

# Exhibit A

This page intentionally left blank.

## EXHIBIT A

### PROJECT DISCUSSION

#### TRIO PETROLEUM LLC (PLN160146)

##### **Project Overview**

The proposed project includes site preparation, drilling, and production testing (exploration) for oil and gas at four new well sites in Hames Valley (HV). The project is an exploratory effort to assist the applicant in determining whether oil is available in commercial quantities at the project location. Potential future production wells would be subject to additional environmental review and permitting.

The project would involve the construction of four (4) test wells for 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 424-081-084-000).

Well site HV #2 does not have an existing access road so the project also includes construction of a 0.2-mile long access road to the well site from an existing driveway and farm access road near Nacimiento Lake Drive. The other well sites would be accessed via existing agriculture and ranch access roads. Table 1 below includes the total area for each well site and the total acreage for all four well sites.

**Table 1 Project Disturbance Area**

Well Site	Area (acres)
HV #1	1.0
HV #2	2.2 <sup>1</sup>
HV #3	1.1
HV #4	1.5
<b>Total</b>	<b>5.8</b>

<sup>1</sup>Includes 0.5 acre of access route construction.

Each well site would contain a 105 foot-tall drilling rig with a mud pit, mud pump, pipe trailer, drawworks, water and fuel tank, generator house, pipe rack area, dog house, cat walk, 500-gallon fresh water tank, diesel tank, and tool house.<sup>1</sup>

---

<sup>1</sup> A dog house is a room located adjacent to the rig floor which serves as a combination of a tool shed, office, communications center, coffee room, lunchroom, and general meeting place for the crew. The cat walk is a platform used as a staging area for rig and drill tools.

*Construction and Testing.* The project would involve the drilling and production testing of up to four wells. One well would be drilled at a time. The Use Permit would expire 18 months from the date 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. Testing of each site could last for up to 18 months, such that all four wells could potentially be tested at the same time. Drilling of the first well is anticipated to start shortly after permit approval and condition compliance.

*Site Preparation.* Site preparation would include clearing of grasses and other vegetation, minor grading, and compaction. No trees would be removed at any site and existing drainage patterns would be maintained. An earthen berm would be constructed around the perimeter of each well site to ensure that any unintended fluid discharge during drilling or production testing is confined within the well site. The earthen berm at each site would be approximately 1.5 feet tall and located around the exterior limits of each site, with smaller berms as necessary around all tanks and separating facilities. Where appropriate, material rolls would also be laid around the footprint of specific facilities within each well site. Site preparation, which would occur during the summer, would require four to seven days to complete for each site. An erosion control plan has been prepared for each well site to control sedimentation associated with project construction. All grading, erosion control, and site preparation activities would be performed in accordance with applicable federal, State and local regulations.

*Drilling Phase.* The drilling phase for each proposed well would last approximately 19 days with drilling activity occurring 24 hours a day. A 105-foot tall drilling rig and temporary facilities, such as crew support trailers and portables generators, would be brought in for drilling. Portable lighting would be used only as needed during drilling. Hazardous materials common to drilling operations, including diesel fuel, motor oil, transmission oil, and nitrogen, would be used and stored on site according to applicable Federal, State, and local regulations.

*Production Testing Phase.* The project would include production testing (exploration) for oil and gas 24 hours a day. Set up of the temporary tanks and pumping unit would take approximately two to three days. Production testing operations for each well may require up to 12 months, with the option to test for an additional six months. Once the target depth of each well is reached, it would be tested and evaluated to determine whether to place the well in production or plug and abandon the well. Initially a production rig would be moved on site to complete the well and prepare for production testing. The rig would operate 10 hours a day for five days.

During production testing, briny water (produced water) and oil will be recovered. Separated crude oil and produced water would be stored on site in four to six 500-barrel portable, enclosed steel tanks for transportation to off-site facilities. An acid wash may be used during production testing and disposed of at a licensed hazardous waste facility.

### **Project Issues**

Monterey County requires use permits to allow exploration for oil and gas. The project site is zoned F/40 (Farming/ 40 acres per unit) and PG (Permanent Grazing). In both zoning districts, a use permit is required for “exploration for and removal of oil and gas.” (Monterey County Code (MCC), sections 21.30.050.EE and 21.34.050.EE.)

If granted, the use permit would allow the drilling of test wells that will be used for production testing to determine if the well can produce commercial quantities of oil and gas. The permit is conditioned to 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.

Any long-term production would require subsequent environmental review and permitting by federal, State, and local agencies, including a use permit from the County. Additionally, the citizen-sponsored initiative, Measure Z, was passed in November 2016. Measure Z would have amended the Monterey County General Plan to: (1) prohibit the use of land within the County's unincorporated (non-city) areas for hydraulic fracturing treatments ("fracking"), acid well stimulation treatments, and other well stimulation treatments; (2) prohibit new and phase out existing land uses that utilize oil and gas wastewater injection and impoundment; and (3) prohibit the drilling of new oil and gas wells in the County's unincorporated areas. Measure Z makes similar amendments to the Fort Ord Master Plan and Local Coastal Program, if certified respectively by the Fort Ord Reuse Authority and California Coastal Commission. As a result of litigation challenging Measure Z, the effective date of Measure Z was stayed while this application was being processed. Since the Planning Commission decision, the Monterey County Superior Court has issued a judgment and writ enjoining the County from enforcing the prohibition on new oil and gas wells and ordering the County to invalidate the prohibition. Accordingly, at present, Measure Z does not prohibit the County from processing and approving this use permit for exploratory wells. However, if the Superior Court decision is appealed and if Measure Z's prohibition on new oil and gas wells is upheld, Measure Z may impact the applicant's ability to drill other new wells or convert the exploratory wells to production wells. Potential future well operations would continue to be regulated by the State of California, Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR), as well as subject to permitting pursuant to the Monterey County Code, and local land use authority. Regardless of the outcome of the Measure Z litigation, the Title 21 requirements predate and are independent of Measure Z, are in effect, and govern this application.

#### Conditions of Approval Recommended by Staff

Staff has prepared a draft resolution of approval, subject to conditions of approval. The recommended conditions (Conditions 34, 35 and 36, **Exhibit B**) require the Use Permit to 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.

If the Owner/Applicant decides to pursue full production of oil and gas from the wells, a subsequent Use Permit approval is required to convert the site to full production. Should the Owner/Applicant not apply for a subsequent Use Permit for full production of oil and gas within 18 months from the date that construction is started on the fourth well, or from the date that construction is started on the last well constructed under this permit, whichever occurs first, all wells must be properly abandoned according to the requirements of the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR), all temporary facilities must be removed, and the sites must be restored to their predevelopment state as permanent

grazing/non-native grasslands. A performance bond or security in the amount of 100% of the estimated cost of well abandonment and site restoration must be submitted to the County prior to issuance of a construction permit.

### CEQA

An Initial Study-Mitigated Negative Declaration (IS/MND) was prepared for the project that considered the project and the reasonably foreseeable impacts of long term production, if commercially viable quantities of oil and gas were found at the site. The following environmental factors were analyzed: aesthetics, 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, utilities/services systems. The IS/MND concludes that, with the exception of air quality and biological resources, the project as proposed would not result in significant impacts to any of the analyzed environmental factors. Conditions of approval are recommended requiring the applicant to enter into a mitigation monitoring and reporting program for the implementation of 14 mitigation measures. These mitigation measures would require the applicant to use EPA Tier 4 construction equipment, comply with Monterey Bay Air Resources District (MBARD) Best Management Practices, consult with MBARD regarding the use of portable engines, register portable engines with MBARD, provide a Worker Environmental Awareness Program materials and training to all employees onsite, conduct pre-construction surveys to ensure no special-status species are in the project vicinity, protect trees, implement work area delineation and/or flagging, implement avoidance and minimization measures for San Joaquin kit fox, American badger, and special-status bat species, removal of micro-trash, relocation of reptiles out of the work area, and implementation of condor best management practices.

### Comments received on the IS-MND

MBARD provided three comments on the project, none of which change staff's analysis of the project. The comment letter includes suggestions to rename the reference to the Air Quality Management Plan, request to apply Best Management Practices to reduce air quality, and request to consult the MBARD Compliance Division regarding portable engines. Suggestions 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 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).

The Center for Biological Diversity submitted a letter to the Planning Commission challenging the adequacy of the IS/MND. **(Exhibit I)** The letter argues that the IS/MND is deficient for failing to evaluate the reasonably foreseeable cumulative impacts, the impacts to surface and

groundwater quality, impacts to health, air impacts, biological impacts, and impacts on greenhouse gas emissions.

To adopt the Mitigated Negative Declaration, the Board must find on the basis of the whole record, including the Initial Study and any comments received, that there is no substantial evidence that the project will have a significant impact on the environment. (CEQA Guidelines section 15074(b).) If the Board finds that substantial evidence supports a fair argument that the project may have a potential environmental impact, then an EIR would be required. (CEQA Guidelines section 15064(f).) If the Board has questions raised by the Initial Study and comments but is not ready to conclude there is a fair argument of an environmental impact, the Board could request additional information and investigation of potential environmental impacts, which could result in revision of the IS/MND or preparation of an EIR, depending on the result of the additional investigation.

### **Planning Commission Decision**

On December 13, 2017, the Planning Commission conducted a public hearing on the project, adopted a motion of intent to deny the project, and continued the hearing to January 31, 2018 with direction to staff to return with a resolution to deny the project based on the following reasons:

- The effects of oil exploration and production are injurious to the general welfare of the residents of Monterey County in terms of carbon emissions and groundwater contamination.
- Monterey County is an agricultural county and having clean air and water are very important to the economy. Having a stable climate is extremely important to the agricultural basis of the County's economy. Having clean water is important not only for domestic consumption but for the entire economic engine of the County.
- Measure Z, which was passed by Monterey County voters in November 2016, enumerated findings that warned of the oil and gas industry's impacts on health and safety, groundwater, climate change, and the local economy.
- There are no counterbalancing benefits of the proposed project to offset these detrimental effects.

Staff subsequently prepared a resolution of denial with findings and evidence based on Planning Commission direction. On January 31, 2018, at a public hearing at which all persons had the opportunity to be heard, the Planning Commission voted 6-3 with one abstention to find the project Statutorily Exempt from CEQA pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a); and deny the request for a Use Permit to allow temporary production testing for oil and gas at four (4) well sites in Hames Valley.

### **Appeal**

The Appellant (Trio Petroleum LLC represented by Jason Retterer) timely filed an appeal from the January 31, 2018 decision of the Planning Commission to deny the project. The overall contention of the appeal is that the Planning Commission's findings are not supported by the evidence and the decision is contrary to law. The full text of the Appellant's contentions is contained in the letter from Jason Retterer to the Clerk of the Board dated February 13, 2018

and attached to this staff report as **Exhibit G**. The Appellant's contentions and staff's analysis of each are as follows:

**A. Appellant's Contention: "Finding No. 2, which states that the project would be detrimental to the health and safety of people working in the vicinity is not supported by any evidence."**

Grant of a use permit is a discretionary action. To grant a use permit, County zoning (Title 21) requires the decision-maker to make a finding, supported by substantial evidence, that the "establishment, maintenance, or operation of the use or structure applied for, will not, under the circumstances of the particular case, be detrimental to 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 improvement in the neighborhood; or to the general welfare of the County." (Monterey County Code, Section 21.74.050.B.1.) The Planning Commission found that the proposed project will be detrimental to "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 improvement in the neighborhood; or to the general welfare of the County." The hearing on appeal before the Board of Supervisors is de novo. Therefore, as the decision-maker, the Board should evaluate whether the evidence supports a finding of detriment or non-detriment. Evidence need not consist of expert testimony. Community concerns relating to the impact of the project may constitute substantial evidence with respect to this finding.

Additionally, under CEQA, adoption of the Mitigated Negative Declaration requires a finding, on the basis of the whole record, "that there is no substantial evidence that the project will have a significant effect on the environment." CEQA Guidelines §15074(b). Staff has prepared an Initial Study/proposed Mitigated Negative Declaration (IS/MND) which concludes that the project does not have a significant environmental impact. If the Board finds on the basis of substantial evidence that the project has no significant environmental impact, the Board may adopt the MND. However, if the Board finds there is a fair argument supported by substantial evidence that a project may have a significant environmental impact, even if the County is also presented with substantial evidence that the project would not have a significant environmental impact, then an EIR is required. CEQA Guidelines §15064(f)(1). Under CEQA, "substantial evidence" includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." CEQA Guidelines §15064(f)(5). It does not include "argument, speculation, unsubstantiated opinion or narrative." CEQA Guidelines §15064(f)(5).

If, based on the record including comments received and testimony, the Board has further questions about the impacts of the project, the Board could also request further information. This could result in revision of the Initial Study/ proposed Mitigated Negative Declaration or could result in preparation of an EIR depending on the outcome of the further studies.

The Initial Study analyzed environmental factors potentially affected by the project including but not limited to air quality, geology/soils, greenhouse gas emissions, hazards/hazardous materials, hydrology/water quality, mineral resources, noise, transportation/traffic and biological resources. 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.

If the Board were to approve the project, staff has proposed several conditions of approval. RMA-Planning has proposed a condition of approval 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. Other proposed conditions include not allowing the use of well stimulation treatment, including hydraulic fracturing, acid fracturing, and acid matrix stimulation. The proposed conditions also would require full restoration of the site if no commercial quantities of oil or gas are found. To ensure compliance the applicant is required to submit a performance bond equal to the cost of full site restoration.

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.

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.

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.

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.

**B. Appellant's Contention: "The Planning Commission's denial of the permit is an unconstitutional "taking" of private property without compensation."**

Trio argues that the Planning Commission's denial of the 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." The Fifth Amendment to the United States Constitution prohibits the taking of private property for public use without just compensation. (See also California Constitution, Art. 1, §19.) Land use regulations that "completely deprive an owner of all economically beneficial use of her property" may be a takings. Lingle v. Chevron USA, Inc., 544 U.S. 528, 539 (2005). Generally, the determination of whether a land use regulation effects a taking requires an ad hoc factual inquiry based on the particular facts of the

case, with examination of factors such as “the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations,” and “the character of the governmental action.” *Id.* at 539. Trio has failed to demonstrate that the Planning Commission’s denial was a takings. Trio cites to the trial court’s decision in Measure Z to argue that the Commission’s denial was a facial taking, but Trio’s application does not involve Measure Z regulations. This application involves the application of Title 21’s use permit requirement to the Trio Petroleum application, so Trio’s challenge to the decision on its use permit is necessarily a challenge of the Title 21 use permit requirement as applied to its application, not a facial challenge. Furthermore, the court in the Measure Z case did not find a takings as to Trio Petroleum.

As to Trio’s argument that the denial of the use permit effects a taking, Trio had the right to appeal the Planning Commission’s denial, a right to which it has availed itself. If the Board approves the permit, Trio has no takings claim. If the Use Permit is approved, it would authorize the temporary exploration for oil and gas at four well sites in the Hames Valley. 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. The applicant has agreed to these conditions.

If the Board were to deny the use permit, Trio has not substantiated its argument that a denial of the use permit would result in a takings. Trio must demonstrate factually, among other things, that the denial deprives it of a property right and that the denial has interfered with investment-backed expectations. Trio’s appeal does not prove it has a property right. Trio has presented no factual evidence of the nature of its lease or property right, for example, whether it is contingent on the approval of the permit or otherwise contingent. Trio also has not submitted any factual evidence of reasonable investment-backed expectations. The requirement in Title 21 to obtain a use permit for oil and gas exploration is of longstanding, and the grant of a use permit is discretionary, not a right, so no reasonable investor would assume that the grant of a use permit is guaranteed. Moreover, Trio is only seeking exploration, without certainty that the oil and gas wells will profitably produce. Trio has submitted no evidence to the contrary to demonstrate that its distinct investment-backed expectations would justify a finding of a takings.

**C. Appellant’s Contention: “The findings are based on irrelevant evidence, which cannot form a part of the “substantial evidence” to support the decision.”**

Trio appears to be arguing that consideration of environmental factors is preempted by state law. This argument is directly in conflict with the California Environmental Quality Act which requires the County to conduct environmental review of discretionary use permits. Neither the weight of legal authority or the practice of the Department of Conservation supports Trio’s argument. Trio quotes from a 1976 California Attorney General opinion regarding state preemption of local regulation of underground phases of oil and gas activities, but the same Attorney General opinion goes on to conclude that the state has not occupied the field to the exclusion of local governments, such as for purposes of environmental protection. The Attorney General observed that for certain activities and concerns, which include “land use, environmental

protection, aesthetics, public safety, and fire and noise prevention,” local government retains local regulatory authority, so long as the local regulations do not conflict with or frustrate the purposes of statewide regulations. 59 Op. Cal. Att’y Gen. 461, 478-79 (1976). Title 21 requires a Use Permit for oil and gas exploration. As a discretionary action, the Use Permit is subject to CEQA. DOGGR has not questioned the County’s authority under CEQA. Indeed, in a workshop before the Board of Supervisors about state regulation of hydraulic fracturing under SB4, the Department of Conservation acknowledged that the County retains traditional land use authority, including the right to conduct environmental review under CEQA.

**D. Appellant’s Contention: “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 field, was proper.”**

Although this issue was not addressed in the Planning Commission resolution denying the project, some of the commenters at the Planning Commission hearings contended that the IS/MND was inadequate because it was limited to an analysis of the environmental impacts of the four wells and that it should have included an analysis of the impacts from a production oil well field because of Trio’s plans to develop the oil well field if the exploration is successful. In this case, the IS/MND is for the exploratory well project, but it did analyze the reasonably foreseeable impacts of long-term production, in which all four wells would be used for production. The applicant does not currently propose long-term production under this Use Permit. Any long-term production would require subsequent CEQA review and permitting by federal, State, and local agencies, including a Use Permit from the County. In evaluating a project’s environmental effects, CEQA requires examination of the project’s direct physical changes in the environment and indirect physical changes which are reasonably foreseeable. (CEQA Guidelines §15064(d).) However, speculative indirect physical changes are considered to be not reasonably foreseeable; CEQA does not require analysis of an impact if the County finds that the impact is too speculative for evaluation. (CEQA Guidelines §§15064(d), 15145.) Accordingly, evaluation of this contention depends on whether Trio’s plans for development of an oil well field are reasonably foreseeable or so speculative as to not require analysis at this time.

**Appeal Hearing Action**

The hearing on the project at the Board is de novo. Staff has prepared a draft resolution granting the appeal, adopting a Mitigated Negative Declaration, approving the use permit and adopting a Mitigation Monitoring and Reporting Program. Options for the Board include the following:

1. Grant the Appeal, Adopt the Mitigated Negative Declaration and Approve the Project – If the Board finds that the project has no significant environmental impact and desires to grant the appeal and approve the project, the Board of Supervisors could adopt the draft resolution (**Exhibit B**) to grant the appeal, adopt the Mitigated Negative Declaration, approve the Use Permit, and adopt a Mitigation Monitoring and Reporting Program.
2. Direct Staff to Prepare an EIR – If the Board finds that there is fair argument based on substantial evidence that the project may have a significant effect on the environment, the Board could direct staff to prepare an EIR. The Board could remand the project to the

Planning Commission for a decision based on the additional information contained in the EIR, or the Board could retain jurisdiction and hear the project application after completion of the EIR.

3. Direct Staff to Conduct Further Investigation of Potential Environmental Impacts -- If the Board has questions raised by the Initial Study and comments but is not ready to conclude there is a fair argument of an environmental impact, the Board could request additional information and investigation of potential environmental impacts, which could result in revision of the Initial Study/MND or preparation of an EIR, depending on the result of the additional investigation. As with Option 2 above, the Board could remand the project to the Planning Commission or retain jurisdiction and hear the project application after further study.
4. Continue Hearing and Pass Motion of Intent– If the Board desires to take a different action, the Board could adopt a motion of intent and continue the hearing to a date certain for staff to prepare a resolution with modified findings.