reasonably germane to a common theme then, because they address potential environmental, safety, and social impacts of oil and gas production.

By contrast, the cases CRC cite involve provisions linked only by "excessive generality." (*Brosnahan, supra,* 32 Cal.3d at p. 253.) For example, in *California Trial Lawyers Assn. v. Eu* (1988) 200 Cal.App.3d 351, 355, 358, the proposed 120-page, 67-section ballot initiative stated it was intended to control insurance costs, and in particular, "the constantly increasing premiums charged to California purchasers of liability insurance." Section 8, "located inconspicuously" in the middle of the measure, provided insurance companies with protection from future campaign contribution regulations that could be aimed at insurers. (*Id.* at p. 356.) In defending the challenge, the insurers claimed that, because the initiative at issue "deals generally with the regulation of insurance industry practices and [the campaign contribution provision] relates to a specific aspect of those practices, the latter section ipso facto satisfies the 'reasonably germane' test." (*Id.* at pp. 359-360.) The court rejected this defense on two grounds:

"First, the express purpose of the initiative is to control the cost of insurance, not generally to regulate the practices of the insurance industry. Second, we cannot accept the implied premise of Association's analysis, i.e., that any two provisions, no matter how functionally unrelated, nevertheless comply with the constitution's single-subject requirement so long as they have in common an effect on any aspect of the business of insurance. Contemporary society is structured in such a way that the need for and provision of insurance against hazards and losses pervades virtually every aspect of life. [The insurers'] approach would permit the joining of enactments so disparate as to render the constitutional single-subject limitation nugatory." (*Id.* at p. 360.)

Similarly, in *Chemical Specialties Manufacturers Assn., Inc. v. Deukmejian* (1991) 227 Cal.App.3d 663, 670-671, the Court of Appeal sustained a single-subject challenge to an initiative entitled the "Public's Right to Know Act" because the Act covered an overly broad subject. Specifically, the measure contained sections requiring public disclosure of information in a number of unrelated areas such as nursing homes, seniors' health insurance, household toxic

products, and statewide initiative or referendum campaigns. (*Id.* at p. 666.) The measure's supporters claimed that its provisions were all reasonably germane to the subject of "public disclosure i.e. truth-in-advertising." (*Id.* at p. 670.) The Court found this to be a "subject of excessive generality," explaining, "the object of providing the public with accurate information in advertising is so broad that a virtually unlimited array of provisions could be considered germane thereto and joined in this proposition, essentially obliterating the constitutional requirement." (*Id.* at p. 671.)

Measure Z raises none of these concerns. All three policies in effect prohibit specific production techniques in a single industry. Additionally, all three policies further the common goal of protecting the public from the purportedly harmful effects of these practices on the environment, public safety, and quality of life. Hence, Measure Z does not violate the single-subject rule. (See *Brosnahan*, *supra*, 32 Cal.3d at p. 253.)

1.2 Voter Deception

Alternatively, CRC argues that even if the reasonably germane test is satisfied, Measure Z violates the single-subject rule because voters were misled by its proponents' campaign as to the true purpose of the initiative. CRC maintains that these proponents used the controversial topic of fracking, a practice the parties concede is not currently used in Monterey County (see Stipulated Facts, ¶ 29), as a "political hook" for their real agenda: destroying the oil and gas industry by effectively banning certain production techniques. CRC insists that highly technical knowledge — which the average voter lacks — is required to understand the true impact of Measure Z upon the oil and gas industry. (See, e.g., Tubbs Dec., ¶¶ 32-60.)

CRC is correct that the single-subject rule was enacted, in part, to prevent voter deception. (*Jones*, *supra*, 21 Cal.4th at p. 1156.) And it is true that Measure Z goes much further than the simplistic "anti-fracking" campaign label suggests. But however distasteful oversimplification and political puffery may be, CRC has failed to identify authority for its contention that a proponent's use of misleading campaign material and/or proponent-submitted ballot materials stands as an independent ground for invalidating an initiative under the single-subject rule. Instead, CRC justifies its argument with isolated excerpts from the California

Supreme Court's decision in *Jones*, and by reference to a concurring opinion in *Manduley v. Superior Court* (2002) 27 Cal.4th 537.

1.2.1 *Jones*

Jones involved a challenge to Proposition 24, the "Let the Voters Decide Act of 2000." (*Jones*, *supra*, 21 Cal.4th at p. 1147.) Proposition 24 revised provisions of the law related to state legislator compensation. (*Id.* at pp. 1147-1148.) The Proposition also transferred the power to reapportion state legislative, congressional, and Board of Equalization districts from the Legislature to the California Supreme Court. (*Id.* at pp. 1148-1149.) The Court held that addressing these two issues in concert violated the single-subject rule. The Court reasoned that the reapportionment proposal involved "a most fundamental and far-reaching change in the law" that "clearly represent[ed] a separate 'subject' within the meaning of the single-subject rule upon which a clear expression of the voters' intent is essential." (*Id.* at pp. 1167-1168.) It therefore concluded that authorizing this provision together with the provisions regarding state officer compensation "would inevitably create voter confusion and obscure the electorate's intent with regard to each of the separate subjects included within the initiative, undermining the basic objectives sought to be achieved by the single-subject rule." (*Id.* at p. 1168.)

CRC claims that *Jones* also stands for the proposition that the Court "can even hypothesize a further claim that there will be instances where [the Court] might just strike the statute down just on the fact that it was brought in such a misleading and deceptive way." In support of this claim, CRC cites to footnote 12 of *Jones*. (*Id.* at p. 1163, fn. 12.) In fact, the *Jones* Court never reached this issue. Footnote 12 provides:

"As noted, in a separate argument petitioners assert that the misleading nature of the initiative petition with regard to this significant point is itself a sufficient basis upon which to disqualify the measure from the ballot. In light of our conclusion that the measure violates the single-subject rule, *we need not determine whether the misleading nature of the initiative petition in itself would support an order restraining election officials from placing the measure on the ballot.*" (*Id.* at p. 1163, fn. 12, italics added; see also *id.* at pp. 1152-1153 [because the court held that the initiative violated the single-subject rule, the court "need not reach the question[]

whether . . . its allegedly misleading aspects are sufficient, in themselves, to warrant an order withholding the measure from the ballot"].)

Although it did not reach the voter deception argument, the Court nevertheless summarized the petitioner's arguments in its introduction. (*Id.* at pp. 1150-1153); CRC cites to this *summary* to support its claim. For example, CRC quotes *Jones* at page 1151 for the proposition that, in applying the single-subject test, the court must take "special care to ensure that voters are not manipulated by one part of the new law 'that the proponent views as politically popular . . . .'" This language is convenient for CRC, since it insists that Intervenors used fracking as a "hook for other, unrelated provisions." But the language CRC quotes simply describes one of the *Jones petitioner's contentions*.

Further, in arguing that campaign behavior may be a factor in the single-subject inquiry, CRC places great emphasis on the Court's citation to a newspaper article, describing it as "one of the key pieces of evidence" upon which the Court relies. (*Id.* at p. 1151, fn. 5.) However, the Court's sole reference to the article is in a footnote in the section of the Court's opinion summarizing the petitioner's contentions, in which the court notes merely that the article in question was an attachment to the underlying petition. (*Ibid.*) Nothing in *Jones* supports CRC's claim that the Court relied on the newspaper article in reaching its decision.

CRC also notes *Jones*' "holding" that "a provision governing legislative salaries was unrelated to the purported purpose of addressing 'legislative self-interest,'" because, as the Court stated, "[a]lthough the text of Proposition 24 obscures this point, in reality . . . members of the Legislature do *not* control their own salaries (and thus cannot 'raise their own pay,' as the initiative implies)." (*Id.* at p. 1163, italics in original.) CRC relies on this statement in analogizing Measure Z to *Jones*, claiming that just as Proposition 24 falsely represented the Legislature's power to control their own salaries, a politically controversial issue, Intervenors misled voters by focusing their campaign nearly entirely on fracking, an equally politically charged issue, even though fracking is not presently employed in Monterey County. (Stipulated Facts, ¶ 29.)

CRC's carve-out of a single sentence of the Supreme Court's opinion is misleading; *Jones* did not hold as CRC contends. Rather, in the relevant passage, the Court primarily

addressed an alternative argument advanced by proponent's counsel as to the *subject* of Proposition 24, not a false premise *within* Proposition 24.

Proposition 24's proponent initially asserted that "voter approval" was the "single subject" to which the initiative pertained. (*Id.* at pp. 1161-1162.) The Court rejected this subject as far too broad to satisfy the rule. (*Id.* at p. 1162.) In the alternative, the proponent suggested the initiative's provisions were reasonably germane to "the objective of dealing with the problem of 'legislative self-interest.'" (*Id.* at p. 1163.) The proponent pointed out that one purpose of the measure was to "'combat the self-interest of individual legislators,'" and hence, the measure declared, "'Legislators should not be entitled to raise their own pay or draw their own districts without obtaining approval of the voters.'" (*Ibid.*) The Court rejected this argument, explaining,

"We need not determine in this case whether an initiative matter that includes provisions dealing with a number of subject matter areas as diverse as legislator salaries and reapportionment would satisfy the single-subject requirement if each of the separate areas addressed by the provision poses a potential conflict of interest between the personal interests of legislators and the public interest. Even if we were to assume that the theme or objective of remedying 'legislative self-interest' is not excessively broad and would permit the combination of such otherwise unrelated proposals, the initiative before us cannot properly be defended on this basis. Although the text of Proposition 24 obscures this point, in reality, under existing law, members of the Legislature do *not* control their own salaries (and thus cannot "raise their own pay," as the initiative implies)." (*Id.* at p. 1163, italics in original.)

The Court consequently *deemed it unnecessary* to consider this *alternative* theory argued by counsel because it was predicated on a falsehood. The Court did *not*, as CRC states, hold that the single-subject rule was violated *because* of the falsehood.

In sum, *Jones* does not support CRC's voter deception argument.

1.2.2 *Manduley*

The closest CRC gets to providing support for its deception argument is in its citation to *Manduley v. Superior Court* (2002) 27 Cal.4th 537. There, in a concurring opinion, Justice Moreno addressed the deception issue, stating, "at the very least, an initiative should not pass muster under the single-subject rule unless its provisions are reasonably encompassed within the

title and summary of the initiative." (*Id.* at p. 587.) Justice Moreno likened to this to the inquiry "whether a party was unfairly surprised by a provision in a contract of adhesion, rendering that provision unconscionable. [Citation.]" (*Ibid.*) Justice Moreno also noted that "the subject encompassed by the title and summary should be reasonably specific, not a broad, generic subject such as crime or public disclosure. [Citation.]" (*Id.* at p. 588.)

However persuasive the opinion of a California Supreme Court Justice may be, it is not, on its own, controlling precedent. (See *People v. Stewart* (1985) 171 Cal.App.3d 59, 65 [to qualify as precedent, a "majority of the court" must agree on a point of law].) Nevertheless, even if this court were to apply Justice Moreno's test, Measure Z would still "pass muster." (*Manduley, supra*, 27 Cal.4th at p. 587.) Measure Z's official title is the "Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative." (AR 152.) The title provides notice that the initiative will, at minimum, address fracking and the effect of oil operations on the County's water. Additionally, Measure Z expressly explains that its purpose is to protect the County's "water, agricultural lands, air quality, scenic vistas, and quality of life by prohibiting the use of any land within the County's unincorporated area for well stimulation treatments, including, for example, hydraulic fracturing treatments (also known as 'fracking') and acid well stimulation treatments. The Initiative also prohibits and phases out land uses in support of oil and gas wastewater (which the Initiative defines) disposal using injection wells or disposal ponds in the County's unincorporated area. The Initiative also prohibits drilling new oil and gas wells in the County's unincorporated area." (*Ibid.*)

Accordingly, the title and summary of Measure Z "reasonably encompass" its provisions. (*Manduley, supra*, 27 Cal.4th at p. 587.) Moreover, the title and summary are "reasonably specific" as to the subject of the initiative: limiting the risk of harm to the public interest purportedly posed by certain of the oil and gas industry's production techniques. (*Id.* at p. 588.)

In sum, Measure Z does not violate the single-subject rule.

2. Preemption

Petitioners argue that state and federal law preempt Measure Z.

2.1 State Oil and Gas Law

Oil and gas operations in California are governed by Division 3 of the Public Resources Code (Pub. Resources Code, § 3000, et seq.) and its implementing regulations (Cal. Code Regs., tit. 14, § 1712, et seq.). Division 3 addresses oil and gas exploration and extraction in detail, including notices of intent to drill and abandon (§§ 3203, 3229); bonding (§§ 3204-3207); abandonment of wells (§ 3208); recordkeeping (§§ 3210-3216); blowout prevention (§ 3219); use of well casing to prevent water pollution (§ 3220); protection of water supplies (§§ 3222, 3228); repairs (§ 3225); regulation of production facilities (§ 3270); waste of gas (§§ 3300-3314); subsidence (§ 3315-3347); well spacing (§§ 3600-3609); unit operations (§§ 3635-3690); and regulation of oil sumps (§§ 3780-3787).

The State of California Department of Conservation's Division of Oil, Gas, and Geothermal Resources (DOGGR) is the state agency appointed to administer oil and gas activities. (See Pub. Resources Code, § 3100, et seq.) DOGGR has a dual mandate to promote the development of the state's oil and gas resources, and to supervise such operations "to prevent, as far as possible, damage to life, health, property, and natural resources," including the water supply. (Pub. Resources Code, § 3106.) DOGGR regulations are extensive. (See, e.g. Cal. Code Regs., tit. 14, §§ 1722-1722.9, 1723, 1723.7, 1724, 1724.1, 1775.) These regulations are intended to be "statewide in application for onshore drilling, production and injection operations." (*Id.*, § 1712.)

Effective January 1, 2014, DOGGR's obligation to regulate the oil and gas industry's use of well stimulation treatments (WSTs), including hydraulic fracturing, was codified by SB 4. (Pub. Resources Code, § 3150, et seq.) SB 4 charged DOGGR with creating permanent regulations specific to WSTs. (Pub. Resources Code, § 3160, subd. (b)(1)(A).) DOGGR's regulations, which created a state permitting system for WSTs, went into effect in July 2015. (Cal. Code Regs., tit. 14, §§ 1761, 1780-1789.)

Further, in California, the U.S. EPA has delegated to DOGGR the authority to permit and regulate "Class II" injection wells under the Underground Injection Control (UIC) program. (40 C.F.R. § 147.250.) The UIC program falls under the federal Safe Drinking Water Act (42 U.S.C. § 300f, et seq.), the purpose of which is to protect "underground sources of drinking water" (40

C.F.R. § 144.1). The Class II injection category includes wells used to enhance oil recovery through the injection of fluids, including steam and water. (*Id.*, § 144.6(B).) All UIC projects are subject to DOGGR approval. (Cal. Code Regs., tit. 14, § 1724.10.) DOGGR strictly regulates UIC projects, enforces testing and equipment requirements, and requires both monthly reporting of injection activity and chemical analysis of injection fluids. (*Id*, §§ 1724.9, 1724.10.)

2.2 Preemption Law

Under state law, Petitioners bear the burden of proving preemption. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) Voter-approved initiatives, such as Measure Z, are "subject to the same constitutional limitations and rules of construction as are other statutes." (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 675.)

"Under article XI, section 7 of the California Constitution, '[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.'" (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-898.) However, "[l]ocal legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747, internal citations omitted.)

"Local legislation is duplicative of general law when it is coextensive therewith. [¶] Similarly, local legislation is contradictory to general law when it is inimical thereto. [¶] Finally, local legislation enters an area that is fully occupied by general law when the Legislature has expressly manifested its intent to fully occupy the area, or when it has impliedly done so in light of one of the following indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality." (*Sherwin-Williams*, *supra*, 4 Cal.4th at p. 898, internal citations omitted.)

Likewise, the federal Supremacy Clause empowers Congress to preempt state and local law. (*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 193, citing U.S. Const., art. VI, cl. 2.) "There are four species of federal preemption: express, conflict, obstacle, and field." (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935.) Express preemption occurs when Congress "define[s] explicitly the extent to which its enactments pre-empt state law." (*English v. General Electric Co.* (1990) 496 U.S. 72, 78.) "[C]onflict preemption will be found when simultaneous compliance with both state and federal directives is impossible." (*Viva!, supra*, 41 Cal.4th at p. 936.) Preemption also occurs when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Crosby v. Nat. Foreign Trade Council* (2000) 530 U.S. 363, 373, citation omitted.) Courts will infer field preemption "when it is clear . . . that Congress intended, by legislating comprehensively, to occupy an entire field of regulation." (*Capital Cities Cable, Inc. v. Crisp* (1984) 467 U.S. 691, 699.) "[F]or the purposes of the Supremacy Clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws. [Citation.]" (*Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.* (1985) 471 U.S. 707, 713.)

Courts are "reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another." (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707.) "The inherent local police power includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders, and preemption by state law is not lightly presumed." (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 738.) Thus, "when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute." (*Big Creek, supra*, 38 Cal.4th at 1149.)

2.3 Well Stimulation Treatments

Measure Z's Policy LU-1.21 prohibits "[t]he development, construction, installation, or use of any facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal, in support of well stimulation treatments . . . within the County's unincorporated area." (AR 155.)

"Well stimulation treatments" are defined as "any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments. Well stimulation treatments do not include steam flooding, water flooding, or cyclic steaming and do not include routine well cleanout work, routine well maintenance, routine removal of formation damage due to drilling, bottom hole pressure surveys, or routine activities that do not affect the integrity of the well or the formation." (AR 155.)

Policy LU-1.21 defines the term "hydraulic fracturing treatment" as a WST "that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid or fluids into an underground geologic formation in order to fracture or with the intent to fracture the formation, thereby causing or enhancing the production of oil or gas from a well." (AR 155.) Further, Policy LU-1.21 defines "acid well stimulation treatment" as a WST "that uses, in whole or in part, the application of one or more acids to the well or underground geologic formation." (*Ibid.*)

Petitioners argue that state law preempts Policy LU-1.21.

2.3.1 Standing

Intervenors contend that Petitioners lack standing to challenge the WST prohibition because they have conceded they neither use WSTs nor are likely to do so in the future. Petitioners respond that the parties stipulated not to raise standing at this phase of the proceedings. Petitioners further respond that they have standing because they are concerned that Measure Z's definition of "acid well simulation treatment" may include certain well maintenance performed with hydrochloric acid.

Only parties with a real interest in a dispute have standing. (Code Civ. Proc., § 367.) A real party in interest is defined as "the person possessing the right sued upon by reason of the substantive law." (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787.) Challenges to standing are

jurisdictional; they "may be raised at any time in the proceeding. [Citations.]" (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 438; *Payne v. United California Bank* (1972) 23 Cal.App.3d 850, 859 ["The question of standing to sue is one of the right to relief and goes to the existence of a cause of action against the defendant"].) Accordingly, the fact that the parties have stipulated not to raise standing in this phase of the proceedings is immaterial.

A party has standing to bring a petition for writ of mandate where "there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested." (Code Civ. Proc., § 1086.) The "beneficially interested" requirement "has been generally interpreted to mean one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. [Citations.]" (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796.) "The petitioner's interest in the outcome of the proceedings must be substantial, i.e., a writ will not issue to enforce a technical, abstract or moot right. The petitioner also must show his legal rights are injuriously affected by the action being challenged." (*Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87, internal citations omitted; see also *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560 [to have standing, a party "must have suffered an 'injury in fact' — an invasion of a legally protected interest which is (a) concrete and particularized . . . ; and (b) "actual or imminent, not 'conjectural' or 'hypothetical'"].)

Petitioners concede they do not presently use WSTs and are unlikely to do so in the future. (See, e.g, Stipulated Facts, ¶ 29; Wilson Dec., ¶¶ 30, 32 [Eagle]; Miller Dec., ¶ 17 [CRC]; Declaration of Charles G. Kemp (Kemp Dec.), ¶ 3, Ex. A, p. 51 [Aera]; Tubbs Dec., ¶ 42 [Chevron]; Gore Dec., ¶ 10 [NARO].) Petitioners nevertheless argue they have standing to challenge the WST prohibition on several grounds.

First, Petitioners are disquieted that a perceived ambiguity in the definition of "acid well stimulation treatment" could potentially subject them to adverse action under Measure Z. A Chevron declarant explains, "Well cleanout and maintenance operations may involve the use of hydrochloric acid. This type of cleanout is not considered well stimulation so long as the maintenance operations comply with the acid volume thresholds set pursuant to DOGGR's

regulations. However, because Measure Z does not incorporate DOGGR's regulations into its provisions," it is "unclear" how the County will determine whether these cleanouts are permissible or prohibited. (Tubbs Dec., ¶ 53.)

To determine whether the use of acid in oil operations constitutes a WST under SB 4, the Legislature directed DOGGR to "establish special values for acid volume applied protruded foot of any individual stage of the well or for total acid volume of the treatment, or both, based upon a quantitative assessment of the risks posed by acid matrix stimulation treatments that exceed the specified threshold value or values in order to prevent, as far as possible, damage to life, health, property, and natural resources pursuant to Section 3106." (Pub. Resources Code, § 3160, subd. (B)(1)(C).) DOGGR did so. (Cal. Code Regs., tit. 14, § 1761, subd. (a)(1)(A)(ii)-(iii), (a)(3).)

Measure Z declares that its definition of "acid well stimulation treatment" "tracks the state law." (AR 152.) Indeed, Measure Z's definition is *identical* to the definition of that term under state law. (Pub. Resources Code, § 3158.) Moreover, Measure Z exempts "routine well cleanout work" and "routine well maintenance" from its definition of WST. (AR 152.) Consequently, to the extent Petitioners' well cleanout and maintenance operations do not exceed DOGGR thresholds, the court construes Measure Z to except those operations from its definition of WST.

The court's construction is supported by the canon of constitutional doubt. That canon requires that this court "adhere to the precept that a court, when faced with an ambiguous statute that raises serious constitutional questions, should endeavor to construe the statute in a manner which *avoids* any doubt concerning its validity." (*People v. Leiva* (2013) 56 Cal.4th 498, 506-507, italics in original, internal citations omitted.) The canon reflects the judgment that "courts should minimize the occasions on which they confront and perhaps contradict the legislative branch.' [Citation.]" (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373.)

Petitioners contend that this interpretation of the WST prohibition would not bind other parties and hence, that the purported ambiguity would expose them to the risk of enforcement. However, should the WST prohibition ultimately be enforced against Petitioners, they would then have standing to object to such enforcement in this court.

Petitioners claim Intervenors would then argue such a challenge was time-barred. (See Gov. Code, § 65009, subd. (c)(1) [90-day bar on facial challenges to general plan amendments].) This is possible, but any such claim would be defeated by the doctrine of equitable tolling. That doctrine is "designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations—timely notice to the defendant of the plaintiff's claims—has been satisfied." (*Appalachian Ins. Co. v. McDonnell Douglas Corp.* (1989) 214 Cal.App.3d 1, 38.) "Where applicable, the doctrine will suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness. Broadly speaking, the doctrine applies when an injured person has several legal remedies and, reasonably and in good faith, pursues one. Thus, it may apply . . . where a first action, embarked upon in good faith, is found to be defective for some reason." (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 99-100, internal citations omitted.) It would be inequitable to bar Petitioners from prosecuting a facial challenge to Policy LU-1.21 when they lacked standing to bring such a challenge within the statutory period.

Petitioners also argue that even if they lack beneficial interest standing they nevertheless have standing under the "public interest exception." That exception provides, "where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.' [Citation.]" (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166.) "When the duty is sharp and the public need weighty, the courts will grant a mandamus at the behest of an applicant who shows no greater personal interest than that of a citizen who wants the law enforced. [Citations.] When the public need is less pointed, the courts hold the petitioner to a sharper showing of personal need." (*McDonald v. Stockton Met. Transit Dist.* (1973) 36 Cal.App.3d 436, 440.) Here, Petitioners do not seek to enforce a public right, but rather, seek to preserve a private right to benefit economically from WSTs. (See *Weiss v. City of L.A* (2016) 2 Cal.App.5th 194, 205-206.) And, even if Petitioners otherwise qualified for public interest standing, the application of the doctrine is within the court's discretion. (*Save the Plastic Bag Coalition, supra,* 52 Cal.4th at p. 170, fn. 3 ["we do not

suggest that public interest standing is freely available to business interests lacking a beneficial interest in the litigation. No party, individual or corporate, may proceed with a mandamus petition as a matter of right under the public interest exception"].)

Relatedly, Petitioners contend that the WST prohibition is "of great public interest" and that this fact alone suffices to confer standing. Indeed, courts have occasionally relied on this rationale to find standing. (See, e.g., *California Water & Tel. Co. v. Los Angeles County* (1967) 253 Cal.App.2d 16, 26.) However, this has generally occurred when other factors favoring standing are present. (*Ibid.*) "The fact that an issue raised in an action for declaratory relief is of broad general interest is not grounds for the courts to grant such relief in the absence of a true justiciable controversy. [Citations.]" (*Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 662.) Finally, Petitioners imply that they may qualify for taxpayer standing. (See, e.g., *Harman v. San Francisco* (1972) 7 Cal.3d 150, 159.) Petitioners do not explain how this doctrine applies here.

In sum, unless and until Petitioners or another party actually propose or engage in WSTs, the question whether LU-1.21 is preempted is not ripe for adjudication and is therefore best left for another day. (See *Braude*, *supra*, 226 Cal.App.3d at p. 87; *California School Emp. Assn v. Sequoia Union High School Dist.* (1969) 272 Cal.App.2d 98, 104 [a "court will not undertake to decide abstract questions of law at the request of a party who shows no substantial right that can be affected by a decision either way"].)

2.4 Wastewater Injection and Impoundment

Policy LU-1.22 provides, "The development, construction, installation, or use of any facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal, in support of oil and gas wastewater injection or oil and gas wastewater impoundment is prohibited on all lands within the County's unincorporated area." (AR 155.)

Policy LU-1.22 defines "oil and gas wastewater injection" as "the injection of oil and gas wastewater into a well for underground storage or disposal." Policy LU-1.22 defines "oil and gas wastewater impoundment" as "the storage or disposal of oil and gas wastewater in depressions or basins in the ground, whether manmade or natural, lined or unlined, including percolation ponds

and evaporation ponds." Finally, Policy LU-1.22 defines "oil and gas wastewater" as "wastewater brought to the surface in connection with oil or natural gas production, including flowback fluid and produced water." (AR 155.)

Petitioners argue that state and federal law (and state law enacted in furtherance of federal law) preempt Policy LU-1.22. Specifically, Petitioners assert that 1) Policy LU-1.22 conflicts with state law, and is thus preempted; the SDWA's express language forbids local governments from impairing or impeding state underground injection programs; 2) the EPA has approved DOGGR's regulatory scheme, which conflicts with Measure Z; 3) Policy LU-1.22 stands as an obstacle to the SDWA's purposes; and 4) the SDWA occupies the field of oil and gas wastewater injection.

The County and Intervenors contend that 1) Policy LU-1.22 is a valid exercise of the County's police power; 2) the SDWA authorizes Measure Z's ban on underground injection because it is "essential" to protect County drinking water; 3) the SDWA contains a "savings clause," which refutes Petitioners' suggested inference of field preemption; and 4) Measure Z aligns with, rather than frustrates, the SDWA's policy goals.

2.4.1 State Preemption

2.4.1.1 Field Preemption

Petitioners argue that the extensive legal and regulatory scheme described above fully occupies the field of oil and gas regulation in California. Petitioners also argue that the historical trend of increased state regulation of the oil and gas industry evinces the Legislature's intent to occupy the field. (See, e.g., Pub. Resources Code, §§ 3130-3132, 3150-3161; Cal. Code Regs., tit. 14, §§ 1761, 1780-1789.) Petitioners cite a 1976 California Attorney General opinion in support of these claims.[7] In that opinion, the Attorney General stated that State oil and gas law preempts "nearly all local regulations of oil and gas production" because local regulation of such resources "would subject development of the state's fuel resources to [a] checkerboard of regulations' . . . . Such local regulation could obviously interfere with and frustrate the state's conservation and protection regulatory scheme." (59 Ops.Cal.Atty.Gen 461, 469, 477 (1976)

[7] "Opinions of the Attorney General, while not binding, are entitled to great weight." (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17, internal citations omitted.)

[JRJN, Ex. 32], internal citation omitted.) The Attorney General explained, "[w]here the statutory scheme or Supervisor specifies a particular method, material or procedure by a general rule or regulation or gives approval to a plan of action with respect to a particular well or field or approves a transaction at a specified well or field, it is difficult to see how there can be any room for local regulation . . . . [¶] We observe that these statutory and administrative provisions appear to occupy fully the underground phases of oil and gas activities." (*Id.* at p. 478.)

The County and Intervenors essentially concede in briefing that state oil and gas law preempts local law as to "technical, downhole activities." However, they characterize Measure Z as a land use regulation addressing surface, as opposed to subsurface activities. They observe that the Attorney General wrote that, as to regulation concerning "land use, environmental protection, aesthetics, public safety, and fire and noise prevention, local governments may impose regulations more stringent than those imposed by the state so long as they do not conflict with, frustrate the purposes of, or destroy the uniformity of the Supervisor's statewide regulatory conservation and protection program. As we have stated, these latter activities appear to be, for the most part, surface activities." (*Id.* at p. 478.) The County and Intervenors reason that Measure Z does not prohibit wastewater injection and impoundment, but rather, prohibits *surface* equipment and activities "*in support of*" these techniques and hence, that Policy LU-1.22 is a valid exercise of the County's police power. There are several problems with this claim.

First, Measure Z's purported prohibition on certain "land uses" is clearly a pretextual attempt to do indirectly what it cannot do directly. (See 59 Ops.Cal.Atty.Gen at p. 478 ["there will . . . be a conflict with state regulation when a local entity, attempting to regulate for a local purpose, *directly or indirectly* attempts to exercise control over subsurface activities"].) Nothing in Measure Z or in Intervenors' brief provides a meaningful distinction between wastewater injection and impoundment on the one hand, and surface equipment and activities in support of wastewater injection and impoundment on the other. And tellingly, Intervenors conceded at argument that Measure Z does not merely regulate surface land uses but instead, "specifically prohibit[s] wastewater injection for storage and disposal."

Second, the County and Intervenors' focus on the distinction between surface and subsurface activities is an oversimplification.[8] At bottom, the relevant issue is not whether the activity regulated takes place on the surface or below the surface, but rather whether Measure Z regulates the *conduct* of oil and gas operations or their permitted *location*. (59 Ops.Cal.Atty.Gen at p. 478; see *Big Creek Lumber, supra*, 38 Cal.4th at pp. 1152, 1157.) The County and Intervenors are correct that, in general, the County may exercise its broad police power to regulate land use, even to the extent of prohibiting oil and gas production in specific zones or in the County as a whole. (*Pacific Palisades Assn v. City of Huntington Beach* (1925) 196 Cal. 211, 217; *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 555; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534.) However, this does not answer the question whether state law preempts the use of that police power, an issue that none of the cases the County and Intervenors cite addressed. (59 Ops.Cal.Atty.Gen at p. 467 ["[a]s has been said, these cases without exception fail to consider any conflict between local and state authority"].)

Moreover, even if the County and Intervenors' argument were accepted, it would change nothing. Measure Z's prohibition of WSTs is not a ban on the *location* of oil and gas drilling or restrictions on the use to which operators may put land. Rather, Policy LU-1.21 regulates a specific *production technique* used by operators on lands upon which oil and gas development is permitted. Such regulation directly conflicts with DOGGR's mandate.[9] (Pub. Resources Code, § 3106, subd. (b) ["The Supervisor shall . . . supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of

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[8] At argument, Intervenors, who were represented on this point by a certified law student, appeared to abandon this distinction entirely, contending it to be "artificial" because, inter alia, subsurface activity "is accompanied inherently by surface activities" and by accompanying surface land uses. This claim both directly contradicts Intervenors' briefing and cannot be reconciled with Measure Z's focus on surface uses in support of subsurface activities.

The court further notes that Intervenors' counsel failed to present or file a copy of a signed consent form from their clients authorizing a certified law student to appear on their behalf. (Cal. Rules of Court, Rule 9.42(d)(3)(D).) The court reminds Intervenors' counsel of its obligation to observe this rule in the future.

[9] For this reason, Intervenors' claims that state oil and gas regulation do not preempt "zoning restrictions" or "local land use law" are accurate, but beside the point.

underground hydrocarbons . . ."]; 59 Ops.Cal.Atty.Gen at p. 478 ["The state's "statutory and administrative regulatory scheme . . . exclude[s] local regulation in each instance where the Supervisor or his regulatory program approves or specifies plans of operation, methods, materials, procedures or equipment to be used by the operator . . ."].)

Intervenors respond that the statutory and regulatory scheme with respect to state oil and gas operations is relevant only to the "technical requirements" of operations, not to the question whether those operations may be permitted in the first place. Intervenors contend that local governments retain the police power to proscribe such operations, and that Measure Z is merely an exercise of that power. But Measure Z is a ban on specific production techniques *not* a total ban on oil operations.

In short, California's state oil and gas legal and regulatory scheme fully occupies the area of the manner of oil and gas production. Because Policy LU-1.22 seeks to regulate the manner of oil and gas production by restricting particular production techniques, namely wastewater injection and impoundment, it is "in conflict with general law," and is therefore preempted. (*Morehart, supra,* 7 Cal.4th at p. 747.)

2.4.1.2 Policy LU-1.22 is "contradictory" to general law.

Policy LU-1.22 is also preempted because it is "contradictory" of general law. (*Sherwin-Williams, supra,* 4 Cal.4th at p. 898.) Public Resources Code, section 3106, subdivision (b), provides, "[t]he supervisor *shall* also supervise the drilling, operation, maintenance, and abandonment of wells *so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons* and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case. To further the elimination of waste by increasing the recovery of underground hydrocarbons, it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state [and] . . . to do what a prudent operator using reasonable diligence would do . . . including, but not limited to, *the injection of air, gas, water, or other fluids into the productive strata* . . . when these methods or processes employed have been approved by the supervisor . . . ." (Italics added.)

By enacting this statute, the Legislature expressly declared the state's policy regarding, inter alia, wastewater injection. Policy LU-1.22, then, is irreconcilable with state policy. (See *Fiscal v. City & County of S.F.* (2008) 158 Cal.App.4th 895, 914-915 [local law was "irreconcilable, clearly repugnant, and so inconsistent" with state law that "the two cannot have concurrent operation"].)

2.4.1.3 The effect of "savings clauses"

The County and Intervenors argue that three statutes indicate the Legislature did not intend to preempt the field of oil and gas regulation.

2.4.1.3.1 Public Resources Code, section 3690

Both the County and Intervenors contend Public Resources Code, section 3690 undermines Petitioners' preemption argument. Section 3690 is expressly limited to a single chapter of Division 3 dealing with unitized operations.[10] The County and Intervenors acknowledge this, but insist the statute demonstrates the Legislature "expressly intended not to preempt the field." Intervenors argues that this section applies here because it "directly covers operations on unitized fields like those at issue."

These claims are not persuasive. As the Attorney General noted in its opinion on which both the County and Intervenors heavily rely, "[t]his declaration in Public Resources Code section 3690 applies only to 'any existing rights' and only to the provisions of 'this chapter,' *i.e.*, chapter 3.5." (59 Ops.Cal.Atty.Gen at p. 473.) Petitioners' preemption arguments do not rely upon Chapter 3.5. Moreover, the fact that no other chapter of Division 3 contains such a provision indicates that the statute was intentionally limited to Chapter 3.5. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 ["The expression of some things in a statute necessarily means the exclusion of other things not expressed"].)

[10] Section 3690 provides, "*[t]his chapter* shall not be deemed a preemption by the state of any existing right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including, but not limited to, zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment, and inspection." (Italics added.)

2.4.1.3.2 Public Resources Code, sections 3206.5 and 3320.1, subdivision (c)

Finally, the County argues that Public Resources Code, sections 3206.5 and 3320.1, subdivision (c), blunt Petitioners' preemption argument. Section 3206.5 authorizes cities and counties to request that DOGGR 1) provide information concerning non-producing oil wells; and 2) determine "whether the wells should be plugged and abandoned." Section 3206.5 also authorizes DOGGR to compel operators to provide reasons why non-producing wells should not be plugged and abandoned. Section 3320.1, subdivision (c), preserves local governments' right of eminent domain in order to address land subsistence problems related to oil or gas pools. The County maintains that these provisions evince the Legislature's intent to "include and work with local agencies." But these statutes neither confer authority on local governments to regulate the manner of oil production nor suggest DOGGR's authority to do so is non-exclusive. At best, they recognize only that oil and gas production operations are subject to both state and local oversight, a premise implicit in the discussion *ante*, concerning the distinction between regulating the manner of oil production and the location of that production.

2.4.1.4 Federal Preemption

Petitioners also contend that Policy LU-1.22 directly conflicts with the Safe Water Drinking Act (SWDA)'s express terms.

The SDWA directed the EPA to oversee underground injection throughout the United States. (42 U.S.C. § 300h, et seq.) Nevertheless, the SDWA provides that states may obtain "primary enforcement responsibility" to enforce the SDWA's UIC program if they have adopted and implemented adequate standards and enforcement measures. (42 U.S.C. § 300h-1.) In 1982, the EPA granted DOGGR this primary enforcement responsibility for the State of California. (40 C.F.R. § 147.250.)

The SDWA establishes certain minimum requirements and restrictions for state UIC programs. (42 U.S.C. § 300h(b).) As relevant here, a state program "may not prescribe requirements which interfere with or impede" underground injection "unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection." (42 U.S.C. § 300h(b)(2).) Petitioners maintain that Measure Z is in direct conflict

with this provision. The County and Intervenors respond that Congress structured the SDWA to establish minimum standards that leave room for more stringent local regulation, such as Measure Z. They further respond that Policy LU-1.22 is a land use policy decision the County made because it determined that the Policy was "essential" to protect County drinking water.

It is true that the SDWA generally does not bar states from enacting supplemental or more stringent restrictions on UIC programs. (See 42 U.S.C. § 300h-1(b)(1)(B)(3); 40 C.F.R. § 145.1(g).) The SDWA expressly provides that it does not "diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter." (42 U.S.C. § 300h-2(d).) "Congress intended that states retain authority respecting underground injection so long as it does not impinge on the UIC program administered by the EPA." (*Bath Petroleum Storage, Inc. v. Sovas* (N.D.N.Y. 2004) 309 F.Supp.2d 357, 367-368.)

As an initial matter, there is a significant difference between stringent regulation and outright proscription; "surely the prohibition above prevents such local law from altogether preventing UIC activity." (*EQT Production Company, supra*, 191 F.Supp.3d at p. 601, affd. on other grounds (4th Cir. 2017) 870 F.3d 322.)[11] Measure Z prohibits underwater injection notwithstanding that DOGGR, in implementing its UIC program, has established regulations requiring DOGGR approval for any injection or disposal project, together with extensive filing, notification, operating, and testing requirements for such projects. (Cal. Code Regs., tit. 14, §§ 1724.06, 1724.10.) Where "the state has undertaken to allow UIC wells, [that] action operates to diminish the counties' powers to prohibit them." (*EQT Production Company, supra,* 191 F.Supp.3d at p. 601.)[12]

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[11] On appeal, the Fourth Circuit resolved the dispute on state preemption grounds and thus, found it unnecessary to reach the federal preemption issue. (*Id.* at p. 332.) Nevertheless, the trial court's opinion on that point was not superseded; it remains persuasive authority. (*Credit Managers Assn of California v. Countrywide Home Loans, Inc.* (2006) 144 Cal.App.4th 590, 598.)

[12] In addition, although the SDWA's "savings clause" explicitly preserves some local authority *under state law*, the County lacks the authority under state law to regulate the manner of oil and gas production. (Pub. Resources Code, § 3106, subd. (b); 59 Ops.Cal.Atty.Gen at p. 478; see *Big Creek Lumber, supra*, 38 Cal.4th at pp. 1152, 1157.)

Intervenors contend that the SDWA's prohibition on regulations "which interfere with or impede" underground injection (42 U.S.C. § 300h(b)(2)) is limited to federally mandated UIC programs. Intervenors maintain that the SDWA's "savings clause" (42 U.S.C. § 300h-2(d)) applies to the entire Act, effectively trumping Title 42 United States Code section 300h(b)(2), as applied to local governments. Consequently, Intervenors assert that the obligation not to "interfere with or impede" underground injection applies to the state but not its subdivisions. This claim suffers from at least two defects.

First, the text of the "savings clause" does not support this reading. Although the statute preserves local authority "respecting underground injection," that authority is qualified by the subsequent phrase providing that a law enacted under that authority "shall [not] relieve any person of any requirement otherwise applicable under this subchapter." (42 U.S.C. § 300h-2(d).) A local law like Measure Z, then, cannot relieve the County[13] of its obligation not to "prescribe requirements which interfere with or impede" underground injection programs. (42 U.S.C. § 300h(b)(2).) Second, Intervenors' argument would lead to states possessing less authority than their own political subdivisions, an absurd result. "[T]he superior, overriding power of the state must enable the state to occupy the field to the exclusion of its own subdivisions, lest its superiority be circumscribed." (*EQT Production Company*, *supra*, 191 F.Supp.3d 583 at p. 601.)

The County and Intervenors further argue that Measure Z is not preempted because it is "essential" to protect drinking water from endangerment, an express exception to the SDWA's prohibition on regulations that prescribe requirements "which interfere with or impede" underground injection. In support of this argument, the County and Intervenors cite Measure Z's Finding 5, which states that wastewater injection and disposal present "a risk of water pollution and soil contamination." (AR 153.) There are three problems with this claim.

First, the County and Intervenors incorrectly assume that the County is authorized to make this finding. In truth, when as here, the EPA has conferred primacy on a state, the SDWA expressly charges that state with determining whether a regulation is essential to protect drinking water. (42 U.S.C. § 300h(b)(2) [regulations for "*State* underground injection control programs

[13] Although the statute refers to a "person," the subchapter's definition of the term expressly includes a "State [or] municipality . . . ." (42 U.S.C. § 300f(12).)

may not prescribe requirements which interfere with or impede" underwater injection "unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection"], italics added.) Had Congress intended political subdivisions to make such determinations, it could have so stated. After all, it expressly referenced political subdivisions in the "savings clause" upon which the County and Intervenors rely. (42 U.S.C. § 300h-2(d); see *EQT Production Company, supra*, 191 F.Supp.3d at p. 602 ["wastewater properly injected into UIC wells pursuant to state and federal law does not become pollution simply because the [County] says so"].)

Second, the State has recently indicated that such a finding is the province of DOGGR and the State and Regional Water Boards. In 2015, the Legislature amended the Public Resources Code to add Article 2.5, "Underground Injection Control" (§§ 3130-3132), to its oil and gas conservation chapter. That Article requires DOGGR, prior to proposing an aquifer exemption to the EPA, to "consult with the appropriate regional water quality control board and the state board," provide a public comment period, hold a joint public hearing, and if both DOGGR and the State Water Board "concur that the exemption proposal merits consideration for exemption," submit the proposal to the EPA. (Pub. Resources Code, § 3131.)

Third, the State, through DOGGR and the State Water Board, has already followed this process — at least as to San Ardo — and determined that underground water injection will not endanger the relevant water sources. (JRJN, Exs. 27-29; Petitioners' Supplemental JRJN, Exs. 3-4.) That determination trumps Measure Z's findings. Policy LU-1.22 would directly undermine the authority and contradict the expert opinion of two state agencies charged by the EPA to make the requisite determinations. (40 C.F.R. § 147.250; JRJN, Ex. 73; see also Pub. Resources Code, §§ 3106, 3131.) Therefore, Policy LU-1.22 "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Crosby, supra*, 530 U.S. at p. 377.)

The County and Intervenors contend that this conclusion "stands the SDWA on its head." They note that Congress' "overriding concern" in enacting the law was to assure "the safety of present and potential sources of drinking water" not to encourage underwater injection. (*Phillips Petroleum Co. v. U.S. E.P.A.* (10th Cir. 1986) 803 F.2d 545, 560.) They maintain that Measure Z promotes this purpose.

It is true that the SDWA is primarily concerned with protecting drinking water. However, "[t]he principal legislative history explains that . . . [Congress] contemplated regulation, not prohibition, because of the importance of avoiding needless interference with energy production and other commercial uses." (*W. Neb. Resources Council v. U.S. EPA* (8th Cir. 1991) 943 F.2d 867, 870.) Thus, Congress intended the SDWA's prohibition on interfering with or impeding underground injection "to assure that constraints on energy production activities would be kept as limited in scope as possible while still assuring the safety of present and potential sources of drinking water." (H.R. Rep. No. 93-1185, 93rd Cong., 2d Sess., reprinted in 4 1974 U.S. Code, Cong. & Admin. News 6454, 6480-6484.) As discussed *ante*, the EPA delegated the role of insuring the safety of drinking water to the State not the County. (42 U.S.C. § 300h(b)(2); 40 C.F.R. § 147.250; JRJN, Ex. 73.)

Hence, the SDWA preempts Policy LU-1.22.[14]

2.5 New Wells

Policy LU-1.23 provides, "The drilling of new oil and gas wells is prohibited on all lands within the County's unincorporated area. This Policy LU-1.23 does not affect oil and gas wells drilled prior to the Effective Date and which have not been abandoned." Policy LU-1.23 defines "oil and gas wells" as "wells drilled for the purpose of exploring for, recovering, or aiding in the recovery of, oil and gas." (AR 156.)

Petitioners argue that state law preempts Policy LU-1.23 because the Policy is a ban on a production technique rather than a true land use regulation. The County and Intervenors respond that ample decisional authority supports the County's right to ban the drilling of new wells.

Preliminarily, the Court observes that, as with Policy LU-1.22, Policy LU-1.23 directly conflicts with the SDWA. Policy LU-1.23's prohibition on new wells extends to wells drilled "for the purpose of . . . aiding in the recovery of [] oil and gas." By its plain language then, Policy LU-1.23 prohibits the drilling of injection wells necessary for oil operators to inject wastewater, effectively banning wastewater injection. (Tubbs Dec., ¶¶ 38-41.) Consequently, Policy LU-1.23 "interfere[s] with or impede[s]" California's UIC program, and as such, is preempted. (42 U.S.C. § 300h(b)(2).)

[14] In light of this conclusion, the court need not reach Petitioners' federal field preemption argument.

Moreover, Policy LU-1.23 impermissibly prohibits certain production techniques. For example, Petitioners have shown that their operations require them to drill new wells for purposes of injecting steam to maintain the "steam chest," an enhanced oil recovery technique necessary to their profitable operation. (Tubbs Dec., ¶¶ 42-47.) Petitioners also drill new wells to dispose of excess produced water and concentrated brine (a byproduct of Petitioner Chevron's reverse osmosis water treatment plant). (*Id.*, ¶¶ 38-41.) Accordingly, Policy LU-1.23 directly conflicts with DOGGR's mandate. (Pub. Resources Code, § 3106, subd. (b) ["it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state [and] . . . to do what a prudent operator using reasonable diligence would do . . . including, but not limited to, the injection of air, gas, water, or other fluids into the productive strata . . . when these methods or processes employed have been approved by the supervisor . . . "]; 59 Ops.Cal.Atty.Gen at p. 478 [California's "statutory and administrative regulatory scheme . . . exclude[s] local regulation in each instance where the Supervisor or his regulatory program approves or specifies plans of operation, methods, materials, procedures or equipment to be used by the operator . . ."].)

Finally, the County and Intervenors' authorities authorizing prohibitions on the locations upon which new oil wells may be drilled are inapposite. (See, e.g. *Pacific Palisades*, *supra*, 196 Cal. at p. 217; *Beverly Oil Co.*, *supra*, 40 Cal.2d at p. 555; *Hermosa Beach*, *supra*, 86 Cal.App.4th at p. 534.) As discussed *ante*, at best these cases stand for the proposition that the County has the authority under the police power to prohibit new wells. They do not, however, address preemption. (See 59 Ops.Cal.Atty.Gen at p. 467; *Hermosa Beach*, *supra*, 86 Cal.App.4th at pp. 545-546.) The mere fact that the County may legislate in an area under the police power does not divest the State of the superior right to occupy the relevant field and/or adopt contradictory law. (See *EQT Production Company*, *supra*, 191 F.Supp.3d at p. 601 [where "the state has undertaken to allow UIC wells, [that] action operates to diminish the counties' powers to prohibit them"].)

2.6 Severability

The foregoing thus raises the question whether the invalidity of parts of Measure Z causes the entire Measure to fail. Measure Z's Section 9 contains a severability clause.[15] "Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable . . . . Such a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether the remainder . . . is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidity of the statute . . . or constitutes a completely operative expression of the legislative intent . . . [and is not] so connected with the rest of the statute as to be inseparable." (*Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315, 331.)

Three criteria must be satisfied to show the valid portions of the law are severable from the invalid portion(s): "the invalid provision must be grammatically, functionally, and volitionally separable." (*Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 714.) To be grammatically severable, the "valid and invalid parts" of the initiative must be able to "be separated by paragraph, sentence, clause, phrase, or even single words." (*People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 331.) To be functionally severable, "the sections to be severed, though grammatically distinct, must be capable of independent application" and of separate enforcement. (*Id.* at pp. 331-332.)

Finally, to be volitionally severable, "[t]he remaining portions must constitute an independent operative expression of legislative intent, unaided by the invalidated provisions . . . [and cannot] be inextricably connected to them by policy considerations." (*Barlow v. Davis* (1999) 72 Cal.App.4th 1258, 1263.) In the context of an initiative, "[t]he test is whether it can be said with confidence that the electorate's attention was sufficiently focused upon the parts to be severed so that it would have separately considered and adopted them in the absence of the

[15] "If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional."

invalid portions." (*Gerken, supra*, 6 Cal.4th at pp. 714-715.) "[I]f a part to be severed reflects a 'substantial' portion of the electorate's purpose, that part can and should be severed and given operative effect." (*Id.* at p. 715, citing *Santa Barbara Sch. Dist., supra*, 13 Cal.3d at pp. 331-332.) When applying this test, courts "look to the initiative measure's text and the ballot materials for guidance . . . ." (*Id.* at p. 717.)

Because this court has found that Policies LU-1.22 and LU-1.23 are preempted, the court must determine whether Policy LU-1.21 survives in their absence. Policy LU-1.21 passes all three severability tests.

Policy LU-1.21 is grammatically separable from the remainder of Measure Z. It is entirely contained in its own section of the initiative. Policy LU-1.21 is functionally severable for much the same reason. The ban on WST is capable of application irrespective of whether the other prohibitions stand.

As to volitional severability, the court can "say with confidence" that the electorate would have separately considered the ban on WST and adopted it "in the absence of the invalid provisions." (*Gerken, supra*, 6 Cal.4th at pp. 714-715.) Measure Z's official title is "Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative." (AR 152.) Measure Z declares that its purpose "is to protect Monterey County's water, agricultural lands, air quality, scenic vistas, and quality of life by prohibiting the use of any land within the County's unincorporated area for well stimulation treatments, including, for example, hydraulic fracturing treatments (also known as 'fracking') and acid well stimulation treatments." (*Ibid.*) The measure notes that its proponents drafted the initiative in direct response to the Board of Supervisors' decision not to adopt a WST moratorium. (*Ibid.* [Finding 2].) In fact, 11 of Measure Z's 15 findings refer directly to WSTs. (AR 152-154 [Findings 1-9, 11, and 13].) Additionally, the official materials provided to voters placed great emphasis on WSTs. (AR 364, 387.)

It is true, as Petitioners point out, that proponents often promoted the WST and wastewater provisions injection prohibitions as complementary. (AR 364, 387.) Nevertheless, there can be no doubt that the WST prohibition was a "substantial portion" of Measure Z's purpose. (*Gerken, supra*, 6 Cal.4th at p. 715.) And, given the campaign's focus on the fracking ban, the court believes the electorate would prefer "to achieve at least some substantial portion of

their purpose" rather than see the whole initiative be invalidated. (*Santa Barbara Sch. Dist.*, *supra*, 13 Cal.3d at p. 332.)

Accordingly, Policy LU-1.21 is severable from the remainder of Measure Z.

3. Takings

Petitioners also contend that Measure Z will end all oil and gas operations in Monterey County, effecting a facial regulatory taking of their property, and entitling them to just compensation under the United States and California Constitutions. The County and Intervenors disagree. They also argue that Petitioners have failed to exhaust their administrative remedies, namely the procedure prescribed by Section 6(C) of Measure Z.

Because exhaustion of administrative remedies is "a jurisdictional prerequisite to resort to the courts," the court will take up this issue first. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 293.)

3.1 Administrative Remedies

Measure Z's Section 6(C) allows a landowner to apply for an exception to its provisions if he or she "contends that application of this Initiative effects an unconstitutional taking of property . . . ." If a landowner so contends, the County Board of Supervisors "may grant . . . an exception to application of any provision . . . if [it] finds, based on substantial evidence that both (1) the application of that provision of this Initiative would constitute an unconstitutional taking of property, and (2) the exception will allow additional or continued land uses only to the minimum extent necessary to avoid such a taking." (AR 160.)

The County and Intervenors argue that Petitioners have failed to exhaust this procedure, and hence that their facial takings claims must be denied. The County and Intervenors are incorrect. Petitioners' challenge is facial and thus, a legal issue for which "case-specific factual inquiry is not required." (*Del Oro Hills v. City of Oceanside* (1995) 31 Cal.App.4th 1060, 1076.) Facial challenges are not subject to the exhaustion requirement. (*Ibid.*; *State of California v. Superior Court (Veta Co.)* (1974) 12 Cal.3d 237, 251; see also *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 135.)

Further, even if this were not the case, the County and Intervenors' argument would still fail. The exhaustion doctrine "has not hardened into inflexible dogma. [Citation.]" (*Ogo*

Associates v. City of Torrance (1974) 37 Cal.App.3d 830, 834.) For example, the exhaustion rule does not apply "where an administrative remedy is . . . inadequate . . . ." (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 217; *Action Apartment Assn v. Santa Monica Rent Control Bd.* (2001) 94 Cal.App.4th 587, 611.) Section 6(C) is inadequate in several respects.

Action Apartment is instructive. There, Santa Monica landlords were required to place tenant security deposits in an interest-bearing account, but were not initially required to pay the interest accrued from those accounts to their tenants. (*Action Apartment, supra*, 94 Cal.App.4th at p. 595.) However, a 1999 ordinance required landlords to pay tenants three-percent interest on security deposits held for at least one year. (*Ibid.*) A group of landlords sued, complaining that the ordinance worked a regulatory taking. The Rent Control Board successfully demurred, but the Court of Appeal reversed, finding that the landlords had stated a takings claim. (*Id.* at p. 621.)

On appeal, the Board claimed that the landlords had failed to exhaust their administrative remedies, i.e. the general and/or individual rent adjustment process. (*Id.* at p. 611.) The Court disagreed because, inter alia, it found that these procedures "d[id] not offer an . . . adequate remedy." (*Id.* at pp. 612-615.) Specifically, the Court noted, 1) the challenge to the regulations "present[ed] a dispositive question within judicial, not administrative, competence"; 2) the administrative process was "not likely to resolve the dispute in a manner that makes judicial review unnecessary" because the City's 3,200 landlords would be required to file individual petitions, notwithstanding that the key issue was facial, and therefore identical as to each affected landlord; 3) "[t]he dispute [could] efficiently and inexpensively be resolved in a judicial forum"; and 4) the processing of each individual rent petition imposed "a severe time and financial burden on a landlord [and] require[d] a long administrative process . . . ." (*Id.* at p. 615, internal citations omitted.)

Section 6(C) suffers from many of the same defects. First, although the Board undoubtedly possesses substantial expertise in some areas, the decision whether a taking has occurred is a legal one; "an administrative agency is not competent to decide whether its own action constitutes a taking . . . ." (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 16.) Thus,

"[t]he Board's expertise is of no assistance here." (*Action Apartment*, *supra*, 94 Cal.App.4th at p. 615.)

Second, the County would require potentially hundreds of mineral rights owners[16] and oil and gas operators to file individual petitions for exceptions. To the extent the issues raised are facial, such individual processes would be highly inefficient; such disputes could more "efficiently and inexpensively be resolved in a judicial forum." (*Action Apartment*, *supra*, 94 Cal.App.4th at p. 615.) Indeed, this court is engaged in just such an undertaking. Additionally, to the extent as-applied takings claims are at issue, the Board would be required to engage in complex, lengthy factual determinations as to each of the potentially hundreds of affected parties. (See JRJN, Ex. 35; Supplemental JRJN, Ex. 5; AR 373.) Such a procedure would impose "a severe time and financial burden on each rights holder." (*Action Apartment*, *supra*, 94 Cal.App.4th at p. 615.) And, because so many parties would be affected, Section 6(C) "inherently and unnecessarily precludes reasonably prompt action except perhaps for a lucky few." (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 172.)

Third, the procedure would almost certainly require judicial review. An applicant would likely appeal both a Board decision to reject an exception in its entirety and one to grant an exception only in part. Similarly, any member of the public might claim public interest standing to challenge a decision to fully or partially grant an exception. (See *Save the Plastic Bag*, *supra*, 52 Cal.4th at p. 166; *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1236-1237.) Such challenges appear highly likely in light of Measure Z supporters' public statements respecting the exception process. (See, e.g., JRJN Ex. 36, at pp. 36:5-8, 39:17-18 (July 25, 2017 Board meeting transcript) ["We should have an absolute minimum of exemptions if at all . . . . We did not vote to allow the oil companies to have exemptions to work around the vote"].) Thus, the administrative procedure would do little but impose "a severe time and financial burden on each rights holder." (*Action Apartment*, *supra*, 94 Cal.App.4th at p. 615.) In fact, the burden here would be significantly greater than the one imposed upon the landlords in *Action Apartment* because the lengthy delay in resolving

[16] In 2016 alone, the County issued 281 mineral rights property tax assessments. (Welles Dec., ¶ 2.)

exception applications would likely cause grievous, fatal damage to Petitioners' operations. (Tubbs Dec., ¶¶ 52, 57-60; Kemp Dec., Ex. A, pp. 52-55.)

Further, Section 6(C) violates due process because it runs a serious risk of "arbitrary and discriminatory application." (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 109.) Section 6(C) provides that the Board "may" grant an exception if a taking occurs, and even then, shall do so "only to the minimum extent necessary to avoid such a taking." (AR 160.) The Board thus has discretion to grant or deny exceptions to similarly or identically situated parties. For example, the Board could find that Measure Z effects a taking as to Chevron and Aera, but choose only to except Chevron. The Board also has authority to grant exceptions with different parameters to similarly or identically situated parties. Thus, the Board could choose to except Trio from Measure Z's wastewater impoundment and disposal prohibitions but not as to the new wells prohibition, while granting the opposite exception to Eagle. Finally, the Board could choose to grant exceptions only to larger producers, such as Chevron, or only to smaller mineral rights holders, such as those represented by NARO. And, because the Board is an elected body, it would likely be subjected to significant political pressure in making each of these decisions.

Section 6(C) also violates due process because it fails to provide the Board with an adequate standard to determine both whether a taking has occurred and the scope of any potential exception. (See *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 231 [laws "must provide a standard or guide against which conduct can be uniformly judged by courts and administrative agencies"].) Section 6(C) states that these decisions shall be made "based on substantial evidence" (AR 160), but "substantial evidence" is a standard of review, not a burden of proof (see, e.g. Code Civ. Proc., § 1094.5, subd. (c); *JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1062).

Nevertheless, Intervenors claim the application of Section 6(B) in concert with Section 6(C) would "always avoid an impermissible taking." Section 6(B) provides, "[t]he provisions of this Initiative shall not apply to the extent, but only to the extent, that they would violate the constitution or laws of the United States or the State of California." (AR 160.) Intervenors cite *San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995) 38 Cal.App.4th

523, as a case in which they claim that a court "recognized the validity" of a provision nearly identical to Section 6(B).

San Mateo involved a facial challenge to a land use ordinance authorizing the County to impose open space or other easements as a condition of subdivision map and plan approvals. (38 Cal.App.4th at p. 545.) The ordinance contained language virtually identical to Section 6(B). The court reasoned that a facial challenge was untenable because, inter alia, that language gave the county "the flexibility to avoid potentially unconstitutional application of easement requirements," by declining to impose conditions before a taking could occur. (*Id.* at p. 547.) *San Mateo* is distinguishable. There, a taking would only occur if and when the County imposed one or more easements as a condition of project approval. At that stage, the County could avoid any such taking as to specific property by appropriate design of the easement(s). Here, any taking would occur *upon Measure Z's taking effect*. Section 6(C) could theoretically reduce or eliminate that taking, but only after the fact, and, as discussed *ante*, its procedure is sufficiently convoluted that it risks arbitrary and discriminatory application. Additionally, it is so lengthy that it would impose a significant financial burden on property owners in the interim, possibly up to and including a total loss of all economic value of the relevant property before the administrative process — and the nearly certain ensuing litigation — is complete. (Tubbs Dec., ¶¶ 52, 57-60; Kemp Dec., Ex. A, pp. 52-55.) Section 6(B) does not ameliorate these issues.[17]

In short, Petitioners were not required to exhaust their administrative remedies, both because their claims are facial in nature (*Del Oro Hills*, *supra*, 31 Cal.App.4th at p. 1076), and because Section 6 constitutes a wholly "inadequate" administrative remedy (*Tiernan*, *supra*, 33 Cal.3d at p. 217).

3.2 Whether Measure Z effects a taking

Petitioners assert that Measure Z's dramatic effect on the economic value of their mineral rights amounts to a taking under the state and federal Constitutions, entitling them to just compensation.

[17] Moreover, Section 6(B) does little more than state the obvious. *No law* applies to the extent it violates the United States Constitution.

3.2.1 Takings Law

The takings clause of the Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, requires a governmental entity to pay just compensation when it "takes" private property for public use. California Constitution, article I, section 19 contains a comparable provision.[18]

A taking may be either physical or regulatory. A physical taking occurs when the government physically occupies, takes possession of, or destroys property. (See, e.g., *United States v. Pewee Coal Co.* (1941) 341 U.S. 114, 115.) A regulatory taking occurs when a "regulation goes too far," such that it is effectively the equivalent of a physical taking. (*Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 415; *Hensler, supra*, 8 Cal.4th at p. 13 ["[A] 'regulatory taking' . . . results from the application of zoning laws or regulations which limit development of real property"].) Petitioners contend Measure Z effects a regulatory taking. Regulatory takings are divided into facial and as-applied challenges. "In facial takings claims, "[the court] look[s] only to the regulation's general scope and dominant features, rather than to the effect of the application of the regulation in specific circumstances." (*Hodel v. Virginia Surface Min. and Reclamation Assn, Inc.* (1981) 452 U.S. 264, 295.) By contrast, an as-applied challenge requires the court to engage in "essentially ad hoc, factual inquiries" exploring the economic impact of the specific application of a regulation to a particular property. (*Kaiser Aetna v. U. S.* (1979) 444 U.S. 164, 175.) Petitioners argue that Measure Z is an invalid regulatory taking on its face.

In a facial challenge, the court must determine whether "the mere enactment" of a law effects a taking. (*Suitum v. Tahoe Regional Planning Agency* (1997) 520 U.S. 725, 736, fn. 10.) "The test to be applied in considering this facial challenge is fairly straightforward. A statute regulating the uses that can be made of property effects a taking if it "denies an owner economically viable use of his land' . . . . [Citation]." (*Hodel, supra*, 452 U.S. at pp. 295-296.) Such challenges face an "uphill battle" (*Keystone, supra*, 480 U.S. at p. 495) because a

[18] Article I, section 19 also requires compensation for damage to property, and hence "protects a somewhat broader range of property values . . . . [Citations.]" (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 298.) Nevertheless, that distinction is irrelevant to the issues in this case, and in any event, "the takings clause in the California Constitution is "construed congruently with the federal clause.' [Citation.]" (*Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, 183.)

challenger must show that the law requires an owner of real property to "sacrifice *all* economically beneficial uses" of his property (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1019, italics in original).

Before addressing the merits of the takings challenges, the court notes that, unlike in the preemption context, Petitioners are not all similarly situated. Broadly speaking, Petitioners may be broken into two groups: 1) Petitioners that have exercised their oil rights and have active wells (i.e., Chevron, Aera, Eagle, Trio, and some members of NARO); 2) and those that have not (CRC and the remaining members of NARO). The court will address each situation separately.

3.2.2 CRC and some members of NARO

A group of Petitioners, including CRC and some members of NARO, are mineral rights and oil and gas lease owners. A mineral owner has "the exclusive right to drill for and produce oil, gas and other hydrocarbons." (*Cassinos v. Union Oil Co.* (1993) 14 Cal.App.4th 1770, 1782.) Oil and gas lessees possess similar rights. "All other rights" are retained by the surface owner. (*Phillips Petroleum Co. v. County of Lake* (1993) 15 Cal.App.4th 180, 185.) The Takings Clause applies to mineral rights estates. (*Pennsylvania Coal Co., supra*, 260 U.S. at p. 414; *Braly v. Board of Fire Commissioners* (1958) 157 Cal.App.2d 608, 610 [a party's mineral rights are "as much entitled to protection as the property itself"; restrictions on that right may constitute a regulatory taking].)

CRC leases mineral rights in over 44 parcels of land in Monterey County; 40 contain no oil and gas wells. (Bridges Dec., ¶ 9; McMahan Dec., ¶¶ 2-9.) The four remaining parcels contain infrastructure, but each requires new wells to be drilled for production to occur. (McMahan Dec., ¶¶ 2-8.) CRC also owns mineral rights in 23 separate parcels, none of which contain wells. (Bridges Dec., ¶¶ 30-31; McMahan Dec., ¶ 9.) Many members of NARO also own or lease parcels with heretofore unexercised mineral rights.

Accordingly, CRC must drill new wells to extract any economic value from either their mineral rights or their oil and gas leases. (McMahan Dec., ¶¶ 2-8.) Policy LU-1.23 prohibits the drilling of any new wells countywide. Consequently, should it take effect, Measure Z would effect a facial regulatory taking of CRC's and some members of NARO's property. (*Lucas*,

supra, 505 U.S. at p. 1019; Miller Dec., ¶¶ 28-29.)[19] However, because the court has found that Policies LU-1.22 and LU-1.23 are preempted,[20] the court need not determine an appropriate remedy for the taking.

3.2.3 The remaining Petitioners

The remaining Petitioners are in a different position. All either own active oil and gas operations or receive royalties from those operations. These Petitioners (the remaining Petitioners) claim that the prohibitions on new wells and on wastewater injection and impoundment will ultimately result in a complete elimination of their economic value.

The remaining Petitioners contend that the prohibition on drilling new wells will severely impact operations in at least two ways. First, they maintain that new wells must be drilled to maximize oil recovery through "side-tracking." (Tubbs Dec., ¶ 51.) Side-tracking is the practice of "mill[ing] a hole through the existing well casing and drill[ing] a new bottom hole that is adjacent to the current well. Side-track operations are done specifically to re-establish production from the same portion of the reservoir as the original well. The use of sidetracks is often essential to repair damaged wells and to access additional areas of hydrocarbons that are in close proximity to the current bottom hole of the well." (*Ibid.*)

Second, the remaining Petitioners explain that new wells are essential to "steam flooding" an enhanced oil recovery technique in which producers inject steam into underground formations to heat oil, thereby decreasing its viscosity and facilitating its recovery. (Tubbs Dec., ¶¶ 43-45.) Over time, the remaining Petitioners have used steam flooding to create a "steam chest," a large collection of steam which fills a significant, subsurface portion of the production area. (Tubbs Dec., ¶ 44.) The remaining Petitioners assert that the maintenance of this steam chest is critical to the economically feasible production of oil in the County. (Tubbs Dec., ¶¶ 57-59; Latham Dec., ¶¶ 14-15.) But "the constant encroachment of water from the edges of the steam chest can quickly quench the steam and cause the collapse of the steam chest." (Tubbs Dec., ¶ 47.) The remaining Petitioners explain that, to avoid this result, they "must continuously

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[19] For the same reasons (discussed *ante*), that the proposed exemption process is an inadequate administrative remedy, it also fails to vitiate the taking.

[20] Neither CRC nor NARO assert that the WST prohibition would affect their business.

replace or side-track non-productive wells, add infill horizontal wells, and drill new wells at the perimeter of the steam chest . . . ." (Tubbs Dec., ¶ 47; Latham Dec., ¶¶ 14, 22.) Thus, the remaining Petitioners predict Measure Z's immediate ban on new wells would cause production to "exponentially decline" by 20-25% per year. (*Id.*, ¶¶ 52, 60; Kemp Dec., Ex. A, p. 53.)

The remaining Petitioners also insist that the prohibitions on wastewater injection and impoundment will effectively end their operations after Measure Z's phase-out period is complete. They note that, absent the ability to inject wastewater, there is no viable method to dispose of the over 100 million barrels of water produced yearly. (Kemp Dec., Ex. A, pp. 39, 48, 54; Tubbs Dec., ¶ 48.) Moreover, Petitioner Chevron argues that Policy LU-1.22 would force it to halt the operation of its reverse-osmosis water treatment facility, a critical means for disposing of wastewater. (Tubbs Dec., ¶¶ 35-41.) The facility would be unable to continue because 1) it must impound wastewater prior to treatment; and 2) the reverse-osmosis process generates a concentrated brine stream, which must be injected underground to continue operations. (Tubbs Dec., ¶ 41, 55.) Finally, the remaining Petitioners opine that the wastewater injection prohibition will effectively end steam flooding, which relies on injecting steam produced by wastewater through injection wells. (Kemp Dec., Ex. A, p. 52; Tubbs Dec., ¶ 54.) This too, they assert, would lead to "the complete shutdown of operations." (Tubbs Dec., ¶ 54.)

The court has little doubt that Measure Z would cripple oil production in Monterey County. However, the remaining Petitioners have not met their burden to show "the mere enactment" of Measure Z effects a facial taking of their property. (*Suitum*, *supra*, 520 U.S. at p. 736, fn. 10.) To prove a facial taking has occurred, a property owner must show that the law will result in the "sacrifice [of] *all* economically beneficial uses" of her property. (*Lucas*, *supra*, 505 U.S. at p. 1019, italics in original.) The United States Supreme Court has explained that, under this rule, "a statute that 'wholly eliminated the value' of Lucas' fee simple title clearly qualified as a taking. But our holding was limited to 'the extraordinary circumstance when *no* productive or economically beneficial land use is permitted.' The emphasis on the word 'no' in the text of the opinion was, in effect, reiterated in a footnote explaining that the categorical rule would not apply if the diminution in value were 95% instead of 100%. Anything less than a 'complete elimination of value,' or a 'total loss,' the Court acknowledged, would require the kind of

analysis applied in *Penn Central.*" (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 330, internal citations and footnotes omitted.)

Although the implementation of Measure Z might *ultimately* result in the end of oil and gas operations in Monterey County, the Measure's "mere enactment" plainly would not. Policy LU-1.22 provides for a minimum of a five-year phase-out period before its prohibitions are effective. And, although the new well prohibition is immediate, as the remaining Petitioners concede, it would only cause production to "exponentially decline" by 20-25% *per year*. (*Id.*, ¶¶ 52, 60; Kemp Dec., Ex. A, p. 53.) Until oil operations were terminated then, the remaining Petitioners would still be able to derive value from their existing oil wells and ongoing operations.[21]

Nevertheless, this does not mean the remaining Petitioners would be without a remedy. But for this court's finding that Policies LU-1.22 and LU-1.23 are preempted,[22] the remaining Petitioners would have the option of proceeding with an as-applied takings claim "governed by the standards set forth in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 . . . (1978)." (*Lingle*, *supra*, 544 U.S. at p. 538.)

4. General Plan Consistency

Petitioner NARO argues that Measure Z creates internal inconsistencies in the County's General Plan.

"The general plan is atop the hierarchy of local government law regulating land use. It has been aptly analogized to 'a constitution for all future developments.' [Citation.]" (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183.) "[T]he general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." (Gov. Code, § 65300.5.) This principle "has been uniformly construed as promulgating a judicially reviewable requirement 'that the elements of the general plan comprise an integrated internally consistent and compatible

[21] At argument, Chevron suggested that the costs of winding down operations and shutting-in idle wells would more than make up for any economic value derived from operations in the interim. However, Chevron has not presented sufficient evidence to support this claim.

[22] Petitioners do not assert that the WST prohibition would effect a taking, so the court need not address that issue.

statement of policies.' [Citations.]" (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 96–97.)

NARO claims Measure Z creates several inconsistencies within the General Plan. NARO contends that 1) Policies LU-1.21 and LU-1.23 are inconsistent with LU-1.22; 2) LU-1.21 and LU-1.22 are inconsistent; and 3) LU-1.22 is inconsistent with certain Policies under the Public Services Element of the General Plan. All of these contentions are mooted by this court's finding that Measure Z's Policies LU-1.22 and LU-1.23 are preempted.

NARO further contends that an internal inconsistency exists between Measure Z and General Plan Policies ED-1.2, ED-2.1, and ED-4.4. NARO explains that these Policies "mandate promoting sustainable economic growth, enhancing the competitiveness of Monterey County's key industrial clusters and working with stakeholders of key industry clusters to support those clusters." NARO asserts that Measure Z will seriously damage the County's economy, in violation of various aspects of these Policies.

Absent Policies LU-1.22 and LU-1.23, this argument must also fail. NARO's own expert has stated both that WSTs are not currently in use and that "it is highly unlikely" they will be employed in the future. (Gore Dec., ¶10.) Any damage to the economy stemming from Measure Z, then, must be the result of Policies LU-1.22 and LU-1.23. Because these policies are preempted, NARO's claim is meritless.

Moreover, Measure Z includes provisions to ensure its consistency with the General Plan. Section 7(F) directs the County "to amend the Monterey County General Plan . . . and other ordinances and policies affected by this Initiative as soon as possible . . . to ensure consistency between the provisions adopted in this initiative and other sections of the General Plan . . . ." (AR 160.) NARO does not explain why this provision is insufficient to remediate any purported inconsistency. (See *Citizens for Planning Responsibly v. County of San Luis Obispo* (2009) 176 Cal.App.4th 357, 378.)

In short, the court finds that Policy LU-1.21 is consistent with the General Plan.

5. Petitioners' remaining arguments

The court's conclusions above render it unnecessary either to reach Petitioners' remaining arguments or to proceed to any subsequent stage of these proceedings

Disposition

Measure Z's Policies LU-1.22 and LU-1.23 are preempted in their entirety by superior law. Further, Section 6(C) is an inadequate, unconstitutional administrative remedy.

The court directs Petitioners' counsel to prepare appropriate judgments and writs consistent with this decision, present them to opposing counsel for the County and Intervenors for approval as to form, and return them to this court for signature.

The court's orders and stays in case numbers 16CV003978 and 16CV003980 remain in effect as to all portions of Measure Z with the exception of Policy LU-1.21 as interpreted by the court.

Trial materials are returned to parties submitting the same.

Date: 4/28/17

Thomas W. Wills
Judge of the Superior Court

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CERTIFICATE OF MAILING
(Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I placed true and correct copies of the **INTENDED DECISION** for collection and mailing this date following our ordinary business practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services in Salinas, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed is as follows:

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Date: December 28, 2017

Clerk of the Court,

By: _____
Diana Valenzuela, Deputy Clerk

EXHIBIT B

DECLARATION OF STEVEN BOHLEN. IN SUPPORT OF PETITIONERS' AND PLAINTIFFS' OPENING BRIEF FOR THE PHASE 1 PROCEEDINGS

I, Steven Bohlen, hereby declare:

1. I received my M. S. and Ph.D. degrees from the University of Michigan in the fields geology and geochemistry. The topic of my Ph.D. research concerned the evolution of the Earth's crust, particularly with respect to the flow of geologic fluids – water, chloride brines, oil and gas – through the continental crust and the impact of fluids on Earth evolution.

2. For twenty years I have conducted research on the nature and flow of geologic fluids through the crust as a tenured professor at Stony Brook University (State University of New York) and a consulting professor at Stanford University. This research work has been published in various leading international journals and includes over 80 research papers and more than 100 other forms of publications – conference abstracts, book chapters, National Academy studies, US government reports.

3. I have served for 6 years as the Associate Chief Geologist for Science and Chief Scientist at the US Geological Survey. The research programs (line items in the Federal budget for the US Geological Survey) for which I have directed and prioritized include the National Earthquake Hazards Reduction Program, the Energy Resources Program, the Surficial Processes Program and the Climate Change Program. Together these programs represented over $100M of annual investment in Federal funded research and development to, for example, understand seismic source mechanisms and reduce the risk of earthquakes, understand the environmental impacts of oil and gas development, understand surface and near surface impacts of the built environment on surface geologic processes (erosion, ground water contamination, etc.), and understand the consequences of the use of fossil fuels.

4. I served as the Executive Director of the Ocean Drilling Program and the Integrated Ocean Drilling Programs for over 8 years, as the President and CEO of Joint Oceanographic Institutions, a systems integration and naval architecture firm providing facilities and services to the international oceans community. These programs have provided most of the

documented evidence for the environmental changes the Earth has undergone over the past 70 million years. This information has been gleaned from cores of sediments and rocks obtained by an ocean-going drilling vessel from the world's ocean basins and continental shelves. This state of the art research drilling vessel has obtained permission to drill in some of the most fragile ecosystems on the planet, such as the Great Barrier Reef, for example, because of its exceptional safety and environmental record, even when drilling to depths of over a mile into ocean sediments that lay several thousand meters below the surface of the ocean.

5. In 2014, I was appointed by Governor Edmund G. Brown Jr. as a senior advisor for oil and gas issues and to lead the California Division of Oil, Gas, and Geothermal Resources (DOGGR). During my tenure as the State Oil and Gas Supervisor and the State's head regulator for all oil and gas activities in the State, regulations for well stimulation and well treatments (commonly referred to as hydraulic fracturing or fracking, shorthand for a suite of well-completion techniques) were developed and enacted as directed by California Senate Bill 4 (Pavley, 2014). These regulations are without peer in their breadth, comprehensiveness, transparency, required record-keeping and environmental stewardship. In addition, the State began the process to update its exemptions for specified geologic formations containing oil-laden water from the Safe Drinking Water Act in accord with the State's agreement with the US Environmental Protection Agency.

6. From 2014 through 2016, I also served on the science advisory board for the US EPA national scientific study on the hazards of hydraulic fracturing and other well stimulation and completion practices entitled, "*Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*". This study was initiated and completed under the Obama Administration.

7. I currently lead the advanced energy technologies and energy security programs at the Lawrence Livermore National Laboratory.

8. I have been asked to review the "Measure Z Findings of Fact", and to express my opinions regarding the factual, technical and regulatory issues raised by Measure Z. My opinions are as follows:

9. Finding No. 1 Is That Monterey County Does Not Have a Permitting Process and Regulations Specifically for Oil and Gas Production Operations

In my opinion, Monterey County does not have a permitting process and regulations specifically for oil and gas production for a very good reason. None is needed as the oversight and regulation of oil and gas activities has been assigned by the state legislature to the Division of Oil, Gas and Geothermal Resources (DOGGR) and managed effectively by DOGGR for over 100 years. It is also my opinion, based on discussions when I was the Division Supervisor that the County did not have the expertise to regulate down-hole oil and gas activities and that a hodge podge of local down-hole rules would interfere with DOGGR's regulatory role. I also learned that before I became Supervisor the California Attorney General's office had given an opinion that local government did not have the power to regulate down-hole activities because those activities had been preempted by the State of California.

Most counties in the State of California do not have permitting processes and regulations specifically for oil and gas production operations. In general, counties have issued general use permits following the review and evaluation process by the CA Division of Oil, Gas, and Geothermal Resources leading to a State permit for the drilling of an oil, gas or geothermal well. Upon receiving authority delegated in the early 1980s by the US EPA for regulation of EPA Class II wells (those for the development of oil and gas and the reinjection of water produced with the oil and gas) in accordance with the Safe Drinking Water Act, the State identified DOGGR as the State agency responsible for the implementation of the delegated requirements. Counties throughout the State have recognized that the entity responsible for permitting oil and gas activities is DOGGR. For each permit issued, DOGGR reviews and evaluates all aspects of every drilling operation, including, but not limited to, the magnitude of well-drilling operations, roads to be built (if any), land area disturbed, well construction and completion plans, geological formations and units within the formations to be drilled, proximity to residential areas and environmentally sensitive areas, and produced water management. The Division also works in close coordination with the State Water Resources Control Board to ensure that drilling permits are awarded in full compliance not only with the Federal Safe Drinking Water Act, but also in

accord with State water protection requirements. Furthermore, the Division is responsible for conducting an environmental review to ensure that the requirements of CEQA have been met including the mitigation of any identified environmental impacts. Even Kern County, the locus of over 80% of the State's oil and gas production, did not, until recently, have any county mandated processes or regulations associated with oil and gas development. The fundamental foundation on which the Kern county process is based is the permitting requirements, process and procedures of the DOGGR and the issuance of a drilling permit by the State.

10. Finding No. 2 Is That Monterey County Supervisors Have Failed to Enact Needed Protections.

In my opinion, the County Supervisors, instead of failing in their duties, chose not to pursue the enactment of protections beyond those being implemented by the state after learning from the state all that was being done to regulate well stimulation activities in the state and realizing the County did not have the expertise to regulate those activities.

In the summer of 2014, the Monterey County Board of Supervisors requested that a representative of the CA Division of Oil, Gas and Geothermal Resources provide the Board with information on the current status of well stimulation and hydraulic fracturing in the State, the emergency regulations for hydraulic fracturing put in place by the State as required by Senate Bill 4 (2014, Pavley), and progress toward the establishment of permanent regulations, required to be submitted to the Legislative Law Office for review and acceptance by December 31, 2014, and enacted no later than July 1, 2015.

Jason Marshall, the Deputy Director of the Department of Conservation, the department within which the DOGGR sits, spoke to the Board, and provided a comprehensive review of hydraulic fracturing within the State, the actions the DOGGR was taking with respect to regulation of these practices and the status of rulemaking in accord with SB 4. The Deputy Director also engaged the board in an extensive question and answer session. The Department and the Division provided additional information and answered additional questions by the Board subsequent to Mr. Marshall's testimony.

11. Finding No 3 Is That Fracking Could Become Widespread in Monterey County.

In my opinion, this finding is not supported by geologic data, previous widespread oil exploration in the county, and the results of the USGS undiscovered oil and gas potential assessment for the Monterey Formation in California.

This finding raises the specter of oil wells being drilled all over Monterey County and that each well will require the use of hazardous chemicals in the well completion process that necessarily leads to the degradation of ground water resources. These combined assertions address complex issues in simplistic and misleading terms leading to an incorrect finding.

It is true that the Monterey Formation underlies a portion of Monterey County. However, the geologic setting and the fact that the Monterey Formation, the putative target of oil and gas production in the county, has numerous surficial expressions (geologic outcrops), whatever oil existed in the formation has long ago leaked away. California is well known for its natural oil seeps, the result of oil-bearing formations outcropping on land or at the ocean margin nearly ubiquitously south of the Golden Gate Bridge.

Though it is true that chemicals are used in the completion of most wells in California, the blanket characterization of these chemicals as highly hazardous can overstate their exotic chemistry and level of hazard. In some cases hazardous chemicals are not even used. This is known in detail in California because the details of the chemicals used in each well stimulation treatment in the State must be reported to the State as part of the well stimulation regulatory requirements enacted in 2015. The name, chemical formula, volume, and handling of chemicals must be reported. Many of these chemicals are well known, sometimes have uses in the home, and are closely akin to such substances as bleach (biocide), lemon juice (acid), food additives (guar gum). Given the volumes of chemical used and chemical combinations, the State tracks and regulates the use of chemicals used in well completions, and provides this information to the public on DOGGR webpages.

In addition, in certain types of rocks, those rich in clay minerals such as the Monterey Shale, the chemicals, water and sand used to create fractures and permeability within the rock are

often absorbed by the rock and sequestered – bonded to the interlayers of the clay minerals that make up the rock. Furthermore, as required by regulation and the primacy agreement the State has with the US EPA for the management of the Underground Injection Control program (the program that regulates the injection of fluids into EPA Class II wells as part of oil and gas operations), the geologic formations into which fluids are injected must show geologic containment. That is, the oil and gas operator must demonstrate to the DOGGR and the State Water Resources Control Board that the geologic conditions are such that the injected fluids will not migrate beyond the specified geologic layer or zone into which they are injected.

Geologists have long known that geologic strata can contain fluids and gases, sometimes very high-pressure fluids and gases, for geologically long periods of time, millions of years. Were rocks not able to contain fluids for long periods, oil and gas deposits would never accumulate. Hence the case for (or against) containment can be made with careful geologic analysis. Geologic containment, therefore, provides a robust barrier against the contamination of other water bearing strata by fluids injected as part of oil and gas development.

The specific strata within a geologic formation into which hydraulic fracturing fluids are injected contain hydrocarbons, and the operator hopes that those hydrocarbon accumulations are sufficiently plentiful so that the value of the oil and gas produced exceeds the costs of extraction. Any water held within the formation at the time of hydraulic fracturing will be in equilibrium with the oil and gas and will therefore have benzene and other volatile, cancer-causing hydrocarbon components, rendering the water unfit for consumption by humans, animals or for use in agriculture. Such water is expensive to clean to standards required for human consumption.

An important distinction of oil and gas-bearing strata globally, including within Monterey County and across the state, is the fact that water contained therein will be unfit for use without treatment. It will contain hydrocarbon components that are toxic in quantities exceeding standards for use, and difficult for current technology to economically clean for human use.

As for the specter of Monterey County having oil and gas wells throughout the County, in 2015, the US Geological Survey released its evaluation of the potential for undiscovered oil and

gas resources within the Monterey Formation in California.
(https://pubs.usgs.gov/fs/2015/3058/fs20153058.pdf).

The study was comprehensive in that it considered the geologic information, well logs, and other information obtained by looking at hundreds of well records of wells that penetrated the Monterey Shale. The most important finding of this investigation is that the potential for as yet undiscovered oil and gas resources in the Monterey Formation in CA is exceedingly low, and near zero in areas other than those west of Bakersfield and in the Los Angeles Basin. The USGS concluded that the Monterey Formation was likely the source rock for much of the oil found in higher-level geologic strata in the State, and it had long ago lost its oil through migration to higher levels in most places..

Aside from the fact that over half of the County is underlain by crystalline rocks with no hydrocarbon potential whatsoever, the US Geologic Survey analysis casts grave doubts on the assertion that oil and gas production will ever expand beyond the South County area plan for oil and gas extraction in Monterey County.

12. Finding N0. 4 Is That Oil and Gas Production Operations, Including Those Enabled by Fracking, Use Limited Water Supplies That Should Be Preserved for Agricultural and Municipal Uses.

In my opinion, this finding makes the a priori assumption that any water used for hydraulic fracturing is too much and ignores the water use data for oil and gas operations versus agriculture, municipal and other uses. The finding is undermined by the fact that the oil industry operating in Monterey County has produced far more water for beneficial use than has been consumed for well completion practices.

Water consumption by the oil and gas industry for use in hydraulic fracturing and other well completion techniques represents a tiny fraction of the water use anywhere in the State. The well stimulation regulations that went into effect in 2015 require operators to report the source or sources of water used for well stimulation, the volume, and the water management plan for so-called flow back water (water that returns to the surface immediately after well stimulation (fracturing) and water produced as a part of oil extraction (so-called produced water). Because of

these requirements, the amount of water use is well known.

However, unlike in other parts of the country, such as in the oil shales in North Dakota, Texas, and Colorado (to name a few) and in the gas shales in Pennsylvania, Texas, Oklahoma, Wyoming (to name a few), areas in which the geology and resource potential favor very long wells and the stimulation of these wells requires hundreds of thousands to a few million gallons of water per well, the geology and resource potential in CA, and therefore the stimulation techniques, are very different. Data obtained by the DOGGR as a result of reporting requirements indicate that the average well stimulation treatment in CA is approximately 50,000 gallons of water, and the median amount of water used is somewhat less than 50,000 gallons, meaning that more wells use less than 50,000 gallons of water than those using more. Furthermore the data indicate that a growing proportion of this water is recycled or is unfit for use by humans.

To place 50,000 gallons of water in context, golf courses in CA use in excess of an acre-foot per week to maintain fairways and greens, with some using over an acre-foot of water a day during hot summer days. An acre-foot of water is the amount of water covering an acre to a depth of one foot or 325,851 gallons.

In contrast, Chevron in Monterey County cleans water produced in the oil extraction process to standards meeting or exceeding those required for agricultural purposes and provides 1,600 acre feet annually to the agricultural industry. Hence the industry provides the County with more water than it uses in its oil development practices.

13. Finding No. 5 Is That Oil and Gas Production Operations, Including Fracking, and Oil and Gas Wastewater Injection and Surface Disposal Present a Risk of Water Pollution and Soil Contamination That Monterey County Cannot Afford.

In my opinion, this finding greatly exaggerates the risk of spills and ignores comprehensive state regulations requiring notification of even small spills and requirements for rapid clean up and remediation of any spills.

Oil and gas operators are required by law to report spills, even small spills of a gallon or two of hazardous substances. Once reported, the operator is required to remediate the spill immediately and to demonstrate remediation to an inspector. Hence the risk to ground or surface

water from spills from fracturing chemicals or other substances used in oil and gas production is extremely low.

The "Findings of Fact" refer to the injection of water produced along with oil into water-bearing rocks (aquifers) protected by the Safe Drinking Water Act (SDWA). This statement is misleading in that it implies that the oil and gas industry is contaminating geologic formations containing water fit for human consumption. Such formations are protected under the Safe Drinking Water Act, and as noted above, the DOGGR is the State agency designated to enforce all provisions of the Act.

As part of a state-wide well review in 2014, the State Oil and Gas Supervisor identified wells that appeared to be injecting waste water (produced water) from oil and gas operations via injection wells that had been improperly permitted into geologic formations not exempted from the SDWA. Further analysis indicated that such was the case. However, analysis by the DOGGR has demonstrated that for all but a few tens of wells in Kern County, the improperly permitted wells were injecting fluids into formations that contained hydrocarbons. As noted above, the water in formations containing hydrocarbons is not usable. In fact, the presence of hydrocarbons is one of the most important criteria for the exemption of a formation from the SDWA. The DOGGR, in close consultation with the State Water Resources Control Board, is developing information packages to support exemption applications for the US EPA for those wells in the State improperly permitted in previous decades.

The implication that the oil and gas industry is injecting waste water into geologic formations in Monterey County that contain potable water or water useable by agriculture is not supported by the thorough well review and analysis undertaken by the DOGGR and the SWRCB.

14. Finding No. 6 Is That Expanding Oil and Gas Production Operations and Continuing to Drill New Oil and Gas Wells Is Incompatible with Monterey County's Vision for the Future.

In my opinion, this finding greatly exaggerates the risks of impacts on water supply, quality, air quality, earthquake risk, scenic and biological resources.

This finding asserts that oil and gas production operations in the county will inevitably

expand well beyond those areas that have been producing oil for many years. Further it may imply that the risks extant for decades by existing oil and gas activities are now no longer acceptable, even without evidence that the risks have translated into hazardous impacts.

Current oil and gas operations in Monterey County have provided the county with economic revenue, jobs, and water for agricultural use for many years, and these operations have, apparently, not been considered incompatible with Monterey's vision for the future. As noted previously in this declaration, the geologic formations underlying Monterey County are not consistent with oil and gas accumulations. In fact, granitic crystalline rocks and other formations devoid of any oil and gas potential whatsoever underlay much of the county. The areas of the county with formations with even the potential, however slight, of oil and gas accumulations lie under the Salinas Valley. The primary target formation is the Monterey Formation, and the USGS assessment has cast grave doubts on any likelihood of finding any significant oil and gas. Records of wells drilled in Monterey County archived by DOGGR show a record of many dry holes in the county. That is, in decades past, wells drilled in the hopes of finding oil in new areas of the county beyond those areas already discovered in the southern part of the county, have demonstrated the lack of economic oil and gas deposits. Even in the early years of this century when oil was valued at nearly $140 a barrel, a time when many exploratory wells were being drilled, supported by high prices, all over the state in the hope of finding additional new oil and gas discoveries, there was very limited expansion of the oil and gas fields in Monterey County. That is, at a time when economic incentives were driving new oil and gas exploration around the state, Monterey County saw little of this activity. The obvious conclusion to be drawn is that the oil and gas potential for the county is extremely limited. Therefore, the greatest likelihood of additional oil and gas wells will be around existing wells in an area already well established as a small, but economically viable, oil producing area in the south of the county. Hence any perceived risks noted in this finding will be similar in kind and magnitude to those that have been acceptable to the county for decades.

15. Finding No 7 Is That Expanding Oil and Gas Production Operations in Monterey County Is Inconsistent With Our Agricultural Heritage and Rural Character.

In my opinion, this finding asserts that oil and gas operations are inconsistent with agriculture and this assertion is contradicted by the many oil and gas operations that operate compatibly with agriculture across the state.

During my tenure as the Oil and Gas Supervisor and head of DOGGR, I had the opportunity to inspect many of the oil and gas producing areas in the state. These included downtown Los Angeles as well as some of the most remote areas of the state. In many places, oil production was occurring on active farmland. In many areas in the southern San Joaquin Valley given predominately to agriculture, oil and gas wells can be seen pumping seemingly randomly across the agricultural landscape. Were oil operations incompatible with agriculture, this would not be the case. Hence the assumption of expanding oil and gas operations, itself a supposition not supported by the data, interfering with ongoing agricultural practices, is also not supported by observations of both agriculture and oil coexisting compatibly in many, many locations across the state.

16. Finding 8 Is That Wastewater Injection and Fracking Will Increase the Already High Risk of Earthquakes in Monterey County.

In my opinion, this finding confuses and conflates the seismic risk from significant and impactful tectonic earthquakes with earthquakes induced by the injection of water produced with oil and gas into deep disposal wells in other parts of the US, most notably northern and central portions of the State of Oklahoma. Thus, this finding incorrectly asserts that oil and gas activities will increase the risk of tectonic earthquakes, as deep disposal wells disposing of large volumes of produced water do not exist in California.

Assertions that oil and gas activities in shales and other so-called unconventional oil and gas-bearing formations causes earthquakes are exaggerated, but this topic is complicated and entangles many different issues concerning earthquake risk, well stimulation practices and produced water disposal. In short, though it is true that there are a few wells that have been stimulated by hydraulic fracturing known to have caused felt earthquakes, these wells are few in

number, and the cases routinely used as evidence proving increased seismic risk are exceptionally unusual in their depth and large volume of water used for fracturing (several million gallons of water). Only a few such wells have been drilled in California, and there is no expectation such wells will be drilled often in the state owing to the geological conditions in this state that are very different from those in other states such as Texas, North Dakota, Colorado, Pennsylvania in which the oil and gas wells are deep with long laterals and are stimulated with large volumes (millions of gallons) of water. To put this in perspective, out of over a million wells drilled in North America and stimulated using hydraulic fracturing in the past 15 years, fewer than about 20 of these operations have any felt seismicity associated with them, and the kinds of wells associated with seismicity are not those that are drilled in the state, let alone Monterey County.

What is true is that unregulated injection of large volumes of produced water into a restricted number of EPA Class II disposal wells have caused felt, and even damaging, earthquakes. Such earthquakes occur in parts of the country where injection of produced water was increased dramatically into wells never designed for such large volumes of water. The best examples are north-central and central Oklahoma and northeast Ohio.

However, California contrasts markedly in many respects. The state as over 1900 permitted disposal wells that are regulated, and the volumes injected, date and time are required to be submitted to the state. The state's disposal wells are drilled into geologically young formations with substantial amounts of porosity, and therefore formations capable of accepting significant amounts of water without increasing reservoir pressures enough to induce earthquakes. Indeed, because the state is blessed with a seismic network second only to that which exists in Japan, seismologists from universities, the state and federal agencies have the opportunity to study seismicity in the state in exquisite detail, and they have been able to do so over decades.

Only recently has there been any indication of any correlation of seismicity with injection in disposal wells in California, and even the recent data are not definitive. A new, highly detailed study of seismicity in the southern San Joaquin Valley (Goebel and others, Geophysical Research Letters, 10.1002, 2015, 1092-1099) finds that there *could* be the potential for seismicity induced by increased injection. However, the data are equivocal, and the circumstances existing

in California and in Oklahoma, for example, (which most use as the example to claim increased risk of earthquakes) are quite different (Goebel, The Leading Edge, 2015, 640-648).

The state's regulations governing well stimulation completion practices, including hydraulic fracturing, anticipated concern caused by the potential connection between seismicity and hydraulic fracturing. The state requires that, during well drilling and stimulation activities, operators monitor the California Integrated Seismic Network, which posts earthquake events and their locations (including depths) in near real time. If a seismic event occurs near by in excess of moment magnitude of 2.8 – below the felt threshold, drilling and stimulation activities must cease immediately so a geologic assessment can be conducted by the State Geological Survey to assess earthquake risk prior to the resumption (or not) of drilling activities.

Recent analysis by the US Geological Survey of relatively large earthquakes have found that oil and gas activities, such as those around Long Beach, CA, are implicated with significant seismic activity. However, the circumstances are quite different than elsewhere in the state and harken to a bygone era. In the 1930s and 40s, the Los Angeles Basin was the world's supplier of petroleum. One could call southern California the Saudi Arabia of the world at that time without exaggeration. Millions upon millions of barrels of oil were pumped from super-giant (of which only a handful have been found globally) oil-bearing reservoirs. So much oil was extracted that the associated subsidence threatened to submerge the docks of Long Beach Harbor, some 30-40 feet of subsidence. In such extreme cases, seismicity, some of it damaging, can be linked to oil and gas activities, and this behavior has been observed in a few places around the world. That said, circumstances historically extant in Long Beach, bare absolutely no resemblance to the circumstances in Monterey County, or even Kern County for that matter.

This brief tour of the connection between oil and gas activities and seismicity outlines the boundaries of the nature of earthquakes linked to oil and gas drilling, well completion and extraction. What is clear is that large volumes matter, depth of wells matter, and geology matters. The seismicity noted has been caused without exception by large volumes (millions of barrels) of extracted or injected fluids, into deep wells (exceeding a few thousand feet in depth), into a limited range of geological conditions. None of these conditions exist in Monterey County.

Assertions that additional oil and gas activities in the county increase the risk of seismicity is simply not supported by data collected from areas in which there is a connection, sometimes distant, linking the two.

17. Finding No. 9 Is That Expanding Oil and Gas Production Will further Degrade Our Air Quality.

Given the rural character of the oil-bearing areas of Monterey County and the short time period required for well drilling (few days) and for well completion (few hours), in my opinion this finding overstates the risk for degraded air quality. However, in the development of the regulations for well stimulation under SB 4, the DOGGR worked closely with the California Air Resources Board as that Board worked to develop statewide regulations regarding air emissions from the oil and gas industry. In addition, the Air Quality Management District has jurisdiction of air quality at oil production sites and related facilities and issues permits to both construct and operate these facilities. Hence any emissions from such operations have a strong regulatory framework to protect health.

18. Finding No 10 Is That Expanding Oil and Gas Production Operations Could Degrade Our Scenic Vistas and Reputation as a Destination.

In my opinion, this finding is based on the false premise that oil and gas operations will proliferate throughout the county, and is therefore unfounded.

As noted previously in this declaration, the potential for widespread development of oil and gas reserves beyond those known to be present in the southern portion of the county is so low as to approach or be zero. Previous unsuccessful exploratory drilling, the near surface outcrops of formations that have any potential at all for containing oil (hence the oil has migrated out of the rock), and the USGS assessment of the Monterey Formation all support this negative conclusion. Furthermore, the geologic formations that underlie the scenic vistas and natural places noted in this Finding are crystalline rock or formations that do not, geologically speaking, host oil and gas deposits. Hence these would not be targets for any oil and gas production in any case. All data point to the same conclusion – oil and gas development will not expand save incrementally around known oil and gas producing areas in the county. Thus, Monterey County's scenic beauty

and quiet natural spaces are safe from oil and gas development.

19. Finding No. 11 Is That Expanding Oil and Gas Production Operations Could Harm the County's Biological Resources.

In my opinion, leaving aside the issue that county-wide expansion of oil and gas activities is extremely unlikely, this finding ignores the active role the DOGGR plays in reviewing the potential impacts of even a single oil and gas well on biological resources as part of its responsibilities to assess permit applications in light of California environmental requirements (CEQA). Therefore this Finding is unsubstantiated.

As noted previously in this declaration, the DOGGR is required to review all permit applications to ensure that any activities permitted meet standards set by the California Environmental Quality Act. The Division reviews each permit application for environmental impacts and has wide authority to require offsets, modifications to drilling plans, or deny a permit on the basis of inadequate protection of the environment, including, but not limited to, threatened or endangered species, sensitive habitats, erosion potential, noise, etc.

20. Finding No. 12 That We Must Protect the Monterey Bay National Marine Sanctuary.

In my opinion, this Finding makes the specious argument that via its connection to aquifers through which water flows into Monterey Bay, the Bay water quality could be threatened by increased oil and gas activities.

The requirements for underground injection control regulation, as spelled out in the Safe Drinking Water Act, and delegated to the state for implementation by the Division of Oil, Gas and Geothermal Resources, require geologic containment of injected fluids. As noted previously in this declaration, geologic containment can be demonstrated (or disproven) with a detailed geologic analysis, which is required by the Division and by the State Water Resources Board before a drilling permit can be granted. Furthermore, there is no evidence for undiscovered oil and gas bearing formations in areas bounding the Bay. The combination of safeguards required by the Safe Drinking Water Act, and the absence of the potential for oil and gas development in areas surrounding the Bay renders this finding meaningless. The Bay is far more susceptible to

much greater risk from oil releases by oil tankers importing oil into the state than from any putative onshore oil and gas activities, though I do not know if such tanker-related risks have been carefully evaluated. The state imports over one million barrels of oil a day, much of it by ocean-going tanker ships.

21. Finding No. 13 Is That Reliance on Oil and Gas Extraction Is Not the Way to Grow a Healthy Economy in Monterey County.

In my opinion, this Finding ignores the wider picture that the healthy economy Monterey seeks is based on oil and gas and the Finding inherently makes the argument that others should bear the problems Monterey County claims with oil and gas development so county residents can use oil and gas for their more natural pursuits.

Tourism, an expanding agricultural sector, and more jobs and technologies, require, at this time and for the near future, oil and gas to propel progress. California produces only one third of the oil it uses every day. Two thirds of the oil, over a million barrels of oil per day, must be imported. Over 80% of the oil refined in the state is used for transportation fuels, mostly gasoline for consumption in the state, because Californians drive nearly a billion miles a day for business and pleasure. The healthy sustainable economy Monterey County seeks can only be obtained via the utilization of hydrocarbon-based fuels. The oil and gas must come from somewhere, and obtaining it from within California confers economic, environmental and safety benefits unrecognized by this Finding.

22. Finding No. 14 Is That Monterey County's Oil is Particularly Carbon-intensive

In my opinion, this finding is undermined by the lack of a life-cycle analysis to demonstrate that the carbon intensity of the oil extracted from oil fields within Monterey County is greater than the carbon intensity of oil imported from overseas that might be required to replace oil from the county.

It is true that the carbon footprint of oil extracted from within the County is relatively large by California standards. However, were the county not to produce oil, given that the state must import two-thirds of its oil, there is no guarantee that the imported oil needed to make up the

shortfall would have a lower carbon footprint. Such oil would be produced in areas not likely to have environmental regulations of the level of California and would have to be transported considerable distance across the globe. Furthermore many additional carbon emitting activities need to be considered. The carbon footprint of ocean spill clean up, the potential for environmental damage from invasive species from tanker transport, as well as the potential for the degradation of the California coastline and marine ecosystem degradation were a tanker spill to occur neeed to be evaluated in the context of the carbon footprint of oil from Monterey County.

It is likely that the safest, most environmentally friendly and lowest carbon pathway to satisfying California's petroleum needs is via in-state production with the oil being transported to refineries in the state via pipeline.

23. Finding No 15 Is That Expanded Oil and Gas Production Operations Will Contribute to Climate Change.

In my opinion, this finding is focused only on the use of fossil fuels and incorrectly labels the production of oil in the state as the sole contributor to climate change in the county.

This Finding contradicts previous Findings that state that the healthy economy Monterey County seeks is a low-carbon economy, one based on tourism and agriculture – activities that themselves are fossil-fuel dependent and lead to climate change. Furthermore, one of the largest global emitters of climate change inducing emissions worldwide is agriculture. Agricultural emissions are three-fold: emissions from farm animals and farm vehicles, emissions from fertilizer decomposition, and emissions from oxidizing carbon in the soil as a result of tilling. Such emissions around the globe account for over 2 billion tons of CO2 equivalent annually, or 5% of global carbon emissions. If agricultural activities were to increase in the county, emissions of CO2 from the county might actually increase, not decrease as implied in this Finding. Lacking a life-cycle analysis of carbon in the county, the argument that increases in the county's oil and gas production will lead to greater carbon emissions misses the point that increases in other desired activities might increase emissions even more. This Finding myopically focuses on oil and gas production and ignores the climate change inducing emissions of other industries and activities in the county.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 10, 2017 in Livermore, California.

By: _____
Dr. Steven Bohlen

EXHIBIT C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

CHEVRON U.S.A. INC, et al.,

Petitioners and Plaintiffs,

v.

COUNTY OF MONTEREY, et al.,

Respondents and Defendants.

CASE NO. 16-CV-3978 (Consolidated for purposes of Phase 1 with Case Nos. 16-CV-3980, 17-CV-0790, 17-CV-0871, 17-CV-0935, and 17-CV-1012)

DECLARATION OF BURTON R. ELLISON IN SUPPORT OF CHEVRON PLAINTIFFS' OPENING BRIEF FOR THE PHASE 1 PROCEEDINGS

Action Filed: December 14, 2016

Trial Date: None set

I, Burton R. Ellison, declare:

1. I, Burton R. Ellison, am a registered professional geologist in the State of California, and from June 2011 to October 2013, I was employed as District Deputy for the District Four Office in Bakersfield for the State of California, Division of Oil, Gas, and Geothermal Resources ("DOGGR"). In all, I worked at DOGGR for twenty four years up to the time of my retirement in October 2013. I am currently a senior geologist for E&B Natural Resources Management Corporation. Applying my background and knowledge of the industry from both the public and private sector, I was asked to draft this declaration discussing DOGGR's role in regulating oil and gas in California. Attached as Exhibit A is a true and correct copy my Resume outlining my education and work experience. I have personal knowledge of the following facts, and if called to testify to these facts, could and would do so completely.

Measure Z Litigation and DOGGR

2. As an initial matter, I am familiar with the Monterey County Ordinance known as Measure Z. While the purpose of my declaration is to use my own extensive background in the oil and gas industry in California to attest to DOGGR's oversight of that industry, I also discuss Measure Z herein where I believe it will be helpful to the Court's understanding of the issues.

3. DOGGR's Oil and Gas Laws and Regulations have proven successful in protecting the environment, and accomplishing DOGGR's mandate. DOGGR has a long history of regulating the oil and gas industry and has effectively protected the environment and the citizens of California. It is therefore important to understand how Measure Z impacts DOGGR's jurisdiction. The prohibitions found in Measure Z are in direct conflict with DOGGR's mandate "to encourage the wise development of oil and gas resources." (Pub. Resources Code, § 3106, subd. (d).) Just by way of example, prohibition of water disposal wells and surface disposal impoundments is ultimately a prohibition on oil production. It is common knowledge that if an operator cannot dispose of produced water, the operator cannot produce the wells and make oil. Measure Z failed to demonstrate the need for a prohibition on water disposal wells. Class II injections wells as regulated by DOGGR, are the safest and most efficient method of produced water disposal. This is simply one introductory example of the tension between DOGGR and Measure Z.

DOGGR Laws and Regulations

4. The Division of Oil, Gas, and Geothermal Resources (DOGGR) supervises the drilling, operations, maintenance, and abandonment of oil, gas, and geothermal wells, preventing damage to life, health, property, and natural resources, underground and surface waters suitable for irrigation or domestic use, and oil, gas, and geothermal reservoirs. DOGGR's mandated responsibilities are set forth in a broad regulatory framework in Section 3000 et seq. of the *Public Resources Code* and Title 14, Chapter 4 of the *California Code of Regulations*. DOGGR's mandate also encourages the wise development of California's oil, gas, and geothermal resources while protecting the environment. As outlined in Section 3106 (b) of the Public Resources Code, "[t]he supervisor shall also supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners . . . of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable . . . in each proposed case." (Pub. Resources Code, § 3106, subd. (b).)

5. During my employment at DOGGR, I understood the mandated responsibilities of DOGGR, set forth in the regulatory framework introduced above, to be a dual mandate. First and foremost that mandate is to protect life, health, property, water resources, and the oil and gas resources from damage. Second, DOGGR's mandate is to encourage the wise development of the hydrocarbon resources by allowing the owner of a well to use all methods to increase the ultimate recovery of the resources provided these methods do not damage life, health, property, water resources, and the oil and gas resources. I also understood that prohibiting a well owner from using all safe methods to recover as much of the hydrocarbon resources as possible to be unlawful.

6. DOGGR accomplishes its mandate through an abundance of programs, which include: well permitting and testing, oversight of production and injection operations, environmental lease inspection including inspection of oilfield tanks, pipelines, surface impoundments (limited to fencing and netting), and sumps, idle well testing, orphan and hazardous well plugging, well stimulation treatment, and subsidence monitoring. Surface impoundments are more widely regulated by the

Regional Water Quality Control Board. (Title 23, Division 3, Chapter 9, of the California Code of Regulations.)

7. As a result of DOGGR's well permitting and testing program, California has some of the strongest well construction standards in the nation, which are within DOGGR's jurisdiction of oversight. Before an oil operator can drill a new well, rework, redrill, deepen, or abandon a well, the operator must file a Notice of Intention to carry out these operations. A Notice of Intent is required if the proposed operation involves "permanently altering in any manner the casing." (Pub. Resources Code, § 3203, subd. (b).) Operation "shall not commence until approval is given by the supervisor or district deputy." (Pub. Resources Code, § 3203, subd. (a).) The notice shall contain the pertinent data the supervisor requires on division printed forms. (Pub. Resources Code, § 3203, subd. (a).) Division engineers review the notice for compliance with the regulations. A Permit to Conduct Well Operations ("Permit") is issued if the well work program stated on the notice satisfies the applicable laws and regulations. The Permit also states the conditions of approval such as but not limited to, well placement, the type of blowout prevention equipment and hole fluid required, casing and cementing requirements, well testing requirements, and specifies the operations and/or well tests that need to be witnessed by DOGGR engineers.

8. "Each well shall have casing designed to provide anchorage for blowout prevention equipment and to seal off fluids and segregate them for the protection of all oil, gas, and freshwater zones. All casing strings shall be designed to withstand anticipated collapse, burst, and tension forces with the appropriate safety design factor . . . ." (Cal. Code Regs., tit. 14, § 1722.2.) Wells are constructed in stages with multiple casing strings in a telescoping fashion. Casing program and casing requirements are very specific and standards are set for the conductor casing, surface casing, intermediate casing, and production casing. In general, the different casing setting depths and design criteria is based on geologic conditions, whether the well is a prospect well or in an oil field with known field conditions, the presence of drilling conditions such as lost circulation zones or anomalous pressure zones, and the need to segregate oil and gas zones from freshwater zones. As the well is drilled, these casing strings may be required to be pressure tested (positive and negative pressure tests) and these tests are witnessed by DOGGR inspectors. The tests ensure the wells'

mechanical integrity by checking for pressure leaks or fluid entry. There are myriad types of equipment used to accomplish these tasks including but not limited to a drilling rig, mud pumps, mud motors, drill pipe, drilling collars and drill bits.

9. Each casing string is required to be cemented to seal the annular space to ensure zonal isolation. Zonal isolation means fluids from one geologic zone will not migrate up or down to another geologic zone. Cement is placed in the space between the open hole and casing and forms a barrier to fluid migration. The cementing requirements for the different casing strings varies but the purpose is the same. To ensure the well is cemented properly, "[t]he appropriate Division district deputy may require a cement bond log, temperature survey, or other survey to determine cement fill behind casing. If it is determined that the casing is not cemented adequately by the primary cementing operation, the operator shall recement in such a manner as to comply with the above requirements." (Cal. Code Regs., tit. 14, § 1722.4.)

10. According to the regulations, "[b]lowout prevention and related well control equipment shall be installed, tested, used, and maintained in a manner necessary to prevent an uncontrolled flow of fluid from a well. [DOGGR] publication No. MO 7, 'Blowout Prevention in California,' shall be used by Division personnel as a guide in establishing the blowout prevention equipment requirements specified in the Division's approval of proposed operations." (Cal. Code Regs., tit. 14, § 1722.5.)

11. The regulations further state: "When sufficient geologic and engineering information is available from previous drilling or producing operations, operators may make application to the Supervisor for the establishment of field rules, or the Supervisor may establish field rules or change established field rules for any oil or gas field." (Cal. Code Regs., tit. 14, § 1722, subd. (k).) Attached as Exhibit 25 to the Request for Judicial Notice is a true and correct copy of the DOGGR's Field Rules for the San Ardo Field.

12. In the context of Measure Z, new and replacement wells are needed throughout the life of an oil field. Prohibiting new well drilling will result in premature loss of oil and gas production. The facts found in Measure Z do not support a need to prohibit drilling new wells. In my opinion, the true motivation of Measure Z is to shut down oil operations.

13. DOGGR also has jurisdiction over proper abandonment of wells. Proper abandonment of wells, using the appropriate equipment and machinery, is critical to preventing damage to the environment, usable groundwater, and the oil and gas resources. DOGGR's abandonment requirements in open hole (no casing) are different than the requirements for wells with casing. Sections 1723 – 1723.8 of the California Code of Regulations list the specific well abandonment requirements. In general, wells are abandoned by placing cement plugs across and above oil and gas zones, across the freshwater-saltwater interface (base of freshwater), and at surface to prevent wildlife and humans from falling in a well. The abandonment requirements are prescriptive and once completed, result in an abandoned well that is safe for the environment. DOGGR inspectors are on site to routinely witness the placing, location, and hardness of the various cement plugs. DOGGR inspectors will also insure that the appropriate equipment is being used for each of these critical tasks. All portions of the well not plugged with cement are required to be filled with heavy drilling mud.

14. **Underground Injection Control Program-** DOGGR has regulated Class II injection wells as far back as the 1940's and on September 29, 1982, was granted Primacy in the Regulation of Class II injection wells by the United States Environmental Protection Agency. During my career at DOGGR, I processed over 200 Underground Injection Control (UIC) Project applications and thousands of individual injection well permits. The following description of DOGGR's UIC program is based on my experience.

15. The purpose of the UIC program is to protect Underground Sources of Drinking Water (USDW). A USDW is an aquifer that contains water with a Total Dissolved Solids concentration of less than 10,000 mg/l. If the zone water is greater than 10,000 mg/l, the zone is not a USDW and injection is permissible. If a zone is oil and gas bearing and productive, the zone is exempt regardless of zone water quality and injection is permissible. Additional zones were also exempted for injection as part of the UIC Primacy Application and UIC Memorandum of Agreement between California Division of Oil and Gas and The United States Environmental Protection Agency.

16. The UIC project application and review process consists of a UIC application, DOGGR technical review, State and Regional Water Board review, and Public notification and if the

project is controversial, a public hearing is held. This is a strenuous process. Those projects that get approved are projects that are safe and protect USDW's. After the UIC project is approved, DOGGR has specific well construction standards that must be met. Also, all injection wells are subject to rigorous testing requirements.

17. Before injection can begin, UIC Project approval must be obtained from DOGGR. "This includes all EPA Class II wells and air- and gas-injection wells. The operator requesting approval for such a project must provide the appropriate Division district deputy with any data that, in the judgment of the Supervisor, are pertinent and necessary for the proper evaluation of the proposed project." (Cal. Code Regs., tit. 14, § 1724.6.) In general, the UIC project application consists of a statement of primary purpose, an engineering study, a geologic study, an injection plan, and offset operator notification. Section 1724.7 of the California Code of Regulations lists the UIC Project Data Requirements. The most important requirement is the "Area of Review" (AOR) where "[c]asing diagrams, including cement plugs, and actual or calculated cement fill behind casing, of all idle, plugged and abandoned, or deeper-zone producing wells within the area affected by the project, and evidence that plugged and abandoned wells in the area will not have an adverse effect on the project or cause damage to life, health, property, or natural resources." (Cal. Code Regs., tit. 14, § 1724.7, subd. (a)(4).) The area affected by the project or AOR typically includes a quarter mile buffer from the proposed injection wells. This distance can be increased or decreased based on engineering calculations. DOGGR engineers check each well in the AOR to ensure the well provides injection zone isolation. If a well is deficient in zonal isolation, the well must be repaired by remedial cementing or if possible, a reservoir monitoring program. Deficient wells that cannot be repaired to provide zonal isolation or cannot be monitored to ensure no fluid movement is taking place, is the main reason UIC project applications do not receive approval.

18. Ensuring mechanical integrity of injection wells is a major part of the UIC program. "Prior to commencing injection operations, each injection well must pass a pressure test of the casing-tubing annulus to determine the absence of leaks. Thereafter, the annulus of each well must be tested at least once every five years; prior to recommencing injection operations following the repositioning or replacement of downhole equipment; or whenever requested by the appropriate

Division district deputy." (Cal. Code Regs., tit. 14, § 1724.10, subd. (j)(1).) "[I]njection wells shall pass a second demonstration of mechanical integrity. The second test of a two-part MIT shall demonstrate that there is no fluid migration behind the casing, tubing, or packer. . . . The second part of the MIT must be performed within three (3) months after injection has commenced. Thereafter, water-disposal wells shall be tested at least once each year; waterflood wells shall be tested at least once every two years; and steamflood wells shall be tested at least once every five years." (Cal. Code Regs., tit. 14, § 1724.10, subd. (j)(2)-(3).)

19. **Environmental Lease and Facilities Inspection (includes AB 1960)** – The operator of a facility shall develop a spill contingency plan and all oil spills shall be promptly reported to the California Emergency Management Agency. Spill Contingency plans must satisfy the requirements listed in Section 1722.9 of the California Code of Regulations. The purpose of the spill contingency plans is to prevent oil spills and if a spill occurs, how to proceed with notification and clean-up.

20. DOGGR's environmental program has been in place since the 1960's and mainly focused on good "house keeping" practices. The focus was on oilfield wastes and refuse, properly fencing and screening oil sumps, well signs and well site and lease restoration. The passage of AB 1960 and the corresponding facility regulations, effective in 2011, further expanded DOGGR's jurisdiction over oil and gas operations in California. These laws increased DOGGR's environmental program to include tank and pipeline testing, set minimum standard for tank and pipeline construction, set requirements for leak detection on tanks and production facility secondary containment, and pipeline management plan. In addition to increased facility and environmental regulations, AB 1960 increased the amount the supervisor may impose as a civil penalty to $25,000.00 per violation, added a lifetime of the well bond for operators with a history of violations, and added the provision that authorized the district deputy to issue a cease and desist order for facilities with violations.

21. The result of the increased regulations was dramatic. The oilfields in District 4 got cleaner, oil spills were reduced, and operators were proactive in environmental compliance.

22. **Idle Well Testing Program**- DOGGR also has jurisdiction over the regulation of idle wells. DOGGR has regulated idle wells since the mid 1990's. On September 9, 2016, Governor

Brown signed into law Assembly Bill 2729. AB 2729 changed the definition of an "idle" well and "long term" idle well. Effective January 1, 2017, an idle well is defined, in part, as "any well that has had 24 consecutive months of not either producing oil or natural gas, producing water to be used in production stimulation, enhanced oil recovery, or reservoir pressure management, or being used for injection." (Pub. Resources Code, § 3008, subd. (d).) A long-term idle well is now defined as "any well that has been an idle well for eight or more years." (Pub. Resources Code, § 3008, subd. (e).) A portion of the bill's requirements took effect beginning January 1, 2017. Most of the new requirements, however, will not go into effect until January 1, 2018. This lag time will provide DOGGR with the time needed to develop the Idle Well Program and promulgate idle well regulations, as well as preparation time for operators to adapt to the new requirements.

23. DOGGR's idle well program consists of two main components – 1) idle well testing and 2) idle well management plans. Currently, and until the new idle well regulations are passed, all idle wells are required to be tested at 5 year idle and two years thereafter by determining the fluid level in the well. Additional testing beyond fluid level is at the discretion of the district deputy. Based on the fluid level results and the age of the idle well, the District Deputy may require casing pressure test and clean out tags. The purpose of the idle well testing program is to ensure no damage is occurring to freshwater or the oil and gas resources. If idle wells are found to have casing holes, the district deputy may order the operator to repair the well to prevent damage.

24. According to the Department of Conservation's website, "[b]eginning January 1, 2018, all operators must either 1) file and comply with an idle well management plan (IWMP) approved by the Division for addressing long-term idle wells or 2) pay annual fees for each idle well. This requirement applies to all operators regardless of the amount of bonding they may have in place." The purpose of the IWMP's is to reduce the number of long term idle wells in the state or contribute to a fund to abandon orphan wells.

25. **Well Stimulation Treatment-** On September 20, 2013, Governor Brown signed into law Senate Bill 4, which further expanded DOGGR's oil and gas oversight in California. SB 4 requires operators to obtain a permit from DOGGR to conduct well stimulation. Well stimulation treatment means a "treatment of a well designed to enhance oil and gas production or recovery by

increasing the permeability of the formation." (Pub. Resources Code, § 3157, subd. (a).) There are three types of well stimulation used in California: 1) Hydraulic Fracturing, 2) Acid Fracturing, and 3) Acid Matrix Stimulation. Prior to the passage of SB 4, well stimulation procedures were approved as part of the well permitting process.

26. With the passage of SB4 and the new Well Stimulation Treatment Regulations that went into effect on July 1, 2015, operators must conduct a cement evaluation of the well to be treated, complete a well stimulation treatment area analysis for potential conduits for fluid to migrate out of zone, prepare a well stimulation treatment design, submit a well stimulation permit application, provide independent neighbor notification and water testing, conduct pressure testing prior to well stimulation treatment, perform monitoring during a well stimulation treatment, track seismic monitoring after well stimulation treatment, conduct monitoring after a well, and submit a post –well stimulation treatment report. The new SB4 regulations combined with the California's well construction standards provides safeguards to the public and the environment from well stimulation treatment.

27. In the context of Measure Z, on August 2, 2017, I performed a review of DOGGR's online Well Stimulation Treatment Disclosure database and Well Stimulation Treatment (WST) Permit database and found that, starting in 2014, no wells received WST or applied for a permit to conduct WST in Monterey County. I concluded that Well Stimulation Treatment in Monterey County is not common. Since WST is rare, the threat to the public as claimed by Measure Z does not currently exist.

Summary and Conclusion

28. To conclude, in 2007, the Department of Conservation presented Chevron a special award for the installation of a reverse osmosis (RO) processing facility. The following true and correct excerpt from DOGGR's 2007 annual report describes the special award. *"**SPECIAL AWARD FOR CHEVRON U.S.A. INC.** Challenged with water cuts of 90-99 percent, Chevron U.S.A. Inc. installed a reverse osmosis (RO) processing facility in the San Ardo oil field. With the completion of the RO plant, Chevron is dewatering the Lombardi zone, reducing reservoir pressures to maximize the effects of a steam drive and expanding steam chest, lessening the demands on the*

North Area water disposal wells, providing fresh water for increased steam production, as well as recharging the freshwater aquifer. In recognition of this effort, the Department of Conservation presented a special award to Chevron U.S.A. Inc. for its Outstanding Commitment to Environmental Protection and Efficient Enhanced Oil Recovery".

29. Measure Z prohibits all injection and impoundment of produced water in five years from the effective date of Measure Z. This means that the impoundment of the purified produced water from Chevron's award winning RO plant must stop, resulting in a loss of beneficial surface recharge of fresh water. In my professional opinion, Measure Z will cause financial hardship to Chevron and other oil companies, without alleviating any harm that is being done by the current drilling operations or impoundments. On the contrary, the State of California recognized Chevron for its outstanding commitment to environmental protection and efficient enhanced oil recovery.

30. Measure Z prohibitions will result in a decrease in the ultimate recovery of the oil and gas resource in Monterey County to the detriment of the citizens of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 11, 2017 in Bakersfield, California.

By: 
Burton R. Ellison, P.G. 7864

EXHIBIT A

Burton R. Ellison

10805 Queensbury Drive
Bakersfield, CA 93312
M: (661) 809-7548
bellison101@aol.com

Objective

Senior Geologist with a progressive Independent Oil and Gas Company.

Profile

Experienced Geologist with extensive knowledge of Southern San Joaquin Basin Oil and Gas Fields. Over 30 years working for Independent and Major Oil companies, and the State of California, Division of Oil, Gas, and Geothermal Resources.

Skills

- Well drilling and construction
- Oil and Gas well permitting
- Reserve Estimates
- Expert knowledge of UIC project application process
- Monitoring of Enhanced Oil Recovery Projects
- Geologic and Engineering report writing
- Economic evaluation of Producing Properties
- Well log interpretation/correlation, geologic formation and fault picks
- Construction of Structure Contour maps, cross-sections, and isopach maps
- Lease/Well management and operations
- CEQA and Land Use Process
- Supervision of Geologists and Engineers

Accomplishments

Over the past 24 years, I have worked for the Division of Oil, Gas, and Geothermal Resources, starting as a Field Engineer and progressing to District Deputy. Dedicated hard work and a passion for the Oil and Gas Industry, has provided me an extensive geologic knowledge of the San Joaquin Basin.

Professional Experience

December 1, 2013 to Present — **E&B Natural Resources Management Corporation** — Bakersfield, CA
Senior Geologist
Provide geologic and regulatory support for asset development.

June 2011 to October 2013 — **Division of Oil, Gas, and Geothermal Resources** — Bakersfield, CA
District Deputy
Managed an office of 50 Engineers, Geologists, and staff performing duties to regulate the Oil and Gas Industry. Responsible for supervising the Oil and Gas Industry and administering and enforcing the Oil and Gas Laws and Regulations. Issued permits to drill, rework, and abandon wells and injection project approvals.

January 2010 to May 2011 — **Division of Oil Gas and Geothermal Resources** — Bakersfield, CA
Senior Oil and Gas Engineer
Supervised the work of 12-15 Engineers and Geologists in the Environmental/CEQA unit and the Underground Control unit. Review permit and project applications for conformance with laws and regulations. Issued violations and Civil Penalties.

October 1999 to December 2009 — **Division of Oil, Gas, and Geothermal Resources** — Bakersfield, CA
Associate Oil and Gas Engineer
Reviewed applications for drilling, reworking, and abandonment of oil and gas wells.

Reviewed injection project applications for approval. Prepared enforcement actions such as civil penalties and formal orders. Project manager for State contracted well/facility abandonment and clean-up. Provided technical guidance to field engineers. Performed geologic field studies and reserve estimates.

April 1989 to September 1999 — **Division of Oil, Gas, and Geothermal Resources** — Bakersfield, CA
Energy and Mineral Resources Engineer
Performed routine well/lease inspections. Witnessed BOPE tests, WSO tests, and well abandonment operations. Performed Area of Review studies for UIC projects. Prepared Division comments for CEQA and construction site review.

July 1988 to April 1989 — **Chevron USA** — Bakersfield, CA
Geologic Technician
Assisted geologic staff in the construction of structure contour and isopach maps, cross-sections, and correlation of geologic markers.

March 1985 to June 1988 — **Ganong and Ellison, Petroleum Engineers and Geologists** — Bakersfield, CA
Junior Geologist
Preparation of structure contour maps, cross-sections, isochore and isopach maps, and volumetric reserve estimates. Witnessed electric log runs. Supervised the operations of four oil leases (9 wells) in Kern County.

Education and Training

1985 — **California State University, Bakersfield** — Bakersfield, CA, Kern
Bachelor of Science: Geology

California State University, Long Beach — Long Beach, CA, Los Angeles
Reservoir Engineering 5 unit Semester Course

Additional Experience/Registrations

California Professional Geologist, Registration #7864
City of Bakersfield Planning Commissioner (4 years)

EXHIBIT D

EXHIBIT B
DRAFT RESOLUTION

Before the Planning Commission in and for the County of Monterey, State of California

In the matter of the application of:
PORTER ESTATE COMPANY BRADLEY RANCH LLC (Trio Petroleum/PLN160146)
RESOLUTION NO. ----
Resolution by the Monterey County Planning Commission:

1) Adopting the Mitigated Negative Declaration; and
2) Approving a use permit to allow for temporary production testing for oil and gas; and
3) Adopting a Mitigation Monitoring and Reporting Program.

[PLN160146, Porter Estate Company Bradley Ranch LLC, four sites in the Hames Valley, South County Area Plan (APNs: 424-081-046-000, 424-081-050-000, 424-111-001-000, 424-081-084-000)]

The Porter Estates application (Trio Petroleum/PLN160146) came on for public hearing before the Monterey County Planning Commission on December 13, 2017. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – The proposed project is a use permit to allow the temporary exploration for oil and gas at four well sites on four parcels in the Hames Valley (Hames Valley [HV] #1, #2, #3, and #4) as shown in Exhibit D. The permit will be conditioned to expire 18 months from the date that construction begins on the fourth and final well. Each of the three other wells may not be tested more than 18 months from the date that construction is started on the well. This permit authorizes exploration only; the applicant must apply for a subsequent use permit to convert any of the exploratory well sites to full production if commercial quantities of oil and gas are found.

   EVIDENCE: 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 PLN160146.

2. **FINDING:** **CONSISTENCY** – The project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

   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; and
- 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 project properties are located in the Hames Valley on four parcels (Assessor's Parcel Numbers: 424-081-046-000, 424-081-050-000, 424-111-001-000, 424-081-084-000), South County Area Plan. One well site would be located on each parcel. The parcels are zoned F/40 and PG [Farming 40 acres per unit and Permanent Grazing]. Both zoning districts allow for the exploration for and removal of oil and gas with a use permit. Therefore, the project is an allowed land use for this site.

c) The properties consist of undeveloped agricultural land and non-native annual grassland.

d) The project planner conducted a site inspection on March 9, 2017 to verify that the project on the subject parcel conforms to the plans listed above. Well sites HV #1, #3, and #4 are accessed via existing agricultural and access roads. Well site HV #2 does not have an existing access road and the project would include construction of a 0.2-mile long access road. The sites contain undeveloped agricultural land and non-native grassland.

e) Measure Z amends the Monterey County General Plan Land Use Element to add Policy LU-1.23, and other similar policies. Policy LU-1.23 provides, "the drilling of new oil and gas wells is prohibited on all lands within the County's unincorporated areas. This Policy LU-1.23 does not affect oil and gas wells drilled prior to the Effective Date and which have not been abandoned." Measure Z's effective date is currently stayed, although the stay can be lifted by order of the Monterey County Superior Court or with six months' notice from the County of Monterey. With the stay in effect, the exploratory wells are consistent with County zoning if a Use Permit is granted.

f) As noted, the project site is designated Farmlands (HV #1, 2, and 4) and Permanent Grazing (HV #3) in the County's Land Use Plan for South County. The Farmlands land use designation permits a range of uses to conserve and enhance the use of the important farmlands in the County while providing opportunity to establish necessary support facilities for agricultural uses. The Permanent Grazing land use designation allows for a range of land uses to conserve and enhance the productive grazing lands in the County.

g) The site is zoned Farmlands (F/40) (HV #1, 2, and 4) and Permanent Grazing (PG) (HV #3) in the County's Zoning Code. The Farmlands zone allows for land uses that preserve and enhance productive and unique farmlands and the Permanent Grazing zone allows for land uses that preserve, protect, and enhance grazing lands. Under the County Code "The exploration for and the removal of oil and gas" is allowed on Permanent Grazing sites with a Use Permit (Monterey County Ordinance Code Chapter 21.34). In addition, "The exploration for and the removal of oil and gas" is also allowed on Farmlands with a Use

Permit (Monterey County Ordinance Code Chapter 21.30). The exploratory wells are consistent with County zoning if a Use Permit is granted notwithstanding Measure Z's prohibition on drilling of new oil and gas wells because the effective date of Measure Z is currently stayed. (See evidence e above.)

h) The project was referred to the South County Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, this application warranted referral to the LUAC because the permit application and land use matter may raise significant land issues that necessitate review prior to a public hearing by the Planning Commission.

i) The South County LUAC met on July 20, 2016 to discuss the application and any potential issues. The applicant gave a short presentation on the project and detail and parameters of the four exploratory wells and the method of drilling to allow for minimal ground disturbance. The LUAC voted 5-1-0-0 to recommend approval of the project.

j) 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 PLN160146.

3. 1 **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, RMA-Environmental Services, Environmental Health Bureau, and 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 by the Environmental Health Bureau to address handling of hazardous materials and by RMA-Environmental Services to address erosion, grading, drainage, and geohazardous conditions. RMA-Planning added conditions to clarify that the permit does not allow any use of well stimulation treatments and that restoration would occur following well production testing or long-term production. Conditions recommended have been incorporated.

b) The following reports have been prepared:
- Biological Assessment (LIB160229) prepared by Ed Mercurio, Biological Consultant, Salinas, California in June 2016.
- 3167-01 Trio Petroleum LLC. Hames Valley Project Letter Report (LIB160228) prepared by Pacific Legacy, Bay Area Division, Berkeley, California in May 2016.

The above-mentioned technical reports by outside consultants indicated 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 these reports and concurs with their conclusions.

c) The project has been conditioned to required full restoration of the site and requires that applicant to submit a performance bond equal to the

cost of full site restoration.

d) Staff conducted a site inspection on March 9, 2017 to verify that the site is suitable for this use.

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 PLN160146.

4. 1 **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 the RMA - Planning, Cal Fire South County Fire Protection District, Public Works, Environmental Health Bureau, RMA-Environmental Services, and 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) On recommendation of RMA-Planning, the project has been conditioned to require that the applicant apply for a subsequent use permit to convert any of the exploratory well sites to full production if commercial quantities of oil and gas are found. The project has been conditioned to allow specific uses, which do not include the use of well stimulation, including hydraulic fracturing. The project has also been conditioned to required 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 submit and maintain an up-to-date Business Response Plan and to ensure the maintenance of above ground storage tanks and the disposal of hazardous waste, including compliance with state and federal regulations related to handling of production fluids.

e) RMA-Environmental Services has conditioned the project applicant to submit a Waste Discharger Identification number certifying the project is covered under the California Construction General Permit and to ensure that the project is compliant with state and local regulations and the project's Geotechnical Report, which will be prepared as required by the project's conditions of approval.

f) Necessary public facilities will be provided by portable restrooms and will be temporary in nature. Each portable restroom facility will be pumped on an as-needed basis and will be removed if a well is plugged and abandoned. During the drilling phase water will be supplied by the property owner and a water tank would be set up and stored on-site.

g) Each well 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 Air Resources District requirements. The project has been conditioned to ensure compliance with Monterey Bay Air Resources District requirements.

h) Staff conducted a site inspection on March 9, 2017 to verify that the site is suitable for this use.

i) 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 PLN160146.

5. 1 **FINDING:** **NO VIOLATIONS - The** subject property is in compliance with all rules and regulations pertaining to zoning uses, in the County's zoning ordinance. There are no violations.

EVIDENCE:

a) Staff reviewed Monterey County RMA - Planning Department records and is not aware of any violations existing on subject property.

b) Staff conducted a site inspection on March 9, 2017 and researched County records to assess if any violation exists on the subject property.

c) There are no known violations on the subject parcel.

d) Zoning violation abatement costs, if any, have been paid.

e) 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 PLN160146.

6. 1 **FINDING:** **CEQA (Mitigated Negative Declaration) -** On the basis of the whole record before the Monterey County Planning Commission, 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-Mitigated Negative Declaration (IS-MND) pursuant to CEQA. The IS-MND is on file in the offices of RMA-Planning and is hereby incorporated by reference (PLN160146).

c) The IS-MND analyzed environmental factors potentially affected by the project including aesthetics, agricultural and forest resources, air quality, biological resources, cultural resources, geology/soils, greenhouse gas emissions, hazards/hazardous materials, hydrology/water quality, land use/planning, mineral resources, noise, population/housing, public services, recreation, transportation/traffic, tribal cultural resources, and utilities/services systems. The applicant has agreed to proposed mitigation measures relevant to air quality and biological resources that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. All other potentially significant effects identified in the IS-MND were determined to have a less than significant impact or no impact.

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 Monterey County regulations, is designed to ensure compliance during project implementation, and is hereby incorporated herein by reference. The applicant must enter into an Agreement to Implement a Mitigation Monitoring and/or Reporting Plan as a condition of the project approval.

e) The Draft IS-MND for PLN160146 was prepared in accordance with CEQA and circulated for public review form August 8, 2017 to September 8, 2017 (SCH No. 2017081015).

f) Due to the existing disturbed condition of the project site well sites HV #1 and HV #4 do not have the potential to support any special-status species. Well sites HV #2 and #3 and the proposed access road to exploration site HV #2 have potential to support silvery legless lizard, San Joaquin whipsnake, coast horned lizard, burrowing owl, pallid bat, Townsend's big-eared bat, American badger, Salinas pocket-mouse, and San Joaquin kit fox. Activities within the project site could also impact breeding of these species should they take up residence nearby in the surrounding habitats. The mitigation measures that were applied to the project will raise employee awareness of the environmental conditions through a Worker Environmental Awareness Program and will require preconstruction surveys to ensure special-status species are not present on site; work area delineation and/or flagging to mark site boundaries and avoid special-status species; avoidance and minimization measures for San Joaquin kit fox, American badger, and special-status bat species; removal of micro-trash and relocation of reptiles out of the work area; protection of trees; and condor best management practices (BMPs). The mitigation measures also require a mitigation plan if there are special-status species found on site during the pre-construction survey. Following implementation of these mitigation measures, biological impacts would be reduced to a less-than-significant level.

g) The project would have air quality impacts as a result of project construction. Project construction would exceed local NO_X thresholds and will require use of EPA Tier 4 construction equipment, consultation with the Monterey Bay Air Resources District regarding portable engines, and application of Monterey Bay Air Resources District BMPs. Following implementation of these mitigation measures, impacts to air quality would be reduced to a less-than-significant level.

h) Evidence that has been received and considered includes: the application, technical studies/reports (see Finding 3/Site Suitability), staff reports that reflect the County's independent judgement, and information and testimony presented during public hearings. These documents are on file in RMA-Planning (PLM160146) and are hereby incorporated herein by reference.

i) Staff analysis contained in the IS-MND and the record as a whole indicate that the project could result in changes to the resources listed in Section 753.5(d) of the California Department of Fish and Game (CDFG) regulations. All land development projects that are subject to environmental review are subject to a State filing fee plus the County recording fee, unless the Department of Fish and Wildlife determines

that the project will have no effect on fish and wildlife resources. Exploration well sites HV #2 and HV #3 and the proposed access road to exploration well site HV #2 have the potential to support silvery legless lizard, San Joaquin whipsnake, coast horned lizard, burrowing owl, pallid bat, Townsend's big-eared bat, American badger, Salinas pocket-mouse, and San Joaquin kit fox. As indicated above, the impacts have been mitigated to a less than significant level, but 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 and requires payment of fees. The IS-MND was sent to the California Department of Fish and Wildlife for review, comment, and to recommend necessary conditions to protect biological resources in this area. Therefore, the project will be required to pay the State fee plus a fee payable to the Monterey County Clerk/Recorder for processing said fee and posting the Notice of Determination (NOD).

j) The County has considered the comments received during the public review period and they do not alter the conclusions in the IS-MND. The comments received from the Monterey Bay Air Resources District ask for application of the Air District's BMPs to reduce air quality and request consultation with the Air District Compliance Division on the matter or portable engines. Application of MBARD's BMPs and consultation with MBARD would not change the determination of the IS-MND, and impacts to air quality would remain less than significant following mitigation. Application of MBARD's BMPs and consultation and registration regarding portable engines has been added as a condition of approval for the project as shown in Exhibit C.

k) Monterey County RMA-Planning, located at 1441 Schilling Place, 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.

7. **FINDING:** **CEQA RECIRCULATION** – Recirculation of the CEQA IS-MND is not required.

EVIDENCE: a) Following circulation of the IS-MND suggestions by MBARD regarding nomenclature were incorporated into the IS-MND and Mitigation Measure AQ-2 was added requiring consultation and registration with MBARD for use of portable engines. MBARD Best Management Practices were also added as Mitigation Measure AQ-3 to reduce air quality emissions. Addition of Mitigation Measures AQ-2 and AQ-3 to the IS-MND would not change the project air quality findings because air quality construction impacts were already determined to be less than significant with mitigation. As stated in Section 15073.5(c) of the *State CEQA Guidelines*, measures or conditions of project approval may be added to an IS-MND after circulation if they are not required by CEQA, do not create new significant environmental effects, and are not necessary to mitigate an avoidable significant effect. Mitigation Measures AQ-2 and AQ-3 entail construction BMPs and consultation requested by MBARD and meets the requirements of Section 15073.5(c).

8. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.

EVIDENCE: a) Section 21.80.010.D of the Monterey County Zoning Ordinance states that the proposed project is appealable to the Board of Supervisors.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

1. Adopt a Mitigated Negative Declaration; and
2. Approve a use permit to allow temporary production testing for oil and gas at four sites in the Hames Valley, subject to the attached conditions of approval and as shown on the plans attached hereto and incorporated herein by reference; and
3. Adopt the Mitigation Monitoring and Reporting Program.

PASSED AND ADOPTED this 13th day of December 2017 upon motion of xxxx, seconded by xxxx, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Jacqueline R. Onciano, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON DATE

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE [DATE]

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

   Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

   Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from Monterey County RMA-Planning and RMA-Building Services Department office in Salinas.

2. This permit expires 1 year after the above date of granting thereof unless construction or use is started within this period. If construction or use is started within this period, this permit expires 18 months from the date that construction is started on the fourth and final well. Each of the three other wells may not be tested more than 18 months from the date that construction is started on the well.

Form Rev. 5-14-2014n

Monterey County RMA Planning

DRAFT Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN160146

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This Use Permit (PLN160146) allows the construction of four wells and allows the temporary exploration for and removal of oil and gas at the following locations: Hames Valley Exploration Well #1: 5,000 feet west of Nacimiento Lake Drive, 1 mile south of Jolon Road (Assessor's Parcel Number 424-081-046-000). Hames Valley Exploration Well #2: 1,200 feet east of Nacimiento Lake Drive. (Assessor's Parcel Number 424-081-050-000). Hames Valley Exploration Well #3: 2 miles south of Jolon Road and 1 mile east of Nacimiento Lake Drive (Assessor's Parcel Number 424-111-001-000). Hames Valley Exploration Well #4: 1 mile south of Jolon Road and ¼ mile west of Nacimiento Lake Drive, Bradley (Assessor's Parcel Number 424-081-083-000), South County Area Plan. These conditions apply to the owners and applicant and their successors. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The applicant shall record a Permit Approval Notice. This notice shall state:
"A Use Permit (Resolution Number ***) was approved by the Planning Commission for Assessor's Parcel Numbers 424-081-046-000, 424-081-050-000, 424-081-083-000 and 424-111-001-000 on December 13, 2017. The permit was granted subject to 32 conditions of approval which run with the land. A copy of the permit is on file with Monterey County RMA - Planning."

Proof of recordation of this notice shall be furnished to the Director of RMA - Planning prior to issuance of grading and building permits, Certificates of Compliance, or commencement of use, whichever occurs first and as applicable. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to the issuance of grading and building permits, certificates of compliance, or commencement of use, whichever occurs first and as applicable, the Owner/Applicant shall provide proof of recordation of this notice to the RMA - Planning.

3. PD016 - NOTICE OF REPORT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states:
"A Biological Assessment (Library No. LIB160229), was prepared by Ed Mercurio in June 2016 and is on file in Monterey County RMA - Planning. All development shall be in accordance with this report."

Compliance or Monitoring Action to be Performed: Prior to the issuance of grading and building permits, the Owner/Applicant shall submit proof of recordation of this notice to RMA - Planning.

Prior to occupancy, the Owner/Applicant shall submit proof, for review and approval, that all development has been implemented in accordance with the report to the RMA - Planning.

4. PD003(A) - CULTURAL RESOURCES NEGATIVE ARCHAEOLOGICAL REPORT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. Monterey County RMA - Planning and a qualified archaeologist (i.e., an archaeologist registered with the Register of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for recovery.
(RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to this condition on an on-going basis.

Prior to the issuance of grading or building permits and/or prior to the recordation of the final/parcel map, whichever occurs first, the Owner/Applicant shall include requirements of this condition as a note on all grading and building plans. The note shall state "Stop work within 50 meters (165 feet) of uncovered resource and contact Monterey County RMA - Planning and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered."

When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.

5. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, or recordation of Certificates of Compliance, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the Director of RMA-Planning for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to RMA-Planning .

6. PD005 - FISH & GAME FEE NEG DEC/EIR

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Pursuant to the State Public Resources Code Section 753.5, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee, to be collected by the County, within five (5) working days of project approval. This fee shall be paid before the Notice of Determination is filed. If the fee is not paid within five (5) working days, the project shall not be operative, vested or final until the filing fees are paid. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Within five (5) working days of project approval, the Owner/Applicant shall submit a check, payable to the County of Monterey, to the Director of RMA - Planning.

If the fee is not paid within five (5) working days, the applicant shall submit a check, payable to the County of Monterey, to the Director of RMA - Planning prior to the recordation of the final/parcel map, the start of use, or the issuance of building permits or grading permits.

7. PD006 - CONDITION OF APPROVAL / MITIGATION MONITORING PLAN

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The applicant shall enter into an agreement with the County to implement a Condition of Approval/Mitigation Monitoring and/or Reporting Plan (Agreement) in accordance with Section 21081.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed Agreement. The agreement shall be recorded. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Within sixty (60) days after project approval or prior to the issuance of building and grading permits, whichever occurs first, the Owner/Applicant shall:

1) Enter into an agreement with the County to implement a Condition of Approval/Mitigation Monitoring Plan.

2) Fees shall be submitted at the time the property owner submits the signed Agreement.

3) Proof of recordation of the Agreement shall be submitted to RMA-Planning.

8. EHSP01 - PERMIT TO CONDUCT WELL OPERATIONS (NON- STANDARD)

Responsible Department: Health Department

Condition/Mitigation Monitoring Measure: The applicant must apply for a permit to conduct well operations from the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (CDOGGR) for each exploratory well pursuant to the CDOGGR Public Resources Codes (PRC) 01 and 04.

Compliance or Monitoring Action to be Performed: Prior to commencement of operations apply for a permit to conduct well operations from the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (CDOGGR).

Submit documentation to the Environmental Health Bureau indicating that CDOGGR has received a complete application.

9. EHSP02 - HMMS BUSINESS RESPONSE PLAN – MEMORANDUM OF UNDERSTANDING (NON-STANDARD)

Responsible Department: Health Department

Condition/Mitigation Monitoring Measure: The applicant shall submit a Business Response Plan to the California Environmental Reporting System (CERS) and have it approved by the Hazardous Materials Management Services (HMMS) program of the Environmental Health Bureau prior to bringing hazardous materials on site and/or commencement of operations. As part of this requirement, the applicant agrees to comply with the following terms:

- Obtain a Hazardous Materials Facility Operating Permit from HMMS.
- Develop a Business Response Plan that meets the standards found in the California Code of Regulations, Title 19, Division 2, Chapter 4 (Hazardous Material Release Reporting, Inventory, and Response Plans) and the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Material Release Response Plans and Inventory). Submit to CERS and provide notification to Environmental Health Bureau for HMMS to review and approve.
- Maintain an up-to-date Business Response Plan that reflects all hazardous materials stored on site.

Compliance or Monitoring Action to be Performed: Prior to bringing hazardous materials on site and/or commencement of operations the applicant shall comply with the requirements of this condition.

10. EHSP03 – HAZARDOUS MATERIALS: SPILL PREVENTION CONTROL COUNTERMEASURE PLAN (NON-STANDARD)

Responsible Department: Health Department

Condition/Mitigation Monitoring Measure: Above ground storage tanks for petroleum products (i.e. diesel, oil, and gasoline) with greater than 1320-gallons of capacity or for cumulative storage of more than 1320-gallons shall meet the standards as found in the California Health and Safety Code, Section 25270 et seq. and of the Code of Federal Regulations, Part 112 (commencing with Section 112.1) of Subchapter D of Chapter 1 of Title 40.

Compliance or Monitoring Action to be Performed: Prior to issuance of commencement of operations, it may be necessary to prepare a Spill Prevention Control Countermeasure (SPCC) Plan. Upon receipt of the construction permit application, the Hazardous Materials Management Service of Environmental Health Bureau (EHB) will determine if an SPCC Plan will be required.

If it is determined that the plan is required prior to issuance of commencement of operations, the applicant shall submit an SPCC Plan to EHB for review and approval.

If it is determined that the SPCC Plan is not required, no further action is necessary.

11. EHSP04 - HAZARDOUS WASTE CONTROL (NON-STANDARD)

Responsible Department: Health Department

Condition/Mitigation Monitoring Measure: The facility shall comply with the standards found in the California Code of Regulations, Title 22, Division 4.5 and the California Health and Safety Code, Division 20, Chapter 6.5, and the Monterey County Code Chapter 10.65 for the proper handling, storage and disposal of Hazardous Waste as approved by the Environmental Health Bureau (EHB).

Compliance or Monitoring Action to be Performed: Prior to commencement of operations, the applicant shall submit to the Hazardous Materials Management Services of the Environmental Health Bureau (EHB) an inventory of any hazardous waste expected to be generated on site for review and acceptance. If no hazardous waste is expected to be generated, applicant shall submit attestation to the satisfaction of EHB.

12. CALIFORNIA CONSTRUCTION GENERAL PERMIT

Responsible Department: Environmental Services

Condition/Mitigation Monitoring Measure: The applicant shall submit a Waste Discharger Identification (WDID) number certifying the project is covered under the California Construction General Permit. (RMA-Environmental Services)

Compliance or Monitoring Action to be Performed: Prior to start of construction, the applicant shall submit a WDID number certifying the project is covered under the California Construction General Permit or a letter of exemption from the Central Coast Regional Water Quality Control Board.

13. EROSION CONTROL PLAN

Responsible Department: Environmental Services

Condition/Mitigation Monitoring Measure: The applicant shall submit an erosion control plan in conformance with the requirements of Monterey County Code Chapter 16.12. The erosion control plan shall include a construction entrance, concrete washout, stockpile area(s), material storage area(s), portable sanitation facilities and waste collection area(s), as applicable. (RMA-Environmental Services)

Compliance or Monitoring Action to be Performed: Prior to issuance of any grading or building permits, the applicant shall submit an erosion control plan to RMA-Environmental Services for review and approval.

14. GEOTECHNICAL CERTIFICATION

Responsible Department: Environmental Services

Condition/Mitigation Monitoring Measure: The applicant shall provide certification from a licensed practitioner that all development has been constructed in accordance with the recommendations in the project Geotechnical Report. (RMA- Environmental Services)

Compliance or Monitoring Action to be Performed: Prior to final inspection, the owner/applicant shall provide RMA-Environmental Services a letter from a licensed practitioner.

15. GEOTECHNICAL REPORT

Responsible Department: Environmental Services

Condition/Mitigation Monitoring Measure: The applicant shall submit a geotechnical report with project specific recommendations. The report shall include data regarding the nature, distribution, and strength of existing soils, as well as, a description of the site geology and any applicable geologic hazards. (RMA – Environmental Services)

Compliance or Monitoring Action to be Performed: Prior to issuance of any grading or building permits, the applicant shall submit a geotechnical report to RMA-Environmental Services for review and approval.

16. GRADING PLAN

Responsible Department: Environmental Services

Condition/Mitigation Monitoring Measure: The applicant shall submit a grading plan, prepared by a Professional Engineer, incorporating the recommendations from a project Geotechnical Report. The grading plan shall include contour intervals and cross-sections that identify the existing grade, proposed grade, and the extent of any proposed excavation and/or fill. The grading plan shall include the geotechnical inspection schedule that identifies when the inspections will be completed, who will conduct the inspection (i.e., PG, PE, and/or Special Inspector), a description of the required inspection, inspector name, and the completion date. The applicant shall also provide certification from the licensed practitioner that the grading plan incorporates their geotechnical recommendations. (RMA-Environmental Services)

Compliance or Monitoring Action to be Performed: Prior to issuance of any grading or building permits, the applicant shall submit a grading plan and geotechnical report to RMA-Environmental Services for review and approval.

Prior to issuance of any grading or building permits, the applicant shall submit certification from a licensed practitioner that they have reviewed the grading plan for conformance with the geotechnical recommendations.

17. INSPECTION-DURING ACTIVE CONSTRUCTION

Responsible Department: Environmental Services

Condition/Mitigation Monitoring Measure: The applicant shall schedule an inspection with RMA-Environmental Services to inspect drainage device installation, review the maintenance and effectiveness of BMPs installed, and to verify that pollutants of concern are not discharged from the site. At the time of the inspection, the applicant shall provide certification that all necessary geotechnical inspections have been completed to that point. This inspection requirement shall be noted on the Erosion Control Plan. (RMA – Environmental Services)

Compliance or Monitoring Action to be Performed: During construction, the applicant shall schedule an inspection with RMA-Environmental Services.

18. INSPECTION-FOLLOWING ACTIVE CONSTRUCTION

Responsible Department: Environmental Services

Condition/Mitigation Monitoring Measure: The applicant shall schedule an inspection with RMA-Environmental Services to ensure all disturbed areas have been stabilized and all temporary erosion and sediment control measures that are no longer needed have been removed. This inspection requirement shall be noted on the Erosion Control Plan. (RMA – Environmental Services)

Compliance or Monitoring Action to be Performed: Prior to final inspection, the owner/applicant shall schedule an inspection with RMA-Environmental Services.

19. INSPECTION-PRIOR TO LAND DISTURBANCE

Responsible Department: Environmental Services

Condition/Mitigation Monitoring Measure: The applicant shall schedule an inspection with RMA-Environmental Services to ensure all necessary sediment controls are in place and the project is compliant with Monterey County regulations. This inspection requirement shall be noted on the Erosion Control Plan. (RMA – Environmental Services)

Compliance or Monitoring Action to be Performed: Prior to commencement of any land disturbance, the owner/applicant shall schedule an inspection with RMA-Environmental Services.

20. MM1 (AQ-1) - CONSTRUCTION EQUIPMENT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Drilling rigs, pumping units, and generators utilized during the production testing phase shall meet U.S. EPA Tier 4 emission standards. The applicant shall submit an equipment list with equipment type, make, model year, and proof of Tier 4 certification to Recourse Management Agency to the satisfaction of the Chief of Planning. The applicant shall submit updated equipment lists throughout the production testing phase, if equipment is modified. The Resource Management Agency – Chief of Planning shall conduct periodic site inspections during the production testing phase to verify that construction equipment with appropriate Tier standards are used.

Compliance or Monitoring Action to be Performed: U.S. EPA Tier 4 construction equipment shall be used throughout the production testing phase. The project contractor shall ensure that equipment is U.S. EPA Tier 4.

21. MM2 (AQ-2) - PORTABLE ENGINE CONSULATION

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The project contractor shall consult with the Monterey Bay Air Resources District Compliance Division regarding any portable engines over 50 horsepower and portable equipment units that emit particulate matter greater than 2.0 pounds per day used during project construction.

Compliance or Monitoring Action to be Performed: Consultation with the Monterey Bay Air Resources District shall occur prior to project construction.

22. MM2a (AQ-3) CONSTRUCTION BEST MANAGEMENT PRACTICES

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Construction at all four well sites shall implement the following practices when appropriate:

- Prohibit all grading activities during periods of high wind (over 15 miles per hour)
- Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil, and wind exposure.
- Apply chemical soil stabilizers on inactive construction areas (disturbed lands within construction projects that are unused for at least four consecutive days)
- Apply non-toxic binders (e.g., latex acrylic copolymer) to exposed areas after cut and fill operations, or hydro-seed area
- Maintain at least two feet of freeboard in haul trucks
- Cover all trucks hauling dirt, sand, or loose material
- Plant vegetative ground cover in disturbed areas as soon as possible
- Cover inactive storage piles
- Install wheel washers at the entrance to construction sites for all exiting trucks
- Post a publically visible sign which specifies the telephone number and person to contact regarding dust complaints. This person shall respond to complaints and take corrective action within 48 hours. The phone number of the Air District shall be visible to ensure compliance with Rule 402 (Nuisance)

Compliance or Monitoring Action to be Performed: Construction Best Management Practices shall be applied during the site preparation and production testing phases. The project contractor shall be responsible for ensuring that the Best Management Practices are being implemented.

23. MM3 (BIO-1) - WORKER ENVIRONMENTAL AWARENESS PROGRAM

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: A County-approved biological monitor shall prepare a worker environmental awareness program (WEAP) training to be given to all personnel (site supervisors, equipment operators and laborers) which emphasizes the potential for special status species and nesting birds to occur within and immediately adjacent to the project site. The WEAP shall cover identification of these species, their habitat requirements, and applicable regulatory policies and provisions regarding their protection, and measures being implemented to avoid and/or minimize potential impacts. A fact sheet or other supporting material containing this information shall be prepared and distributed to all of the workers on-site. Upon completion of training, employees shall sign a form stating that they attended the training and understand all the conservation and protection measures.

During training, contractors and personnel shall be instructed to allow any wildlife observed within the project area to move out of harm's way of their own accord, unimpeded.

The WEAP must contain the following specific information regarding SJKF: photographs describing and illustrating potentially occurring SJKF, description of SJKF habitat needs, a discussion of measures to be implemented for avoidance if one is observed, the identification of an on-site contact in the event the species is seen on the site, an explanation of the status of the species and its protection under the federal and state Endangered Species Acts, and a report of the historic occurrence of kit fox in the project area. The WEAP must specify the reporting process to the designated on-site contact if SJKF are seen on site. This contact is responsible for notifying RMA Planning of any sightings, and notifying regulatory agencies if warranted as specified in measure BIO-4.

The WEAP must contain the following specific information regarding California condor: photographs describing and illustrating California condor and differentiating this species from the common turkey vulture, a definition of microtrash, and description of specific microtrash measures to be implemented to avoid potential for impacts, measures for avoidance if a condor is observed, and the identification of an on-site contact in the event the species is seen on the site.

Compliance or Monitoring Action to be Performed: Training shall be conducted for new personnel before they initiate equipment mobilization onto each well site. The contractor shall be responsible for ensuring that all personnel working on-site comply with the guidelines.

Prior to the start of equipment mobilization, a copy of all written materials shall be provided to employees as part of the WEAP training. Because the production testing phase and potential long-term production may occur over an extended period, an initial training shall be conducted by a qualified biologist for site supervisors and project managers prior to initiation of equipment mobilization activities. WEAP materials shall be provided in written form to be used for subsequent trainings. Prior to new personnel beginning work, the previously trained site supervisor or project manager shall provide WEAP training materials for new employees and document that personnel who will work on site have received WEAP training. A sign-in log identifying all trained employees shall be submitted to the County within one week of each training session.

24. MM4 (BIO-2) - PRE-DISTURBANCE SURVEYS

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Prior to equipment mobilization, within 14 days prior to start of activities, a qualified biologist shall conduct two pre-disturbance surveys at specified timing intervals to determine if special status species have moved into the project site or within a 500-foot buffer (where visible and legally accessible). Species-specific measures are provided below in the event that special status species or their sign are found during pre-construction surveys.

Prior to equipment mobilization that commences within the nesting season, February 1 through September 15, a qualified biologist shall also conduct preconstruction surveys for nesting birds, including raptors, in all areas within 500 feet of proposed disturbance areas, where accessible. The required survey dates may be modified based on local conditions, as determined by the biologist based on observations in the field. Early removal of nest starts (incomplete nests in which eggs have not been laid) can be performed by the qualified biologist for common species to discourage mated pairs from nesting in areas subject to disturbance. Nest starts of special status birds shall not be disturbed without consultation with CDFW.

Active nests of native birds shall be protected with a no-work buffer. Buffer distance shall be a minimum of 100 feet for songbirds, 500 feet for raptors, and 0.25 mile for golden eagle. Prescribed buffers may be adjusted to reflect existing conditions such as ambient noise, topography, and level of disturbance from proposed activities in consultation with CDFW and the County.

Any nest buffer zones shall be clearly delineated to avoid disturbance to nesting birds. Depending on their proximity to disturbance areas, buffer zones may be designated in the field in various ways, including flagging, fencing, and/or signage.

Compliance or Monitoring Action to be Performed: The initial preconstruction survey shall be conducted within 14 days prior to construction activities. An additional survey shall be conducted immediately prior to the start of ground disturbance (within 24 hours) to verify absence of SJKF and burrowing owl. A report documenting results of the preconstruction surveys shall be submitted to Resource Management Agency – Chief of Planning within one week of completing the second and final survey.

If nest buffers and follow-up monitoring are required, the biologist shall submit a monthly monitoring report identifying active nests, monitoring results, and condition of buffer zones. Reports can be combined with other reporting requirements where appropriate.

25. MM5 (BIO-3) - WORK AREA DELINATION AND/OR FLAGGING

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Project site boundaries shall be clearly delineated at each well site by stakes and/or flagging to minimize inadvertent degradation or loss of adjacent habitat during site preparation and drilling. Staff and/or its contractors shall post signs and/or place fence around the proposed project sites to restrict access of vehicles and equipment unrelated to project operations. Fencing or flagging shall be kept in good maintenance and remain through production testing.

Compliance or Monitoring Action to be Performed: The initial delineation and staking and/or flagging of the site shall be completed prior to ground disturbance. The staking and/or flagging must be maintained throughout the duration of production testing.

26. MM6 (BIO-4) SJKF AVOIDANCE AND MINIMIZATION MEASURES

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: All USFWS standardized recommendations for protection of SJKF shall be incorporated pursuant to the guidance for small projects. These recommendations include, but are not limited to: den exclusion zones, project speed limits, food trash limitations, and firearms restrictions.

Compliance or Monitoring Action to be Performed: If required based on results of pre-activity surveys, exclusion zone barriers shall be maintained until all construction activities or operational disturbances have been terminated. At that time all fencing shall be removed to avoid attracting subsequent attention to the dens. If fencing is required for protection of dens, a report shall be submitted to the County Resource Management Agency to the satisfaction of the Chief of Planning by the project biologist documenting that exclusion zone buffers are in place.

If SJKF are observed on or within 200 feet of the project site, the project applicant or representative shall contact RNA Planning reporting the observation and documenting compliance with SJKF measures, as applicable. A report shall be submitted to Resource Management Agency to the satisfaction of the Chief of Planning upon completion of the project documenting compliance with SJKF measures. This report can be submitted with documentation of compliance with other conditions.

If SJKF are sighted in the project area, the project applicant or representative shall immediately notify CDFW, USFWS, and RMA- Planning.

27. MM7 (BIO-5) - BURROWING OWL MITIGATION PLAN

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: If preconstruction surveys determine that burrowing owls are present within the project site and/or buffer area, a burrowing owl mitigation plan shall be prepared consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation. This plan shall describe site-specific avoidance and minimization measures and incorporate all measures outlined in the CDFW 2012 Staff Report on Burrowing Owl Mitigation. These include, but are not limited to: avoidance of occupied burrows and passive relocation techniques.

Compliance or Monitoring Action to be Performed: If required, the Burrowing Owl Mitigation Plan shall be submitted to RMA-Planning and CDFW prior to work that affects burrowing owls. The plan shall be approved by the County prior to implementation. Documentation shall be submitted to CDFW following approval.

28. MM8 (BIO-6) - REMOVE MICRO-TRASH

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: During periods when personnel are present on each well site, project personnel shall regularly check project areas, pick up and contain micro-trash, and remove from the site at least once weekly.

Compliance or Monitoring Action to be Performed: Micro-trash cleanup and containment shall occur daily and removed from each site weekly. The applicant shall submit a report to the Resource Management Agency to the satisfaction of the Chief of Planning upon completion of the project documenting compliance with micro-trash cleanup requirements. This report can be submitted with documentation of compliance with other conditions.

29. MM9 (BIO-7) - CONDOR BEST MANAGEMENT PRACTICES

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: During all phases of the project, the applicant shall adhere to the following USFWS recommended California condor best management practices (BMPs):

- All surface structures which are identified as a risk to California condors shall be modified or relocated to reduce or eliminate the risk.
- All hoses or cords that must be placed on the ground due to drilling operations that are outside of the primary work area (immediate vicinity of the drilling rig) shall be covered to prevent California condor access. Covering will take the form of burying or covering with heavy mats, planks, or grating that will preclude access.
- All equipment and work-related materials (including, but not limited to, loose wires, open containers, rags, hoses, or other supplies or materials) shall be contained in closed containers either in the work area or placed inside vehicles.
- Ethylene glycol based antifreeze or ethylene glycol based liquid substances shall be avoided, and propylene glycol based antifreeze will be encouraged. Equipment or vehicles that use ethylene glycol based antifreeze or other ethylene glycol based liquid substances shall be inspected daily for leaks, including (but not limited to) areas below vehicles for leaks and puddles. Standing fluid shall be remediated immediately upon discovery. Leaks shall be repaired immediately. The changing of antifreeze of any type shall be prohibited onsite.

Compliance or Monitoring Action to be Performed: The project applicant shall adhere to BMPs to at all times during project construction and operations. The applicant shall submit a report to the Resource Management Agency to the satisfaction of the Chief of Planning upon completion of the project documenting compliance with BMPs. This report can be submitted with documentation of compliance with other conditions.

30. MM10 (BIO-8) - RELOCATE REPTILES OUT OF WORK AREA

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: If encountered during preconstruction surveys, San Joaquin whipsnake, coast horned lizard, and silver legless lizard shall be relocated out of direct project impact areas by the qualified biologist. During WEAP training (BIO-1) contractors and personnel shall be instructed to allow any reptiles observed within the project area to move out of harm's way of their own accord, unimpeded.

Compliance or Monitoring Action to be Performed: If relocations occur, the biologist shall submit results with the preconstruction survey report to the Resource Management Agency to the satisfaction of the Chief of Planning.

31. MM11 (BIO-9) - BADGER AVOIDANCE MEASURES

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: If potential badger dens are identified within or in close proximity to project activity areas, exclusion zones shall be established to prevent intrusion of workers on foot, vehicles, and equipment in close proximity to dens. During natal season (March 1 through June 30) dens within 100 feet of work areas shall be marked and avoided unless they are located outside existing fencing. Outside breeding season, dens within 50 feet must be flagged and avoided.

Compliance or Monitoring Action to be Performed: If required based on results of pre-activity surveys, exclusion zone barriers shall be maintained until all site preparation, drilling, or production testing activities have been terminated. At that time all fencing shall be removed to avoid attracting subsequent attention to the dens. If fencing is required for protection of dens, a report shall be submitted to RMA- Planning by the project biologist documenting that exclusion zone buffers are in place.

32. MM12 (BIO-10) - SPECIAL STATUS BAT AVOIDANCE AND MINIMIZATION MEASURES

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Site preparation activities shall be restricted to daylight hours. If a non-maternal roost is found during pre-disturbance surveys (November through March), the qualified biologist, with approval from CDFW, shall install one-way valves or other appropriate passive relocation method. Maternal bat colonies shall not be disturbed. If a maternal colony is discovered, a no-work buffer of 100 feet shall be established.

Compliance or Monitoring Action to be Performed: If required based on results of pre-activity bat surveys, non-maternal roots shall be relocated prior to construction activity. If a maternal colony is discovered the no-work buffer shall be maintained from the time the roost is identified until all site preparation, drilling, or production testing activities have been fully executed and all project activity has been terminated. At that time all maternity roost avoidance fencing shall be removed to avoid subsequent attention to the maternal colony. If fencing is required for protection of the maternal colony, a report shall be submitted to RMA-Planning by the project biologist documenting that no-work buffer zones are in place.

33. MM13 (BIO-11) - TREE PROTECTION

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Limits of any ground-disturbing work within 25 feet of native trees shall be clearly flagged in the field. Parking shall not be permitted under trees. Parking locations for vehicles shall be designated away from oak trees. Workers will be informed of the need to avoid parking under oaks as part of WEAP training (Measure BIO-1). In addition, soils shall not be deposited around or over any trees in the project area.

Compliance or Monitoring Action to be Performed: Prior to the start of equipment mobilization, the applicant shall provide documentation to the Resource Management Agency to the satisfaction of RMA - Planning that tree protection measures prohibiting parking underneath oak trees are incorporated into the WEAP training materials.

34. PDSP001 - USE PERMIT EXPIRATION

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This Use Permit shall expire 18 months from the date that construction is started on the fourth and final well. Each of the three other wells may not be tested more than 18 months from the date that construction is started on the well.

Compliance or Monitoring Action to be Performed: The applicant shall notify the RMA - Planning Chief of Planning in writing of the date that construction is started on each well.

35. PDSP002 - SUBSEQUENT USE PERMIT REQUIRED

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: If the production testing for oil and gas finds that commercial quantities of oil and gas exist at the well locations, a subsequent Use Permit approval will be required to convert the site to full production.

Compliance or Monitoring Action to be Performed: If commercial quantities of oil and gas exist, a subsequent use permit shall be required to convert site to full production.

36. PDSPOO3 – SITE RESTORATION (NON-STANDARD)

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Should the applicant not obtain a subsequent Use Permit for full production of oil and gas, all wells shall be abandoned, all temporary facilities shall be removed, and the sites shall be restored to their predevelopment state as permanent grazing/non-native grasslands. This restoration includes removal of gravel and other surface materials and contaminated soil and the restoration of natural grade, with the re-vegetation of the site.

Compliance or Monitoring Action to be Performed: A performance bond or security in the amount of one hundred percent (100%) of the estimated cost of well abandonment and site restoration shall be submitted to RMA-Planning by Owner/Applicant prior to commencement of use.
Prior to the expiration of the temporary Use Permit, and if the applicant has not applied for a subsequent Use Permit for full production, the applicant shall submit documentation (site photos, DOGGR permits, etc.) to RMA-Planning that the site has been restored to its predevelopment state.

37. PDSP004 – NO WELL STIMULATION TREATMENTS (NON-STANDARD)

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This use permit will allow temporary production testing. The use of any form of well stimulation treatment, including hydraulic fracturing, acid fracturing, and acid matrix stimulation, is not permitted with this entitlement.

Compliance or Monitoring Action to be Performed: The applicant (Trio Petroleum LLC) and their successors and assigns shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

38. PDSP005 – CONFORMANCE WITH MBARD REQUIREMENTS (NON-STANDARD)

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Any flaring of natural gas shall be done using permitted equipment by the Monterey Bay Air Resources District (MBARD) and shall comply with all applicable MBARD standards.

Compliance or Monitoring Action to be Performed: The applicant shall contact the Monterey Bay Air Resources District and obtain any required permits for any flaring.

39. PDSP006 – CONFORMANCE WITH SAFE WATER DRINKING ACT (NON-STANDARD)

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The disposal of produced fluids shall not be injected in any well that is currently out of compliance with the Safe Water Drinking Act. The applicant shall disclose the location of the fluid disposal. The disposal of fluids shall be in conformance with all applicable regional, state, and federal regulations and meet the following performance criteria:
- Disposal of fluids shall be in a permitted injection well that is located in an aquifer that has been exempted by the Department of Conservation, or
- Disposal of fluids shall be in a permitted injection well that is located in an aquifer that has a Total Dissolved Solids (TDS) concentration above 10,000 mg/L which does not require an exemption from the Department of Conservation, or
- Disposal of fluids will be at an approved hazardous waste facility.

Compliance or Monitoring Action to be Performed: Prior to commencement of operation, the applicant shall disclose the name of the licensed contractor hired to dispose of produced fluids, and list of permitted disposal sites to RMA-Planning. The applicant shall disclose the destination of the disposed fluids to RMA-Planning.

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STEGALL CONRAD LEE & HELEN M
TRS
5021 VERDUGO WY # 105
CAMARILLO CA 93012

424-081-041-000
BECKER FREDERICK J ET AL
901 N GARDEN RIDGE BLVD
APT 3111
LEWISVILLE TX 75077-2989

424-081-043-000
WARD GLENN A TR ET AL
5334 COZBY CT
FAIR OAKS CA 95628-3808

424-081-045-000
STONESIFER ALLEN TR ET AL
C/O GLENN A WARD
5334 COZBY CT
FAIR OAKS CA 95628-3808

424-081-053-000
SONNE BILL W & ELLEN J TRS
NACIMIENTO LAKE RD BOX 2905
BRADLEY CA 93426

424-091-016-000
JOSEPH VINEYARD ESTATES LLC
DBA JOSEPH VINEYARD
2800 ROAD 136
DELANO CA 93215-9326

424-101-025-000
AG LAND TRUST
PO BOX 1731
SALINAS CA 93902

APPLICANT
PORTER ESTATE COMPANY BRADLEY
RANCH INC
220 MONTGOMERY ST #910
SAN FRANCISCO CA 94104

AGENT
ROWLEE STEVE
C/O TRIO PETROLEUM
5401 BUSINESS PARK SOUTH STE 115
BAKERSFIELD CA 93309

PLN160146
300 FOOT LABELS

424-111-004-000 & 424-101-016-000
U S A
~~SALINAS CA 93901~~

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