



Monterey County Board of Supervisors

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Salinas, CA 93901
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Board Order

Upon motion of Supervisor Salinas, seconded by Supervisor Phillips and carried by those members present, the Board of Supervisors hereby:

Public hearing held and adopted Resolution No.:18-099 to:

- a. Grant the appeal by Trio Petroleum LLC from the January 31, 2018 decision of the Monterey County Planning Commission denying an application (Porter Estate Company Bradley Ranch (Trio Petroleum LLC)/PLN160146) for a use permit to allow the temporary production testing for oil and gas at four (4) sites in the Hames Valley;
- b. Adopt the Mitigated Negative Declaration;
- c. Approve a Use Permit to allow the construction of four (4) test wells for the temporary exploration for and removal of oil and gas in Hames Valley at the following sites: Hames Valley Exploration Well #1: 5,000 feet west of Nacimiento Lake Drive, 1 mile south of Jolon Road (Assessor's Parcel Number 424-081-046-000); Hames Valley Exploration Well #2: 1,200 feet east of Nacimiento Lake Drive. (Assessor's Parcel Number 424-081-050-000); Hames Valley Exploration Well #3: 2 miles south of Jolon Road and 1 mile east of Nacimiento Lake Drive (Assessor's Parcel Number 424-111-001-000); and Hames Valley Exploration Well #4: 1 mile south of Jolon Road and ¼ mile west of Nacimiento Lake Drive, (Assessor's Parcel Number 424-081-084-000);
- d. Adopt the Mitigation Monitoring and Reporting Program; and
- e. Directed staff to ensure the applicant tracks methane emissions by using the best control technology to capture the methane and consult with the State of California Resources Board about what the appropriate levels are.

PLN160146 - Porter Estate Company Bradley Ranch LLC (Trio Petroleum LLC)

PASSED AND ADOPTED on this 3rd day of April 2018, by the following vote, to wit:

AYES: Supervisors Alejo, Salinas, Phillips, and Parker
NOES: None
ABSENT: Supervisor Adams

I, Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting April 3, 2018.

Dated: April 26, 2018
File ID: RES 18-034

Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

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

In the matter of the application of:

**PORTER ESTATE COMPANY BRADLEY RANCH LLC (Trio Petroleum/PLN160146)
RESOLUTION NO. 18-099**

Resolution by the Monterey County Board of Supervisors:)

- 1) Granting the appeal of Trio Petroleum LLC)
from the decision of the Planning Commission)
decision of January 31, 2018 denying an application)
(Trio Petroleum LLC/PLN160146) for a use permit)
to allow temporary production testing for oil and gas)
at four (4) sites in the Hames Valley;)
- 2) Adopting the Mitigated Negative Declaration;)
- 3) Approving a use permit to allow the construction)
of four (4) test wells for the temporary exploration for)
and removal of oil and gas at Hames Valley Exploration)
Well #1: 5,000 feet west of Nacimiento Lake Drive,)
1 mile south of Jolon Road (Assessor's Parcel Number)
424-081-046-000). Hames Valley Exploration)
Well #2: 1,200 feet east of Nacimiento Lake Drive.)
(Assessor's Parcel Number 424-081-050-000).)
Hames Valley Exploration Well #3: 2 miles south of)
Jolon Road and 1 mile east of Nacimiento Lake Drive)
(Assessor's Parcel Number 424-111-001-000). Hames)
Valley Exploration Well #4: 1 mile south of Jolon Road)
and ¼ mile west of Nacimiento Lake Drive, Bradley)
(Assessor's Parcel Number 424-081-084-000); and)
- 4) Adopting a Mitigation Monitoring and Reporting Program..)

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

The Appeal by Trio Petroleum LLC from the Planning Commission decision of January 31, 2018 denying an application (Porter Estate Company Bradley Ranch, LLC (Trio Petroleum LLC)/PLN160146) for a use permit to allow temporary production testing for oil and gas at four sites in the Hames Valley came on for public hearing before the Monterey County Board of Supervisors on April 3, 2018. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:

FINDINGS

1. **FINDING:** **PROCESS** – The County has processed the subject Use Permit application (RMA-Planning File No. PLN160146/Porter Estate Company Bradley Ranch, LLC (Trio Petroleum LLC)) in compliance with all applicable procedural requirements.
EVIDENCE: a) On July 1, 2016, pursuant to Monterey County Code (MCC) Chapter 21.30 (Farmland Zoning District), Chapter 21.34 (Permanent Grazing

Zoning District) and Chapter 21.74 (Use Permits), Trio Petroleum LLC filed an application for a discretionary permit to allow temporary production testing for oil and gas at four (4) sites in Hames Valley in unincorporated Monterey County, near Bradley, in the South County Area Plan area. (APNs: 424-081-046-000, 424-081-050-000, 424-111-001-000, 424-081-084-000).

- b) The proposed project was referred by the South County Land Use Advisory Committee (LUAC) on July 20, 2016. The LUAC voted 5-1-0-0 to recommend approval of the project. One member expressed concerns relative to petroleum projects instead of supporting renewable energy projects in the County.
- c) The Monterey County Planning Commission held a duly noticed public hearing on the Trio Petroleum LLC project on December 13, 2017 and January 31, 2018. Notices for the Planning Commission public hearing were published in the Monterey County Weekly on November 30, 2018; posted at and near the project site on December 1, 2018; and mailed or emailed to vicinity property owners and interested parties on November 30, 2018.
- d) On December 13, 2017, the Planning Commission conducted a public hearing at which all persons had the opportunity to be heard, the Planning Commission continued the public hearing to a date certain of January 31, 2018 and passed a motion of intent by a vote of 6-1 with 2 absent to direct staff to return on January 31, 2018 with a resolution to deny the project based on the following reasons:
 - The effects of oil exploration and production are detrimental to the health, safety and general welfare of the residents of Monterey County due to carbon emissions and potential for groundwater contamination.
 - Monterey County is an agricultural county and having clean air and water are very important to the economy. Having a stable climate is extremely important to the agricultural basis of the County's economy. Having clean water is important not only for domestic consumption but for the entire economic engine of the County.
 - The findings of Measure Z, which was passed by Monterey County voters in November 2016, reflect that a majority of County voters agree with Measure Z's findings regarding the oil and gas industry's impacts on health and safety, groundwater, climate change, and the local economy.
 - There are no counterbalancing benefits of the proposed project to offset these detrimental effects.

Staff subsequently prepared a resolution of denial with findings and evidence based on Planning Commission direction.

- e) On January 31, 2018, at a public hearing at which all persons had the opportunity to be heard, the Planning Commission adopted Monterey County Planning Commission Resolution No. 18-008 by a vote of 6 to 3 with one abstention finding the project Statutorily Exempt from CEQA pursuant to Public Resource Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a); and denying the request for a Use Permit

to allow temporary production testing for oil and gas at four (4) well sites in Hames Valley.

- f) Trio Petroleum LLC, represented by Jason Retterer of JRG Attorneys at Law, pursuant to MCC Section 21.80.050.A, timely filed an appeal from the January 31, 2018 decision of the Planning Commission to deny the project. The overall contention of the appeal is that the Planning Commission's findings are not supported by the evidence and the decision is contrary to law. The specific contentions and County responses to the appeal are set forth in Finding 9 below.
- g) Pursuant to MCC Sections 21.80.050.C and E, an appeal shall be filed with the Clerk of the Board of Supervisors within 10 days after written notice of the decision of the Appropriate Authority (i.e., Planning Commission Resolution No. 18-008) has been mailed to the Applicant, and no appeal shall be accepted until the notice of the decision has been given (i.e., mailed). The County mailed the written notice of the decision on February 5, 2018, and said appeal was filed with the Clerk of the Board of Supervisors on February 13, 2018, within the 10-day timeframe prescribed by MCC Section 21.80.050.C. The appeal sets aside the Planning Commission decision, and the appeal hearing is de novo (MCC Sections 21.80.030 and 21.80.090). A complete copy of the appeal is on file with the Clerk of the Board, and is attached to the April 3, 2018 staff report to the Board of Supervisors.
- h) Said appeal was timely brought to a duly-noticed public hearing before the Monterey County Board of Supervisors on April 3, 2018. Notices for the Board of Supervisors public hearing were published in the Monterey County Weekly on March 22, 2018; posted at and near the project site on March 22, 2018; and mailed or emailed to vicinity property owners and interested parties on March 22, 2018.
- i) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File No. PLN160146; materials on file with the Clerk of the Board of Supervisors related to the appeal.

2. **FINDING:**

PROJECT DESCRIPTION – The proposed project is a use permit to allow construction of four (4) test wells for the temporary exploration for oil and gas in Hames Valley at the following sites: Hames Valley Exploration Well #1: 5,000 feet west of Nacimiento Lake Drive, 1 mile south of Jolon Road (Assessor's Parcel Number 424-081-046-000). Hames Valley Exploration Well #2: 1,200 feet east of Nacimiento Lake Drive. (Assessor's Parcel Number 424-081-050-000). Hames Valley Exploration Well #3: 2 miles south of Jolon Road and 1 mile east of Nacimiento Lake Drive (Assessor's Parcel Number 424-111-001-000). Hames Valley Exploration Well #4: 1 mile south of Jolon Road and ¼ mile west of Nacimiento Lake Drive (Assessor's Parcel Number 424-081-084000) (Hames Valley [HV] #1, #2, #3, and #4). The permit is conditioned to expire 18 months from the date that construction begins on the fourth and final well. Each of the three other wells may not be tested more than 18 months from the date that construction is started on the well. This permit authorizes exploration only; the permit does not

create a vested right to convert the permit to allow permanent production. The owner/permittee must apply for a subsequent use permit to convert any of the exploratory well sites to full production. If the applicant chooses to pursue permanent production, the determination whether to grant a use permit for permanent production would be subject to the rules and regulations in effect at that time..

EVIDENCE: The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN160146.

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

EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in the:

- 2010 Monterey County General Plan;
- South County Area Plan; and
- Monterey County Zoning Ordinance (Title 21).

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

- b) The project properties are located in the Hames Valley on four parcels (Assessor's Parcel Numbers: 424-081-046-000, 424-081-050-000, 424-111-001-000, 424-081-084-000), South County Area Plan. One well site would be located on each parcel. The project site is zoned Farmlands (F/40) (HV #1, 2, and 4) and Permanent Grazing (PG) (HV #3). Both zoning districts require a use permit for the exploration for and removal of oil and gas. (Monterey County Code sections 21.30.050.EE and 21.34.050.EE.) Therefore, with a use permit, the project is consistent with the zoning for this site.
- c) The properties consist of undeveloped agricultural land and non-native annual grassland.
- d) The project planner conducted a site inspection on March 9, 2017 to verify that the project on the subject parcels conforms to the plans listed above. Well sites HV #1, #3, and #4 are accessed via existing agricultural and access roads. Well site HV #2 does not have an existing access road and the project would include construction of a 0.2-mile long access road. The sites contain undeveloped agricultural land and non-native grassland.
- e) Measure Z, an initiative measure adopted by Monterey County voters in November 2016, would have amended the Monterey County General Plan Land Use Element to add Policy LU-1.23, among other policies. Policy LU-1.23 prohibited the drilling of new oil and gas wells on all lands within the County's unincorporated areas. As a result of litigation challenging Measure Z, the effective date of Measure Z was stayed while this project application was being processed and at the Planning Commission. Since the Planning Commission decision, the Monterey County Superior Court has issued a judgment and writ enjoining the County from enforcing Policy LU-1.23 and ordering the

County to invalidate the policy. Accordingly, at present, Measure Z does not prohibit the County from processing and approving this use permit for exploratory wells.

- f) As noted, the project site is designated Farmlands (HV #1, 2, and 4) and Permanent Grazing (HV #3) in the County's Land Use Plan for South County. The Farmlands land use designation permits a range of uses to conserve and enhance the use of the important farmlands in the County while providing opportunity to establish necessary support facilities for agricultural uses. The Permanent Grazing land use designation allows for a range of land uses to conserve and enhance the productive grazing lands in the County. In both zoning districts, a use permit is required for "*exploration for and removal of oil and gas.*" (Monterey County Code (MCC), sections 21.30.050.EE and 21.34.050.EE.)
- g) The project was referred to the South County Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, this application warranted referral to the LUAC because the permit application and land use matter may raise significant land issues that necessitate review prior to a public hearing by the Planning Commission.
- h) The South County LUAC met on July 20, 2016 to discuss the application and any potential issues. The applicant gave a short presentation on the project and detail and parameters of the four exploratory wells and the method of drilling to allow for minimal ground disturbance. The LUAC voted 5-1-0-0 to recommend approval of the project.
- i) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN160146.

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

- EVIDENCE:**
- a) The project has been reviewed for site suitability by the following departments and agencies: RMA- Planning, Cal Fire South County Fire Protection District, RMA-Public Works, RMA-Environmental Services, Environmental Health Bureau, and Monterey County Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended by the Environmental Health Bureau have been incorporated to address handling of hazardous materials, and conditions recommended by RMA-Environmental Services have been incorporated to address erosion, grading, drainage, and geohazardous conditions. RMA-Planning added conditions to clarify that the permit does not allow any use of well stimulation treatments and that restoration is required following well production testing or long-term production. Conditions recommended have been incorporated.
 - b) The following reports have been prepared:
 - Biological Assessment (LIB160229) prepared by Ed Mercurio, Biological Consultant, Salinas, California in June 2016.

- 3167-01 Trio Petroleum LLC. Hames Valley Project Letter Report (LIB160228) prepared by Pacific Legacy, Bay Area Division, Berkeley, California in May 2016.

The above-mentioned technical reports by outside consultants indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff has independently reviewed these reports and concurs with their conclusions.

- c) The project has been conditioned to require full restoration of the site and requires applicant to submit a performance bond equal to the cost of full site restoration.
- d) Staff conducted a site inspection on March 9, 2017 to verify that the site is suitable for this use.
- e) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA - Planning for the proposed development found in Project File PLN160146.

5. **FINDING:**

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

EVIDENCE:

- a) The project was reviewed by the RMA - Planning, Cal Fire South County Fire Protection District, Public Works, Environmental Health Bureau, RMA-Environmental Services, and Monterey County Water Resources Agency. The respective agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
- b) Cal Fire South County Fire Protection District, RMA-Public Works, and Water Resources Agency did not recommend conditions.
- c) On recommendation of RMA-Planning, the project has been conditioned to require that the applicant apply for a subsequent use permit if applicant seeks to convert any of the exploratory well sites to full production. The project has been also been conditioned to allow specific uses, which do not include the use of well stimulation treatment, including hydraulic fracturing, acid fracturing, and acid matrix stimulation. If the Owner/Applicant decides to pursue full production of oil and gas from the wells, a subsequent Use Permit approval shall be required to convert the site to full production. Should the Owner/Applicant not apply for a subsequent Use Permit for full production of oil and gas within 18 months from the date that construction is started on the fourth well, or from the date that construction is started on the last well constructed under this permit, whichever occurs first, all wells shall be properly abandoned according to the requirements of the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR), all

temporary facilities shall be removed, and the sites shall be restored to their predevelopment state as permanent grazing/non-native grasslands. To ensure compliance, the applicant is required to submit a performance bond equal to the cost of full site restoration.

- d) The Environmental Health Bureau has conditioned the project to require the applicant to submit and maintain an up-to-date Business Response Plan and to ensure the maintenance of above ground storage tanks and the disposal of hazardous waste, including compliance with state and federal regulations related to handling of production fluids.
- e) RMA-Environmental Services has conditioned the project applicant to submit a Waste Discharger Identification number certifying the project is covered under the California Construction General Permit and to ensure that the project is compliant with state and local regulations and the project's Geotechnical Report, which will be prepared as required by the project's conditions of approval.
- f) Necessary public facilities will be provided by portable restrooms and will be temporary in nature. Each portable restroom facility will be pumped on an as-needed basis and will be removed upon ceasing operations at each site. During the drilling phase water will be supplied by the property owner and a water tank would be set up and stored on-site.
- g) Each well site will be equipped with a natural gas flare to burn off natural gas if it is found during production testing, in accordance with Monterey Bay Air Resources District requirements. The project has been conditioned to ensure compliance with Monterey Bay Air Resources District requirements.
- h) Staff conducted a site inspection on March 9, 2017 to verify that the site is suitable for this use.
- i) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN160146.

6. **FINDING:**

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

EVIDENCE:

- a) Staff reviewed Monterey County RMA - Planning Department records and is not aware of any violations existing on subject property.
- b) Staff conducted a site inspection on March 9, 2017 and researched County records to assess if any violation exists on the subject property.
- c) There are no known violations on the subject parcel.
- d) Zoning violation abatement costs, if any, have been paid.
- e) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN160146.

7. **FINDING:**

CEQA (Mitigated Negative Declaration) - On the basis of the whole record before the Monterey County Board of Supervisors, the Board finds there is no substantial evidence that the proposed project, as designed, conditioned and mitigated, will have a significant effect on

- the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County.
- EVIDENCE:**
- a) Pursuant to Public Resources Code Section 21080(c) and California Environmental Quality Act (CEQA) Guidelines Section 15064 (f)(3), based on a determination that there is no substantial evidence that the project may have a significant effect on the environment, the County prepared a Mitigated Negative Declaration.
 - b) Monterey County through RMA-Planning contracted with Rincon Consultants who prepared an Initial Study-Mitigated Negative Declaration (IS-MND) pursuant to CEQA. The IS-MND is on file in the offices of RMA-Planning and is hereby incorporated by reference (PLN160146).
 - c) The IS-MND analyzed environmental factors potentially affected by the project including aesthetics, agricultural and forest resources, air quality, biological resources, cultural resources, geology/soils, greenhouse gas emissions, hazards/hazardous materials, hydrology/water quality, land use/planning, mineral resources, noise, population/housing, public services, recreation, transportation/traffic, tribal cultural resources, and utilities/services systems. The applicant has agreed to proposed mitigation measures relevant to air quality and biological resources that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. All other potentially significant effects identified in the IS-MND were determined to have a less than significant impact or no impact.
 - d) All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval. A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations, is designed to ensure compliance during project implementation, and is hereby incorporated herein by reference. The applicant must enter into an Agreement to Implement a Mitigation Monitoring and/or Reporting Plan as a condition of the project approval.
 - e) The Draft IS-MND for PLN160146 was prepared in accordance with CEQA and circulated for public review from August 8, 2017 to September 8, 2017 (SCH No. 2017081015).
 - f) Due to the existing disturbed condition of the project site well sites, HV #1 and HV #4 do not have the potential to support any special-status species. Well sites HV #2 and #3 and the proposed access road to exploration site HV #2 have potential to support silvery legless lizard, San Joaquin whipsnake, coast horned lizard, burrowing owl, pallid bat, Townsend's big-eared bat, American badger, Salinas pocket-mouse, and San Joaquin kit fox. Activities within the project site could also impact breeding of these species should they take up residence nearby in the surrounding habitats. The mitigation measures that were applied to the project will raise employee awareness of the environmental conditions through a Worker Environmental Awareness Program and will require preconstruction surveys to ensure special-status species are not present on site; work area delineation and/or flagging to mark site boundaries and avoid special-status species; avoidance and minimization measures

for San Joaquin kit fox, American badger, and special-status bat species; removal of micro-trash and relocation of reptiles out of the work area; protection of trees; and condor best management practices (BMPs). The mitigation measures also require a mitigation plan if there are special-status species found on site during the pre-construction survey. Following implementation of these mitigation measures, biological impacts would be reduced to a less-than-significant level.

- g) The project would have air quality impacts as a result of project construction. Project construction would exceed local NO_x thresholds and will require use of EPA Tier 4 construction equipment, consultation with the Monterey Bay Air Resources District regarding portable engines, and application of Monterey Bay Air Resources District BMPs. Following implementation of these mitigation measures, impacts to air quality would be reduced to a less-than-significant level.
- h) Evidence that has been received and considered includes: the application, technical studies/reports (see Finding 3/Site Suitability), staff reports that reflect the County's independent judgement, and information and testimony presented during public hearings. These documents are on file in RMA-Planning (PLM160146) or Clerk of the Board of Supervisors and are hereby incorporated herein by reference.
- i) A filing fee is required pursuant to Section 711.4 of the California Fish and Game Code and Section 753.5(d) of Title 14 of the California Code of Regulations to defray the cost of state review of the proposed Mitigated Negative Declaration. All land development projects that are subject to environmental review are subject to a State filing fee plus the County recording fee, unless the California Department of Fish and Wildlife determines that the project will have no effect on fish and wildlife resources. Exploration well sites HV #2 and HV #3 and the proposed access road to exploration well site HV #2 have the potential to support silvery legless lizard, San Joaquin whipsnake, coast horned lizard, burrowing owl, pallid bat, Townsend's big-eared bat, American badger, Salinas pocket-mouse, and San Joaquin kit fox. As indicated above, the impacts have been mitigated to a less than significant level, but for purposes of the California Fish and Game Code, the project may have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends and requires payment of fees. The IS-MND was sent to the California Department of Fish and Wildlife for review, comment, and to recommend necessary conditions to protect biological resources in this area. Therefore, the project will be required to pay the State fee plus a fee payable to the Monterey County Clerk/Recorder for processing said fee and posting the Notice of Determination (NOD).
- j) The County has considered the comments received during the public review period, and they do not alter the conclusions in the IS-MND. The comments received from the Monterey Bay Air Resources District ask for application of the Air District's BMPs to reduce air quality and request consultation with the Air District Compliance Division on the matter or portable engines. Application of MBARD's BMPs and consultation with MBARD would not change the determination of the IS-MND, and impacts to air quality would remain less than significant

following mitigation. Application of MBARD's BMPs and consultation and registration regarding portable engines has been added as a condition of approval for the project. Following the close of the comment period on the IS-MND, the County received a letter dated January 31, 2018 from the Center for Biological Diversity. The letter argues that the IS/MND is deficient for failing to evaluate the reasonably foreseeable cumulative impacts, the impacts to surface and groundwater quality, impacts to health, air impacts, biological impacts, and impacts on greenhouse gas emissions. The information contained in the letter from the Center for Biological Diversity does not alter the conclusions of the IS-MND. These issues were addressed in detail in the IS-MND.

- k) Monterey County RMA-Planning, located at 1441 Schilling Place, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the negative declaration is based.

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

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

9. **FINDING:** **APPEAL** – The Appellant (Trio Petroleum LLC) challenges the Planning Commission's decision to deny the project. The overall contentions of the appeal are that the Planning Commission's findings are not supported by the evidence and the decision is contrary to law. The text of the contentions are contained in Appellant's letter to the Clerk of the Board dated February 13, 2018. Upon consideration of the documentary evidence, the staff report, the oral and written testimony, and all other evidence in the record as a whole, the Board makes the following findings with respect to the Appellant's contentions:

EVIDENCE:

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

The Board grants the appeal on the basis that the evidence in the record supports a non-detriment finding for this particular project application, which is conditioned to be time-limited, to be for exploration only, and to not allow well stimulation, including hydraulic fracturing. The Board has found that the establishment, maintenance, or operation of the project will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County. (See Finding 5.) The basis of the Board's finding is the Initial Study/Mitigated Negative Declaration and the conditions of approval which the County has required. The Initial Study/Mitigated Negative Declaration (IS/MND) analyzed environmental factors potentially affected by the project including but not limited to air quality, geology/soils, greenhouse gas emissions, hazards/hazardous materials, hydrology/water quality, mineral resources, noise, transportation/traffic and biological resources. The applicant has agreed to proposed mitigation measures relevant to air quality and biological resources that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. All other potentially significant effects identified in the IS-MND were determined to have a less than significant impact or no impact.

This Use Permit authorizes only temporary exploration for oil and gas at the four well sites. The permit is conditioned to expire 18 months from the date that construction begins on the fourth and final well. Each of the three other wells may not be tested more than 18 months from the date that construction is started on the well. This permit authorizes exploration only. This permit does not authorize the use of any form of well stimulation treatment, including hydraulic fracturing, acid fracturing, and acid matrix stimulation. RMA-Planning has also conditioned the project to require that, if the Owner/Applicant decides to pursue full production of oil and gas from the wells, a subsequent Use Permit approval shall be required to convert the site to full production. Should the Owner/Applicant not apply for a subsequent Use Permit for full production of oil and gas within 18 months from the date that construction is started on the fourth well, or from the date that construction construction is started on the last well constructed under this permit, whichever occurs first, all wells shall be properly abandoned according to the requirements of the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR), all temporary facilities shall be removed, and the sites shall be restored to their predevelopment state as permanent grazing/non-native grasslands. This use permit does not guarantee the grant of a use permit for full production. To ensure compliance the applicant is required to submit a performance bond equal to the cost of full site restoration.

The Environmental Health Bureau has conditioned the project to require the applicant to submit and maintain an up-to-date Business Response Plan and to ensure the maintenance of above ground storage tanks and the disposal of hazardous waste, including compliance with state and federal regulations related to handling of production fluids.

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

Necessary public facilities will be provided by portable restrooms and will be temporary in nature. Each portable restroom facility will be pumped on an as-needed basis and will be removed if a well is plugged and abandoned. During the drilling phase water will be supplied by the property owner and a water tank would be set up and stored on-site. Each well site will be equipped with a natural gas flare to burn off natural gas if it is found during production testing, in accordance with Monterey Bay Air Resources District requirements. The project has been conditioned to ensure compliance with Monterey Bay Air Resources District requirements.

The applicant has agreed to all of the conditions.

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

Trio argues that the Planning Commission's denial of the use permit prevents Trio from "exercising its lease right to extract and produce oil and gas resources on the property and is an unconstitutional taking of Trio's property rights." The County does not agree that the Planning Commission's denial constituted a taking of Trio's property. Trio had the right to appeal the Planning Commission's denial, a right to which it has availed itself. Moreover, Trio has not demonstrated that a denial would constitute a taking; however, Trio's taking claim is moot, as the Board is approving the permit.

- d) **Appellant's Contention C:** "The findings are based on irrelevant evidence, which cannot form a part of the "substantial evidence" to support the decision."

Trio appears to be arguing that consideration of environmental factors is preempted by state law. This argument is directly in conflict with the California Environmental Quality Act which requires the County to conduct environmental review of discretionary use permits. In this case, the County has concluded under CEQA that there is no substantial evidence that the project as designed, conditioned and mitigated will have a significant effect on the environment, and County is adopting the Mitigated Negative Declaration and approving the project. Therefore,

this contention is moot.

- e) **Appellant's Contention D: "The Initial Study and Negative Declaration's focus on impacts from the test wells, without also addressing potential future impacts from a speculative commercial oil field, was proper."**

The County agrees with the contention that the IS/MND's focus on the impacts of the test wells, without addressing potential future impacts of a commercial oil field, was proper. Although this issue was not addressed in the Planning Commission resolution denying the project, some of the commenters at the Planning Commission hearings contended that the IS/MND was inadequate because it was limited to an analysis of the environmental impacts from the four wells and that it should have included an analysis of the impacts from a production oil well field which, they argued, is reasonably foreseeable. In this case, the IS/MND is for the exploratory well project, but it did analyze the potential impacts of the wells if they were converted to production wells. The applicant does not currently propose long-term production under this Use Permit and has not provided proposals for a larger oil well field. In evaluating a project's environmental effects, CEQA requires examination of the project's direct physical changes in the environment and indirect physical changes which are reasonably foreseeable. (CEQA Guidelines §15064(d).) However, speculative indirect physical changes are considered to be not reasonably foreseeable; CEQA does not require analysis of an impact if the County finds that the impact is too speculative for evaluation. (CEQA Guidelines §§15064(d), 15145.) In this case, a production oil well field is speculative and therefore not reasonably foreseeable, and impacts of a production oil well field are too speculative for evaluation as part of this project approval. The Initial Study appropriately acknowledged that if the four wells produce large quantities of oil, it is possible that additional wells could be drilled in the vicinity, but the probability of this occurring, as well as the associated details, such as future well locations, was speculative. The Initial Study (page 11) states: "*Despite the need for further CEQA review, additional permitting, and potential application of Measure Z, this Initial Study conservatively assumes that long-term production of the four proposed wells is reasonably foreseeable as a result of this project's exploration. This analysis, therefore, considers the reasonably foreseeable impacts of long-term production, in which all four wells, HV #1 through #4, would be used for production. However, as stated previously, conversion from exploratory wells to production wells would require additional review and permitting, including the potential application of Measure Z. Any future drilling would require separate permits from the County of Monterey and would undergo environmental review at that time.*" The Initial Study (page 12) states: "*If these wells can produce large quantities of oil, it is possible that additional wells could be drilled in the vicinity However, the probability of this occurring, as well as the associated details, such as future well locations, is speculative at this time.*"

10. **FINDING:** **APPEALABILITY** – The decision on this project is final. Section 21.80.090.I of the Monterey County Zoning Ordinance (Title 21) states that the decision of the Appeal Authority shall be final.

DECISION

NOW, THEREFORE, based on the above findings and evidence, and the administrative record as a whole, that the Board of Supervisors does hereby:

1. Grant the appeal by Trio Petroleum LLC from the January 31, 2018 decision of the Monterey County Planning Commission denying an application (Porter Estate Company Bradley Ranch (Trio Petroleum LLC)/PLN160146) for a use permit to allow temporary production testing for oil and gas at four sites in the Hames Valley;
2. Adopt a Mitigated Negative Declaration;
3. Approve a use permit to allow the construction of four (4) test wells for the temporary exploration for and removal of oil and gas in Hames Valley at the following sites:
Exploration Well #1: 5,000 feet west of Nacimiento Lake Drive, 1 mile south of Jolon Road (Assessor's Parcel Number 424-081-046-000); Hames Valley Exploration Well #2: 1,200 feet east of Nacimiento Lake Drive (Assessor's Parcel Number 424-081-050-000); Hames Valley Exploration Well #3: 2 miles south of Jolon Road and 1 mile east of Nacimiento Lake Drive (Assessor's Parcel Number 424-111-001-000); and Hames Valley Exploration Well #4: 1 mile south of Jolon Road and ¼ mile west of Nacimiento Lake Drive, Bradley (Assessor's Parcel Number 424-081-084-000), in general conformance with the attached plans and subject to the attached conditions, both being incorporated herein by reference; and
4. Adopt the Mitigation Monitoring and Reporting Program.

PASSED AND ADOPTED upon motion of Supervisor Salinas, seconded by Supervisor Phillips and carried this 3rd day of April 2018, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Salinas, Parker and Adams

NOES: None

ABSENT: None

I, Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting on April 3, 2018.

Dated: May 2, 2018
File Number: RES 18-034

Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

Monterey County RMA Planning

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

PLN160146

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

This Use Permit (PLN160146) allows the construction of four wells and allows the temporary exploration for and removal of oil and gas at the following locations: Hames Valley Exploration Well #1: 5,000 feet west of Nacimiento Lake Drive, 1 mile south of Jolon Road (Assessor's Parcel Number 424-081-046-000). Hames Valley Exploration Well #2: 1,200 feet east of Nacimiento Lake Drive. (Assessor's Parcel Number 424-081-050-000). Hames Valley Exploration Well #3: 2 miles south of Jolon Road and 1 mile east of Nacimiento Lake Drive (Assessor's Parcel Number 424-111-001-000). Hames Valley Exploration Well #4: 1 mile south of Jolon Road and ¼ mile west of Nacimiento Lake Drive, Bradley (Assessor's Parcel Number 424-081-084-000), South County Area Plan. These conditions apply to the owners and applicant and their successors. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

**Compliance or
Monitoring
Action to be Performed:**

The Owner/Applicant shall adhere to conditions and uses specified in the permit on an on-going basis unless otherwise stated.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: RMA-Planning

Condition/Mitigation The applicant shall record a Permit Approval Notice. This notice shall state:

Monitoring Measure: "A Use Permit (Resolution Number 18-099) was approved by the Board of Supervisors for Assessor's Parcel Numbers 424-081-046-000, 424-081-050-000, 424-081-083-000 and 424-111-001-000 on April 3, 2018. The permit was granted subject to 41 conditions of approval which run with the land. A copy of the permit is on file with Monterey County RMA - Planning."

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

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

3. PD016 - NOTICE OF REPORT

Responsible Department: RMA-Planning

Condition/Mitigation Prior to issuance of building or grading permits, a notice shall be recorded with the
Monitoring Measure: Monterey County Recorder which states:

"A Biological Assessment (Library No. LIB160229), was prepared by Ed Mercurio in June 2016 and is on file in Monterey County RMA - Planning. All development shall be in accordance with this report."

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

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

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

Responsible Department: RMA-Planning

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

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

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

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

5. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

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

**Compliance or
Monitoring
Action to be Performed:**

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

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

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

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

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

**Compliance or
Monitoring
Action to be Performed:**

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

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

7. PD006 - CONDITION OF APPROVAL / MITIGATION MONITORING PLAN

Responsible Department: RMA-Planning

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

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

- 1) Enter into an agreement with the County to implement a Condition of Approval/Mitigation Monitoring Plan.
- 2) Fees shall be submitted at the time the property owner submits the signed Agreement.
- 3) Proof of recordation of the Agreement shall be submitted to RMA-Planning.

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

Responsible Department: Health Department

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

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

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

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

Responsible Department: Health Department

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

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

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

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

Responsible Department: Health Department

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

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

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

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

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

Responsible Department: Health Department

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

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

12. CALIFORNIA CONSTRUCTION GENERAL PERMIT

Responsible Department: Environmental Services

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

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

13. EROSION CONTROL PLAN

Responsible Department: Environmental Services

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

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

14. GEOTECHNICAL CERTIFICATION

Responsible Department: Environmental Services

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

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

15. GEOTECHNICAL REPORT

Responsible Department: Environmental Services

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

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

16. GRADING PLAN

Responsible Department: Environmental Services

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

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

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

17. INSPECTION-DURING ACTIVE CONSTRUCTION

Responsible Department: Environmental Services

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

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

18. INSPECTION-FOLLOWING ACTIVE CONSTRUCTION

Responsible Department: Environmental Services

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

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

19. INSPECTION-PRIOR TO LAND DISTURBANCE

Responsible Department: Environmental Services

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

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

20. MM1 (AQ-1) - CONSTRUCTION EQUIPMENT

Responsible Department: RMA-Planning

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

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

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

Responsible Department: RMA-Planning

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

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

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

Responsible Department: RMA-Planning

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

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

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

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

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

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

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

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

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

**Compliance or
Monitoring
Action to be Performed:**

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

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

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

Responsible Department: RMA-Planning

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

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

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

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

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

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

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

Responsible Department: RMA-Planning

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

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

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

Responsible Department: RMA-Planning

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

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

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

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

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

Responsible Department: RMA-Planning

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

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

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

Responsible Department: RMA-Planning

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

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

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

Responsible Department: RMA-Planning

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

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

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

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

Responsible Department: RMA-Planning

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

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

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

Responsible Department: RMA-Planning

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

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

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

Responsible Department: RMA-Planning

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

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

33. MM13 (BIO-11) - TREE PROTECTION

Responsible Department: RMA-Planning

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

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

34. PDSP001 - USE PERMIT EXPIRATION

Responsible Department: RMA-Planning

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

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

35. PDSP002 - SUBSEQUENT USE PERMIT REQUIRED

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: If the Owner/Applicant decides to pursue full production of oil and gas from the wells, a subsequent Use Permit approval shall be required to convert the site to full production.

Compliance or Monitoring Action to be Performed: If the Owner/Applicant decides to pursue full production of oil and gas from the wells, a subsequent use permit shall be required to convert the site to full production.

36. PDSPO03 – SITE RESTORATION (NON-STANDARD)

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Should the Owner/Applicant not apply for a subsequent Use Permit for full production of oil and gas within 18 months from the date that construction is started on the fourth well, or from the date that construction construction is started on the last well constructed under this permit, whichever occurs first, all wells shall be properly abandoned according to the requirements of the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR), all temporary facilities shall be removed, and the sites shall be restored to their predevelopment state as permanent grazing/non-native grasslands. This restoration includes removal of gravel and other surface materials and contaminated soil and the restoration of natural grade, with the re-vegetation of the site.

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

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

Responsible Department: RMA-Planning

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

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

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

Responsible Department: RMA-Planning

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

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

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

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The disposal of produced fluids shall not be injected in any well that is currently out of compliance with the Safe Water Drinking Act. The applicant shall disclose the location of the fluid disposal. The disposal of fluids shall be in conformance with all applicable regional, state, and federal regulations and meet the following performance criteria:

- Disposal of fluids shall be in a permitted injection well that is located in an aquifer that has been exempted by the Department of Conservation, or
- Disposal of fluids shall be in a permitted injection well that is located in an aquifer that has a Total Dissolved Solids (TDS) concentration above 10,000 mg/L which does not require an exemption from the Department of Conservation, or
- Disposal of fluids will be at an approved hazardous waste facility.

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

40. EHSP05 – PORTABLE TOILETS (NON-STANDARD)

Responsible Department: Health Department

Condition/Mitigation Monitoring Measure: The applicant shall provide for portable toilet(s) at the sites. One toilet is sufficient for forty (40) individuals. The toilet(s) shall be pumped on a regular basis and stocked with appropriate supplies as necessary.

Compliance or Monitoring Action to be Performed: Prior to commencement of operations, provide portable toilet(s) at the sites. Upon ceasing operations at each site, the portable toilet(s) shall be removed from the site.

41. PDSP007 - METHANE CAPTURE

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The applicant shall consult with the California Air Resources Board (CARB) on methane emissions limits, capture targets, and available technologies to capture methane during the production testing phase. The applicant shall utilize best available control technologies (BACT) for methane capture throughout production testing, based on this consultation.

Compliance or Monitoring Action to be Performed: Prior to issuance of grading or building permits, the applicant shall report to RMA – Planning on the results of the CARB consultation and the BACT to be used during production testing.