

## McDougal, Melissa x5146

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**From:** Beretti, Melanie x5285  
**Sent:** Tuesday, January 30, 2018 2:18 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: IMPORTANT CONSIDERATIONS/ENFORCEMENTS FOR THOSE WITH USE PERMITS  
**Attachments:** IMPORTANT CONSIDERATIONS FOR THOSE WITH USE PERMITS.pdf

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**From:** Callie Williams [mailto:cwilliams@smfc.k12.ca.us]  
**Sent:** Tuesday, January 30, 2018 2:15 PM  
**To:** Beretti, Melanie x5285 <BerettiM@co.monterey.ca.us>  
**Subject:** IMPORTANT CONSIDERATIONS/ENFORCEMENTS FOR THOSE WITH USE PERMITS

#2

HEARING SUBMITTAL	
PROJECT NO/AGENDA NO.	STR-Compliance
DATE RECEIVED:	1/30/18
SUBMITTED BY/VIA:	Public / email
DISTRIBUTION TO/DATE:	PC / 1/30
DATE OF HEARING:	1/31/18

## IMPORTANT CONSIDERATIONS FOR THOSE WITH USE PERMITS

1. How will you enforce those renting a property with a “use” permit will actually stay the minimum number of days required? We live next to a short term rental with a use permit. She is required to rent out for a minimum of 7 days, but rents it out for 2 nights each weekend. This could easily be remedied if the county routinely monitors, enforces and requires this to be stated on the website being used. EXAMPLE: It needs to state on each internet site: minimum of 7 days NO LESS!!!!!! if that is what the permit requires them to do.
2. Are you going to continue to allow “use” permit holders to interpret the language of their permit? You do now! We live next to a neighbor that has a “use” permit. Her permit states, “minimum 7 day stay.” She claims the county told her she could rent out her house every weekend and requires only a 2 day stay as long as she only rents once a week. This isn’t the same language and is a completely different rule.
3. Will you have 3 or more employees working 8 hour shifts on the weekends? The weekend parties late at night/early morning are a HUGE concern. We need to have someone we can call and come out when a complaint is made.
4. If a code enforcer is requested in different parts of the county at the same time how will this be addressed? It takes an hour to drive from Carmel to Arroyo Seco and I am sure you will have times when there are complaints made at the same time.
5. Will you hold those with “use” permits to the same standard as bed and breakfast and small hotels?
6. What happens when a violation has been made? For those with a “use” permit that charge more than \$1,000 a night a small fine isn’t going to matter!
7. At what point will you revoke a “use” permit? How many complaints and what type of complaints need to be made before you hold the holder of a “use” permit accountable?
8. What do we do if we suspect people are pitching tents and there are more than the permitted number staying on a site? You can’t expect

neighbors to be the police? This is already causing a lot of friction between neighbors.

9. What will the turnaround time be when one makes a complaint?

10. How are you going to make sure owners don't establish "special" relationships with renters and allow them to bypass websites and pay TOT and instead privately use Paypal or Venmo? THIS HAPPENS NOW!! Owners do this to bypass paying TOT and this allows them to rent more than the restrict time allowed. They tell the renters to just say "they're friends."

11. ALL SHORT TERM RENTAL PERMITS SHOULD BE NULL AND VOID WHEN

**McDougal, Melissa x5146**

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**From:** Beretti, Melanie x5285  
**Sent:** Tuesday, January 30, 2018 1:55 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: Enforcement of code on str's

**From:** bgross50@aol.com [mailto:bgross50@aol.com]  
**Sent:** Tuesday, January 30, 2018 1:38 PM  
**To:** Beretti, Melanie x5285 <BerettiM@co.monterey.ca.us>  
**Subject:** Enforcement of code on str's

Hi Melanie,  
RE: Short Term Rentals

Enforcement is mandatory. We need to find the funds for this ASAP.

Brent Gross

[bgross50@aol.com](mailto:bgross50@aol.com)

#2

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA NO.	STR Compliance
DATE RECEIVED	1/30/18
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January 30, 2018

Monterey County Planning Commission  
168 West Alisal Street  
1st Floor  
Salinas, CA 93901

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA NO.	STR- Compliance
DATE RECEIVED:	1/30/18
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*Re: Trio Petroleum Application for Conditional Use Permit (PLN160146)*

Dear Honorable Commissioners:

On behalf of the Center for Biological Diversity, Protect Monterey County, their respective members, and the public, I am writing to urge the Commissioners to adopt the resolution denying Trio Petroleum LLC's conditional use permit (CUP) application PLN160146 (the "Application").

In November 2016, voters in Monterey passed Measure Z, which, among other restrictions, bans the use of land for drilling new wells. The overwhelming number of votes in favor of the Measure demonstrates that the majority of Monterey County residents want to put an end to endless expansion of oil and gas development. The Planning Commission rightly respected the will of voters in making the commonsense decision to deny Trio's Application at its December 13, 2017 hearing. In doing so, Commission also showed true leadership in guiding the county toward a cleaner, safer, and more sustainable future.

## **I. Background**

Trio Petroleum LLC (Trio) seeks approval to drill four new exploratory wells in Hames Valley. According to its application, originally submitted July 1, 2016, each exploratory well site would contain a drilling rig over 100 feet tall, an open pit to collect drilling fluid and drill cuttings, and other apparatuses necessary to drill the wells. Each site would require over 450 hours of continuous drilling and involve the transportation, storage, use, and disposal of hazardous chemicals, many of which are unknown.

Trio anticipates that the four exploratory wells will lead to expanded oil and gas activity. At the December 13, 2017 Planning Commission Meeting, the representative for Trio stated, "these sites are probably going to be housing maybe 3 to 6 wells each...and those wells will be going to different places in that anticline."<sup>1</sup> He added, "We are going to locate multiple wells on those sites in the development situation.... That will be the end result, hopefully."<sup>2</sup>

<sup>1</sup> Monterey County Planning Commission Public Hearing, Dec. 13, 2017, Agenda Item #4, Testimony of Trio Petroleum representative, video available at

[http://monterey.granicus.com/MediaPlayer.php?view\\_id=14&clip\\_id=3501](http://monterey.granicus.com/MediaPlayer.php?view_id=14&clip_id=3501)

<sup>2</sup> Id.

Production is unlikely to stop with the four exploration wells. Trio has publicly stated “[b]eyond these four wells [in Hames Valley], Trio has additional well defined prospects on its leasehold.”<sup>3</sup> Trio “estimates [Hames Valley] to contain hundreds of millions of barrels of recoverable oil and significant recoverable gas.”<sup>4</sup>

Thus, despite Trio’s attempt to minimize the impact of its Application, in reality it has the potential to trigger an extensive new wave of oil and gas development in the region. Oil and gas extraction is inherently speculative, and the economic feasibility of extracting fossil fuels at a profit is subject to global market fluctuations. Nevertheless, the potential for expansion far beyond the initial four exploratory wells should not be omitted from consideration and full evaluation required by law.

## **II. The Application Is Inconsistent with Measure Z.**

As noted in the Application and IS-MND, Measure Z amended the Monterey County General Plan and County Code to prohibit certain land uses in unincorporated parts of the County. Among other restrictions, Measure Z prohibits land uses that support new wells. (Policy LU-1.23.)

Although the ordinance is currently the subject of litigation, there is a strong possibility that the courts will ultimately uphold Measure Z and order its implementation. Approval would be inconsistent with Measure Z and the will of the majority of voters who passed the initiative in 2016. In order to avoid approving a project that would directly conflict with Measure Z, the Commission should not approve any new drilling projects until the matter is resolved.

## **III. Approval Would Be Inconsistent with CEQA**

The Initial Study and Mitigated Negative Declaration (collectively, the “IS-MND”) prepared in support of this Application are seriously flawed and do not meet the minimum standards of the California Environmental Quality Act (“CEQA”).<sup>5</sup> CEQA is meant to ensure that the public and decision-makers are fully informed about the true extent of harms that may arise from a given project. A local agency ordinarily must prepare an EIR on any project which *may* have a significant effect on the environment.<sup>6</sup> Conversely, an agency may adopt a negative declaration only if there is no substantial evidence that the project *may* have a significant effect on the environment.<sup>7</sup> When there is a “fair argument” that the foreseeable impacts of a project may be

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<sup>3</sup> *Trio Petroleum LLC et al. v. Monterey County*, Case No. 17-CV-001012, Trio Petroleum Complaint at p. 8

<sup>4</sup> *Id.* at p. 9.

<sup>5</sup> Pub. Res. Code §§ 21000 et seq.; CEQA Guidelines, 14 Cal. Code Regs. §§ 15000 et seq.

<sup>6</sup> Pub. Res. Code, § 21151.

<sup>7</sup> Pub. Res. Code, § 21080, subd. (c)(1) and (2), italics added; see also Guidelines, § 15070; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399.

significant, an agency must prepare a full environmental impact report before approving a project.<sup>8</sup>

CEQA requires the disclosure and analysis of both direct and reasonably foreseeable indirect significant effects of the project.<sup>9</sup> Further, it is improper for agencies to “piecemeal” the review of a project’s environmental impacts by examining only some stages of a project while omitting later stages. CEQA defines “project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”<sup>10</sup> CEQA forbids segmenting a project into separate actions in order to avoid environmental review of the “whole of the action.”

#### **A. The IS-MND Fails to Evaluate Reasonably Foreseeable Impacts**

Trio has stated openly that upon discovering oil and gas, it fully intends to drill dozens more wells to produce the estimated hundreds of millions of barrels of oil in Hames Valley. Despite the reasonably foreseeable expansion of oil and gas development, the IS-MND only analyzes the impacts from the first four wells.

By improperly and artificially limiting the scope of the analysis, the IS-MND erroneously concludes that the environmental impact of this project would be less than significant. Impacts to the environment, including air, water, geology and soil, biological resources, and climate, must include the harms that would result from Trio’s foreseeable plans to develop the area for oil and gas extraction. There is quite clearly more than a “fair argument” that Trio’s oil and gas development plans put the County’s air, water, health, and climate at risk.

In addition, Trio claims its prospects in Hames Valley include “significant recoverable natural gas,”<sup>11</sup> but the IS-MND does not adequately disclose the impacts of this gas extraction. It estimates that 50,000 cf of gas will be flared per day, but does not account for fugitive emissions from short and long term operations.

#### **B. The IS-MND Fails to Evaluate Significant Impacts to Water**

Trio’s proposed oil and gas development, as with all such projects, put surface and groundwater at risk.

The wastewater from oil and gas operations is a toxic mix of chemicals harmful to human health. A study of Kern County produced water showed high concentrations of benzene, a known carcinogen. In some samples, benzene concentrations were as high as 18.0 mg/L, thousands of

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<sup>8</sup> Cal. Pub. Res. Code §§ 21100; 21151; CEQA Guidelines § 15064(a)(1) (f)(1).

<sup>9</sup> CEQA Guidelines, § 15126.2, subd. (a), 15064, subd. (d); see also § 21080, subd. (d), 21082.2, subd. (a); Guidelines, § 15064, subd. (a)(1).

<sup>10</sup> CEQA Guidelines § 15378(a); Pub. Res. Code § 21065.

<sup>11</sup> Trio Complaint at p. 9

times above safe levels for drinking water.<sup>12</sup> Water testing in this DEIR does not disclose benzene levels for a majority of samples.

A review of fracking flowback fluid similarly found high levels of benzene, as well as other harmful chemicals such as hexavalent chromium, naphthalene, toluene, and ethylbenzene.<sup>13</sup> These tests do not fully capture the extent of the risk because drilling muds, well completion fluids, biocides, solvents, surfactants, well maintenance acids, corrosion inhibitors, lubricants, and other fluids also contain a mix of harmful chemicals. Without full disclosure of these chemicals used throughout the oil and gas development process, it is impossible for the DEIR to accurately describe the full scope of threats to our water. The chemicals used and the manner in which it is handled will also vary from site to site, making a project-level EIR for all of oil and gas untenable.

Spills and leaks occur with troubling regularity in California. One survey found that there were 575 spills of produced water from 2011 to 2014, and 18 percent of those spills affected waterways.<sup>14</sup> There were 31 chemical spills in oil fields, nine of them acid spills.<sup>15</sup> One acid spill ruptured beyond a secondary containment apparatus and spilled 5,500 gallons of hydrochloric acid.<sup>16</sup> These high rates of accidents illustrate that spills are unavoidable. The number of incidents reported is likely smaller than the number of actual spills and leaks, either because they have not yet been discovered, or operators have not reported them. The data indicate that blowout rates of thermal EOR wells is four times higher than non-thermal recovery fields.<sup>17</sup>

### **C. The MS-MND Fails to Consider Health Impacts**

A recent state-commissioned study by the CCST found that residents near active oil and gas wells are at higher risk of being exposed to harmful chemicals, and as a result have higher risk of developing health problems. Significant exposures can occur at least as far as two miles from an active well.<sup>18</sup>

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<sup>12</sup> DOGGR, *Benzene in water produced in Kern County oil fields containing fresh water* (1993).

<sup>13</sup> Julie Cart, "High levels of benzene found in fracking waste water," Los Angeles Times, February 11, 2015 available at <http://www.latimes.com/local/california/la-me-fracking-20150211-story.html>; Center for Biological Diversity Press Release: Cancer-causing Chemicals Found in Fracking Flowback From California Oil Wells (Feb. 11, 2015) available at [http://www.biologicaldiversity.org/news/press\\_releases/2015/fracking-02-11-2015.html](http://www.biologicaldiversity.org/news/press_releases/2015/fracking-02-11-2015.html)

<sup>14</sup> California Council of Science and Technology, *An Independent Scientific Assessment of Well Stimulation in California, Vol. II*. (CCST) at p. 127. (unless otherwise noted, all page references are to Volume II of the CCST SB 4 Well Stimulation report).

<sup>15</sup> CCST at 127.

<sup>16</sup> CCST at 128.

<sup>17</sup> Kern County Oil and Gas Ordinance draft Environmental Impact Report (2015) (DEIR) at 1157.

<sup>18</sup> CCST at 414



The public health risk to California is serious. About 5.4 million Californians live within *one* mile of an active oil and gas well<sup>19</sup>, within the distance scientifically shown to increase the risks to populations. Many more millions live within the 2-mile radius that studies have found to increase the risk to people's health. The risk is particularly serious for vulnerable populations more susceptible to developing health effects from pollution exposure, such as children, the elderly, or pregnant women.

A rigorous study by Johns Hopkins University, which examined 35,000 medical records of people with asthma in Pennsylvania, found that people who live near a higher number of, or larger, active gas wells were 1.5 to 4 times more likely to suffer from asthma attacks than those living farther away, with the closest groups having the highest risk.<sup>20</sup> Increased asthma risks occurred during all phases of well development. A recent Yale University study identified numerous fracking chemicals that are known, probable, or possible human carcinogens (20 air pollutants) and/or are linked to increased risk for leukemia and lymphoma (11 air pollutants), including benzene, 1,3-butadiene, cadmium, diesel exhaust, and polycyclic aromatic hydrocarbons.<sup>21</sup>

Numerous studies suggest that higher maternal exposure to fracking and drilling can increase the incidence of high-risk pregnancies, premature births, low-birthweight babies, and birth defects. A study of 9,384 pregnant women in Pennsylvania found that women who live near active drilling and fracking sites had a 40 percent increased risk for having premature birth and a 30 percent increased risk for having high-risk pregnancies.<sup>22</sup> Another study found that pregnant women who had greater exposure to gas wells (measured in terms of proximity and density of wells) had a much higher risk of having low-birthweight babies; the researchers identified air pollution as the likely route of exposure.<sup>23</sup> In rural Colorado, mothers with greater exposure to natural gas wells were associated with a higher risk of having babies with congenital heart defects and possibly neural tube defects.<sup>24</sup>

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<sup>19</sup> Natural Resources Defense Council, *Drilling in California: Who's at Risk?*, Oct. 2014, available at <http://www.nrdc.org/health/files/california-fracking-risks-report.pdf>.

<sup>20</sup> Rasmussen, Sara G. et al., Association Between Unconventional Natural Gas Development in the Marcellus Shale and Asthma Exacerbations, 176 JAMA Internal Medicine 1334 (2016).

<sup>21</sup> Elliott, Elise G. et al., A Systematic Evaluation of Chemicals in Hydraulic-Fracturing Fluids and Wastewater for Reproductive and Developmental Toxicity, 27 Journal of Exposure Science and Environmental Epidemiology 90 (2016).

<sup>22</sup> Casey, Joan A., Unconventional Natural Gas Development and Birth Outcomes in Pennsylvania, USA, 27 Epidemiology 163 (2016).

<sup>23</sup> Stacy, Shaina L. et al., Perinatal Outcomes and Unconventional Natural Gas Operations in Southwest Pennsylvania. 10 PLoS ONE e0126425 (2015).

<sup>24</sup> McKenzie, Lisa M., Birth Outcomes and Maternal Residential Proximity to Natural Gas Development in Rural Colorado, 122 Environmental Health Perspectives 412 (2014).

Other studies have found that residents living closer to drilling and fracking operations had higher hospitalization rates<sup>25</sup> and reported more health symptoms, including upper respiratory problems and rashes.<sup>26</sup>

#### **D. The IS-MND Fails to Evaluate Air Impacts**

The IS-MND does not include a complete list of potential air pollutants and potential airborne byproducts of oil and gas operations and assess the harm caused by each in order to better assess the true extent of the damage caused by the oil and gas industry.

Fugitive emissions can occur at every stage of extraction and production, often leading to high volumes of gas being released into the air. Oil and gas operations emit large amounts and a wide array of toxic air pollutants,<sup>27</sup> also referred to as Hazardous Air Pollutants, which are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects.<sup>28</sup> Air pollutants emitted by unconventional oil and gas production include toxic BTEX compounds (benzene, toluene, ethylbenzene, and xylene); volatile organic compounds (VOCs) such as methylene chloride; nitrogen oxides (NOx); particulate matter (including diesel exhaust); alkanes (methane, ethane, propane); formaldehyde; hydrogen sulfide; silica; acid mists; sulfuric oxide; and radon gas.<sup>29</sup> These toxic air contaminants and smog-forming chemicals (such as VOCs, NOx, methane and ethane) threaten local communities and regional air quality.

The reporting requirements recently implemented by the California South Coast Air Quality Management District (“SCAQMD”) have shown that at least 44 chemicals known to be air toxics have been used in fracking and other types of oil and gas operations in California.<sup>30</sup> Through the implementation of these new reporting requirements, it is now known that operators have been using several types of air toxics, including crystalline silica, methanol, hydrochloric acid, hydrofluoric acid, 2-butoxyethanol, ethyl glycol monobutyl ether, xylene, amorphous silica fume, aluminum oxide, acrylic polymer, acetophenone, and ethylbenzene. Many of these chemicals

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<sup>25</sup> Jemielita, Thomas et al., Unconventional Gas and Oil Drilling Is Associated with Increased Hospital Utilization Rates. 10 PLoS ONE e0131093 (2015).

<sup>26</sup> Rabinowitz, Peter M. et al., Proximity to Natural Gas Wells and Reported Health Status: Results of a Household Survey in Washington County, Pennsylvania, 123 Environmental Health Perspectives 21 (2015).

<sup>27</sup> Sierra Club et al. comments on New Source Performance Standards: Oil and Natural Gas Sector; Review and Proposed Rule for Subpart OOOO (Nov. 30, 2011) (“Sierra Club Comments”) at 13.

<sup>28</sup> See “About Hazardous Air Pollutants” at U.S. Environmental Protection Agency, Hazardous Air Pollutants, <https://www.epa.gov/haps> (accessed Jan 5, 2017).

<sup>29</sup> McKenzie, Lisa M. et al., Human Health Risk Assessment of Air Emissions From Development of Unconventional Natural Gas Resources, 424 Science of the Total Environment 79 (2012) (“McKenzie 2012”); Shonkoff, Seth B.C. et al., Environmental Public Health Dimensions of Shale and Tight Gas Development, 122 Environmental Health Perspectives 787 (2014) (“Shonkoff 2014”).

<sup>30</sup> Center for Biological Diversity, Air Toxics One Year Report (June 2014) at 1.

also appear on the U.S. EPA's list of hazardous air pollutants.<sup>31</sup> EPA has also identified six "criteria" air pollutants that must be regulated under the National Ambient Air Quality Standards (NAAQS) due to their potential to cause primary and secondary health effects. As detailed below, concentrations of many of these pollutants—ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide and lead—have been shown to increase in regions where unconventional oil and gas recovery techniques are permitted.

VOCs, from car and truck engines as well as the drilling and completion stages of oil and gas production, make up about 3.5 percent of the gases emitted by oil or gas operations.<sup>32</sup> The VOCs emitted include the BTEX compounds – benzene, toluene, ethyl benzene, and xylene – which are listed as Hazardous Air Pollutants.<sup>33</sup> There is substantial evidence showing the grave harm from these pollutants.<sup>34</sup> Recent studies and reports confirm the pervasive and extensive amount of VOCs emitted by unconventional oil and gas extraction.<sup>35</sup> For example, a study covering sites near oil and gas wells in five different states including Colorado, Wyoming, Ohio, Pennsylvania, and Arkansas, found that concentrations of eight toxic volatile chemicals, including benzene, formaldehyde and hydrogen sulfide, exceeded federal health and safety standards, at times by several orders of magnitude.<sup>36</sup> Another study determined that vehicle traffic and engine exhaust were likely the sources of intermittently high dust and benzene concentrations observed near well pads.<sup>37</sup> Recent studies have found that oil and gas operations are likely responsible for elevated levels of hydrocarbons such as benzene downwind of the Denver-Julesburg Fossil Fuel

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<sup>31</sup> U.S. Environmental Protection Agency, The Clean Air Act Amendments of 1990 List of Hazardous Air Pollutants, Technology Transfer Network Air Toxics Web Site, available at <http://www.epa.gov/ttnatw01/orig189.html> (accessed July 29, 2015).

<sup>32</sup> Brown, Heather, Memorandum to Bruce Moore, U.S.EPA/OAQPS/SPPD re Composition of Natural Gas for use in the Oil and Natural Gas Sector Rulemaking, July 28, 2011 ("Brown Memo") at 3.

<sup>33</sup> 42 U.S.C. § 7412(b).

<sup>34</sup> Colborn, T. et al., Natural Gas Operations from a Public Health Perspective, 17 Human and Ecological Risk Assessment 1039 (2011) ("Colborn 2011"); McKenzie 2012.

<sup>35</sup> McCawley, Michael., Air, Noise, and Light Monitoring Plan for Assessing Environmental Impacts of Horizontal Gas Well Drilling Operations (ETD-10 Project), West Virginia University School of Public Health, Morgantown, WV (2013) ("McCawley 2013"), available at <http://www.dep.wv.gov/oil-and-gas/Horizontal-Permits/legislativestudies/Documents/WVU%20Final%20Air%20Noise%20Light%20Protocol.pdf>; Center for Biological Diversity, Dirty Dozen: The 12 Most Commonly Used Air Toxics in Unconventional Oil Development in the Los Angeles Basin (Sept. 2013).

<sup>36</sup> Macey, Gregg P. et al., Air Concentrations of Volatile Compounds Near Oil and Gas Production: A Community-Based Exploratory Study, 13 Environmental Health 82 (2014) at 1.

<sup>37</sup> McCawley 2013.

Basin, north of Denver.<sup>38</sup> Another study found that oil and gas operations in this area emit approximately 55percent of the VOCs in northeastern Colorado.<sup>39</sup>

VOCs, NO<sub>x</sub>, methane, and ethane are potent ground-level (tropospheric) ozone precursors that are emitted by oil and gas drilling and fracking operations. Ozone can result in serious health conditions, including heart and lung disease and mortality.<sup>40</sup> Exposure to elevated levels of ozone is estimated to be cause ~10,000 premature deaths per year in the United States.<sup>41</sup> VOCs can form ground-level (tropospheric) ozone when combined with nitrogen oxides (“NO<sub>x</sub>”) from compressor engines, turbines, other engines used in drilling, and flaring,<sup>42</sup> in the presence of sunlight. This reaction can diminish visibility and air quality and harm vegetation. Many regions around the country with substantial oil and gas operations are now suffering from extreme ozone levels due to heavy emissions of these pollutants.<sup>43</sup> A recent study of ozone pollution in the Uintah Basin of northeastern Utah, a rural area that experiences hazardous tropospheric ozone concentrations, found that oil and gas operations were responsible for 98 to 99 percent of VOCs and 57 to 61 percent of NO<sub>x</sub> emitted from sources within the Basin considered in the study’s inventory.<sup>44</sup> A recent assessment of oxides of nitrogen (NO<sub>x</sub>) emitted from well sites showed that operator-reported numbers, based on false and unproven assumptions, are often drastically lower than what actual emissions could be.<sup>45</sup>

Ground-level ozone can also be caused by methane, which is leaked and vented at various stages of unconventional oil and gas development, as it interacts with nitrogen oxides and sunlight.<sup>46</sup> In addition to its role as a potent greenhouse gas, methane’s effect on ozone concentrations can be

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<sup>38</sup> Pétron, G. et al., Hydrocarbon Emissions Characterization in the Colorado Front Range – A Pilot Study, 117 J. Geophysical Research D04304 (2012) at 8, 13 (“Pétron 2012”).

<sup>39</sup> Gilman, Jessica B. et al., Source Signature of Volatile Organic Compounds from Oil and Natural Gas Operations in Northeastern Colorado, 47 Environmental Science & Technology 1297 (2013) at 1297, 1303 (“Gilman 2013”).

<sup>40</sup> U.S. Environmental Protection Agency, Integrated Science Assessment (ISA) for Ozone (O<sub>3</sub>) and Related Photochemical Oxidants (2013).

<sup>41</sup> Caiazzo, Fabio et al., Air Pollution and Early Deaths in the United States. Part I: Quantifying the Impact of Major Sectors in 2005, 79 Atmospheric Environment 198 (2013).

<sup>42</sup> See, e.g., U.S. Environmental Protection Agency, Oil and Gas Sector: Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution: Background Technical Support Document for Proposed Standards at 3-6 (July 2011); Armendariz, Al, Emissions for Natural Gas Production in the Barnett Shale Area and Opportunities for Cost-Effective Improvements (2009) (“Armendariz 2009”) at 24.

<sup>43</sup> Armendariz 2009 at 1, 3, 25-26; Koch, Wendy, *Wyoming's Smog Exceeds Los Angeles' Due to Gas Drilling*, USA Today (May 9, 2011); Craft, Elena, Environmental Defense Fund, Do Shale Gas Activities Play a Role in Rising Ozone Levels? (2012); Colorado Dept. of Public Health and Environment, Conservation Commission, Colorado Weekly and Monthly Oil and Gas Statistics (July 6, 2012) at 12.

<sup>44</sup> Lyman, Seth & Howard Shorthill, Final Report: 2012 Uintah Basin Winter Ozone & Air Quality Study, Utah Department of Environmental Quality (2013) (“Lyman 2013”); see also Gilman 2013.

<sup>45</sup> Dr. Ranajit Sahu “On the Underestimation of NO<sub>x</sub> from Oil Well Drilling in Kern County, CA” (2015)

<sup>46</sup> Fiore, Arlene et al., Linking Ozone Pollution and Climate Change: The Case for Controlling Methane, 29 Geophys. Res Letters 19 (2002) (“Fiore 2002”); U.S. Environmental Protection Agency, Oil and Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews Proposed Rule, 76 Fed. Reg 52,738 (Aug 23, 2011).

substantial. One paper modeled reductions in various anthropogenic ozone precursor emissions and found that “[r]educing anthropogenic CH<sub>4</sub> emissions by 50% nearly halves the incidence of U.S. high-O<sub>3</sub> events . . . .”<sup>47</sup>

Ethane is also a potent precursor of ground-based ozone pollution as it breaks down and reacts with sunlight to create smog, as well as being a greenhouse gas. Ethane emissions have risen steeply in recent years due to U.S. oil and gas production. A recent study documented that ethane emissions in the Northern Hemisphere increased by about 400,000 tons annually between 2009 and 2014, with the majority coming from North American oil and gas activity, reversing a decades-long decline in ethane emissions.<sup>48</sup> Shockingly, about 60 percent of the drop in ethane levels that occurred over the past 40 years has already been made up in the past five years. At this rate, U.S. ethane levels are expected to hit 1970s levels in about three years. About two percent of global ethane emissions originate from the Bakken Shale oil and gas field alone, which emits 250,000 tons of ethane per year.<sup>49</sup> Because global ethane levels were decreasing until 2009, the U.S. shale gas boom is thought to be responsible for the global increase in levels since 2010. Oil and gas operations can also emit hydrogen sulfide. The hydrogen sulfide is contained in the natural gas and makes that gas “sour.” Hydrogen sulfide may be emitted during all stages of operation, including exploration, extraction, treatment and storage, transportation, and refining. Long-term exposure to hydrogen sulfide is linked to respiratory infections, eye, nose, and throat irritation, breathlessness, nausea, dizziness, confusion, and headaches.<sup>50</sup>

The oil and gas industry is also a major source of particulate matter. The heavy equipment regularly used in the industry burns diesel fuel, generating fine particulate matter<sup>51</sup> that is especially harmful.<sup>52</sup> Vehicles traveling on unpaved roads also kick up fugitive dust, which is particulate matter.<sup>53</sup> Further, both NO<sub>x</sub> and VOCs, which as discussed above are heavily emitted by the oil and gas industry, are also particulate matter precursors.<sup>54</sup> Some of the health effects

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<sup>47</sup> Fiore 2002; *see also* Martin, Randal et al., Final Report: Uinta Basin Winter Ozone and Air Quality Study Dec 2010 - March 2011 (2011) at 7.

<sup>48</sup> Helmig, Detlev et al., Reversal of Global Atmospheric Ethane and Propane Trends Largely Due to US Oil and Natural Gas Production, 9 *Nature Geoscience* 490 (2016).

<sup>49</sup> Kort, Eric A. et al., Fugitive Emissions From the Bakken Shale Illustrate Role of Shale Production in Global Ethane Shift, 43 *Geophysical Research Letters* 4617 (2016).

<sup>50</sup> U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Report to Congress on Hydrogen Sulfide Air Emissions Associated with the Extraction of Oil and Natural Gas (EPA-453/R-93-045) at i (Oct. 1993) (“USEPA 1993”).

<sup>51</sup> Earthworks, *Sources of Oil and Gas Pollution* (2011).

<sup>52</sup> Bay Area Air Quality Management District, *Particulate Matter Overview, Particulate Matter and Human Health* (2012).

<sup>53</sup> U.S. Environmental Protection Agency, *Regulatory Impact Analysis for the Proposed Revisions to the National Ambient Air Quality Standards for Particulate Matter* (June 2012),

[http://www.epa.gov/ttnecas1/regdata/RIAs/PMRIACombinedFile\\_Bookmarked.pdf](http://www.epa.gov/ttnecas1/regdata/RIAs/PMRIACombinedFile_Bookmarked.pdf) at 2-2, (“EPA RIA”)

<sup>54</sup> EPA RIA at 2-2.

associated with particulate matter exposure are “premature mortality, increased hospital admissions and development of chronic respiratory disease.”<sup>55</sup>

#### **E. The IS-MND Fails to Evaluate Cumulative Impacts**

The IS-MND also fails to adequately disclose the cumulative impact of this project. Already in Monterey County, there are hundreds of active production and injection wells. The aggregate effect on air quality, traffic, water quality, noise, light, greenhouse gas emissions, and habitat are significant and will only be exacerbated if Trio is allowed to add four new well pads to the county’s existing oil and gas development. Yet the IS-MND provides no meaningful analysis or even an inventory of the cumulative impact of decades’ worth of environmental degradation. Without the inclusion of the rest of Monterey County’s oil and gas extraction, the analysis of Trio’s additional wells is fails to provide the full implications of expansion and is therefore incomplete.

#### **IV. The Application and IS-MND Do Not Consider the Impacts of Extreme Extraction Techniques**

The IS-MND omits the environmental impact of enhanced oil recovery techniques that are prevalent in oil and gas operations in Monterey County. Cyclic steam injection, steam flooding, water flooding, and other dangerous injection techniques are used after the initial flow of oil and gas declines. Trio claims that these techniques are “necessary and indispensable” to their operations.<sup>56</sup> Though Trio does not propose EOR at this time, it is reasonably foreseeable that its wells will eventually undergo such operations to increase the flow of oil and gas to the surface. Neither the conditions for approval nor the mitigation measures prohibit such activities from occurring in the future.

Furthermore, although Trio claims that it does not intend to use well stimulation, hydraulic fracturing (“fracking”) and acidization were both previously used on the Bradley Minerals 2-2 wells in the vicinity. Many chemicals known to be used in well stimulation activities are associated with adverse health effects.<sup>57</sup> Well maintenance also uses scores of dangerous chemicals,<sup>58</sup> yet neither the Application nor the IS-MND discloses a list of chemicals that Trio intends to use.

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<sup>55</sup> U.S. Environmental Protection Agency, National Ambient Air Quality Standards for Particulate Matter Proposed Rule, 77 Fed. Reg. 38,890, 38,893. (June 29, 2012).

<sup>56</sup> *Trio v. County of Monterey*, Case No. 17 CV 001012, Opening Brief at p. 14.

<sup>57</sup> See., e.g., Colborn, Theo et al., Natural Gas Operations from a Public Health Perspective, 17 Human and Ecological Risk Assessment 1047 (2011); McKenzie, Lisa et al., Human Health Risk Assessment of Air Emissions from Development of Unconventional Natural Gas Resources, *Sci Total Environ* (2012) doi:10.1016/j.scitotenv.2012.02.018.

<sup>58</sup> See, e.g., Center for Biological Diversity, *The Danger Next Door* (Dec. 2017) (listing common chemicals used in acidizing used for well maintenance)

Because enhanced oil recovery and well stimulation are reasonably foreseeable future activities, the County must analyze the risks and dangers from this activity before approving the permit. As Trio itself states, “the right to drill additional wells and to conduct injection, impoundment and stimulation activities, as necessary, is a *critical* and fundamental attribute of ownership in these [Monterey County] lands.”<sup>59</sup>

Moreover, acidization has been used with increasing regularity around California. The technique involves the injection of large amounts of acid – commonly hydrochloric acid – into the well. This acid can spill or leak into the environment. Exposure to hydrochloric acid is extremely harmful. It is corrosive to the eyes, skin, and mucous membranes, and exposure to hydrochloric acid fumes can cause irritation of the respiratory system and pulmonary edema in humans.<sup>60</sup> Hydrofluoric acid is also used, and is also extremely dangerous.<sup>61</sup> These serious effects must be considered because Trio may to treat the well with acid.<sup>62</sup> These activities use largely the same toxic chemicals that are used in well stimulation operators, including hydrochloric acid, and hydrofluoric acid.<sup>63</sup> Thus, even if the use of acid is truly for “well maintenance,” many of the same dangers to public health and safety associated with using acid in enhanced recovery operations are present when a well operator conducts a well maintenance or well cleanout procedure.<sup>64</sup>

#### **V. The Application and IS-MND Fail to Disclose Which Harmful Chemicals Will Be Used**

Although the Application acknowledges the use of hazardous substances for drilling and well maintenance, the list of substances is far from complete. There are significant data gaps regarding what chemicals are used in oil and gas extraction. State disclosure requirements only cover hydraulic fracturing and other types of well stimulation. There are no disclosure requirements for drilling, well completion, well maintenance, enhanced oil recovery, and other processes.<sup>65</sup> As a result, there is little information regarding what kinds of chemicals are being used, and what risks they pose to public health and safety and the environment. Still others are

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<sup>59</sup> Trio Complaint at p. 21.

<sup>60</sup> U.S. Environmental Protection Agency, Hydrochloric Acid (Hydrogen Chloride) (Jan. 2000), <http://www.epa.gov/ttnatw01/hlthef/hydrochl.html> (“EPA Hydrochloric Acid”).

<sup>61</sup> Collier, Robert, Part 1: Distracted by Fracking?, August 8, 2013, available at <http://www.thenextgeneration.org/blog/post/monterey-shale-series-distracted-by-fracking>; Collier, Robert, Part 2: The Most Dangerous Chemical You’ve Never Heard Of, August 15, 2013, available at <http://thenextgeneration.org/blog/post/monterey-shale-series-the-most-dangerous-chemical>.

<sup>62</sup> Planning Commission Staff Report, PLN 140395 (July 30, 2014) at 5.

<sup>63</sup> See, e.g., Center for Biological Diversity & Communities for a Better Environment, SB 4 Well Stimulation Treatment Regulations, First Revised Text of Proposed Regulations, Comments submitted to Department of Conservation Division of Oil, Gas, and Geothermal Resources (July 28, 2014).

<sup>64</sup> *Id.*

<sup>65</sup> Shonkoff, Seth et al., Preliminary Hazard Assessment of Chemical Additives Used in Oil and Gas Fields that Reuse Their Produced Water for Agricultural Irrigation in The San Joaquin Valley of California, PSE Healthy Energy (2016), (“Shonkoff 2016”)

protected under claims of trade secrecy.<sup>66</sup> Even for chemicals that have been identified, many have little to no publicly available information regarding their toxicity.<sup>67</sup>

Recent studies show that drilling mud and bore waste discharge contains scores of chemicals that are harmful to human health and present a risk to water resources. Increasingly, chemicals are being added to drilling mud used to drill the bore hole. The chemicals are added to increase the density and weight of the fluids in order to facilitate boring, to reduce friction, to facilitate the return of drilling detritus to the surface, to shorten drilling time, and to reduce accidents.<sup>68</sup>

Not all chemicals used in drilling muds are known to the public, but the chemicals that have been identified are associated with serious harm to human health. A study of drilling mud in Wyoming revealed 36 chemicals, all of which having at least one harmful human health effect.<sup>69</sup> These chemicals included aluminum tristearate, Amoco-NT-45 process oil (Diesel 2), chromium, crystalline silica, distillates, drakeol, formic acid, gas oils (petroleum), lubricating oils (petroleum), monopentaerythritol, polyacrylamide/polyacrylate copolymer, sepiolite, xanthan gum.<sup>70</sup>

The health effects from exposure to these chemicals include damage to skin, eye, and sensory organs, the respiratory system, the gastrointestinal system and liver, the brain and nervous system, the immune system, kidneys, and blood and the cardiovascular system.<sup>71</sup> Chemicals found in drilling mud also have been linked to cancer, endocrine disruption, mutagenic harm, ecological harm, and other types of harm. Most chemicals have multiple health risks. A significant portion of the known chemicals can contaminate air, soil, and water through evaporation, solubility, and miscibility. Drill cuttings, which may be produced concurrently with drilling mud and other boring waste, can also contain dangerous heavy metals such as aluminum, mercury, cadmium, arsenic, chromium, copper, lead, nickel and zinc.<sup>72</sup> Exposure to these heavy metals can lead to numerous deleterious health effects for humans and wildlife. Several of these metals are listed as hazardous waste under California law.<sup>73</sup> Other chemicals possess characteristics that qualify them as hazardous waste under California law definitions.

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<sup>66</sup> Shonkoff 2016 at 7 (finding 38 percent of chemicals withheld from disclosure to California Regional Water Quality Control Board investigation).

<sup>67</sup> *Id.* at 13.

<sup>68</sup> Colborn, Theo, *Natural Gas from a Public Health Perspective*, Human Ecol. Risk Assess. Vol. 17, 1039, 1044 (Sept. 2011) (“Colborn 2011”)

<sup>69</sup> Colborn, Theo, Written Testimony before the House Committee on Oversight and Government Reform, hearing on the Applicability of Federal Requirements to Protect Public Health and the Environment from Oil and Gas Development (Oct. 31, 2007) Appendix C, p. 1.

<sup>70</sup> See Colborn and Schultz, Chart listing chemicals found in drilling and drilling muds.

<sup>71</sup> Colborn 2011 at 1048

<sup>72</sup> U.S. Environmental Protection Agency, Ocean Discharge Evaluation for Beaufort Exploration NPDES General Permit (Oct. 2012) p. 3-6, Table 3-3.

<sup>73</sup> See, e.g., 22 Cal. Code Reg. § 66261.24 (listing several chemicals considered hazardous waste).



Drilling muds and boring waste may also contain naturally occurring radioactive material (“NORMs”) that are brought to the surface through drilling. Radioactive material such as radium has been discovered where oil drilling has occurred.<sup>74</sup> In fact, the use of horizontal or directional drilling, which Trio acknowledges it may use, may increase the amount of radioactive material brought to the surface in drill cuttings and drilling muds.<sup>75</sup> These too can potentially harm humans and wildlife through prolonged exposure.

More fundamentally, there are significant data gaps regarding what chemicals are used in oil and gas extraction. State disclosure requirements only cover hydraulic fracturing and other types of well stimulation. There are no disclosure requirements for drilling, well completion, well maintenance, enhanced oil recovery, and other processes.<sup>76</sup> As a result, there is little information regarding what kinds of chemicals are being used, and what risks they pose to public health and safety and the environment. Still others are protected under claims of trade secrecy.<sup>77</sup> Even for chemicals that have been identified, many have little to no publicly available information regarding their toxicity.<sup>78</sup>

Where, as here, there is substantial evidence to support a fair argument that drilling mud discharges may have a significant effect on the environment, preparation of an EIR is required.<sup>79</sup> This “fair argument” test “establishes a low threshold for initial preparation of an EIR, which reflects a preference for resolving doubts in favor of environmental review.”<sup>80</sup>

## **VI. The Biological Opinion Does Not Include Recent Sightings of a Fully Protected Species.**

The IS-MND’s conclusion that impacts to biological resources is not supported. For example, the IS-MND asserts that impacts to the golden eagle, a Fully Protected Species under California law, are less than significant. It points to a biological opinion that concluded that the species was did not occur in the area. However, a more recent survey sighted the golden eagle in the project area, indicating that the area is occupied or used for foraging by this species.<sup>81</sup>

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<sup>74</sup> Morgan, Rachel, “Isn’t This Radiation Naturally Occurring?” Timesonline.com (Jan. 27, 2013); Warner et al. “Impacts of Shale Gas Wastewater Disposal on Water Quality in Western Pennsylvania” Environ. Sci. Technol. (Oct. 2013) available at <http://pubs.acs.org/doi/pdf/10.1021/es402165b>.

<sup>75</sup> See White, E. Ivan, “Consideration of Radiation in Hazardous Waste Produced from Horizontal Hydrofracking” (October 2012).

<sup>76</sup> Shonkoff, Seth et al., Preliminary Hazard Assessment of Chemical Additives Used in Oil and Gas Fields that Reuse Their Produced Water for Agricultural Irrigation in The San Joaquin Valley of California, PSE Healthy Energy (2016), (“Shonkoff 2016”)

<sup>77</sup> Id. at 7 (finding 38 percent of chemicals withheld from disclosure to California Regional Water Quality Control Board investigation.

<sup>78</sup> Id. at 13.

<sup>79</sup> Pub. Res. Code §§ 21100, 21151; CEQA Guidelines § 15064(a)(1), (f)(1); *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.*, 48 Cal. 4th 310, 319 (2010); *No Oil, Inc.*, 13 Cal. 3d at 82.

<sup>80</sup> *Architectural Heritage Assn. v. County of Monterey*, 122 Cal. App. 4th 1095 (2004).

<sup>81</sup> Application at p. 43 [golden eagle observed during March 9, 2017 site visit]

There is also a fair argument that the project will harm other special status species listed in the biological survey as occurring or potentially occurring in the project area.

## **VII. The Application Is Inconsistent with the Need to Reduce Greenhouse Gas Emissions**

Current science establishes that substantial GHG emission reductions are necessary through at least 2050 to preserve any reasonable chance of avoiding the worst impacts of climate change. This science-based approach is reflected in California climate policy. AB 32 sets a target of reducing the state's greenhouse gas emissions to 1990 levels by 2020. Taking into consideration the persistent nature of GHGs and their lasting impacts on climate, Executive Orders S-3-05 and B-30-15 lay out a roadmap for steep reductions in statewide GHG emissions extending to mid-century: 40 percent below 1990 levels by 2030, and 80 percent below 1990 levels by 2050.

At a time when the state needs to be *reducing* its carbon emissions, approving the Trio Application would lead us in exactly the wrong direction by *increasing* greenhouse gas emissions. Moreover, the IS-MND's greenhouse gas analysis does not factor in the dozens of new production wells that could be drilled as a result of *these* exploratory wells. Nor does it account for the methane leakage that is inevitable at well sites with natural gas. Finally, the greenhouse gas emissions that will result from transporting, refining and combusting the extracted oil and gas will only add to the greenhouse gas footprint of this proposed project. Moreover, it is unclear whether the Commission's GHG estimates per well include fugitive emissions, EOR, well stimulation, or plugging and abandonment. The IS-MND emissions factors are not evident.

The less-than-significant finding also improperly relies on the premise that Trio's project is limited to four wells. When the totality of Trio's project is considered, the greenhouse gas emissions will far exceed the Commission's threshold for significance.

Moreover, it is well-recognized that the engines of economic growth in the energy industry are in the very renewable energy sources that will be central to achieving a greenhouse gas NAAQS standard. Thus, for example, solar jobs are growing faster than any other job sector, and wind and solar energy continue to account for the largest areas of new energy growth across the economy.<sup>82</sup>

The urgent need to prevent the worst impacts of climate change means that the world in general – and California in particular – cannot afford to invest in new fossil fuel development and infrastructure that locks in carbon intensive oil production for years into the future.

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<sup>82</sup> See MIT Technology Review, Jan. 8, 2018 (explaining that renewables “will be the fastest-growing professions by percentage over the next 10 years”) (available at <https://www.technologyreview.com/s/609644/five-jobs-that-are-set-to-grow-in-2018/>)

A robust body of scientific research has established that most fossil fuels must be kept in the ground to avoid the worst dangers of climate change. The severe impacts of global warming from the 1°C warming that the planet has already experienced highlight the urgency for stronger climate action to avoid truly catastrophic dangers to people and planet. Human-caused climate change is already causing widespread damage from intensifying global food and water insecurity, the increasing frequency of heat waves and other extreme weather events, flooding of coastal regions by sea level rise and increasing storm surge, the rapid loss of Arctic sea ice and Antarctic ice shelves, increasing species extinction risk, and the worldwide collapse of coral reefs.<sup>83</sup> The Third National Climate Assessment makes clear that “reduc[ing] the risks of some of the worst impacts of climate change” will require “aggressive and sustained greenhouse gas emission reductions” over the course of this century.<sup>84</sup>

The United States has committed to the climate change target of holding the long-term global average temperature “to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels”<sup>85</sup> under the Paris Agreement.<sup>86</sup> The United States signed the Paris Agreement on April 22, 2016 as a legally binding instrument through executive agreement,<sup>87</sup> and the treaty entered into force on November 4, 2016. The Paris Agreement codifies the international consensus that climate change is an “urgent threat” of global concern.<sup>88</sup> The Agreement also requires a “well below 2°C” climate target because 2°C of warming is no longer considered a safe guardrail for avoiding catastrophic climate impacts and runaway climate change.<sup>89</sup>

Immediate and aggressive greenhouse gas emissions reductions are necessary to keep warming well below 2°C rise above pre-industrial levels. The IPCC Fifth Assessment Report and other

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<sup>83</sup> Melillo, Jerry M., “Climate Change Impacts in the United States: The Third National Climate Assessment,” Terese (T.C.) Richmond, and Gary W. Yohe, Eds., U.S. Global Change Research Program, (2014).

<sup>84</sup> Melillo, Jerry M., at 13, 14, and 649.

<sup>85</sup> See United Nations Framework Convention on Climate Change, Conference of the Parties, Nov. 30-Dec. 11, 2015, Adoption of the Paris Agreement Art. 2, U.N. Doc. FCCC/CP/2015/L.9 (Dec. 12, 2015), <http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf> (“Paris Agreement”).

<sup>86</sup> On December 12, 2015, 197 nation-state and supra-national organization parties meeting in Paris at the 2015 United Nations Framework Convention on Climate Change Conference of the Parties consented to the Paris Agreement committing its parties to take action so as to avoid dangerous climate change.

<sup>87</sup> See United Nations Treaty Collection, Chapter XXVII, 7.d Paris Agreement, List of Signatories (2015); U.S. Department of State, Background Briefing on the Paris Climate Agreement (Dec. 12, 2015). Although not every provision in the Paris Agreement is legally binding or enforceable, the U.S. and all parties are committed to perform the treaty commitments in good faith under the international legal principle of *pacta sunt servanda* (“agreements must be kept”). Vienna Convention on the Law of Treaties, Art. 26.

<sup>88</sup> *Id.*

<sup>89</sup> See Paris Agreement, at Recitals.

<sup>89</sup> See the comprehensive scientific review under the United Nations Framework Convention on Climate Change (UNFCCC) of the global impacts of 1.5°C versus 2°C warming: U.N. Subsidiary Body for Scientific and Technological Advice, “Report on the Structured Expert Dialogue on the 2013-2015 review,” FCCC/SB/2015/INF.1 (2015), <http://unfccc.int/resource/docs/2015/sb/eng/inf01.pdf>; Schleussner, Carl-Friedrich, et al., Differential climate impacts for policy-relevant limits to global warming: the case of 1.5C and 2C, 7 Earth Systems Dynamics 327 (2016).

expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, total cumulative anthropogenic emissions of CO<sub>2</sub> must remain below about 1,000 gigatonnes (GtCO<sub>2</sub>) from 2011 onward for a 66 percent probability of limiting warming to 2°C above pre-industrial levels, and to 400 GtCO<sub>2</sub> from 2011 onward for a 66 percent probability of limiting warming to 1.5°C.<sup>90</sup> These carbon budgets have been reduced to 850 GtCO<sub>2</sub> and 240 GtCO<sub>2</sub>, respectively, from 2015 onward.<sup>91</sup> Given that global CO<sub>2</sub> emissions in 2015 alone totaled 36 GtCO<sub>2</sub>,<sup>92</sup> humanity is rapidly consuming the remaining carbon budget.

According to a large body of scientific research, the vast majority of global and US fossil fuels must stay in the ground in order to hold temperature rise to well below 2°C.<sup>93</sup> Studies estimate that 68 to 80 percent of global fossil fuel reserves must not be extracted and burned to limit temperature rise to 2°C based on a 1,000 GtCO<sub>2</sub> carbon budget.<sup>94</sup> For a 50 percent chance of limiting temperature rise to 1.5°C, 85 percent of known fossil fuel reserves must stay in the ground.<sup>95</sup> Effectively, fossil fuel emissions must be phased out globally within the next few decades.<sup>96</sup>

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<sup>90</sup> IPCC, “2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change; Summary for Policymakers (2013), at 25; IPCC, Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, R.K. Pachauri and L.A. Meyer (eds.) (2014), at 63-64 and Table 2.2.

<sup>91</sup> Rogelj, Joeri et al., Differences between carbon budget estimates unraveled, 6 *Nature Climate Change* 245 (2016), at Table 2.

<sup>92</sup> See Le Quéré, Corinne et al., Global Carbon Budget 2016, 8 *Earth Syst. Sci. Data* 605 (2016), [www.globalcarbonproject.org/carbonbudget/16/data.htm](http://www.globalcarbonproject.org/carbonbudget/16/data.htm).

<sup>93</sup> The IPCC estimates that global fossil fuel reserves exceed the remaining carbon budget for staying below 2°C by 4 to 7 times, while fossil fuel resources exceed the carbon budget for 2°C by 31 to 50 times. See Bruckner, Thomas et al., Ch. 7: 2014: Energy Systems, in *Climate Change 2014: Mitigation of Climate Change, Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2014), [http://ipcc.ch/pdf/assessment-report/ar5/wg3/ipcc\\_wg3\\_ar5\\_chapter7.pdf](http://ipcc.ch/pdf/assessment-report/ar5/wg3/ipcc_wg3_ar5_chapter7.pdf), at Table 7.2.

<sup>94</sup> To limit temperature rise to 2°C based on a 1,000 GtCO<sub>2</sub> carbon budget from 2011 onward, studies indicate variously that 80 percent (Carbon Tracker Initiative, *Unburnable Carbon – Are the world’s financial markets carrying a carbon bubble?* (2013) (“Carbon Tracker Initiative 2013”), <http://www.carbontracker.org/wp-content/uploads/2014/09/Unburnable-Carbon-Full-rev2-1.pdf>), 76 percent (Raupach, Michael et al., “Sharing a quota on cumulative carbon emissions,” 4 *Nature Climate Change* 873 (“Raupach 2014”), and 68 percent (Oil Change International, *The Sky’s Limit: Why the Paris Climate Goals Require A Managed Decline of Fossil Fuel Production*, (September 2016) (“Oil Change International 2016”)) of global fossil fuel reserves must stay in the ground. See Carbon Tracker Initiative 2013; Raupach 2014; Oil Change International 2016.

<sup>95</sup> Oil Change International 2016 at 6.

<sup>96</sup> Joeri Rogelj et al. (2015) estimated that a reasonable likelihood of limiting warming to 1.5° or 2°C requires global CO<sub>2</sub> emissions to be phased out by mid-century and likely as early as 2040-2045. See Rogelj, Joeri et al., Energy system transformations for limiting end-of-century warming to below 1.5°C, 5 *Nature Climate Change* 519 (2015). Climate Action Tracker indicated that the United States must phase out fossil fuel CO<sub>2</sub> emissions

A 2016 analysis found that potential carbon emissions from developed reserves in currently operating oil and gas fields and mines would lead to global temperature rise beyond 2°C.<sup>97</sup> Excluding coal, currently operating oil and gas fields alone would take the world beyond 1.5°C.<sup>98</sup> To stay well below 2°C, the clear implication is that no new fossil fuel extraction or transportation infrastructure should be built, and governments should grant no new permits for new fossil fuel extraction and infrastructure.<sup>99</sup> Moreover, some fields and mines, primarily in rich countries, must close before fully exploiting their resources. The analysis concludes that, because “existing fossil fuel reserves considerably exceed both the 2°C and 1.5°C carbon budgets[, i]t follows that exploration for new fossil fuel reserves is at best a waste of money and at worst very dangerous.”<sup>100</sup>

### **VIII. Commenters Request to Be Added to the Planning Commission’s “List of Interested Persons”**

It does not appear as though either is included on the “List of Interested Persons” that received notification of Trio’s Application when it was first submitted on July 1, 2017. Both Protect Monterey County and the Center for Biological Diversity have a strong and longstanding interest in protecting the water, air, and land in Monterey County from the dangers of oil and gas activity. As such, the Commission should notify both stakeholders when oil and gas projects are proposed in the County. Protect Monterey County and the Center for Biological Diversity both request that they be added to the List of Interested Persons and be notified of future developments pertaining to this and other oil and gas projects.

### **IX. Conclusion**

On behalf of Protect Monterey County and the Center for Biological Diversity, and supporters of Measure Z, we thank the Commissioners for denying this ill-conceived Application. The long term impacts are not aligned with Monterey County’s path toward a safer, healthier, and sustainable future. We urge the Commission to adopt the staff’s draft resolution to deny the Trio Application.

Thank you for showing strong leadership on this matter.

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even earlier—between 2025 and 2040—for a reasonable chance of staying below 2°C. *See, e.g.* Climate Action Tracker, “USA” (last updated 25 January 2017), <http://climateactiontracker.org/countries/usa>

<sup>97</sup> Oil Change International 2016 at 5.

<sup>98</sup> *Id.*, at 5.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*, at 17.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hollin Kretzmann", with a horizontal line drawn through the middle of the signature.

Hollin Kretzmann  
Staff Attorney  
Center for Biological Diversity  
1212 Broadway Suite 800  
Oakland, CA 94612

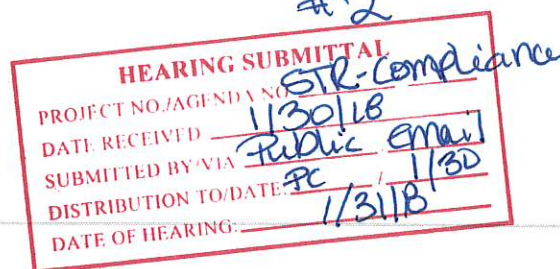
A handwritten signature in cursive script, appearing to read "Hollin Kretzmann", with a horizontal line drawn through the middle of the signature. The word "for" is written in small letters below the signature.

Dr. Laura Solorio, MD  
President  
Protect Monterey County

## McDougal, Melissa x5146

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**From:** Beretti, Melanie x5285  
**Sent:** Tuesday, January 30, 2018 12:18 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: short term rentals



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**From:** MARGARET E ROBBINS [mailto:mm\_robbins@comcast.net]  
**Sent:** Tuesday, January 30, 2018 12:06 PM  
**To:** Martha Diehl <mvdiehl@mindspring.com>; keith vandevere <kvandevere@gmail.com>  
**Cc:** Beretti, Melanie x5285 <BerettiM@co.monterey.ca.us>; Katie Coburn <Coburn.Katie@yahoo.com>  
**Subject:** short term rentals

In 18 months of meetings the working group only agreed on two things. 1. the mission statement and 2. TOT was to be used for code enforcement. I believe the mission statement in words about preserving property rights. without code enforcement this will not be possible. Can't attend tomorrow's meeting so i want to go firmly on the record that I find the staff report !@@#\$!!!!!! margaret robbins  
PS Let marijuana raise it's own \$ for their own code enforcement.

## McDougal, Melissa x5146

**From:** Onciano, Jacqueline x5193  
**Sent:** Tuesday, January 30, 2018 9:42 AM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: STR hearing January 31 re enforcement

# 2

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA NO.	STR - Compliance
DATE RECEIVED	1-29-18
SUBMITTED BY/VIA	Public / Email
DISTRIBUTION TO/DATE	PC / 1/30
DATE OF HEARING	1/31/18

Hi Melissa:

Please make sure this is part of the record and distributed to the Planning commissioners.

Jacque O.

*~Jacqueline R. Onciano  
RMA Chief of Planning  
Land Use & Community Development*

*Monterey County Resource Management Agency  
1441 Schilling Place, 2nd Floor  
Salinas, CA 93901  
Office: (831) 755-5193  
Fax: (831) 757-9516  
[oncianoj@co.monterey.ca.us](mailto:oncianoj@co.monterey.ca.us)*

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**From:** Beretti, Melanie x5285  
**Sent:** Monday, January 29, 2018 2:27 PM  
**To:** Michelle Alway <[michellealway@gmail.com](mailto:michellealway@gmail.com)>  
**Cc:** Bowling, Joshua x5227 <[BowlingJ@co.monterey.ca.us](mailto:BowlingJ@co.monterey.ca.us)>; Onciano, Jacqueline x5193 <[oncianoj@co.monterey.ca.us](mailto:oncianoj@co.monterey.ca.us)>; Bauman, Lew x5113 <[baumanl@co.monterey.ca.us](mailto:baumanl@co.monterey.ca.us)>; Holm, Carl P. x5103 <[HolmCP@co.monterey.ca.us](mailto:HolmCP@co.monterey.ca.us)>; 100-District 5 (831) 647-7755 <[district5@co.monterey.ca.us](mailto:district5@co.monterey.ca.us)>; Martha V Diehl <[mvdiehl@mindspring.com](mailto:mvdiehl@mindspring.com)>; Vandever, Keith <[VandeverK@co.monterey.ca.us](mailto:VandeverK@co.monterey.ca.us)>; Ambriz, Ana <[AmbrizA1@co.monterey.ca.us](mailto:AmbrizA1@co.monterey.ca.us)>; Duflock, Melissa <[DuflockM1@co.monterey.ca.us](mailto:DuflockM1@co.monterey.ca.us)>; Getzelman, Paul C. <[GetzelmanPC@co.monterey.ca.us](mailto:GetzelmanPC@co.monterey.ca.us)>; Mendez, Jose <[MendezJ@co.monterey.ca.us](mailto:MendezJ@co.monterey.ca.us)>; Padilla, Cosme <[PadillaC1@co.monterey.ca.us](mailto:PadillaC1@co.monterey.ca.us)>; mendozaf@co.monterey.ca.us; Wizard, Jonathan <[WizardJ@co.monterey.ca.us](mailto:WizardJ@co.monterey.ca.us)>  
**Subject:** Re: STR hearing January 31 re enforcement

Received

Sent from my iPhone

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"We have inspection staff in the field making observations. We're looking for places that seem to have indicators there may be short-term rentals going on, and we're also patrolling the websites."

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New Orleans officials say they're about to step up short-term rental enforcement using administrative subpoenas. The city budgeted about \$727,000 in additional funds for Munster's department last year in anticipation of short-term rentals becoming legal on April 1. The money was mostly used for personnel, including the hiring of seven people, including three enforcement officers.

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Respectfully submitted,  
Michelle Alway  
Carmel Highlands

## McDougal, Melissa x5146

**From:** Beretti, Melanie x5285  
**Sent:** Monday, January 29, 2018 4:47 PM  
**To:** McDougal, Melissa x5146  
**Subject:** Fwd: Comments on Enforcement Staff Report:  
<https://preservemontereyneighborhoods.community/no-meaningful-enforcement-of-current-ordinances-and-draft-ordinance-is-much-more-complex-and-difficult-to-enforce/>

Sent from my iPhone

Begin forwarded message:

**From:** Callie Williams <callierwilliams@icloud.com>  
**Date:** January 29, 2018 at 4:40:12 PM PST  
**To:** Robert Danziger <bobdanziger@mac.com>  
**Cc:** "Beretti, Melanie x5285" <BerettiM@co.monterey.ca.us>, Supervisor Mary Adams <district5@co.monterey.ca.us>, Stewart Winona <winonas@sbcglobal.net>, Lynne Boyd <lboyd456@aol.com>, Gwyn De Amaral <preservecarmelhighlands@gmail.com>, Lorraine Oshea <lorrainekoshea@gmail.com>, Todd Norgaard <toddnorg@aol.com>, linda norgaard <lindanorg@aol.com>, Kate Hardy <hbodyk@sbcglobal.net>, Alan Laschiver <alaschiver@aol.com>, Gary Cursio <GCursio@CGCLLC.org>, Adrienne Berry <yankeebeach@sbcglobal.net>, "R. Michael Wisner" <wizman@earthlink.net>, Michelle Alway <michellealway@gmail.com>, Priscilla Walton <priswalton@sbcglobal.net>, kenneth Wright <krwbigsur@gmail.com>, Big Sur LCP Defense Committee <bigsurlcp@gmail.com>, Joseph Bileci <j.e.bileci@gmail.com>, <endosea@prodigy.net>, Magnus Toren <magnus@henrymiller.org>, Katie Coburn <coburn.katie@yahoo.com>, Voices of Monterey Bay <admin@voicesofmontereybay.org>, "Mary Trotter (quailmeadows@gmail.com)" <quailmeadows@gmail.com>, John Cluett <marblepeak@madriver.com>, Mark O'Shea <moshea@csumb.edu>, "Steve Beck (stevebeck2@gmail.com)" <stevebeck2@gmail.com>, Jimmy Panetta <jimmypanettaforcongress@gmail.com>, Ben Heinrich <Ben@benheinrich.com>  
**Subject: Re: Comments on Enforcement Staff Report:**  
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#2

<b>HEARING SUBMITTAL</b>	
PROJECT NO/AGENDA NO:	STR-Compliance
DATE RECEIVED:	1/29/18
SUBMITTED BY/VIA:	Public / email
DISTRIBUTION TO/DATE:	PC / 1/30
DATE OF HEARING:	1/31/18

Thank you! This new ordinance does NOTHING to help those who have the misfortune of already living next to someone with a "use" permit. According to Melanie, those who already have a "use" permit will be allowed to continued to rent as they do now and the permit will easily change hands if the owner wants to sell.

This does not help those who live in an area full time!!

Sent from my iPhone

On Jan 29, 2018, at 4:24 PM, Robert Danziger <bobdanziger@mac.com> wrote:

Please respond to the comments below:

The disclosure that resources do not exist to enforce the existing ordinances explains the lack of response to our many complaints and concerns. This is a huge problem, in effect requiring the neighbors to police STR's in their neighborhoods. This is something

we seriously do not want to have to do. When we take pictures or otherwise assemble the data that your department has requested from us we are labelled "vigilantes" and much neighborhood conflict ensues. And then, after the data is assembled, nothing happens.

This calls in to question the entire premise of the rulemaking to allow STR's, and most certainly invalidates all of the focus group data you rely on. The focus group was specifically and unequivocally promised that there would be adequate resources to enforce a new ordinance. The facts turn out to be otherwise. Many participants in the focus group are also upset because they were explicitly and repeatedly promised that adequate enforcement resources exist and would be applied to any final rule. It was a fundamental premise of the scenarios they were asked to consider.

**And now you propose a draft ordinance that will be infinitely more difficult and time consuming to enforce.**

**The draft ordinance is fundamentally unenforceable.** Staffer Melanie Berretti is quoted as saying the reason they have to do a one-size fits all ordinance is that they do not have the staff to consider area by area differences. This is no reason to write an ordinance without considering any of the serious negatives of STR's that have been raised repeatedly in public comment. This is no reason not to study the unique issues of Highway 1, or Carmel Valley.

- The draft ordinance has noise limits. Will you have officers available to measure noise levels after 10 pm 5 or 6 days a week which is when the violations occur? The draft ordinance is unenforceable.
- The draft ordinance has limits on the number of renters: Will you have officers watching the coming and going of guests to count whether there are too many? What do you expect the neighbors to do? What types of proofs will satisfy you, and can neighbors legally obtain them? The draft ordinance is unenforceable.
- The draft ordinance require the owner to live on-site. How do you expect to be able to prove or disprove their presence without having someone inside the rental? The draft ordinance is unenforceable.
- The draft ordinance requires an owner who lives there. How do intend to prove that an applying owner isn't merely an employee of a trust or corporation who is beholden to them and not a real neighbor, a real part of the community? This has become a huge problem in city after city where STR "Home Stays" are allowed. It is a difficult thing to prove for sophisticated financial regulators as large legal resources are deployed by STR investment groups to circumvent the letter of the laws. The draft ordinance is unenforceable.
- Under the draft ordinance a use permit after some procedure is required and appeals are allowed. I can promise you now that in the Highlands that many if

not the vast majority of use applications will be contested, and appealed should we lose. This will require major resources from the County, and tremendous time from Commission staff. Where are those resources going to come from? The draft ordinance is unenforceable.

You are not considering what is best for Monterey County, you are doing something that is bad policy, violates at least three LCP's or LUP's, and ignores serious adverse environmental consequences in order to fit something within the drafting resources of the County, but with no enforcement to back it up.

***This process should be stopped. And only re-started when the resources are there to draft and enforce an ordinance that actually makes sense for our community.***



## McDougal, Melissa x5146

**From:** Beretti, Melanie x5285  
**Sent:** Monday, January 29, 2018 4:47 PM  
**To:** McDougal, Melissa x5146  
**Subject:** Fwd: Comments on Enforcement Staff Report:  
<https://preservemontereyneighborhoods.community/no-meaningful-enforcement-of-current-ordinances-and-draft-ordinance-is-much-more-complex-and-difficult-to-enforce/>

Sent from my iPhone

Begin forwarded message:

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA NO.	STR-Compliance
DATE RECEIVED	1-29-18
SUBMITTED BY/VIA	Public email
DISTRIBUTION TO-DATE	PC / 1/30
DATE OF HEARING:	1/31/18

**From:** Robert Danziger <[bobdanziger@mac.com](mailto:bobdanziger@mac.com)>

**Date:** January 29, 2018 at 4:24:07 PM PST

**To:** "Beretti, Melanie x5285" <[BerettiM@co.monterey.ca.us](mailto:BerettiM@co.monterey.ca.us)>, Supervisor Mary Adams <[district5@co.monterey.ca.us](mailto:district5@co.monterey.ca.us)>

**Cc:** Stewart Winona <[winonas@sbcglobal.net](mailto:winonas@sbcglobal.net)>, Lynne Boyd <[lboyd456@aol.com](mailto:lboyd456@aol.com)>, Gwyn De Amaral <[preservecarmelhighlands@gmail.com](mailto:preservecarmelhighlands@gmail.com)>, Lorraine Oshea <[lorrainekoshea@gmail.com](mailto:lorrainekoshea@gmail.com)>, Callie Williams <[callierwilliams@icloud.com](mailto:callierwilliams@icloud.com)>, Todd Norgaard <[toddnorg@aol.com](mailto:toddnorg@aol.com)>, linda norgaard <[lindanorg@aol.com](mailto:lindanorg@aol.com)>, Kate Hardy <[hbodyk@sbcglobal.net](mailto:hbodyk@sbcglobal.net)>, Alan Laschiver <[alaschiver@aol.com](mailto:alaschiver@aol.com)>, Gary Cursio <[GCursio@CGCLLC.org](mailto:GCursio@CGCLLC.org)>, Adrienne Berry <[yankeebeach@sbcglobal.net](mailto:yankeebeach@sbcglobal.net)>, "R. Michael Wisner" <[wizman@earthlink.net](mailto:wizman@earthlink.net)>, Michelle Alway <[michellealway@gmail.com](mailto:michellealway@gmail.com)>, Priscilla Walton <[priswalton@sbcglobal.net](mailto:priswalton@sbcglobal.net)>, kenneth Wright <[krwbigsur@gmail.com](mailto:krwbigsur@gmail.com)>, Big Sur LCP Defense Committee <[bigsurlcp@gmail.com](mailto:bigsurlcp@gmail.com)>, Joseph Bileci <[j.e.bileci@gmail.com](mailto:j.e.bileci@gmail.com)>, <[endosea@prodigy.net](mailto:endosea@prodigy.net)>, Magnus Toren <[magnus@henrymiller.org](mailto:magnus@henrymiller.org)>, Katie Coburn <[coburn.katie@yahoo.com](mailto:coburn.katie@yahoo.com)>, Voices of Monterey Bay <[admin@voicesofmontereybay.org](mailto:admin@voicesofmontereybay.org)>, "Mary Trotter ([quailmeadows@gmail.com](mailto:quailmeadows@gmail.com))" <[quailmeadows@gmail.com](mailto:quailmeadows@gmail.com)>, John Cluett <[marblepeak@madriver.com](mailto:marblepeak@madriver.com)>, Mark O'Shea <[moshea@csumb.edu](mailto:moshea@csumb.edu)>, "Steve Beck ([stevebeck2@gmail.com](mailto:stevebeck2@gmail.com))" <[stevebeck2@gmail.com](mailto:stevebeck2@gmail.com)>, Jimmy Panetta <[jimmypanettaforcongress@gmail.com](mailto:jimmypanettaforcongress@gmail.com)>, Ben Heinrich <[Ben@benheinrich.com](mailto:Ben@benheinrich.com)>

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**Sent:** Monday, January 29, 2018 2:27 PM  
**To:** McDougal, Melissa x5146  
**Subject:** Fwd: STR hearing January 31 re enforcement

#2

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PROJECT NO./AGENDA NO.	STR-Compliance
DATE RECEIVED:	1/29/18
SUBMITTED BY/VIA:	Public email
DISTRIBUTION TO/DATE:	Re 1/30
DATE OF HEARING:	1/31/18

Begin forwarded message:

**From:** Michelle Alway <michellealway@gmail.com>  
**Date:** January 29, 2018 at 2:18:56 PM PST  
**To:** "Beretti, Melanie x5285" <berettim@co.monterey.ca.us>, BowlingJ@co.monterey.ca.us, "Onciano, Jacqueline x5193" <oncianoj@co.monterey.ca.us>, baumanl@co.monterey.ca.us, "Holm, Carl P. x5103" <HolmCP@co.monterey.ca.us>, Mary Adams <district5@co.monterey.ca.us>  
**Cc:** Martha V Diehl <mvdiehl@mindspring.com>, vandeerek@co.monterey.ca.us, ambriza1@co.monterey.ca.us, duflockm1@co.monterey.ca.us, getzelmanpc@co.monterey.ca.us, MendezJ@co.monterey.ca.us, padillac1@co.monterey.ca.us, mendozaf@co.monterey.ca.us, wizardj@co.monterey.ca.us  
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Michelle Alway  
Carmel Highlands

## McDougal, Melissa x5146

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**From:** boardmember@mcvra.org  
**Sent:** Sunday, January 28, 2018 9:54 AM  
**To:** jmjosemendez1@gmail.com; Mendez, Jose; ambrizana1@gmail.com; Padilla, Cosme; jon@electwizard.com; Getzelman, Paul C.; mduflock@gmail.com; amydroberts@gmail.com; kvandevere@gmail.com; Vandevere, Keith; mvdiehl@mindspring.com; Beretti, Melanie x5285; Holm, Carl P. x5103; Bauman, Lew x5113; Onciano, Jacqueline x5193; Nickerson, Jacquelyn x5240; McDougal, Melissa x5146; Pereira, Neville x5962; Dugan, John x6654  
**Subject:** Short-Term Rental Enforcement Questions & Suggestions  
**Attachments:** County STR TOT Collection History.jpeg

January 28, 2018

#2

HEARING SUBMITTAL	
PROJECT NO / AGENDA NO	STR-Compliance
DATE RECEIVED	1/28/18
SUBMITTED BY VIA	Public / email
DISTRIBUTION TO DATE	PC / 1/30
DATE OF HEARING	1/31/18

Dear Mr. Holm:

The County staff report for the January 31, 2018 Planning Commission states there are 34 open code enforcement complaints for STRs within the unincorporated areas of the County of Monterey.

STRs are an emotional issue often devoid of facts. Of the 34 open cases, how many are based upon complaints about an actual incident such as nuisance or disturbance? The Planning Commissioners need to understand that many, if not all, of these complaints are not based upon actual incidences but rather, are STR opponents simply taking matters into their own hands to eliminate STRs.

How do we know this? Josh Bowling's initial notice, the "Courtesy Notice," does not refer to any incident, or a date of such incident. Furthermore, STR citations have not specified an actual, verified incident. The recent citations of Lotte Marcus and Lowell Strauss were rescinded because there was no date of a code violation. Lotte Marcus lives on the property. She knows there was no disturbance. The complaints came from STR opponents that do not live close by. Thus they could not provide the date of any STR activity, let alone the date of any possible incident.

One of the most egregious examples is the citation of William Lewis. The complaint came from a wedding planner (name available upon request) who lives in Carmel Valley, many miles away. He simply used the County to eliminate a competitor, an STR that was allowing weddings. The complainer was never disturbed by the Lewis STR!

So how many of the 34 open cases are reasonable, not based upon vigilante action? One? Two? The truth is that STR problems are blown way out of proportion based upon emotion, not facts. The Planning Commissioners should have this information to make their decision on code enforcement prioritization.

We see that the staff report made no effort to estimate the additional cost associated with raising the code enforcement priority on STRs. The Planning Commissioners also need this information. Most importantly, they need to understand that if the goal of prioritized enforcement is to eliminate the 779 (799-20) unpermitted STRs in the County, this will eliminate \$1.4 million in annual TOT revenue. For the amount of TOT paid by STRs, see the attached letter from the Monterey County Tax Collector.

The staff report vaguely suggests, with no rational, that more STR code enforcement might increase TOT revenues. The reports states, "...an additional Code Compliance Inspector position that would be dedicated to the STR program, with the intent that they would generate additional permits resulting in additional TOT." Increased TOT collections will absolutely NOT happen! Most, if not all, of the \$1.4 million annual TOT will be lost.

A few non-coastal STR owners might try to get a permit but most will not. The County has a history of denying non-coastal permit applications or placing arbitrary, additional restrictions on the applicant. The County will lose most of the TOT paid by non-coastal STRs.

In the coastal region where the majority of all STRs are located, the County will lose 100% of the TOT. This is because there is NO similar use permit available. The County staff's January 23, 2018 Board Report addressing the Lewis application for a similar use BnB permit states, "Comparing this specific application against those requirements for a bed and breakfast, staff identified the following differences:

- The owner will not occupy the home during visitor stay;
- The owner will not provide any meals to the renters; and
- The entire premises would be rented out, not just single rooms."

We all know that 100% of all STRs do not meet these characteristics. So NO coastal STR owner will try to get a similar use permit. Why would an owner waste \$9,000 to apply for a permit that will be denied?

The June 26, 2016 Coastal Commission letter to you stated, "...we (Coastal Commission) highly recommend that instead of attempting to suggest they (STRs) are prohibited or pursuing such prohibitions, that Monterey County instead work with us to develop regulations..." MCVRA agrees. Please focus all efforts on creating a fair STR ordinance. And unless there is an actual, verified STR nuisance or disturbance, discontinue citations as also stated in that letter.

Respectfully,

MCVRA Board of Directors

Cc: Neville Pereira

John Dugan



Josh Bowling

Lew Bauman

Melanie Beretti

Planning Commissioners

# MONTEREY COUNTY



**MARY A. ZEEB**  
**Treasurer – Tax Collector**

168 West Alisal Street - 1st Floor  
Salinas, CA 93901

Tax Collector Division  
P.O. Box 891, Salinas, CA 93902  
(831) 755-5057 Salinas, (831) 647-7857 Monterey  
(831) 385-8357 King City, Fax (831) 759-6623

October 2, 2017

Richard Matthews  
Monterey County Vacation Rental Alliance  
P. O. Box 221816  
Carmel, CA 93922

**Re: Transient Occupancy Tax Request for Information**

Dear Richard,

Thank you for your request for information related to the proportion of transient occupancy tax received during the FY 2015-2016 and FY 2016-2017 attributable to short term rental owners and property managers. As explained this was a time intensive project to prepare, as the information is not readily available or independently tracked in our system. In addition, the requested data transitioned from one software program to another during the given time-frame, which added to the difficulty in isolating the information. As a result, the information is being provided as our best estimate of the information you have requested.

It is our best estimate that during fiscal year 2015-2016, the amount of transient occupancy tax received by the County of Monterey attributable to short-term rental owners and property managers was approximately \$1,422,696 of the total \$22,814,535 reported collected, or roughly 6%.

It is our best estimate that during fiscal year 2016-2017, the amount of transient occupancy tax received by the County of Monterey attributable to short-term rental owners and property managers was approximately \$1,393,973 of the total \$21,176,871 reported collected, or roughly 6%.

I believe this satisfies your request for information. Should you feel there is additional information that is not included, please contact Kristina Parson via telephone at (831) 755-5317 or by email at [parsonka@co.monterey.ca.us](mailto:parsonka@co.monterey.ca.us).

Sincerely,

MARY A. ZEEB  
TREASURER-TAX COLLECTOR

KRISTINA PARSON  
Management Analyst III  
Treasurer-Tax Collector

**MONTEREY COUNTY PLANNING COMMISSION**  
**JANUARY 31, 2018**  
**AGENDA ITEM NO. 2**



# Additional Correspondence

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Short Term Rental Code Compliance  
REF100042/REF130043

**FOR ADDITIONAL INFORMATION CONTACT:**

Melanie Beretti, Special Programs Manager  
Monterey County Resource Management Agency  
1441 Schilling Place, 2nd Floor South, Salinas CA, 93901  
(831) 755-5285 [berettim@co.monterey.ca.us](mailto:berettim@co.monterey.ca.us)



## McDougal, Melissa x5146

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**From:** Beretti, Melanie x5285  
**Sent:** Tuesday, January 30, 2018 2:18 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: IMPORTANT CONSIDERATIONS/ENFORCEMENTS FOR THOSE WITH USE PERMITS  
**Attachments:** IMPORTANT CONSIDERATIONS FOR THOSE WITH USE PERMITS.pdf

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**From:** Callie Williams [mailto:cwilliams@smfc.k12.ca.us]  
**Sent:** Tuesday, January 30, 2018 2:15 PM  
**To:** Beretti, Melanie x5285 <BerettiM@co.monterey.ca.us>  
**Subject:** IMPORTANT CONSIDERATIONS/ENFORCEMENTS FOR THOSE WITH USE PERMITS

#2

HEARING SUBMITTAL	
PROJECT NO/AGENDA NO.	STR-Compliance
DATE RECEIVED:	1/30/18
SUBMITTED BY/VIA:	Public / email
DISTRIBUTION TO/DATE:	PC / 1/30
DATE OF HEARING:	1/31/18

## IMPORTANT CONSIDERATIONS FOR THOSE WITH USE PERMITS

1. How will you enforce those renting a property with a “use” permit will actually stay the minimum number of days required? We live next to a short term rental with a use permit. She is required to rent out for a minimum of 7 days, but rents it out for 2 nights each weekend. This could easily be remedied if the county routinely monitors, enforces and requires this to be stated on the website being used. EXAMPLE: It needs to state on each internet site: minimum of 7 days NO LESS!!!!!! if that is what the permit requires them to do.
2. Are you going to continue to allow “use” permit holders to interpret the language of their permit? You do now! We live next to a neighbor that has a “use” permit. Her permit states, “minimum 7 day stay.” She claims the county told her she could rent out her house every weekend and requires only a 2 day stay as long as she only rents once a week. This isn’t the same language and is a completely different rule.
3. Will you have 3 or more employees working 8 hour shifts on the weekends? The weekend parties late at night/early morning are a HUGE concern. We need to have someone we can call and come out when a complaint is made.
4. If a code enforcer is requested in different parts of the county at the same time how will this be addressed? It takes an hour to drive from Carmel to Arroyo Seco and I am sure you will have times when there are complaints made at the same time.
5. Will you hold those with “use” permits to the same standard as bed and breakfast and small hotels?
6. What happens when a violation has been made? For those with a “use” permit that charge more than \$1,000 a night a small fine isn’t going to matter!
7. At what point will you revoke a “use” permit? How many complaints and what type of complaints need to be made before you hold the holder of a “use” permit accountable?
8. What do we do if we suspect people are pitching tents and there are more than the permitted number staying on a site? You can’t expect

neighbors to be the police? This is already causing a lot of friction between neighbors.

9. What will the turnaround time be when one makes a complaint?

10. How are you going to make sure owners don't establish "special" relationships with renters and allow them to bypass websites and pay TOT and instead privately use Paypal or Venmo? THIS HAPPENS NOW!! Owners do this to bypass paying TOT and this allows them to rent more than the restrict time allowed. They tell the renters to just say "they're friends."

11. ALL SHORT TERM RENTAL PERMITS SHOULD BE NULL AND VOID WHEN

**McDougal, Melissa x5146**

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**From:** Beretti, Melanie x5285  
**Sent:** Tuesday, January 30, 2018 1:55 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: Enforcement of code on str's

**From:** bgross50@aol.com [mailto:bgross50@aol.com]  
**Sent:** Tuesday, January 30, 2018 1:38 PM  
**To:** Beretti, Melanie x5285 <BerettiM@co.monterey.ca.us>  
**Subject:** Enforcement of code on str's

Hi Melanie,  
RE: Short Term Rentals

Enforcement is mandatory. We need to find the funds for this ASAP.

Brent Gross

[bgross50@aol.com](mailto:bgross50@aol.com)

#2

<b>HEARING SUBMITTAL</b>	
PROJECT NO/AGENDA NO.	STR Compliance
DATE RECEIVED	1/30/18
SUBMITTED BY/VIA	Public / Email
DISTRIBUTION TO/DATE	PC / 1/30
DATE OF HEARING	1/31/18



January 30, 2018

Monterey County Planning Commission  
168 West Alisal Street  
1st Floor  
Salinas, CA 93901

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA NO.	STR- Compliance
DATE RECEIVED:	1/30/18
SUBMITTED BY/VIA:	Public / email
DISTRIBUTION TO/DATE:	PC / 1/30
DATE OF HEARING:	1/31/18

*Re: Trio Petroleum Application for Conditional Use Permit (PLN160146)*

Dear Honorable Commissioners:

On behalf of the Center for Biological Diversity, Protect Monterey County, their respective members, and the public, I am writing to urge the Commissioners to adopt the resolution denying Trio Petroleum LLC's conditional use permit (CUP) application PLN160146 (the "Application").

In November 2016, voters in Monterey passed Measure Z, which, among other restrictions, bans the use of land for drilling new wells. The overwhelming number of votes in favor of the Measure demonstrates that the majority of Monterey County residents want to put an end to endless expansion of oil and gas development. The Planning Commission rightly respected the will of voters in making the commonsense decision to deny Trio's Application at its December 13, 2017 hearing. In doing so, Commission also showed true leadership in guiding the county toward a cleaner, safer, and more sustainable future.

## **I. Background**

Trio Petroleum LLC (Trio) seeks approval to drill four new exploratory wells in Hames Valley. According to its application, originally submitted July 1, 2016, each exploratory well site would contain a drilling rig over 100 feet tall, an open pit to collect drilling fluid and drill cuttings, and other apparatuses necessary to drill the wells. Each site would require over 450 hours of continuous drilling and involve the transportation, storage, use, and disposal of hazardous chemicals, many of which are unknown.

Trio anticipates that the four exploratory wells will lead to expanded oil and gas activity. At the December 13, 2017 Planning Commission Meeting, the representative for Trio stated, "these sites are probably going to be housing maybe 3 to 6 wells each...and those wells will be going to different places in that anticline."<sup>1</sup> He added, "We are going to locate multiple wells on those sites in the development situation.... That will be the end result, hopefully."<sup>2</sup>

<sup>1</sup> Monterey County Planning Commission Public Hearing, Dec. 13, 2017, Agenda Item #4, Testimony of Trio Petroleum representative, video available at

[http://monterey.granicus.com/MediaPlayer.php?view\\_id=14&clip\\_id=3501](http://monterey.granicus.com/MediaPlayer.php?view_id=14&clip_id=3501)

<sup>2</sup> Id.

Production is unlikely to stop with the four exploration wells. Trio has publicly stated “[b]eyond these four wells [in Hames Valley], Trio has additional well defined prospects on its leasehold.”<sup>3</sup> Trio “estimates [Hames Valley] to contain hundreds of millions of barrels of recoverable oil and significant recoverable gas.”<sup>4</sup>

Thus, despite Trio’s attempt to minimize the impact of its Application, in reality it has the potential to trigger an extensive new wave of oil and gas development in the region. Oil and gas extraction is inherently speculative, and the economic feasibility of extracting fossil fuels at a profit is subject to global market fluctuations. Nevertheless, the potential for expansion far beyond the initial four exploratory wells should not be omitted from consideration and full evaluation required by law.

## **II. The Application Is Inconsistent with Measure Z.**

As noted in the Application and IS-MND, Measure Z amended the Monterey County General Plan and County Code to prohibit certain land uses in unincorporated parts of the County. Among other restrictions, Measure Z prohibits land uses that support new wells. (Policy LU-1.23.)

Although the ordinance is currently the subject of litigation, there is a strong possibility that the courts will ultimately uphold Measure Z and order its implementation. Approval would be inconsistent with Measure Z and the will of the majority of voters who passed the initiative in 2016. In order to avoid approving a project that would directly conflict with Measure Z, the Commission should not approve any new drilling projects until the matter is resolved.

## **III. Approval Would Be Inconsistent with CEQA**

The Initial Study and Mitigated Negative Declaration (collectively, the “IS-MND”) prepared in support of this Application are seriously flawed and do not meet the minimum standards of the California Environmental Quality Act (“CEQA”).<sup>5</sup> CEQA is meant to ensure that the public and decision-makers are fully informed about the true extent of harms that may arise from a given project. A local agency ordinarily must prepare an EIR on any project which *may* have a significant effect on the environment.<sup>6</sup> Conversely, an agency may adopt a negative declaration only if there is no substantial evidence that the project *may* have a significant effect on the environment.<sup>7</sup> When there is a “fair argument” that the foreseeable impacts of a project may be

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<sup>3</sup> *Trio Petroleum LLC et al. v. Monterey County*, Case No. 17-CV-001012, Trio Petroleum Complaint at p. 8

<sup>4</sup> *Id.* at p. 9.

<sup>5</sup> Pub. Res. Code §§ 21000 et seq.; CEQA Guidelines, 14 Cal. Code Regs. §§ 15000 et seq.

<sup>6</sup> Pub. Res. Code, § 21151.

<sup>7</sup> Pub. Res. Code, § 21080, subd. (c)(1) and (2), italics added; see also Guidelines, § 15070; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399.

significant, an agency must prepare a full environmental impact report before approving a project.<sup>8</sup>

CEQA requires the disclosure and analysis of both direct and reasonably foreseeable indirect significant effects of the project.<sup>9</sup> Further, it is improper for agencies to “piecemeal” the review of a project’s environmental impacts by examining only some stages of a project while omitting later stages. CEQA defines “project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”<sup>10</sup> CEQA forbids segmenting a project into separate actions in order to avoid environmental review of the “whole of the action.”

#### **A. The IS-MND Fails to Evaluate Reasonably Foreseeable Impacts**

Trio has stated openly that upon discovering oil and gas, it fully intends to drill dozens more wells to produce the estimated hundreds of millions of barrels of oil in Hames Valley. Despite the reasonably foreseeable expansion of oil and gas development, the IS-MND only analyzes the impacts from the first four wells.

By improperly and artificially limiting the scope of the analysis, the IS-MND erroneously concludes that the environmental impact of this project would be less than significant. Impacts to the environment, including air, water, geology and soil, biological resources, and climate, must include the harms that would result from Trio’s foreseeable plans to develop the area for oil and gas extraction. There is quite clearly more than a “fair argument” that Trio’s oil and gas development plans put the County’s air, water, health, and climate at risk.

In addition, Trio claims its prospects in Hames Valley include “significant recoverable natural gas,”<sup>11</sup> but the IS-MND does not adequately disclose the impacts of this gas extraction. It estimates that 50,000 cf of gas will be flared per day, but does not account for fugitive emissions from short and long term operations.

#### **B. The IS-MND Fails to Evaluate Significant Impacts to Water**

Trio’s proposed oil and gas development, as with all such projects, put surface and groundwater at risk.

The wastewater from oil and gas operations is a toxic mix of chemicals harmful to human health. A study of Kern County produced water showed high concentrations of benzene, a known carcinogen. In some samples, benzene concentrations were as high as 18.0 mg/L, thousands of

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<sup>8</sup> Cal. Pub. Res. Code §§ 21100; 21151; CEQA Guidelines § 15064(a)(1) (f)(1).

<sup>9</sup> CEQA Guidelines, § 15126.2, subd. (a), 15064, subd. (d); see also § 21080, subd. (d), 21082.2, subd. (a); Guidelines, § 15064, subd. (a)(1).

<sup>10</sup> CEQA Guidelines § 15378(a); Pub. Res. Code § 21065.

<sup>11</sup> Trio Complaint at p. 9

times above safe levels for drinking water.<sup>12</sup> Water testing in this DEIR does not disclose benzene levels for a majority of samples.

A review of fracking flowback fluid similarly found high levels of benzene, as well as other harmful chemicals such as hexavalent chromium, naphthalene, toluene, and ethylbenzene.<sup>13</sup> These tests do not fully capture the extent of the risk because drilling muds, well completion fluids, biocides, solvents, surfactants, well maintenance acids, corrosion inhibitors, lubricants, and other fluids also contain a mix of harmful chemicals. Without full disclosure of these chemicals used throughout the oil and gas development process, it is impossible for the DEIR to accurately describe the full scope of threats to our water. The chemicals used and the manner in which it is handled will also vary from site to site, making a project-level EIR for all of oil and gas untenable.

Spills and leaks occur with troubling regularity in California. One survey found that there were 575 spills of produced water from 2011 to 2014, and 18 percent of those spills affected waterways.<sup>14</sup> There were 31 chemical spills in oil fields, nine of them acid spills.<sup>15</sup> One acid spill ruptured beyond a secondary containment apparatus and spilled 5,500 gallons of hydrochloric acid.<sup>16</sup> These high rates of accidents illustrate that spills are unavoidable. The number of incidents reported is likely smaller than the number of actual spills and leaks, either because they have not yet been discovered, or operators have not reported them. The data indicate that blowout rates of thermal EOR wells is four times higher than non-thermal recovery fields.<sup>17</sup>

### **C. The MS-MND Fails to Consider Health Impacts**

A recent state-commissioned study by the CCST found that residents near active oil and gas wells are at higher risk of being exposed to harmful chemicals, and as a result have higher risk of developing health problems. Significant exposures can occur at least as far as two miles from an active well.<sup>18</sup>

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<sup>12</sup> DOGGR, *Benzene in water produced in Kern County oil fields containing fresh water* (1993).

<sup>13</sup> Julie Cart, "High levels of benzene found in fracking waste water," Los Angeles Times, February 11, 2015 available at <http://www.latimes.com/local/california/la-me-fracking-20150211-story.html>; Center for Biological Diversity Press Release: Cancer-causing Chemicals Found in Fracking Flowback From California Oil Wells (Feb. 11, 2015) available at [http://www.biologicaldiversity.org/news/press\\_releases/2015/fracking-02-11-2015.html](http://www.biologicaldiversity.org/news/press_releases/2015/fracking-02-11-2015.html)

<sup>14</sup> California Council of Science and Technology, *An Independent Scientific Assessment of Well Stimulation in California, Vol. II*. (CCST) at p. 127. (unless otherwise noted, all page references are to Volume II of the CCST SB 4 Well Stimulation report).

<sup>15</sup> CCST at 127.

<sup>16</sup> CCST at 128.

<sup>17</sup> Kern County Oil and Gas Ordinance draft Environmental Impact Report (2015) (DEIR) at 1157.

<sup>18</sup> CCST at 414



The public health risk to California is serious. About 5.4 million Californians live within *one* mile of an active oil and gas well<sup>19</sup>, within the distance scientifically shown to increase the risks to populations. Many more millions live within the 2-mile radius that studies have found to increase the risk to people's health. The risk is particularly serious for vulnerable populations more susceptible to developing health effects from pollution exposure, such as children, the elderly, or pregnant women.

A rigorous study by Johns Hopkins University, which examined 35,000 medical records of people with asthma in Pennsylvania, found that people who live near a higher number of, or larger, active gas wells were 1.5 to 4 times more likely to suffer from asthma attacks than those living farther away, with the closest groups having the highest risk.<sup>20</sup> Increased asthma risks occurred during all phases of well development. A recent Yale University study identified numerous fracking chemicals that are known, probable, or possible human carcinogens (20 air pollutants) and/or are linked to increased risk for leukemia and lymphoma (11 air pollutants), including benzene, 1,3-butadiene, cadmium, diesel exhaust, and polycyclic aromatic hydrocarbons.<sup>21</sup>

Numerous studies suggest that higher maternal exposure to fracking and drilling can increase the incidence of high-risk pregnancies, premature births, low-birthweight babies, and birth defects. A study of 9,384 pregnant women in Pennsylvania found that women who live near active drilling and fracking sites had a 40 percent increased risk for having premature birth and a 30 percent increased risk for having high-risk pregnancies.<sup>22</sup> Another study found that pregnant women who had greater exposure to gas wells (measured in terms of proximity and density of wells) had a much higher risk of having low-birthweight babies; the researchers identified air pollution as the likely route of exposure.<sup>23</sup> In rural Colorado, mothers with greater exposure to natural gas wells were associated with a higher risk of having babies with congenital heart defects and possibly neural tube defects.<sup>24</sup>

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<sup>19</sup> Natural Resources Defense Council, *Drilling in California: Who's at Risk?*, Oct. 2014, available at <http://www.nrdc.org/health/files/california-fracking-risks-report.pdf>.

<sup>20</sup> Rasmussen, Sara G. et al., Association Between Unconventional Natural Gas Development in the Marcellus Shale and Asthma Exacerbations, 176 JAMA Internal Medicine 1334 (2016).

<sup>21</sup> Elliott, Elise G. et al., A Systematic Evaluation of Chemicals in Hydraulic-Fracturing Fluids and Wastewater for Reproductive and Developmental Toxicity, 27 Journal of Exposure Science and Environmental Epidemiology 90 (2016).

<sup>22</sup> Casey, Joan A., Unconventional Natural Gas Development and Birth Outcomes in Pennsylvania, USA, 27 Epidemiology 163 (2016).

<sup>23</sup> Stacy, Shaina L. et al., Perinatal Outcomes and Unconventional Natural Gas Operations in Southwest Pennsylvania. 10 PLoS ONE e0126425 (2015).

<sup>24</sup> McKenzie, Lisa M., Birth Outcomes and Maternal Residential Proximity to Natural Gas Development in Rural Colorado, 122 Environmental Health Perspectives 412 (2014).

Other studies have found that residents living closer to drilling and fracking operations had higher hospitalization rates<sup>25</sup> and reported more health symptoms, including upper respiratory problems and rashes.<sup>26</sup>

#### **D. The IS-MND Fails to Evaluate Air Impacts**

The IS-MND does not include a complete list of potential air pollutants and potential airborne byproducts of oil and gas operations and assess the harm caused by each in order to better assess the true extent of the damage caused by the oil and gas industry.

Fugitive emissions can occur at every stage of extraction and production, often leading to high volumes of gas being released into the air. Oil and gas operations emit large amounts and a wide array of toxic air pollutants,<sup>27</sup> also referred to as Hazardous Air Pollutants, which are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects.<sup>28</sup> Air pollutants emitted by unconventional oil and gas production include toxic BTEX compounds (benzene, toluene, ethylbenzene, and xylene); volatile organic compounds (VOCs) such as methylene chloride; nitrogen oxides (NOx); particulate matter (including diesel exhaust); alkanes (methane, ethane, propane); formaldehyde; hydrogen sulfide; silica; acid mists; sulfuric oxide; and radon gas.<sup>29</sup> These toxic air contaminants and smog-forming chemicals (such as VOCs, NOx, methane and ethane) threaten local communities and regional air quality.

The reporting requirements recently implemented by the California South Coast Air Quality Management District (“SCAQMD”) have shown that at least 44 chemicals known to be air toxics have been used in fracking and other types of oil and gas operations in California.<sup>30</sup> Through the implementation of these new reporting requirements, it is now known that operators have been using several types of air toxics, including crystalline silica, methanol, hydrochloric acid, hydrofluoric acid, 2-butoxyethanol, ethyl glycol monobutyl ether, xylene, amorphous silica fume, aluminum oxide, acrylic polymer, acetophenone, and ethylbenzene. Many of these chemicals

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<sup>25</sup> Jemielita, Thomas et al., Unconventional Gas and Oil Drilling Is Associated with Increased Hospital Utilization Rates. 10 PLoS ONE e0131093 (2015).

<sup>26</sup> Rabinowitz, Peter M. et al., Proximity to Natural Gas Wells and Reported Health Status: Results of a Household Survey in Washington County, Pennsylvania, 123 Environmental Health Perspectives 21 (2015).

<sup>27</sup> Sierra Club et al. comments on New Source Performance Standards: Oil and Natural Gas Sector; Review and Proposed Rule for Subpart OOOO (Nov. 30, 2011) (“Sierra Club Comments”) at 13.

<sup>28</sup> See “About Hazardous Air Pollutants” at U.S. Environmental Protection Agency, Hazardous Air Pollutants, <https://www.epa.gov/haps> (accessed Jan 5, 2017).

<sup>29</sup> McKenzie, Lisa M. et al., Human Health Risk Assessment of Air Emissions From Development of Unconventional Natural Gas Resources, 424 Science of the Total Environment 79 (2012) (“McKenzie 2012”); Shonkoff, Seth B.C. et al., Environmental Public Health Dimensions of Shale and Tight Gas Development, 122 Environmental Health Perspectives 787 (2014) (“Shonkoff 2014”).

<sup>30</sup> Center for Biological Diversity, Air Toxics One Year Report (June 2014) at 1.

also appear on the U.S. EPA's list of hazardous air pollutants.<sup>31</sup> EPA has also identified six "criteria" air pollutants that must be regulated under the National Ambient Air Quality Standards (NAAQS) due to their potential to cause primary and secondary health effects. As detailed below, concentrations of many of these pollutants—ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide and lead—have been shown to increase in regions where unconventional oil and gas recovery techniques are permitted.

VOCs, from car and truck engines as well as the drilling and completion stages of oil and gas production, make up about 3.5 percent of the gases emitted by oil or gas operations.<sup>32</sup> The VOCs emitted include the BTEX compounds – benzene, toluene, ethyl benzene, and xylene – which are listed as Hazardous Air Pollutants.<sup>33</sup> There is substantial evidence showing the grave harm from these pollutants.<sup>34</sup> Recent studies and reports confirm the pervasive and extensive amount of VOCs emitted by unconventional oil and gas extraction.<sup>35</sup> For example, a study covering sites near oil and gas wells in five different states including Colorado, Wyoming, Ohio, Pennsylvania, and Arkansas, found that concentrations of eight toxic volatile chemicals, including benzene, formaldehyde and hydrogen sulfide, exceeded federal health and safety standards, at times by several orders of magnitude.<sup>36</sup> Another study determined that vehicle traffic and engine exhaust were likely the sources of intermittently high dust and benzene concentrations observed near well pads.<sup>37</sup> Recent studies have found that oil and gas operations are likely responsible for elevated levels of hydrocarbons such as benzene downwind of the Denver-Julesburg Fossil Fuel

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<sup>31</sup> U.S. Environmental Protection Agency, The Clean Air Act Amendments of 1990 List of Hazardous Air Pollutants, Technology Transfer Network Air Toxics Web Site, available at <http://www.epa.gov/ttnatw01/orig189.html> (accessed July 29, 2015).

<sup>32</sup> Brown, Heather, Memorandum to Bruce Moore, U.S.EPA/OAQPS/SPPD re Composition of Natural Gas for use in the Oil and Natural Gas Sector Rulemaking, July 28, 2011 ("Brown Memo") at 3.

<sup>33</sup> 42 U.S.C. § 7412(b).

<sup>34</sup> Colborn, T. et al., Natural Gas Operations from a Public Health Perspective, 17 Human and Ecological Risk Assessment 1039 (2011) ("Colborn 2011"); McKenzie 2012.

<sup>35</sup> McCawley, Michael., Air, Noise, and Light Monitoring Plan for Assessing Environmental Impacts of Horizontal Gas Well Drilling Operations (ETD-10 Project), West Virginia University School of Public Health, Morgantown, WV (2013) ("McCawley 2013"), available at <http://www.dep.wv.gov/oil-and-gas/Horizontal-Permits/legislativestudies/Documents/WVU%20Final%20Air%20Noise%20Light%20Protocol.pdf>; Center for Biological Diversity, Dirty Dozen: The 12 Most Commonly Used Air Toxics in Unconventional Oil Development in the Los Angeles Basin (Sept. 2013).

<sup>36</sup> Macey, Gregg P. et al., Air Concentrations of Volatile Compounds Near Oil and Gas Production: A Community-Based Exploratory Study, 13 Environmental Health 82 (2014) at 1.

<sup>37</sup> McCawley 2013.

Basin, north of Denver.<sup>38</sup> Another study found that oil and gas operations in this area emit approximately 55 percent of the VOCs in northeastern Colorado.<sup>39</sup>

VOCs, NO<sub>x</sub>, methane, and ethane are potent ground-level (tropospheric) ozone precursors that are emitted by oil and gas drilling and fracking operations. Ozone can result in serious health conditions, including heart and lung disease and mortality.<sup>40</sup> Exposure to elevated levels of ozone is estimated to be cause ~10,000 premature deaths per year in the United States.<sup>41</sup> VOCs can form ground-level (tropospheric) ozone when combined with nitrogen oxides (“NO<sub>x</sub>”) from compressor engines, turbines, other engines used in drilling, and flaring,<sup>42</sup> in the presence of sunlight. This reaction can diminish visibility and air quality and harm vegetation. Many regions around the country with substantial oil and gas operations are now suffering from extreme ozone levels due to heavy emissions of these pollutants.<sup>43</sup> A recent study of ozone pollution in the Uintah Basin of northeastern Utah, a rural area that experiences hazardous tropospheric ozone concentrations, found that oil and gas operations were responsible for 98 to 99 percent of VOCs and 57 to 61 percent of NO<sub>x</sub> emitted from sources within the Basin considered in the study’s inventory.<sup>44</sup> A recent assessment of oxides of nitrogen (NO<sub>x</sub>) emitted from well sites showed that operator-reported numbers, based on false and unproven assumptions, are often drastically lower than what actual emissions could be.<sup>45</sup>

Ground-level ozone can also be caused by methane, which is leaked and vented at various stages of unconventional oil and gas development, as it interacts with nitrogen oxides and sunlight.<sup>46</sup> In addition to its role as a potent greenhouse gas, methane’s effect on ozone concentrations can be

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<sup>38</sup> Pétron, G. et al., Hydrocarbon Emissions Characterization in the Colorado Front Range – A Pilot Study, 117 J. Geophysical Research D04304 (2012) at 8, 13 (“Pétron 2012”).

<sup>39</sup> Gilman, Jessica B. et al., Source Signature of Volatile Organic Compounds from Oil and Natural Gas Operations in Northeastern Colorado, 47 Environmental Science & Technology 1297 (2013) at 1297, 1303 (“Gilman 2013”).

<sup>40</sup> U.S. Environmental Protection Agency, Integrated Science Assessment (ISA) for Ozone (O<sub>3</sub>) and Related Photochemical Oxidants (2013).

<sup>41</sup> Caiazzo, Fabio et al., Air Pollution and Early Deaths in the United States. Part I: Quantifying the Impact of Major Sectors in 2005, 79 Atmospheric Environment 198 (2013).

<sup>42</sup> See, e.g., U.S. Environmental Protection Agency, Oil and Gas Sector: Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution: Background Technical Support Document for Proposed Standards at 3-6 (July 2011); Armendariz, Al, Emissions for Natural Gas Production in the Barnett Shale Area and Opportunities for Cost-Effective Improvements (2009) (“Armendariz 2009”) at 24.

<sup>43</sup> Armendariz 2009 at 1, 3, 25-26; Koch, Wendy, *Wyoming's Smog Exceeds Los Angeles' Due to Gas Drilling*, USA Today (May 9, 2011); Craft, Elena, Environmental Defense Fund, Do Shale Gas Activities Play a Role in Rising Ozone Levels? (2012); Colorado Dept. of Public Health and Environment, Conservation Commission, Colorado Weekly and Monthly Oil and Gas Statistics (July 6, 2012) at 12.

<sup>44</sup> Lyman, Seth & Howard Shorthill, Final Report: 2012 Uintah Basin Winter Ozone & Air Quality Study, Utah Department of Environmental Quality (2013) (“Lyman 2013”); see also Gilman 2013.

<sup>45</sup> Dr. Ranajit Sahu “On the Underestimation of NO<sub>x</sub> from Oil Well Drilling in Kern County, CA” (2015)

<sup>46</sup> Fiore, Arlene et al., Linking Ozone Pollution and Climate Change: The Case for Controlling Methane, 29 Geophys. Res. Letters 19 (2002) (“Fiore 2002”); U.S. Environmental Protection Agency, Oil and Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews Proposed Rule, 76 Fed. Reg. 52,738 (Aug 23, 2011).

substantial. One paper modeled reductions in various anthropogenic ozone precursor emissions and found that “[r]educing anthropogenic CH<sub>4</sub> emissions by 50% nearly halves the incidence of U.S. high-O<sub>3</sub> events . . . .”<sup>47</sup>

Ethane is also a potent precursor of ground-based ozone pollution as it breaks down and reacts with sunlight to create smog, as well as being a greenhouse gas. Ethane emissions have risen steeply in recent years due to U.S. oil and gas production. A recent study documented that ethane emissions in the Northern Hemisphere increased by about 400,000 tons annually between 2009 and 2014, with the majority coming from North American oil and gas activity, reversing a decades-long decline in ethane emissions.<sup>48</sup> Shockingly, about 60 percent of the drop in ethane levels that occurred over the past 40 years has already been made up in the past five years. At this rate, U.S. ethane levels are expected to hit 1970s levels in about three years. About two percent of global ethane emissions originate from the Bakken Shale oil and gas field alone, which emits 250,000 tons of ethane per year.<sup>49</sup> Because global ethane levels were decreasing until 2009, the U.S. shale gas boom is thought to be responsible for the global increase in levels since 2010. Oil and gas operations can also emit hydrogen sulfide. The hydrogen sulfide is contained in the natural gas and makes that gas “sour.” Hydrogen sulfide may be emitted during all stages of operation, including exploration, extraction, treatment and storage, transportation, and refining. Long-term exposure to hydrogen sulfide is linked to respiratory infections, eye, nose, and throat irritation, breathlessness, nausea, dizziness, confusion, and headaches.<sup>50</sup>

The oil and gas industry is also a major source of particulate matter. The heavy equipment regularly used in the industry burns diesel fuel, generating fine particulate matter<sup>51</sup> that is especially harmful.<sup>52</sup> Vehicles traveling on unpaved roads also kick up fugitive dust, which is particulate matter.<sup>53</sup> Further, both NO<sub>x</sub> and VOCs, which as discussed above are heavily emitted by the oil and gas industry, are also particulate matter precursors.<sup>54</sup> Some of the health effects

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<sup>47</sup> Fiore 2002; *see also* Martin, Randal et al., Final Report: Uinta Basin Winter Ozone and Air Quality Study Dec 2010 - March 2011 (2011) at 7.

<sup>48</sup> Helmig, Detlev et al., Reversal of Global Atmospheric Ethane and Propane Trends Largely Due to US Oil and Natural Gas Production, 9 *Nature Geoscience* 490 (2016).

<sup>49</sup> Kort, Eric A. et al., Fugitive Emissions From the Bakken Shale Illustrate Role of Shale Production in Global Ethane Shift, 43 *Geophysical Research Letters* 4617 (2016).

<sup>50</sup> U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Report to Congress on Hydrogen Sulfide Air Emissions Associated with the Extraction of Oil and Natural Gas (EPA-453/R-93-045) at i (Oct. 1993) (“USEPA 1993”).

<sup>51</sup> Earthworks, *Sources of Oil and Gas Pollution* (2011).

<sup>52</sup> Bay Area Air Quality Management District, *Particulate Matter Overview, Particulate Matter and Human Health* (2012).

<sup>53</sup> U.S. Environmental Protection Agency, *Regulatory Impact Analysis for the Proposed Revisions to the National Ambient Air Quality Standards for Particulate Matter* (June 2012),

[http://www.epa.gov/ttnecas1/regdata/RIAs/PMRIACombinedFile\\_Bookmarked.pdf](http://www.epa.gov/ttnecas1/regdata/RIAs/PMRIACombinedFile_Bookmarked.pdf) at 2-2, (“EPA RIA”)

<sup>54</sup> EPA RIA at 2-2.

associated with particulate matter exposure are “premature mortality, increased hospital admissions and development of chronic respiratory disease.”<sup>55</sup>

#### **E. The IS-MND Fails to Evaluate Cumulative Impacts**

The IS-MND also fails to adequately disclose the cumulative impact of this project. Already in Monterey County, there are hundreds of active production and injection wells. The aggregate effect on air quality, traffic, water quality, noise, light, greenhouse gas emissions, and habitat are significant and will only be exacerbated if Trio is allowed to add four new well pads to the county’s existing oil and gas development. Yet the IS-MND provides no meaningful analysis or even an inventory of the cumulative impact of decades’ worth of environmental degradation. Without the inclusion of the rest of Monterey County’s oil and gas extraction, the analysis of Trio’s additional wells is fails to provide the full implications of expansion and is therefore incomplete.

#### **IV. The Application and IS-MND Do Not Consider the Impacts of Extreme Extraction Techniques**

The IS-MND omits the environmental impact of enhanced oil recovery techniques that are prevalent in oil and gas operations in Monterey County. Cyclic steam injection, steam flooding, water flooding, and other dangerous injection techniques are used after the initial flow of oil and gas declines. Trio claims that these techniques are “necessary and indispensable” to their operations.<sup>56</sup> Though Trio does not propose EOR at this time, it is reasonably foreseeable that its wells will eventually undergo such operations to increase the flow of oil and gas to the surface. Neither the conditions for approval nor the mitigation measures prohibit such activities from occurring in the future.

Furthermore, although Trio claims that it does not intend to use well stimulation, hydraulic fracturing (“fracking”) and acidization were both previously used on the Bradley Minerals 2-2 wells in the vicinity. Many chemicals known to be used in well stimulation activities are associated with adverse health effects.<sup>57</sup> Well maintenance also uses scores of dangerous chemicals,<sup>58</sup> yet neither the Application nor the IS-MND discloses a list of chemicals that Trio intends to use.

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<sup>55</sup> U.S. Environmental Protection Agency, National Ambient Air Quality Standards for Particulate Matter Proposed Rule, 77 Fed. Reg. 38,890, 38,893. (June 29, 2012).

<sup>56</sup> *Trio v. County of Monterey*, Case No. 17 CV 001012, Opening Brief at p. 14.

<sup>57</sup> See., e.g., Colborn, Theo et al., Natural Gas Operations from a Public Health Perspective, 17 Human and Ecological Risk Assessment 1047 (2011); McKenzie, Lisa et al., Human Health Risk Assessment of Air Emissions from Development of Unconventional Natural Gas Resources, *Sci Total Environ* (2012) doi:10.1016/j.scitotenv.2012.02.018.

<sup>58</sup> See, e.g., Center for Biological Diversity, *The Danger Next Door* (Dec. 2017) (listing common chemicals used in acidizing used for well maintenance)

Because enhanced oil recovery and well stimulation are reasonably foreseeable future activities, the County must analyze the risks and dangers from this activity before approving the permit. As Trio itself states, “the right to drill additional wells and to conduct injection, impoundment and stimulation activities, as necessary, is a *critical* and fundamental attribute of ownership in these [Monterey County] lands.”<sup>59</sup>

Moreover, acidization has been used with increasing regularity around California. The technique involves the injection of large amounts of acid – commonly hydrochloric acid – into the well. This acid can spill or leak into the environment. Exposure to hydrochloric acid is extremely harmful. It is corrosive to the eyes, skin, and mucous membranes, and exposure to hydrochloric acid fumes can cause irritation of the respiratory system and pulmonary edema in humans.<sup>60</sup> Hydrofluoric acid is also used, and is also extremely dangerous.<sup>61</sup> These serious effects must be considered because Trio may to treat the well with acid.<sup>62</sup> These activities use largely the same toxic chemicals that are used in well stimulation operations, including hydrochloric acid, and hydrofluoric acid.<sup>63</sup> Thus, even if the use of acid is truly for “well maintenance,” many of the same dangers to public health and safety associated with using acid in enhanced recovery operations are present when a well operator conducts a well maintenance or well cleanout procedure.<sup>64</sup>

#### **V. The Application and IS-MND Fail to Disclose Which Harmful Chemicals Will Be Used**

Although the Application acknowledges the use of hazardous substances for drilling and well maintenance, the list of substances is far from complete. There are significant data gaps regarding what chemicals are used in oil and gas extraction. State disclosure requirements only cover hydraulic fracturing and other types of well stimulation. There are no disclosure requirements for drilling, well completion, well maintenance, enhanced oil recovery, and other processes.<sup>65</sup> As a result, there is little information regarding what kinds of chemicals are being used, and what risks they pose to public health and safety and the environment. Still others are

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<sup>59</sup> Trio Complaint at p. 21.

<sup>60</sup> U.S. Environmental Protection Agency, Hydrochloric Acid (Hydrogen Chloride) (Jan. 2000), <http://www.epa.gov/ttnatw01/hlthef/hydrochl.html> (“EPA Hydrochloric Acid”).

<sup>61</sup> Collier, Robert, Part 1: Distracted by Fracking?, August 8, 2013, available at <http://www.thenextgeneration.org/blog/post/monterey-shale-series-distracted-by-fracking>; Collier, Robert, Part 2: The Most Dangerous Chemical You’ve Never Heard Of, August 15, 2013, available at <http://thenextgeneration.org/blog/post/monterey-shale-series-the-most-dangerous-chemical>.

<sup>62</sup> Planning Commission Staff Report, PLN 140395 (July 30, 2014) at 5.

<sup>63</sup> See, e.g., Center for Biological Diversity & Communities for a Better Environment, SB 4 Well Stimulation Treatment Regulations, First Revised Text of Proposed Regulations, Comments submitted to Department of Conservation Division of Oil, Gas, and Geothermal Resources (July 28, 2014).

<sup>64</sup> *Id.*

<sup>65</sup> Shonkoff, Seth et al., Preliminary Hazard Assessment of Chemical Additives Used in Oil and Gas Fields that Reuse Their Produced Water for Agricultural Irrigation in The San Joaquin Valley of California, PSE Healthy Energy (2016), (“Shonkoff 2016”)

protected under claims of trade secrecy.<sup>66</sup> Even for chemicals that have been identified, many have little to no publicly available information regarding their toxicity.<sup>67</sup>

Recent studies show that drilling mud and bore waste discharge contains scores of chemicals that are harmful to human health and present a risk to water resources. Increasingly, chemicals are being added to drilling mud used to drill the bore hole. The chemicals are added to increase the density and weight of the fluids in order to facilitate boring, to reduce friction, to facilitate the return of drilling detritus to the surface, to shorten drilling time, and to reduce accidents.<sup>68</sup>

Not all chemicals used in drilling muds are known to the public, but the chemicals that have been identified are associated with serious harm to human health. A study of drilling mud in Wyoming revealed 36 chemicals, all of which having at least one harmful human health effect.<sup>69</sup> These chemicals included aluminum tristearate, Amoco-NT-45 process oil (Diesel 2), chromium, crystalline silica, distillates, drakeol, formic acid, gas oils (petroleum), lubricating oils (petroleum), monopentaerythritol, polyacrylamide/polyacrylate copolymer, sepiolite, xanthan gum.<sup>70</sup>

The health effects from exposure to these chemicals include damage to skin, eye, and sensory organs, the respiratory system, the gastrointestinal system and liver, the brain and nervous system, the immune system, kidneys, and blood and the cardiovascular system.<sup>71</sup> Chemicals found in drilling mud also have been linked to cancer, endocrine disruption, mutagenic harm, ecological harm, and other types of harm. Most chemicals have multiple health risks. A significant portion of the known chemicals can contaminate air, soil, and water through evaporation, solubility, and miscibility. Drill cuttings, which may be produced concurrently with drilling mud and other boring waste, can also contain dangerous heavy metals such as aluminum, mercury, cadmium, arsenic, chromium, copper, lead, nickel and zinc.<sup>72</sup> Exposure to these heavy metals can lead to numerous deleterious health effects for humans and wildlife. Several of these metals are listed as hazardous waste under California law.<sup>73</sup> Other chemicals possess characteristics that qualify them as hazardous waste under California law definitions.

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<sup>66</sup> Shonkoff 2016 at 7 (finding 38 percent of chemicals withheld from disclosure to California Regional Water Quality Control Board investigation).

<sup>67</sup> *Id.* at 13.

<sup>68</sup> Colborn, Theo, *Natural Gas from a Public Health Perspective*, Human Ecol. Risk Assess. Vol. 17, 1039, 1044 (Sept. 2011) (“Colborn 2011”)

<sup>69</sup> Colborn, Theo, Written Testimony before the House Committee on Oversight and Government Reform, hearing on the Applicability of Federal Requirements to Protect Public Health and the Environment from Oil and Gas Development (Oct. 31, 2007) Appendix C, p. 1.

<sup>70</sup> See Colborn and Schultz, Chart listing chemicals found in drilling and drilling muds.

<sup>71</sup> Colborn 2011 at 1048

<sup>72</sup> U.S. Environmental Protection Agency, Ocean Discharge Evaluation for Beaufort Exploration NPDES General Permit (Oct. 2012) p. 3-6, Table 3-3.

<sup>73</sup> See, e.g., 22 Cal. Code Reg. § 66261.24 (listing several chemicals considered hazardous waste).



Drilling muds and boring waste may also contain naturally occurring radioactive material (“NORMs”) that are brought to the surface through drilling. Radioactive material such as radium has been discovered where oil drilling has occurred.<sup>74</sup> In fact, the use of horizontal or directional drilling, which Trio acknowledges it may use, may increase the amount of radioactive material brought to the surface in drill cuttings and drilling muds.<sup>75</sup> These too can potentially harm humans and wildlife through prolonged exposure.

More fundamentally, there are significant data gaps regarding what chemicals are used in oil and gas extraction. State disclosure requirements only cover hydraulic fracturing and other types of well stimulation. There are no disclosure requirements for drilling, well completion, well maintenance, enhanced oil recovery, and other processes.<sup>76</sup> As a result, there is little information regarding what kinds of chemicals are being used, and what risks they pose to public health and safety and the environment. Still others are protected under claims of trade secrecy.<sup>77</sup> Even for chemicals that have been identified, many have little to no publicly available information regarding their toxicity.<sup>78</sup>

Where, as here, there is substantial evidence to support a fair argument that drilling mud discharges may have a significant effect on the environment, preparation of an EIR is required.<sup>79</sup> This “fair argument” test “establishes a low threshold for initial preparation of an EIR, which reflects a preference for resolving doubts in favor of environmental review.”<sup>80</sup>

## **VI. The Biological Opinion Does Not Include Recent Sightings of a Fully Protected Species.**

The IS-MND’s conclusion that impacts to biological resources is not supported. For example, the IS-MND asserts that impacts to the golden eagle, a Fully Protected Species under California law, are less than significant. It points to a biological opinion that concluded that the species was did not occur in the area. However, a more recent survey sighted the golden eagle in the project area, indicating that the area is occupied or used for foraging by this species.<sup>81</sup>

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<sup>74</sup> Morgan, Rachel, “Isn’t This Radiation Naturally Occurring?” Timesonline.com (Jan. 27, 2013); Warner et al. “Impacts of Shale Gas Wastewater Disposal on Water Quality in Western Pennsylvania” Environ. Sci. Technol. (Oct. 2013) available at <http://pubs.acs.org/doi/pdf/10.1021/es402165b>.

<sup>75</sup> See White, E. Ivan, “Consideration of Radiation in Hazardous Waste Produced from Horizontal Hydrofracking” (October 2012).

<sup>76</sup> Shonkoff, Seth et al., Preliminary Hazard Assessment of Chemical Additives Used in Oil and Gas Fields that Reuse Their Produced Water for Agricultural Irrigation in The San Joaquin Valley of California, PSE Healthy Energy (2016), (“Shonkoff 2016”)

<sup>77</sup> Id. at 7 (finding 38 percent of chemicals withheld from disclosure to California Regional Water Quality Control Board investigation.

<sup>78</sup> Id. at 13.

<sup>79</sup> Pub. Res. Code §§ 21100, 21151; CEQA Guidelines § 15064(a)(1), (f)(1); *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.*, 48 Cal. 4th 310, 319 (2010); *No Oil, Inc.*, 13 Cal. 3d at 82.

<sup>80</sup> *Architectural Heritage Assn. v. County of Monterey*, 122 Cal. App. 4th 1095 (2004).

<sup>81</sup> Application at p. 43 [golden eagle observed during March 9, 2017 site visit]

There is also a fair argument that the project will harm other special status species listed in the biological survey as occurring or potentially occurring in the project area.

## **VII. The Application Is Inconsistent with the Need to Reduce Greenhouse Gas Emissions**

Current science establishes that substantial GHG emission reductions are necessary through at least 2050 to preserve any reasonable chance of avoiding the worst impacts of climate change. This science-based approach is reflected in California climate policy. AB 32 sets a target of reducing the state's greenhouse gas emissions to 1990 levels by 2020. Taking into consideration the persistent nature of GHGs and their lasting impacts on climate, Executive Orders S-3-05 and B-30-15 lay out a roadmap for steep reductions in statewide GHG emissions extending to mid-century: 40 percent below 1990 levels by 2030, and 80 percent below 1990 levels by 2050.

At a time when the state needs to be *reducing* its carbon emissions, approving the Trio Application would lead us in exactly the wrong direction by *increasing* greenhouse gas emissions. Moreover, the IS-MND's greenhouse gas analysis does not factor in the dozens of new production wells that could be drilled as a result of *these* exploratory wells. Nor does it account for the methane leakage that is inevitable at well sites with natural gas. Finally, the greenhouse gas emissions that will result from transporting, refining and combusting the extracted oil and gas will only add to the greenhouse gas footprint of this proposed project. Moreover, it is unclear whether the Commission's GHG estimates per well include fugitive emissions, EOR, well stimulation, or plugging and abandonment. The IS-MND emissions factors are not evident.

The less-than-significant finding also improperly relies on the premise that Trio's project is limited to four wells. When the totality of Trio's project is considered, the greenhouse gas emissions will far exceed the Commission's threshold for significance.

Moreover, it is well-recognized that the engines of economic growth in the energy industry are in the very renewable energy sources that will be central to achieving a greenhouse gas NAAQS standard. Thus, for example, solar jobs are growing faster than any other job sector, and wind and solar energy continue to account for the largest areas of new energy growth across the economy.<sup>82</sup>

The urgent need to prevent the worst impacts of climate change means that the world in general – and California in particular – cannot afford to invest in new fossil fuel development and infrastructure that locks in carbon intensive oil production for years into the future.

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<sup>82</sup> See MIT Technology Review, Jan. 8, 2018 (explaining that renewables “will be the fastest-growing professions by percentage over the next 10 years”) (available at <https://www.technologyreview.com/s/609644/five-jobs-that-are-set-to-grow-in-2018/>)

A robust body of scientific research has established that most fossil fuels must be kept in the ground to avoid the worst dangers of climate change. The severe impacts of global warming from the 1°C warming that the planet has already experienced highlight the urgency for stronger climate action to avoid truly catastrophic dangers to people and planet. Human-caused climate change is already causing widespread damage from intensifying global food and water insecurity, the increasing frequency of heat waves and other extreme weather events, flooding of coastal regions by sea level rise and increasing storm surge, the rapid loss of Arctic sea ice and Antarctic ice shelves, increasing species extinction risk, and the worldwide collapse of coral reefs.<sup>83</sup> The Third National Climate Assessment makes clear that “reduc[ing] the risks of some of the worst impacts of climate change” will require “aggressive and sustained greenhouse gas emission reductions” over the course of this century.<sup>84</sup>

The United States has committed to the climate change target of holding the long-term global average temperature “to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels”<sup>85</sup> under the Paris Agreement.<sup>86</sup> The United States signed the Paris Agreement on April 22, 2016 as a legally binding instrument through executive agreement,<sup>87</sup> and the treaty entered into force on November 4, 2016. The Paris Agreement codifies the international consensus that climate change is an “urgent threat” of global concern.<sup>88</sup> The Agreement also requires a “well below 2°C” climate target because 2°C of warming is no longer considered a safe guardrail for avoiding catastrophic climate impacts and runaway climate change.<sup>89</sup>

Immediate and aggressive greenhouse gas emissions reductions are necessary to keep warming well below 2°C rise above pre-industrial levels. The IPCC Fifth Assessment Report and other

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<sup>83</sup> Melillo, Jerry M., “Climate Change Impacts in the United States: The Third National Climate Assessment,” Terese (T.C.) Richmond, and Gary W. Yohe, Eds., U.S. Global Change Research Program, (2014).

<sup>84</sup> Melillo, Jerry M., at 13, 14, and 649.

<sup>85</sup> See United Nations Framework Convention on Climate Change, Conference of the Parties, Nov. 30-Dec. 11, 2015, Adoption of the Paris Agreement Art. 2, U.N. Doc. FCCC/CP/2015/L.9 (Dec. 12, 2015), <http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf> (“Paris Agreement”).

<sup>86</sup> On December 12, 2015, 197 nation-state and supra-national organization parties meeting in Paris at the 2015 United Nations Framework Convention on Climate Change Conference of the Parties consented to the Paris Agreement committing its parties to take action so as to avoid dangerous climate change.

<sup>87</sup> See United Nations Treaty Collection, Chapter XXVII, 7.d Paris Agreement, List of Signatories (2015); U.S. Department of State, Background Briefing on the Paris Climate Agreement (Dec. 12, 2015). Although not every provision in the Paris Agreement is legally binding or enforceable, the U.S. and all parties are committed to perform the treaty commitments in good faith under the international legal principle of *pacta sunt servanda* (“agreements must be kept”). Vienna Convention on the Law of Treaties, Art. 26.

<sup>88</sup> *Id.*

<sup>89</sup> See Paris Agreement, at Recitals.

<sup>89</sup> See the comprehensive scientific review under the United Nations Framework Convention on Climate Change (UNFCCC) of the global impacts of 1.5°C versus 2°C warming: U.N. Subsidiary Body for Scientific and Technological Advice, “Report on the Structured Expert Dialogue on the 2013-2015 review,” FCCC/SB/2015/INF.1 (2015), <http://unfccc.int/resource/docs/2015/sb/eng/inf01.pdf>; Schleussner, Carl-Friedrich, et al., Differential climate impacts for policy-relevant limits to global warming: the case of 1.5C and 2C, 7 Earth Systems Dynamics 327 (2016).

expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, total cumulative anthropogenic emissions of CO<sub>2</sub> must remain below about 1,000 gigatonnes (GtCO<sub>2</sub>) from 2011 onward for a 66 percent probability of limiting warming to 2°C above pre-industrial levels, and to 400 GtCO<sub>2</sub> from 2011 onward for a 66 percent probability of limiting warming to 1.5°C.<sup>90</sup> These carbon budgets have been reduced to 850 GtCO<sub>2</sub> and 240 GtCO<sub>2</sub>, respectively, from 2015 onward.<sup>91</sup> Given that global CO<sub>2</sub> emissions in 2015 alone totaled 36 GtCO<sub>2</sub>,<sup>92</sup> humanity is rapidly consuming the remaining carbon budget.

According to a large body of scientific research, the vast majority of global and US fossil fuels must stay in the ground in order to hold temperature rise to well below 2°C.<sup>93</sup> Studies estimate that 68 to 80 percent of global fossil fuel reserves must not be extracted and burned to limit temperature rise to 2°C based on a 1,000 GtCO<sub>2</sub> carbon budget.<sup>94</sup> For a 50 percent chance of limiting temperature rise to 1.5°C, 85 percent of known fossil fuel reserves must stay in the ground.<sup>95</sup> Effectively, fossil fuel emissions must be phased out globally within the next few decades.<sup>96</sup>

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<sup>90</sup> IPCC, “2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change; Summary for Policymakers (2013), at 25; IPCC, Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, R.K. Pachauri and L.A. Meyer (eds.) (2014), at 63-64 and Table 2.2.

<sup>91</sup> Rogelj, Joeri et al., Differences between carbon budget estimates unraveled, 6 *Nature Climate Change* 245 (2016), at Table 2.

<sup>92</sup> See Le Quéré, Corinne et al., Global Carbon Budget 2016, 8 *Earth Syst. Sci. Data* 605 (2016), [www.globalcarbonproject.org/carbonbudget/16/data.htm](http://www.globalcarbonproject.org/carbonbudget/16/data.htm).

<sup>93</sup> The IPCC estimates that global fossil fuel reserves exceed the remaining carbon budget for staying below 2°C by 4 to 7 times, while fossil fuel resources exceed the carbon budget for 2°C by 31 to 50 times. See Bruckner, Thomas et al., Ch. 7: 2014: Energy Systems, in *Climate Change 2014: Mitigation of Climate Change, Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2014), [http://ipcc.ch/pdf/assessment-report/ar5/wg3/ipcc\\_wg3\\_ar5\\_chapter7.pdf](http://ipcc.ch/pdf/assessment-report/ar5/wg3/ipcc_wg3_ar5_chapter7.pdf), at Table 7.2.

<sup>94</sup> To limit temperature rise to 2°C based on a 1,000 GtCO<sub>2</sub> carbon budget from 2011 onward, studies indicate variously that 80 percent (Carbon Tracker Initiative, *Unburnable Carbon – Are the world’s financial markets carrying a carbon bubble?* (2013) (“Carbon Tracker Initiative 2013”), <http://www.carbontracker.org/wp-content/uploads/2014/09/Unburnable-Carbon-Full-rev2-1.pdf>), 76 percent (Raupach, Michael et al., “Sharing a quota on cumulative carbon emissions,” 4 *Nature Climate Change* 873 (“Raupach 2014”), and 68 percent (Oil Change International, *The Sky’s Limit: Why the Paris Climate Goals Require A Managed Decline of Fossil Fuel Production*, (September 2016) (“Oil Change International 2016”)) of global fossil fuel reserves must stay in the ground. See Carbon Tracker Initiative 2013; Raupach 2014; Oil Change International 2016.

<sup>95</sup> Oil Change International 2016 at 6.

<sup>96</sup> Joeri Rogelj et al. (2015) estimated that a reasonable likelihood of limiting warming to 1.5° or 2°C requires global CO<sub>2</sub> emissions to be phased out by mid-century and likely as early as 2040-2045. See Rogelj, Joeri et al., Energy system transformations for limiting end-of-century warming to below 1.5°C, 5 *Nature Climate Change* 519 (2015). Climate Action Tracker indicated that the United States must phase out fossil fuel CO<sub>2</sub> emissions

A 2016 analysis found that potential carbon emissions from developed reserves in currently operating oil and gas fields and mines would lead to global temperature rise beyond 2°C.<sup>97</sup> Excluding coal, currently operating oil and gas fields alone would take the world beyond 1.5°C.<sup>98</sup> To stay well below 2°C, the clear implication is that no new fossil fuel extraction or transportation infrastructure should be built, and governments should grant no new permits for new fossil fuel extraction and infrastructure.<sup>99</sup> Moreover, some fields and mines, primarily in rich countries, must close before fully exploiting their resources. The analysis concludes that, because “existing fossil fuel reserves considerably exceed both the 2°C and 1.5°C carbon budgets[, i]t follows that exploration for new fossil fuel reserves is at best a waste of money and at worst very dangerous.”<sup>100</sup>

### **VIII. Commenters Request to Be Added to the Planning Commission’s “List of Interested Persons”**

It does not appear as though either is included on the “List of Interested Persons” that received notification of Trio’s Application when it was first submitted on July 1, 2017. Both Protect Monterey County and the Center for Biological Diversity have a strong and longstanding interest in protecting the water, air, and land in Monterey County from the dangers of oil and gas activity. As such, the Commission should notify both stakeholders when oil and gas projects are proposed in the County. Protect Monterey County and the Center for Biological Diversity both request that they be added to the List of Interested Persons and be notified of future developments pertaining to this and other oil and gas projects.

### **IX. Conclusion**

On behalf of Protect Monterey County and the Center for Biological Diversity, and supporters of Measure Z, we thank the Commissioners for denying this ill-conceived Application. The long term impacts are not aligned with Monterey County’s path toward a safer, healthier, and sustainable future. We urge the Commission to adopt the staff’s draft resolution to deny the Trio Application.

Thank you for showing strong leadership on this matter.

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even earlier—between 2025 and 2040—for a reasonable chance of staying below 2°C. *See, e.g.* Climate Action Tracker, “USA” (last updated 25 January 2017), <http://climateactiontracker.org/countries/usa>

<sup>97</sup> Oil Change International 2016 at 5.

<sup>98</sup> *Id.*, at 5.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*, at 17.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hollin Kretzmann", with a horizontal line drawn through the middle of the signature.

Hollin Kretzmann  
Staff Attorney  
Center for Biological Diversity  
1212 Broadway Suite 800  
Oakland, CA 94612

A handwritten signature in cursive script, appearing to read "Hollin Kretzmann", with a horizontal line drawn through the middle of the signature. The word "for" is written in small letters below the signature.

Dr. Laura Solorio, MD  
President  
Protect Monterey County

## McDougal, Melissa x5146

---

**From:** Beretti, Melanie x5285  
**Sent:** Tuesday, January 30, 2018 12:18 PM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: short term rentals

#2

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA NO.	STR-compliance
DATE RECEIVED	1/30/18
SUBMITTED BY/VIA	Public Email
DISTRIBUTION TO/DATE	PC 1/30
DATE OF HEARING	1/31/18

---

**From:** MARGARET E ROBBINS [mailto:mm\_robbins@comcast.net]  
**Sent:** Tuesday, January 30, 2018 12:06 PM  
**To:** Martha Diehl <mvdiehl@mindspring.com>; keith vandevere <kvandevere@gmail.com>  
**Cc:** Beretti, Melanie x5285 <BerettiM@co.monterey.ca.us>; Katie Coburn <Coburn.Katie@yahoo.com>  
**Subject:** short term rentals

In 18 months of meetings the working group only agreed on two things. 1. the mission statement and 2. TOT was to be used for code enforcement. I believe the mission statement in words about preserving property rights. without code enforcement this will not be possible. Can't attend tomorrow's meeting so i want to go firmly on the record that I find the staff report !@@#\$!!!!!! margaret robbins  
PS Let marijuana raise it's own \$ for their own code enforcement.

## McDougal, Melissa x5146

**From:** Onciano, Jacqueline x5193  
**Sent:** Tuesday, January 30, 2018 9:42 AM  
**To:** McDougal, Melissa x5146  
**Subject:** FW: STR hearing January 31 re enforcement

# 2

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA NO.	STR - Compliance
DATE RECEIVED	1-29-18
SUBMITTED BY/VIA	Public / Email
DISTRIBUTION TO/DATE	PC / 1/30
DATE OF HEARING	1/31/18

Hi Melissa:

Please make sure this is part of the record and distributed to the Planning commissioners.

Jacque O.

*~Jacqueline R. Onciano  
RMA Chief of Planning  
Land Use & Community Development*

*Monterey County Resource Management Agency  
1441 Schilling Place, 2nd Floor  
Salinas, CA 93901  
Office: (831) 755-5193  
Fax: (831) 757-9516  
[oncianoj@co.monterey.ca.us](mailto:oncianoj@co.monterey.ca.us)*

---

**From:** Beretti, Melanie x5285  
**Sent:** Monday, January 29, 2018 2:27 PM  
**To:** Michelle Alway <michellealway@gmail.com>  
**Cc:** Bowling, Joshua x5227 <BowlingJ@co.monterey.ca.us>; Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Bauman, Lew x5113 <baumanl@co.monterey.ca.us>; Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>; 100-District 5 (831) 647-7755 <district5@co.monterey.ca.us>; Martha V Diehl <mvdiehl@mindspring.com>; Vandever, Keith <VandeverK@co.monterey.ca.us>; Ambriz, Ana <AmbrizA1@co.monterey.ca.us>; Duflock, Melissa <DuflockM1@co.monterey.ca.us>; Getzelman, Paul C. <GetzelmanPC@co.monterey.ca.us>; Mendez, Jose <MendezJ@co.monterey.ca.us>; Padilla, Cosme <PadillaC1@co.monterey.ca.us>; mendozaf@co.monterey.ca.us; Wizard, Jonathan <WizardJ@co.monterey.ca.us>  
**Subject:** Re: STR hearing January 31 re enforcement

Received

Sent from my iPhone

On Jan 29, 2018, at 2:19 PM, Michelle Alway <[michellealway@gmail.com](mailto:michellealway@gmail.com)> wrote:

I would like to make this part of the record for the January 31, 2018 hearing re STRs:



It has been evident from past operations of STRs that the County cannot keep up with necessary enforcement of STRs. Just look at the various STR websites and you will see that many of those who have received a courtesy letter, and even some with warnings of fines are still operating multiple times per month. They know that the County does not have resources to enforce. Some have been doing this for years and years.

If you do consider an ordinance allowing STRs even with restrictions, it is imperative that you find and allocate the money to increase staff for enforcement.

You can't open a can of worms without owning a fishing pole.

We can look to other cities to see what they have done as a result of realizing that enforcement must be a part of any proposed ordinance allowing STRs. Otherwise our neighborhood will deteriorate, and in essence, the zoning changed and home values decreased. We can learn from other cities as to what they are doing to help correct an obviously problem.

### **New Orleans**

The director of the city's Office of Safety and Permits said he has a staff of seven people to oversee the implementation of the short term rental ordinances. That staff, he said, reviews online listings and short-term rental license applications and keeps its eyes open for infractions.

"We have inspection staff in the field making observations. We're looking for places that seem to have indicators there may be short-term rentals going on, and we're also patrolling the websites."

Because the short-term rental citations are land use violations, a violator would receive notice of a citation and, if the violation continues, that would be followed by a scheduled hearing. If the landowner is found guilty, fines could be levied

New Orleans officials say they're about to step up short-term rental enforcement using administrative subpoenas. The city budgeted about \$727,000 in additional funds for Munster's department last year in anticipation of short-term rentals becoming legal on April 1. The money was mostly used for personnel, including the hiring of seven people, including three enforcement officers.

### **West Hollywood**

On September 21, 2015, the West Hollywood City Council adopted ordinance 15-958 which further clarifies the City's long-standing prohibition of short term vacation rentals in the City. This ordinance went into effect on October 21, 2015, and includes:

1. No person shall rent a dwelling unit, or part of a dwelling unit, to anybody, for a period of 30 days or less. All rentals must be for 31 or more days.
2. The advertising of this activity is also prohibited. Flyers, posters, emails, online ads, and the like, are all prohibited.

While short-term rentals may provide benefits to individual residents, strong concerns were raised by community members during the Task Force review process about quality-of-life and public safety impacts of short-term rentals, as well as the effect of short-term rentals on affordable housing in West Hollywood.

**How the City responds to complaints:**

When Code Compliance receives a complaint about this issue, a case will be generated and the enforcement process will begin. The following is a general guideline on how enforcement will proceed.

Step 1 - A warning notice will be issued to the tenant or property owner informing them that they are in violation of the prohibition on short-term rentals. They will be given 30 days to take the appropriate steps to correct the violation. This means the immediate stoppage of short term rentals and the taking down of any advertisement for such an activity.

Step 2 - A letter will be issued to the complainant informing them of the case # and what can be expected to take place in the coming days and weeks.

Step 3 - If the violation continues, citations will be issued to the violating party. These fines will begin at 400% of the advertised rental rate and go up to 800%. Advertised Rental Rate shall be defined as the advertised nightly rate multiplied by the minimum number of nights required to rent the dwelling or part of the dwelling. The Advertised Rental Rate shall not include deposits or ancillary fees.

For ads that do not have a listed rental price, fines range from \$1000.00 to \$5000.00.

Step 4 - Although we do not anticipate the need to do so, continued non-compliance may result in this matter being referred to the City Prosecutor's Office for criminal prosecution.

**Denver**

Some City Council members worried that homes and apartments that would otherwise be long-term rentals were instead being rented to tourists.

the city now contracts with **a data-harvesting company**.

**Newport Beach**

Newport Beach beefs up enforcement of short-term rentals

the city partnered with San Francisco-based Host Compliance, which reviews rental listings on several websites and can reveal who is renting a property without proper permits.

"They're giving us what they believe are the questionable listings and then we're drilling down further doing the cross-checking to see whether it's a valid listing or not.

**Lake Oswego**

Lake Oswego outlines enforcement plan for short-term rentals plan unveiled calls for the City to proactively seek out and warn violators, rather than wait to respond to complaints.

Councilors asked whether the City had the staff capacity to work through the backlog of cases that would likely result from the new model, and Siegel replied that it probably does. He added that, coincidentally, the City is currently in the process of expanding its planning code enforcement team.

### **Charleston**

Enforcement becomes key concern for Charleston's Short-Term Rental Task Force  
With a slew of short-term rental properties already operating outside of Charleston's currently established rules, a major point of concern for Charleston's Short-Term Rental Task Force has been the issue of enforcement.

Tasked with crafting a set of recommendations that will serve as the basis for Charleston's new short-term rental guidelines, the group always arrives at the same question — What do the rules matter if the city is unable to hold residents accountable? According to Lee Batchelder, Charleston's zoning administrator, the task force's concerns are valid.

### **Nashville**

Metro Establishes Short Term Rental Complaint Hotline

The Metropolitan Government of Nashville and Davidson County has established a hotline for reporting illegal short-term rental properties and for reporting noise, parking, trash and other nuisance complaint pertaining to specific short term rental properties. To file a report, go to: <https://hostcompliance.com/tips> or you may call 435-787-4357, **24 hours per day, 7 days per week**. All request for service / complaints related to short term rental property violations should be reported through this hotline.

### **Santa Fe**

Land Use Director Lisa D. Martinez said that a supervisory position and two code enforcement officers were authorized. The job descriptions had to be created, she said. That has been done and all three jobs are being advertised with the expectation of new hires by the end of June, Martinez said. She added that the office has purchased software that matches permitted units with those being advertised, so it will be easier to find non-permitted units and then issue citations.

Respectfully submitted,  
Michelle Alway  
Carmel Highlands

## McDougal, Melissa x5146

**From:** Beretti, Melanie x5285  
**Sent:** Monday, January 29, 2018 4:47 PM  
**To:** McDougal, Melissa x5146  
**Subject:** Fwd: Comments on Enforcement Staff Report:  
<https://preservemontereyneighborhoods.community/no-meaningful-enforcement-of-current-ordinances-and-draft-ordinance-is-much-more-complex-and-difficult-to-enforce/>

Sent from my iPhone

Begin forwarded message:

**From:** Callie Williams <callierwilliams@icloud.com>  
**Date:** January 29, 2018 at 4:40:12 PM PST  
**To:** Robert Danziger <bobdanziger@mac.com>  
**Cc:** "Beretti, Melanie x5285" <BerettiM@co.monterey.ca.us>, Supervisor Mary Adams <district5@co.monterey.ca.us>, Stewart Winona <winonas@sbcglobal.net>, Lynne Boyd <lboyd456@aol.com>, Gwyn De Amaral <preservecarmelhighlands@gmail.com>, Lorraine Oshea <lorrainekoshea@gmail.com>, Todd Norgaard <toddnorg@aol.com>, linda norgaard <lindanorg@aol.com>, Kate Hardy <hbodyk@sbcglobal.net>, Alan Laschiver <alaschiver@aol.com>, Gary Cursio <GCursio@CGCLLC.org>, Adrienne Berry <yankeebeach@sbcglobal.net>, "R. Michael Wisner" <wizman@earthlink.net>, Michelle Alway <michellealway@gmail.com>, Priscilla Walton <priswalton@sbcglobal.net>, kenneth Wright <krwbigsur@gmail.com>, Big Sur LCP Defense Committee <bigsurlcp@gmail.com>, Joseph Bileci <j.e.bileci@gmail.com>, <endosea@prodigy.net>, Magnus Toren <magnus@henrymiller.org>, Katie Coburn <coburn.katie@yahoo.com>, Voices of Monterey Bay <admin@voicesofmontereybay.org>, "Mary Trotter (quailmeadows@gmail.com)" <quailmeadows@gmail.com>, John Cluett <marblepeak@madriver.com>, Mark O'Shea <moshea@csumb.edu>, "Steve Beck (stevebeck2@gmail.com)" <stevebeck2@gmail.com>, Jimmy Panetta <jimmypanettaforcongress@gmail.com>, Ben Heinrich <Ben@benheinrich.com>  
**Subject: Re: Comments on Enforcement Staff Report:**  
<https://preservemontereyneighborhoods.community/no-meaningful-enforcement-of-current-ordinances-and-draft-ordinance-is-much-more-complex-and-difficult-to-enforce/>

#2

<b>HEARING SUBMITTAL</b>	
PROJECT NO/AGENDA NO:	STR-Compliance
DATE RECEIVED:	1/29/18
SUBMITTED BY/VIA:	Public / email
DISTRIBUTION TO/DATE:	PC / 1/30
DATE OF HEARING:	1/31/18

Thank you! This new ordinance does NOTHING to help those who have the misfortune of already living next to someone with a "use" permit. According to Melanie, those who already have a "use" permit will be allowed to continued to rent as they do now and the permit will easily change hands if the owner wants to sell.

This does not help those who live in an area full time!!

Sent from my iPhone

On Jan 29, 2018, at 4:24 PM, Robert Danziger <bobdanziger@mac.com> wrote:

Please respond to the comments below:

The disclosure that resources do not exist to enforce the existing ordinances explains the lack of response to our many complaints and concerns. This is a huge problem, in effect requiring the neighbors to police STR's in their neighborhoods. This is something

we seriously do not want to have to do. When we take pictures or otherwise assemble the data that your department has requested from us we are labelled "vigilantes" and much neighborhood conflict ensues. And then, after the data is assembled, nothing happens.

This calls in to question the entire premise of the rulemaking to allow STR's, and most certainly invalidates all of the focus group data you rely on. The focus group was specifically and unequivocally promised that there would be adequate resources to enforce a new ordinance. The facts turn out to be otherwise. Many participants in the focus group are also upset because they were explicitly and repeatedly promised that adequate enforcement resources exist and would be applied to any final rule. It was a fundamental premise of the scenarios they were asked to consider.

**And now you propose a draft ordinance that will be infinitely more difficult and time consuming to enforce.**

**The draft ordinance is fundamentally unenforceable.** Staffer Melanie Berretti is quoted as saying the reason they have to do a one-size fits all ordinance is that they do not have the staff to consider area by area differences. This is no reason to write an ordinance without considering any of the serious negatives of STR's that have been raised repeatedly in public comment. This is no reason not to study the unique issues of Highway 1, or Carmel Valley.

- The draft ordinance has noise limits. Will you have officers available to measure noise levels after 10 pm 5 or 6 days a week which is when the violations occur? The draft ordinance is unenforceable.
- The draft ordinance has limits on the number of renters: Will you have officers watching the coming and going of guests to count whether there are too many? What do you expect the neighbors to do? What types of proofs will satisfy you, and can neighbors legally obtain them? The draft ordinance is unenforceable.
- The draft ordinance require the owner to live on-site. How do you expect to be able to prove or disprove their presence without having someone inside the rental? The draft ordinance is unenforceable.
- The draft ordinance requires an owner who lives there. How do intend to prove that an applying owner isn't merely an employee of a trust or corporation who is beholden to them and not a real neighbor, a real part of the community? This has become a huge problem in city after city where STR "Home Stays" are allowed. It is a difficult thing to prove for sophisticated financial regulators as large legal resources are deployed by STR investment groups to circumvent the letter of the laws. The draft ordinance is unenforceable.
- Under the draft ordinance a use permit after some procedure is required and appeals are allowed. I can promise you now that in the Highlands that many if

not the vast majority of use applications will be contested, and appealed should we lose. This will require major resources from the County, and tremendous time from Commission staff. Where are those resources going to come from? The draft ordinance is unenforceable.

You are not considering what is best for Monterey County, you are doing something that is bad policy, violates at least three LCP's or LUP's, and ignores serious adverse environmental consequences in order to fit something within the drafting resources of the County, but with no enforcement to back it up.

***This process should be stopped. And only re-started when the resources are there to draft and enforce an ordinance that actually makes sense for our community.***



## McDougal, Melissa x5146

**From:** Beretti, Melanie x5285  
**Sent:** Monday, January 29, 2018 4:47 PM  
**To:** McDougal, Melissa x5146  
**Subject:** Fwd: Comments on Enforcement Staff Report:  
<https://preservemontereyneighborhoods.community/no-meaningful-enforcement-of-current-ordinances-and-draft-ordinance-is-much-more-complex-and-difficult-to-enforce/>

Sent from my iPhone

Begin forwarded message:

<b>HEARING SUBMITTAL</b>	
PROJECT NO/AGENDA NO	STR-Compliance
DATE RECEIVED	1-29-18
SUBMITTED BY/VIA	Public email
DISTRIBUTION TO-DATE	PC / 1/30
DATE OF HEARING:	1/31/18

**From:** Robert Danziger <[bobdanziger@mac.com](mailto:bobdanziger@mac.com)>

**Date:** January 29, 2018 at 4:24:07 PM PST

**To:** "Beretti, Melanie x5285" <[BerettiM@co.monterey.ca.us](mailto:BerettiM@co.monterey.ca.us)>, Supervisor Mary Adams <[district5@co.monterey.ca.us](mailto:district5@co.monterey.ca.us)>

**Cc:** Stewart Winona <[winonas@sbcglobal.net](mailto:winonas@sbcglobal.net)>, Lynne Boyd <[lboyd456@aol.com](mailto:lboyd456@aol.com)>, Gwyn De Amaral <[preservecarmelhighlands@gmail.com](mailto:preservecarmelhighlands@gmail.com)>, Lorraine Oshea <[lorrainekoshea@gmail.com](mailto:lorrainekoshea@gmail.com)>, Callie Williams <[callierwilliams@icloud.com](mailto:callierwilliams@icloud.com)>, Todd Norgaard <[toddnorg@aol.com](mailto:toddnorg@aol.com)>, linda norgaard <[lindanorg@aol.com](mailto:lindanorg@aol.com)>, Kate Hardy <[hbodyk@sbcglobal.net](mailto:hbodyk@sbcglobal.net)>, Alan Laschiver <[alaschiver@aol.com](mailto:alaschiver@aol.com)>, Gary Cursio <[GCursio@CGCLLC.org](mailto:GCursio@CGCLLC.org)>, Adrienne Berry <[yankeebeach@sbcglobal.net](mailto:yankeebeach@sbcglobal.net)>, "R. Michael Wisner" <[wizman@earthlink.net](mailto:wizman@earthlink.net)>, Michelle Alway <[michellealway@gmail.com](mailto:michellealway@gmail.com)>, Priscilla Walton <[priswalton@sbcglobal.net](mailto:priswalton@sbcglobal.net)>, kenneth Wright <[krwbigsur@gmail.com](mailto:krwbigsur@gmail.com)>, Big Sur LCP Defense Committee <[bigsurlcp@gmail.com](mailto:bigsurlcp@gmail.com)>, Joseph Bileci <[j.e.bileci@gmail.com](mailto:j.e.bileci@gmail.com)>, <[endosea@prodigy.net](mailto:endosea@prodigy.net)>, Magnus Toren <[magnus@henrymiller.org](mailto:magnus@henrymiller.org)>, Katie Coburn <[coburn.katie@yahoo.com](mailto:coburn.katie@yahoo.com)>, Voices of Monterey Bay <[admin@voicesofmontereybay.org](mailto:admin@voicesofmontereybay.org)>, "Mary Trotter ([quailmeadows@gmail.com](mailto:quailmeadows@gmail.com))" <[quailmeadows@gmail.com](mailto:quailmeadows@gmail.com)>, John Cluett <[marblepeak@madriver.com](mailto:marblepeak@madriver.com)>, Mark O'Shea <[moshea@csumb.edu](mailto:moshea@csumb.edu)>, "Steve Beck ([stevebeck2@gmail.com](mailto:stevebeck2@gmail.com))" <[stevebeck2@gmail.com](mailto:stevebeck2@gmail.com)>, Jimmy Panetta <[jimmypanettaforcongress@gmail.com](mailto:jimmypanettaforcongress@gmail.com)>, Ben Heinrich <[Ben@benheinrich.com](mailto:Ben@benheinrich.com)>

**Subject:** Comments on Enforcement Staff Report:

<https://preservemontereyneighborhoods.community/no-meaningful-enforcement-of-current-ordinances-and-draft-ordinance-is-much-more-complex-and-difficult-to-enforce/>

Please respond to the comments below:

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**And now you propose a draft ordinance that will be infinitely more difficult and time consuming to enforce.**

**The draft ordinance is fundamentally unenforceable.** Staffer Melanie Berretti is quoted as saying the reason they have to do a one-size fits all ordinance is that they do not have the staff to consider area by area differences. This is no reason to write an ordinance without considering any of the serious negatives of STR's that have been raised repeatedly in public comment. This is no reason not to study the unique issues of Highway 1, or Carmel Valley.

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***This process should be stopped. And only re-started when the resources are there to draft and enforce an ordinance that actually makes sense for our community.***

## McDougal, Melissa x5146

**From:** Beretti, Melanie x5285  
**Sent:** Monday, January 29, 2018 2:27 PM  
**To:** McDougal, Melissa x5146  
**Subject:** Fwd: STR hearing January 31 re enforcement

#2

<b>HEARING SUBMITTAL</b>	
PROJECT NO./AGENDA NO.	STR-Compliance
DATE RECEIVED:	1/29/18
SUBMITTED BY/VIA:	Public email
DISTRIBUTION TO/DATE:	Re 1/30
DATE OF HEARING:	1/31/18

Begin forwarded message:

**From:** Michelle Alway <michellealway@gmail.com>  
**Date:** January 29, 2018 at 2:18:56 PM PST  
**To:** "Beretti, Melanie x5285" <berettim@co.monterey.ca.us>, BowlingJ@co.monterey.ca.us, "Onciano, Jacqueline x5193" <oncianoj@co.monterey.ca.us>, baumanl@co.monterey.ca.us, "Holm, Carl P. x5103" <HolmCP@co.monterey.ca.us>, Mary Adams <district5@co.monterey.ca.us>  
**Cc:** Martha V Diehl <mvdiehl@mindspring.com>, vandeerek@co.monterey.ca.us, ambriza1@co.monterey.ca.us, duflockm1@co.monterey.ca.us, getzelmanpc@co.monterey.ca.us, MendezJ@co.monterey.ca.us, padillac1@co.monterey.ca.us, mendozaf@co.monterey.ca.us, wizardj@co.monterey.ca.us  
**Subject:** STR hearing January 31 re enforcement

I would like to make this part of the record for the January 31, 2018 hearing re STRs:

It has been evident from past operations of STRs that the County cannot keep up with necessary enforcement of STRs. Just look at the various STR websites and you will see that many of those who have received a courtesy letter, and even some with warnings of fines are still operating multiple times per month. They know that the County does not have resources to enforce. Some have been doing this for years and years.

If you do consider an ordinance allowing STRs even with restrictions, it is imperative that you find and allocate the money to increase staff for enforcement.

You can't open a can of worms without owning a fishing pole.

We can look to other cities to see what they have done as a result of realizing that enforcement must be a part of any proposed ordinance allowing STRs. Otherwise our neighborhood will deteriorate, and in essence, the zoning changed and home values decreased. We can learn from other cities as to what they are doing to help correct an obviously problem.

### New Orleans

The director of the city's Office of Safety and Permits said he has a staff of seven people to oversee the implementation of the short term rental ordinances. That staff, he said, reviews online listings and short-term rental license applications and keeps its eyes open for infractions.

"We have inspection staff in the field making observations. We're looking for places that seem to have indicators there may be short-term rentals going on, and we're also patrolling the websites."

Because the short-term rental citations are land use violations, a violator would receive notice of a citation and, if the violation continues, that would be followed by a scheduled hearing. If the landowner is found guilty, fines could be levied

New Orleans officials say they're about to step up short-term rental enforcement using administrative subpoenas. The city budgeted about \$727,000 in additional funds for Munster's department last year in anticipation of short-term rentals becoming legal on April 1. The money was mostly used for personnel, including the hiring of seven people, including three enforcement officers.

### **West Hollywood**

On September 21, 2015, the West Hollywood City Council adopted ordinance 15-958 which further clarifies the City's long-standing prohibition of short term vacation rentals in the City. This ordinance went into effect on October 21, 2015, and includes:

1. No person shall rent a dwelling unit, or part of a dwelling unit, to anybody, for a period of 30 days or less. All rentals must be for 31 or more days.
2. The advertising of this activity is also prohibited. Flyers, posters, emails, online ads, and the like, are all prohibited.

While short-term rentals may provide benefits to individual residents, strong concerns were raised by community members during the Task Force review process about quality-of-life and public safety impacts of short-term rentals, as well as the effect of short-term rentals on affordable housing in West Hollywood.

#### **How the City responds to complaints:**

When Code Compliance receives a complaint about this issue, a case will be generated and the enforcement process will begin. The following is a general guideline on how enforcement will proceed.

Step 1 - A warning notice will be issued to the tenant or property owner informing them that they are in violation of the prohibition on short-term rentals. They will be given 30 days to take the appropriate steps to correct the violation. This means the immediate stoppage of short term rentals and the taking down of any advertisement for such an activity.

Step 2 - A letter will be issued to the complainant informing them of the case # and what can be expected to take place in the coming days and weeks.

Step 3 - If the violation continues, citations will be issued to the violating party. These fines will begin at 400% of the advertised rental rate and go up to 800%. Advertised Rental Rate shall be defined as the advertised nightly rate multiplied by the minimum number of nights required to rent the dwelling or part of the dwelling. The Advertised Rental Rate shall not include deposits or ancillary fees.

For ads that do not have a listed rental price, fines range from \$1000.00 to \$5000.00.

Step 4 - Although we do not anticipate the need to do so, continued non-compliance may result in this matter being referred to the City Prosecutor's Office for criminal prosecution.

### **Denver**

Some City Council members worried that homes and apartments that would otherwise be long-term rentals were instead being rented to tourists.

the city now contracts with **a data-harvesting company.**

### **Newport Beach**

Newport Beach beefs up enforcement of short-term rentals

the city partnered with San Francisco-based Host Compliance, which reviews rental listings on several websites and can reveal who is renting a property without proper permits. "They're giving us what they believe are the questionable listings and then we're drilling down further doing the cross-checking to see whether it's a valid listing or not.

### **Lake Oswego**

Lake Oswego outlines enforcement plan for short-term rentals plan unveiled calls for the City to proactively seek out and warn violators, rather than wait to respond to complaints. Councilors asked whether the City had the staff capacity to work through the backlog of cases that would likely result from the new model, and Siegel replied that it probably does. He added that, coincidentally, the City is currently in the process of expanding its planning code enforcement team.

### **Charleston**

Enforcement becomes key concern for Charleston's Short-Term Rental Task Force  
With a slew of short-term rental properties already operating outside of Charleston's currently established rules, a major point of concern for Charleston's Short-Term Rental Task Force has been the issue of enforcement.

Tasked with crafting a set of recommendations that will serve as the basis for Charleston's new short-term rental guidelines, the group always arrives at the same question — What do the rules matter if the city is unable to hold residents accountable? According to Lee Batchelder, Charleston's zoning administrator, the task force's concerns are valid.

### **Nashville**

Metro Establishes Short Term Rental Complaint Hotline

The Metropolitan Government of Nashville and Davidson County has established a hotline for reporting illegal short-term rental properties and for reporting noise, parking, trash and other nuisance complaint pertaining to specific short term rental properties. To file a report, go to: <https://hostcompliance.com/tips> or you may call 435-787-4357, **24 hours per day, 7 days per week**. All request for service / complaints related to short term rental property violations should be reported through this hotline.

### **Santa Fe**

Land Use Director Lisa D. Martinez said that a supervisory position and two code enforcement officers were authorized. The job descriptions had to be created, she said. That has been done and all three jobs are being advertised with the expectation of new hires by the end of June, Martinez said. She added that the office has purchased software that matches permitted units with those being advertised, so it will be easier to find non-permitted units and then issue citations.

Respectfully submitted,  
Michelle Alway  
Carmel Highlands

## McDougal, Melissa x5146

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**From:** boardmember@mcvra.org  
**Sent:** Sunday, January 28, 2018 9:54 AM  
**To:** jmjosemendez1@gmail.com; Mendez, Jose; ambrizana1@gmail.com; Padilla, Cosme; jon@electwizard.com; Getzelman, Paul C.; mduflock@gmail.com; amydroberts@gmail.com; kvandevere@gmail.com; Vandevere, Keith; mvdiehl@mindspring.com; Beretti, Melanie x5285; Holm, Carl P. x5103; Bauman, Lew x5113; Onciano, Jacqueline x5193; Nickerson, Jacquelyn x5240; McDougal, Melissa x5146; Pereira, Neville x5962; Dugan, John x6654  
**Subject:** Short-Term Rental Enforcement Questions & Suggestions  
**Attachments:** County STR TOT Collection History.jpeg

January 28, 2018

#2

HEARING SUBMITTAL	
PROJECT NO/AGENDA NO	STR-Compliance
DATE RECEIVED	1/28/18
SUBMITTED BY VIA	Public / email
DISTRIBUTION TO DATE	PC / 1/30
DATE OF HEARING	1/31/18

Dear Mr. Holm:

The County staff report for the January 31, 2018 Planning Commission states there are 34 open code enforcement complaints for STRs within the unincorporated areas of the County of Monterey.

STRs are an emotional issue often devoid of facts. Of the 34 open cases, how many are based upon complaints about an actual incident such as nuisance or disturbance? The Planning Commissioners need to understand that many, if not all, of these complaints are not based upon actual incidences but rather, are STR opponents simply taking matters into their own hands to eliminate STRs.

How do we know this? Josh Bowling's initial notice, the "Courtesy Notice," does not refer to any incident, or a date of such incident. Furthermore, STR citations have not specified an actual, verified incident. The recent citations of Lotte Marcus and Lowell Strauss were rescinded because there was no date of a code violation. Lotte Marcus lives on the property. She knows there was no disturbance. The complaints came from STR opponents that do not live close by. Thus they could not provide the date of any STR activity, let alone the date of any possible incident.

One of the most egregious examples is the citation of William Lewis. The complaint came from a wedding planner (name available upon request) who lives in Carmel Valley, many miles away. He simply used the County to eliminate a competitor, an STR that was allowing weddings. The complainer was never disturbed by the Lewis STR!

So how many of the 34 open cases are reasonable, not based upon vigilante action? One? Two? The truth is that STR problems are blown way out of proportion based upon emotion, not facts. The Planning Commissioners should have this information to make their decision on code enforcement prioritization.



We see that the staff report made no effort to estimate the additional cost associated with raising the code enforcement priority on STRs. The Planning Commissioners also need this information. Most importantly, they need to understand that if the goal of prioritized enforcement is to eliminate the 779 (799-20) unpermitted STRs in the County, this will eliminate \$1.4 million in annual TOT revenue. For the amount of TOT paid by STRs, see the attached letter from the Monterey County Tax Collector.

The staff report vaguely suggests, with no rational, that more STR code enforcement might increase TOT revenues. The reports states, "...an additional Code Compliance Inspector position that would be dedicated to the STR program, with the intent that they would generate additional permits resulting in additional TOT." Increased TOT collections will absolutely NOT happen! Most, if not all, of the \$1.4 million annual TOT will be lost.

A few non-coastal STR owners might try to get a permit but most will not. The County has a history of denying non-coastal permit applications or placing arbitrary, additional restrictions on the applicant. The County will lose most of the TOT paid by non-coastal STRs.

In the coastal region where the majority of all STRs are located, the County will lose 100% of the TOT. This is because there is NO similar use permit available. The County staff's January 23, 2018 Board Report addressing the Lewis application for a similar use BnB permit states, "Comparing this specific application against those requirements for a bed and breakfast, staff identified the following differences:

- The owner will not occupy the home during visitor stay;
- The owner will not provide any meals to the renters; and
- The entire premises would be rented out, not just single rooms."

We all know that 100% of all STRs do not meet these characteristics. So NO coastal STR owner will try to get a similar use permit. Why would an owner waste \$9,000 to apply for a permit that will be denied?

The June 26, 2016 Coastal Commission letter to you stated, "...we (Coastal Commission) highly recommend that instead of attempting to suggest they (STRs) are prohibited or pursuing such prohibitions, that Monterey County instead work with us to develop regulations..." MCVRA agrees. Please focus all efforts on creating a fair STR ordinance. And unless there is an actual, verified STR nuisance or disturbance, discontinue citations as also stated in that letter.

Respectfully,

MCVRA Board of Directors

Cc: Neville Pereira

John Dugan

Josh Bowling

Lew Bauman

Melanie Beretti

Planning Commissioners

# MONTEREY COUNTY



**MARY A. ZEEB**  
**Treasurer – Tax Collector**

168 West Alisal Street - 1st Floor  
Salinas, CA 93901

Tax Collector Division  
P.O. Box 891, Salinas, CA 93902  
(831) 755-5057 Salinas, (831) 647-7857 Monterey  
(831) 385-8357 King City, Fax (831) 759-6623

October 2, 2017

Richard Matthews  
Monterey County Vacation Rental Alliance  
P. O. Box 221816  
Carmel, CA 93922

**Re: Transient Occupancy Tax Request for Information**

Dear Richard,

Thank you for your request for information related to the proportion of transient occupancy tax received during the FY 2015-2016 and FY 2016-2017 attributable to short term rental owners and property managers. As explained this was a time intensive project to prepare, as the information is not readily available or independently tracked in our system. In addition, the requested data transitioned from one software program to another during the given time-frame, which added to the difficulty in isolating the information. As a result, the information is being provided as our best estimate of the information you have requested.

It is our best estimate that during fiscal year 2015-2016, the amount of transient occupancy tax received by the County of Monterey attributable to short-term rental owners and property managers was approximately \$1,422,696 of the total \$22,814,535 reported collected, or roughly 6%.

It is our best estimate that during fiscal year 2016-2017, the amount of transient occupancy tax received by the County of Monterey attributable to short-term rental owners and property managers was approximately \$1,393,973 of the total \$21,176,871 reported collected, or roughly 6%.

I believe this satisfies your request for information. Should you feel there is additional information that is not included, please contact Kristina Parson via telephone at (831) 755-5317 or by email at [parsonka@co.monterey.ca.us](mailto:parsonka@co.monterey.ca.us).

Sincerely,

MARY A. ZEEB  
TREASURER-TAX COLLECTOR

KRISTINA PARSON  
Management Analyst III  
Treasurer-Tax Collector