

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

amessing@adamsbroadwell.com

SACRAMENTO OFFICE

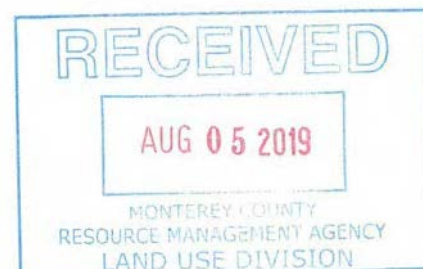
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
CHRISTINA M. CARO
DANIKA L. DESAI
SARA F. DUDLEY
THOMAS A. ENSLOW
ANDREW J. GRAF
TANYA A. GULESSERIAN
KYLE C. JONES
RACHAEL E. KOSS
NIRIT LOTAN
AARON M. MESSING
CAMILLE G. STOUGH

MARC D. JOSEPH
Of Counsel

August 5, 2019



Via Email & Overnight Mail

Yasmeen Hussain
Monterey County Resource Management Agency
1441 Schilling Place, 2nd Floor
Salinas, CA 93901
hussainy@co.monterey.ca.us
CEQAcomments@co.monterey.ca.us

Re: Pacific Gas & Electric Co (Elkhorn Battery Energy Storage Facility) Mitigated Negative Declaration Comments (PLN180371) (SCH #2019079016)

Dear Yasmeen Hussain:

We are writing on behalf of **Monterey Citizens for Responsible Development** ("Citizens") to provide comments on the proposed Initial Study and Mitigated Negative Declaration ("IS/MND") prepared by the Monterey County Resource Management Agency for the Pacific Gas & Electric Co Elkhorn Battery Energy Storage Facility ("Project").

The Project will be constructed within the existing 42-acre PG&E Moss Landing Substation ("Substation") located at 7251 Highway 1 in Moss Landing. The Project footprint would cover approximately 4.5-acres located at the northwestern portion of the Substation. The project includes placement of approximately 268 Tesla manufactured Megapack units over 37 concrete slabs. Each unit will be fully integrated with pre-installed components housed in a single storage enclosure steel cabinet white in color, measuring approximately 23.5 feet in length, 5.3 feet in depth, and 8.25 feet in height. In addition, the Project would include three medium-voltage switchgear units, three 75 or 90 MVA 115kV/21Kv transformers, and an approximately 200-foot-long 115kV electric interconnection line.

Based on our review of the IS/MND and supporting documentation, we conclude that the document fails to comply with the requirements of the California

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Environmental Quality Act (“CEQA”).¹ First, the IS/MND fails to analyze impacts from all phases of the Project. This deficiency is a fatal error because all potentially significant environmental impacts which may result from the Project are not adequately analyzed and all feasible mitigation measures to reduce those impacts to a level of insignificance have not been proposed or adopted. Additionally, the IS/MND fails to adequately identify all of the Project’s potentially significant impacts. Third, the IS/MND fails to support conclusions with substantial evidence. As explained in these comments, there is more than a fair argument that the Project will cause significant hazard and health impacts. For each of these reasons, the County cannot consider the Project until it prepares an Environmental Impact Report (“EIR”) that adequately discloses and analyzes the Project’s potentially significant impacts and incorporates all feasible mitigation to avoid or minimize these impacts to less than significant.

We reviewed the IS/MND, its technical appendices, and the reference documents with the assistance of technical experts from Soil Water Air Protection Enterprise (“SWAPE”).² SWAPE’s technical comments and curricula vitae are attached hereto as Exhibit 1, and are fully incorporated herein and submitted to the County herewith. Therefore, the County must separately respond to the technical comments of SWAPE, in addition to our comments.

I. STATEMENT OF INTEREST

Citizens is an unincorporated association of individuals and labor organizations that are concerned about environmental and public health impacts from industrial development in the region where the association’s members and their families live, work and recreate. The association includes Monterey County residents and California Unions for Reliable Energy (“CURE”) and its local affiliates, and the affiliates’ members and their families, as well as other individuals who live, work and recreate in Monterey County. Accordingly, they would be directly affected by the Project’s environmental and health and safety impacts. Individual members of CURE’s affiliates may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants or other health and safety hazards that exist onsite.

¹ Pub. Resources Code (“PRC”) § 21000 et seq.

² Exhibit 1: SWAPE Comments on the Elkhorn Battery Energy Storage Facility Project Initial Study/Mitigated Negative Declaration (IS/MND) (August 5, 2019) (“SWAPE Comments”).
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CURE is a coalition of labor organizations whose members construct, operate, and maintain powerplants and other industrial facilities throughout California and Monterey County. Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. CURE has helped cut smog-forming pollutants in half, reduced toxic emissions, increased the use of recycled water for cooling systems and pushed for groundbreaking pollution control equipment as the standard for all new power plants, all while ensuring new power plants are built with highly trained, professional workers who live and raise families in nearby communities.

In addition, CURE has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and expensive for industry to expand in Monterey County, and by making it less desirable for businesses to locate and for people to live and recreate in the area. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities for CURE's participating organizations and their members. CURE therefore has a direct interest in enforcing environmental laws and minimizing project impacts that would degrade the environment.

II. THE COUNTY MUST PREPARE AN EIR

The California Environmental Quality Act ("CEQA") has two basic purposes, neither of which the IS/MND satisfies in this case.

First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.³ In the context of CEQA, "environment" means the physical conditions that exist within the affected area and include land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance.⁴ Under CEQA and the CEQA Guidelines, if a project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR.⁵

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and

³ 14 C.C.R. § 15002(a)(1).

⁴ Pub. Resources Code ("PRC") § 21060.5.

⁵ PRC §§ 21100, 21151; 14 C.C.R. § 15064(a)(1), (f)(1).
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the implementation of all feasible mitigation measures.⁶ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”⁷

CEQA requires that an agency analyze all the potential environmental impacts of its proposed actions in an EIR, except in certain limited circumstances.⁸ The EIR is the heart of CEQA⁹ and has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”¹⁰ An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project *may* have a significant effect on the environment.”¹¹ The EIR aids an agency in identifying, disclosing, analyzing, and, to the extent possible, avoiding the entire project’s¹² significant environmental effects through implementing feasible mitigation measures.¹³

In certain limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement indicating that a project will have no significant impact. However, because “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process” by allowing the agency to dispense with the duty to prepare an EIR, negative declarations are allowed only in cases where there is not even a “fair argument” that the project will have a significant environmental effect.¹⁴

In some circumstances, a project with potentially significant impacts can be modified by the adoption of mitigation measures to reduce the impacts to a level of

⁶ 14 C.C.R. § 15002(a)(2) and (3); see also, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

⁷ PRC § 21081; 14 C.C.R. § 15092(b)(2)(A)-(B).

⁸ See, e.g., PRC § 21100.

⁹ *Dunn-Edwards v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, 652.

¹⁰ *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”) (citing *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹¹ PRC § 21080(d) (emphasis added); 14 C.C.R. § 15064; see also *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927; *Mejia v. City of Los Angeles* (2005) 13 Cal. App. 4th 322.

¹² 14 C.C.R. § 15378.

¹³ PRC § 21002.1(a); 14 C.C.R. § 15002(a), (f).

¹⁴ *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440; PRC §§ 21100, 21064. 4337-009acp

insignificance. In such cases, an agency may satisfy its CEQA obligations by preparing a mitigated negative declaration.¹⁵ However, a mitigated negative declaration is also subject to the same “fair argument” standard. Thus, an EIR is required whenever substantial evidence in the record supports a “fair argument” that significant impacts may occur as a result of the project even with the imposition of mitigation measures.

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. The “fair argument” standard reflects this presumption. The fair argument standard is an exceptionally low threshold favoring environmental review in an EIR rather than a negative declaration.¹⁶ As noted above, this standard requires preparation of an EIR if any substantial evidence in the record indicates that a project may have an adverse environmental effect.¹⁷ As a matter of law, substantial evidence includes both expert and lay opinion based on fact.¹⁸ Even if other substantial evidence supports a different conclusion, the agency nevertheless must prepare an EIR.¹⁹

With respect to this Project, the IS/MND fails to satisfy either of CEQA’s two most fundamental purposes. First, the IS/MND lacks critical information on elements of the Project and thereby fails to inform the public and decisionmakers of the Project’s potentially significant impacts on the environment and human health. Second the IS/MND fails to adequately evaluate air quality and health impacts, failing as an informational document. Third, the IS/MND fails to support its energy impact analysis with substantial evidence. CEQA requires that these impacts be analyzed in an EIR in order to inform the public and decisionmakers of the potentially significant impacts from the Project, to consider alternatives, and to identify and incorporate mitigation measures to avoid or reduce the impacts to less than significant.²⁰

¹⁵ PRC § 21064.5; 14 C.C.R. § 15064(f)(2).

¹⁶ *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

¹⁷ 14 C.C.R. § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931.

¹⁸ PRC § 21080(e)(1) (For purposes of CEQA, “substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”); 14 C.C.R. § 15064(f)(5).

¹⁹ *Arviv Enterprises v. South Valley Area Planning Comm.* (2002) 101 Cal.App.4th 1333, 1346; *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597.

²⁰ See *Security Environmental Systems v. South Coast Air Quality Management District* (1991) 229 Cal.App.3d 110.

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III. THE IS/MND FAILS TO ACCOUNT FOR DECOMMISSIONING IMPACTS ON THE ENVIRONMENT

CEQA requires the County to evaluate “[t]he 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.”²¹ Appropriate analysis, therefore, must include impacts that may result during the decommissioning phase of a project. The IS/MND states that the Project’s anticipated life is 15 to 20 years.²² The IS/MND further states that batteries that will exceed their lifetime will be returned to Tesla’s factory in Nevada for recycling.²³

However, the IS/MND fails completely to discuss or analyze what will happen with the Project after 15 to 20 years, nor what possible environmental impacts may result from decommissioning of the Project. It is not clear from the IS/MND if the entire Project will be decommissioned (including removal of all structures, grading, and restoration), or whether spent batteries will be replaced with new ones (which would include additional transport of hazardous materials,²⁴ traffic, greenhouse gas emissions, and equipment use). Whether the Project will be completely decommissioned or spent batteries replaced, the IS/MND fails to provide information on potentially significant impacts or provide a decommissioning plan, as appropriate.

Such an oversight precludes effective evaluation of the Project’s potentially significant impacts over its lifetime, preventing decision-makers and the public from understanding the Project’s environmental and public health ramifications. Therefore, the County must prepare an EIR to fully evaluate impacts from the Project, including decommissioning.

²¹ 14 C.C.R. § 15378(a).

²² IS/MND, at p. 10.

²³ *Id.*

²⁴ Such as discussed in the construction phase, IS/MND, at p. 47: “[t]he construction component of the project would include bulk deliveries of ..., the Tesla Megapacks Tesla Megapacks are classified as UN 3480 “lithium-ion batteries,” a Class 9 (Miscellaneous) Hazardous Material per the United States Code of Federal Regulations (CFR) 49 CFR 172.101.”

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IV. THE IS/MND FAILS TO ANALYZE CRITICAL PROJECT IMPACTS AND IS INADEQUATE AS AN INFORMATIONAL DOCUMENT

The IS/MND violates CEQA because it fails to adequately analyze several Project impacts. The omission of this information renders the IS/MND inconsistent with CEQA's fundamental purpose of disclosure and inadequate as an informational document. It also prevents full consideration of the Project's potentially significant environmental impacts.

CEQA requires that before a negative declaration can be issued, the initial study must "provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment."²⁵

A. The IS/MND Fails to Adequately Analyze Air Quality Impacts

To function as an informational document, the IS/MND must provide correct information on potential impacts, and must support conclusions by substantial evidence.²⁶ In this case, the IS/MND uses inappropriate input parameters in its CalEEMod model, thereby underestimating Project emissions.

First, the IS/MND provides that the construction schedule will be approximately 21 months,²⁷ whereas the CalEEMod input files show that the model used 18 months of construction to generate emissions values.²⁸ Second, the IS/MND provides that construction will take place seven days a week,²⁹ but only a five-day week was used in the model.³⁰ Third, the IS/MND provides that a total of 24 vendor trips a day are anticipated,³¹ whereas the model used 18 trips per day to generate output.³² All these values lead to an underestimation of emissions expected during Project construction.

Because the IS/MND underestimated the construction emission sources used to calculate air impacts, the IS/MND fails to provide substantial evidence to support its conclusion that the Project would result in less than significant construction

²⁵ 14 C.C.R. § 15063(c)(5).

²⁶ *Id.*

²⁷ IS/MND, at p. 7.

²⁸ SWAPE Comments, at p. 3.

²⁹ IS/MND, at p. 7.

³⁰ SWAPE Comments, at p. 4.

³¹ IS/MND, Table 2, at p. 8.

³² SWAPE Comments, at p. 5.

related air quality impacts. Therefore, the County must prepare an EIR to address and fully disclose the Project's air quality impacts.

B. The IS/MND Fails to Adequately Analyze Groundwater Contamination

CEQA requires that the County analyze all impacts of a Project.³³ In this case, soil and groundwater contamination are known to occur within 0.25 miles of the Project site.³⁴ The IS/MND states:

Although the project site is not located on a hazardous materials release site pursuant to Government Code Section 65962.5, according to the DTSC and SWRCB, contaminated soil and groundwater was previously identified at 5 areas of concern (AOCs) at the adjacent property, the Moss Landing Power Plant, in connection with past power-generating activities.³⁵

Despite this information, the County conducted no analysis of impacts associated with the Project's grading of soils and possible encounter with groundwater. Specifically, SWAPE notes that no Phase I or Phase II sampling investigations were conducted at the Project site.³⁶

Furthermore, despite the Project proposing to excavate soils, the IS/MND defers soil analysis until the construction phase, stating:

[i]f unknown hazardous materials-impacted soils are identified during construction, work at that location would cease until the impacted soils are characterized and a management plan is developed for characterization and safe soil handling to protect workers and prevent further release to the environment.³⁷

There is evidence that soil contamination may exist on the site, and that it may be encountered during construction.³⁸ However, the IS/MND did not conduct soil sampling on the Project site despite the available information and therefore defers determination of potential health and environmental impacts. Similarly, the IS/MND defers determination of the presence of contaminated groundwater, stating

³³ PRC § 21100.

³⁴ IS/MND, at p. 48.

³⁵ *Id.*

³⁶ SWAPE Comments, at p. 1-2.

³⁷ IS/MND, at p. 48-49.

³⁸ *Id.*, at p. 48.

only that should groundwater be encountered, only then will groundwater be tested for possible contamination.³⁹ Thus, the IS/MND fails as an informational document and the County must prepare this analysis and include it in an EIR before considering the Project.

V. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT HAZARD IMPACTS

A. The IS/MND Fails to Analyze Battery Hazard Impacts

The Project will use Lithium-Ion batteries. Explosion risk in these kinds of batteries has been well documented.⁴⁰ However, the IS/MND does not discuss the Project's risk of explosions. Furthermore, the thermal imaging and hydrant installation proposed as mitigation, based on an analysis that the County did not even prepare and disclose in the IS/MND,⁴¹ would be ineffective in the case of an explosion.⁴²

In addition, the IS/MND is totally silent on North Monterey County Fire's experience with the unique challenges of battery fires. The IS/MND does not include any evidence that the Fire Department has the equipment, chemicals, or expertise to address possible explosions. Further, the IS/MND fails to disclose the location of the Fire Department relative to the Project site, fails to disclose if the Fire Department has the resources, equipment, and chemicals required to meet the well-known challenges of fighting a lithium-ion battery explosion, and fails to disclose the response time to an emergency.

Thus, the County must prepare an EIR to address the potential for explosions and the effectiveness of mitigation to protect employees and responding agencies from injuries and exposure to toxic chemicals released in a resultant fire.⁴³

³⁹ *Id.* at p. 49.

⁴⁰ SWAPE Comments, at p. 2.

⁴¹ IS/MND, at p. 5.

⁴² SWAPE Comments, at p. 2.

⁴³ *Id.*

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B. The IS/MND fails to Provide Substantial Evidence to Support the Health Risk Analysis.

The IS/MND states that the health risk posed to nearby receptors during construction would be less than significant, stating:

An existing perimeter wall and vegetation sit between the project site and the nearest residence, which is over 200 feet from the development area. However, there is no large population of people at this distance. Therefore, the project would not result in air quality emissions that would adversely affect a substantial number of people.⁴⁴

However, the contention that there is a perimeter wall and vegetation between the nearest residence and the Project does not constitute substantial evidence supporting a finding of no impact. The IS/MND lacks any information on the extent of the health risk and how that perimeter would prevent injury beyond the wall and vegetation. Furthermore, there are at least three residences within 1000 feet of the Project,⁴⁵ all of which may be impacted by air pollution emissions and hazards from project construction activities.

Regarding the Project's health risk impacts, the IS/MND states:

Implementation of the project would result in temporary emissions of CO, NO₂, SO₂, lead, and PM_{2.5} during construction and grading activities; however, these would be well within the emittance levels already accommodated within the AQMP, resulting in no impact. The subject property is an existing industrial site and is not in an area where sensitive receptors, such as a housing area or schools, would be affected by construction and/or grading activities. The nearest schools to the project site are the North Monterey County Middle School and North Monterey County High School, which are located approximately 3 miles southeast of the project site. Operation of construction vehicles associated with the project would generate temporary airborne odors, such as diesel exhaust. An existing perimeter wall and vegetation sit between the project site and nearest residence, which is over 200 feet from the development area. However, there is no large population of people at this distance. Therefore, the project would

⁴⁴ IS/MND, at p. 25.

⁴⁵ Google Earth imagery.
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not result in air quality emissions that would adversely affect a substantial number of people.⁴⁶

To comply with CEQA the IS/MND must provide substantial evidence to support this conclusion. However, the IS/MND fails to conduct a quantified construction Health Risk Assessment (“HRA”) or other analysis to support this claim.⁴⁷ Furthermore, failing to conduct a construction HRA is inconsistent with the most recent guidance published by the Office of Environmental Health Hazard Assessment (OEHHA).⁴⁸

As such, the IS/MND should have evaluated the health risk impacts posed to nearby receptors as a result of Project construction.⁴⁹

C. There is Substantial Evidence that the Project will Have a Significant, Unmitigated Impacts on Public Health

As stated above, the IS/MND failed to conduct a HRA. SWAPE conducted a screening-level HRA to evaluate Project impacts.⁵⁰ In their analysis, SWAPE used the corrected input data for air quality analysis as described above. SWAPE’s analysis showed that:

the excess cancer risk to 3rd trimester gestations and infants at a sensitive receptor located approximately 200 meters away, over the course of Project construction, are approximately 87 and 1,600 in one million, respectively. Furthermore, the excess cancer risk over the course of Project construction (1.25 years) is approximately 1,700 in one million. The 3rd trimester, infant, and total construction cancer risk greatly exceed the MBUAPCD’s threshold of 10 in one million, thus resulting in a potentially significant impact not previously addressed or identified by the IS/MND.⁵¹

As shown, there is substantial evidence to support a fair argument that the Project will have significant impacts. Therefore, the County must prepare an EIR to adequately analyze the Project’s health risk impacts and must also include additional mitigation measures to reduce these impacts to a less than significant level.

⁴⁶ IS/MND, at p. 25.

⁴⁷ SWAPE Comments, at p. 7.

⁴⁸ *Id.*, at p. 8.

⁴⁹ *Id.*, at p. 11.

⁵⁰ SWAPE Comments, at p. 8

⁵¹ *Id.*, at p. 11.

VI. THE IS/MND FAILS TO PROVIDE SUBSTANTIAL EVIDENCE TO SUPPORT THE ENERGY IMPACTS ANALYSIS

CEQA §21100(a) requires agencies to prepare an EIR on any project which may have a significant impact on the environment. Subdivision (b)(3) requires that the EIR must include mitigation measures to, among others, “[r]educe the wasteful, inefficient, and unnecessary consumption of energy.” In order to determine whether a project may have significant energy impacts, the lead agency must conduct an energy study. Section 15126.2 subd. (b) of the CEQA Guidelines requires that “[t]his analysis should include the project's energy use for all project phases and components, including transportation-related energy, during construction and operation.”

Here, the IS/MND fails to compare the Project’s energy use to energy use associated with the existing environmental setting – in this case the vacant lot. Before the impacts of a project can be assessed and mitigation measures considered, the IS/MND must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.⁵² Therefore, it is a central concept of CEQA, widely accepted by the courts, that the significance of a project’s impacts cannot be measured unless the IS/MND first establishes the actual physical conditions on the property. In other words, baseline determination is the first step in the environmental review process.⁵³

In this case, the IS/MND finds that the Project will have no impacts on energy resources.⁵⁴ The IS/MND provides only a conclusory statement stating:

The project proposes to receive, store and discharge electric energy to and from the PG&E electrical grid. The project would consume minimal energy for functions such as safety and security lighting and facility monitoring during construction and operation. The project proposes to install motion censored lighting for egress/ingress purposes, which would reduce the amount of energy utilized with continuous lighting. Therefore, the project would not result in impacts to energy resources.⁵⁵

⁵² *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. Ap. 4th 931, 952.

⁵³ *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal. App. 4th 99, 125; see *Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321 (“the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis”).

⁵⁴ IS/MND, at p. 17.

⁵⁵ *Id.*

However, the IS/MND does not provide any evidence to support this conclusion. A conclusory statement does not constitute substantial evidence as required by CEQA.

Second, the IS/MND fails to compare the Project energy use to CEQA's thresholds for measuring wasteful, uneconomic, inefficient or unnecessary consumption of energy in Appendix F and to the more recent threshold set forth in Governor Brown's Executive Order B-55-18. Under CEQA, wasteful, uneconomic, inefficient or unnecessary consumption of energy means exceeding a threshold of significance in the energy use impact areas identified in Appendix F. This includes asking whether the project's energy requirements by amount and fuel type during construction, operation, maintenance and/or removal and from materials is significant, whether the project comply with existing energy standards, whether the project will have a significant effect on energy resources and whether the project will have significant transportation energy use requirements, among other questions. For each of these questions, CEQA Guidelines Appendix F asks whether the project decreases overall per capita energy consumption, decreases reliance on fossil fuels, and increases reliance on renewable energy sources. Appendix F explains that these are the means to ensure wise and efficient use of energy. If a project does not decrease overall per capita energy consumption, decrease reliance on fossil fuels, and increase reliance on renewable energy sources, then the Project does not ensure wise and efficient use of energy and, therefore, results in a wasteful, inefficient and unnecessary consumption of energy. Furthermore, the IS/MND contains no analysis of whether the Project's energy use is carbon neutral under Governor Brown's Executive Order B-55-18. The question is, for example, whether the project's energy requirements by amount and fuel type during construction, operation, maintenance and/or removal and transportation is carbon neutral. This analysis of carbon neutrality is consistent with Appendix F's explanation of the means to ensure wise and efficient use of energy. The IS/MND contains no such analyses.

Therefore, the IS/MND is inadequate as an environmental document because it fails to comply with the law and fails to properly analyze and disclose the Project's impacts on energy use. Therefore, the County cannot approve the Project until it prepares an EIR that analyzes these issues and complies with CEQA's requirements.

VII. THE IS/MND IMPROPERLY DEFERS ANALYSIS AND MITIGATION

The IS/MND improperly defers analysis and identification of mitigation measures for impacts that may be significant. As a result, the IS/MND's conclusions lack substantial evidence to support the conclusion that impacts would be less than significant. The IS/MND's own evidence shows that significant, unmitigated impacts may occur, requiring the preparation of an EIR.

With respect to potentially significant impacts on biological resources, the IS/MND acknowledges that "[a]lthough development would be within the existing industrially developed substation, construction activity would have potential to disturb ESHA [environmental sensitive habitat area]." Despite this finding, the IS/MND relies on mitigation which is not yet identified, but deferred to sometime in the future. With respect to potentially significant impacts on water resources and from hazards, the IS/MND defers preparation of a stormwater pollution prevention plan, which is required to be included for review during the public review process.

By proposing to develop plans in the future, rather than before the public review process, the County prevents the public from being able to evaluate and comment on the efficiency of mitigation, thus prejudicing the public and bypassing the goal of CEQA. The IS/MND must be withdrawn and recirculated to the public with the required analysis and with enforceable mitigation measures or specific performance standards for future plans, as required by CEQA.

VIII. CONCLUSION

For the foregoing reasons, we urge the County to withdraw the IS/MND. The potentially significant environmental impacts of the Project must be evaluated by the County in an EIR, as required by CEQA.

Sincerely,



Aaron Messing

AMM:acp
Attachments
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