

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  
agraf@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*

September 19, 2019

**Via Email and U.S. Mail**

Guy Savage  
Assistant County Administrative Officer  
San Luis Obispo County  
County Government Center  
1055 Monterey Street  
San Luis Obispo, CA 93408  
[GSavage@co.slo.ca.us](mailto:GSavage@co.slo.ca.us)

Trevor Keith  
Director, Planning & Building  
San Luis Obispo County  
County Government Center  
1055 Monterey Street  
San Luis Obispo, CA 93408  
[TKeith@co.slo.ca.us](mailto:TKeith@co.slo.ca.us)

**Via Email Only**

Ian Landreth, Project Manager, [ILandreth@co.slo.ca.us](mailto:ILandreth@co.slo.ca.us)  
Ramona Hedges, [rhedges@co.slo.ca.us](mailto:rhedges@co.slo.ca.us)

**Re: Comments on the Proposed Mitigated Negative Declaration for  
the City Boy Farms Cannabis Project (DRC2017-00123)**

Dear Mr. Savage, Mr. Keith, Mr. Landreth and Ms. Hedges:

We write on behalf of Californians for Sustainable Communities to provide comments on the proposed Mitigated Negative Declaration (“MND”)<sup>1</sup> and Initial Study<sup>2</sup> prepared by the County of San Luis Obispo (“the County”), pursuant to the California Environmental Quality Act (“CEQA”),<sup>3</sup> for the City Boy Farms Cannabis Project, Conditional Use Permit DRC2017-00123 (“Project”). City Boy Farms (“Applicant”) proposes to establish 152,680 square feet of outdoor and indoor

<sup>1</sup> County of San Luis Obispo, Department of Planning and Building, Negative Declaration & Notice of Determination: City Boy Farms, Conditional Use Permit; DRC2017-00123 (Aug. 16, 2019) (*hereinafter* “MND”).

<sup>2</sup> County of San Luis Obispo, Department of Planning and Building, Initial Study - Environmental Checklist: City Boy Farms, Conditional Use Permit DRC2017-00123 (ED19-0043) (Aug. 16, 2019) (*hereinafter* “Initial Study”).

<sup>3</sup> Pub. Resources Code § 21000 *et seq.*  
4705-004acp

September 19, 2019

Page 2

cannabis cultivation, 146,240 square feet of outdoor and indoor commercial cannabis nursery, and 2,500 square feet of cannabis non-storefront retail and manufacturing on an approximately 25-acre parcel in Templeton, California.<sup>4</sup>

Based on our review of the MND, Initial Study, and supporting documents, we conclude the County failed to comply with CEQA. Specifically, the MND and Initial Study fail to adequately describe the Project. In addition, the Initial Study fails to sufficiently describe the current environmental setting for air quality, biological resources, and energy. These deficiencies are fatal errors because all potentially significant environmental impacts which may result from the Project are not properly disclosed or analyzed, and all feasible mitigation measures to reduce those impacts to a level of insignificance have not been proposed or adopted.

As described in these comments, substantial evidence supports a fair argument that the Project may result in significant, unmitigated impacts to agriculture, air quality, biological resources, energy, greenhouse gas (“GHGs”), hazardous materials, groundwater quality, and land use. Moreover, substantial evidence supports a fair argument that the Project’s impacts may be cumulatively considerable.

The County cannot undertake any further actions concerning the proposed Project until it prepares an environmental impact report (“EIR”) analyzing the Project’s potentially significant direct, indirect, and cumulative impacts, and incorporates all feasible mitigation measures to minimize these impacts to less than significant.

## I. STATEMENT OF INTEREST

Californians for Sustainable Communities is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. The coalition includes International Brotherhood of Electrical Workers Local 639, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live, recreate and work in the County.

---

<sup>4</sup> MND at p. 1.  
4705-004acp

September 19, 2019

Page 3

Individual members of Californians for Sustainable Communities and its member organizations include David Baldwin, Greg Heschke, Cooper Armas, Saul Flores, Cody Francis, Steven Fredricks and Juan Guzman. These individuals live, work, recreate and raise their families in the County. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They would be the first in line to be exposed to any health and safety hazards which may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

Californians for Sustainable Communities 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 more expensive for business and industry to expand in the County and the surrounding region, and by making it less desirable for new businesses to locate and people to live and recreate in the County, including in the vicinity of the Project. Continued degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities.

The members of Californians for Sustainable Communities therefore have a direct interest in enforcing environmental laws that minimize the adverse impacts of projects that would otherwise degrade the environment. CEQA provides a balancing process whereby economic benefits are weighted against significant impacts to the environment,<sup>5</sup> and it is for these purposes we offer these comments.

## **II. THE INITIAL STUDY AND MND FAIL TO ADEQUATELY DESCRIBE THE PROJECT**

The initial study is the preliminary environmental analysis to determine whether a project may have a significant effect on the environment.<sup>6</sup> The purpose of the initial study is to (1) provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration, (2) enable the applicant or lead agency to modify a project, mitigating adverse impacts before an

---

<sup>5</sup> Pub. Resources Code § 21871(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

<sup>6</sup> CEQA Guidelines § 15063(a)(1).  
4705-004acp

September 19, 2019

Page 4

EIR is prepared, thereby enabling the project to qualify for a mitigated negative declaration, and (3) provide documentation of the factual basis for finding in a negative declaration that a project will not have a significant effect.<sup>7</sup>

An initial study and MND must contain a brief description of the project.<sup>8</sup> “All phases of the project planning, implementation, and operation must be considered in the Initial Study of the project.”<sup>9</sup> “Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. An accurate and complete project description is necessary to fully evaluate the project’s potential environmental effects.”<sup>10</sup>

As a threshold matter, the County fails to incorporate enough information about the Project into the Initial Study or MND to permit a proper analysis of the potential environmental impacts despite the relevant information being readily available in the record. In fact, the project description accompanying the land use permit application contains substantially more information regarding the proposed Project than the CEQA documents.<sup>11</sup> Omitting relevant information from the CEQA documents subverts the primary purpose of CEQA, which is to enable an adequate assessment of whether the Project may have a significant effect on the environment.<sup>12</sup>

Disclosure of the full scope of the Project in the Initial Study and MND is essential to evaluation of the environmental impacts. For example, the CEQA documents do not disclose the types of equipment and activities which are expected to consume 810,000 kilowatt hours (“kWh”) of electricity during the Project’s operation.<sup>13</sup> The character of the equipment and activities to be implemented is critical to determining whether the Project may result in a potentially significant

---

<sup>7</sup> *Id.* § 15063(c)(1)-(2), (5).

<sup>8</sup> *Id.* § 15063(d)(1), 15071(a).

<sup>9</sup> *Id.* § 15063(a)(1).

<sup>10</sup> *El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591, 1597 (internal citations omitted).

<sup>11</sup> City Boy Farms, Project Description 3.5: Project # DRC20017-00123 (undated) (*hereinafter* “Project Description”).

<sup>12</sup> CEQA Guidelines § 15063(a).

<sup>13</sup> Initial Study at p. 52.

4705-004acp

September 19, 2019

Page 5

environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources.

To illustrate, the CEQA documents do not disclose the lighting anticipated within the indoor greenhouse. However, the land use permit application's project description states the greenhouse will use over 100 high intensity discharge ("HID") lighting fixtures to supplement plant growth.<sup>14</sup> This information is vital because the use of HID lighting fixtures may result in wasteful and inefficient use of energy resources when feasible alternatives are available to reduce potentially significant impacts to a level of insignificance.

Without an accurate, stable, and complete project description in the Initial Study and MND, the Project's significant environmental impacts cannot be properly assessed and, to the extent feasible, mitigated.

#### **A. The Initial Study and MND Fail to Describe the Project's Construction Phase**

The Initial Study states the Project will involve total site disturbance of about 10 acres, including "construction of a 37,350 square-foot greenhouse for indoor cultivation, commercial nursery and equipment storage; an 8,000 square-foot metal manufacturing building to be used for commercial manufacturing, the non-store front dispensary, ancillary processing and office activities, two 320 square-foot sea train containers for drying and curing, one 5,000 gallon water tank, three 10,000 gallon steel water tanks, a 100 square-foot metal building to be used by security personnel, and a 100 square-foot shed for fertilizer storage."<sup>15</sup> However, the CEQA documents do not disclose any information regarding construction phasing and implementation.<sup>16</sup> Although the project description included with the land use application clarifies construction phasing, it does not shed any light on what construction will entail.<sup>17</sup>

The Initial Study omits (1) the type and number of anticipated construction equipment, (2) the anticipated length of the construction period, (3) the types of

---

<sup>14</sup> Project Description at p. 3.

<sup>15</sup> Initial Study at p. 2.

<sup>16</sup> See generally MND at p. 1; Initial Study at pp. 2-5.

<sup>17</sup> Project Description at p. 4.

September 19, 2019

Page 6

ground-disturbing activities, (4) the depth of excavation for grading activities (5) the number of construction-related truck trips, (6) the construction-related hauling distance, and (7) locations of major laydown and equipment staging areas. Without this information, decisionmakers and the public cannot properly assess the significance of the Project's construction impacts on a variety of environmental issues, namely air quality, biological resources, cultural resources, geology and soils, GHGs, water quality, noise, and transportation.

For example, the Project's impacts on air quality cannot be properly examined because the Initial Study lacks the critical construction information described above. The record does not contain any evidence regarding the assumptions which were used in order to quantify the Project's air quality impacts. This information is readily available because the San Luis Obispo County Air Pollution Control District ("Air District") assessed the potential air pollution impacts from the construction and operational phases of the Project.<sup>18</sup> However, the construction assumptions were not disclosed in the Initial Study or its accompanying materials, the Air District's letter, or any of the records produced in response to Public Records Act requests.

Further compounding the issue is the absence of any information regarding the baseline air quality conditions as discussed below in Section III.A.<sup>19</sup> The combination of inadequate project description and a sub-standard description of the environmental setting does not facilitate informed decisionmaking as required by CEQA. Therefore, the Initial Study and MND do not meet CEQA's basic requirement that the project description contains enough relevant information to evaluate whether the Project may have a significant effect on the environment.<sup>20</sup>

**B. The Initial Study and MND Fail to Describe the Potential Pesticides, Fertilizers, or Other Hazardous Materials that May Be Used During Project Operation**

The Initial Study's project description does not identify any of the potential pesticides, fertilizers, or other hazardous materials that may be used during the

---

<sup>18</sup> Letter from Jackie Mansoor, San Luis Obispo County Air Pollution Control District to Ian Landreth, County of San Luis Obispo, Planning Department re: APCD Comments Regarding the Conditional Use Permit for CB Farms Cannabis Project (DRC2017-000123) (July 23, 2019).

<sup>19</sup> See Initial Study at pp. 27-28.

<sup>20</sup> CEQA Guidelines § 15063(a).

4705-004acp

September 19, 2019

Page 7

Project's operation. Instead, the potential pesticides are identified in a Pesticide Application and Storage Plan submitted with the land use permit application.<sup>21</sup> The Initial Study claims Project "operations would involve the intermittent use of small amounts of hazardous materials such as fertilizer and pesticides,"<sup>22</sup> but these materials "are not expected to be acutely hazardous."<sup>23</sup> Without an accounting of the potential pesticides and fertilizers which may be used, a proper analysis of the Project's potentially significant impacts cannot occur. Decisionmakers and the public are not required to sift through the record to identify the pesticides that could potentially be used.<sup>24</sup>

### **C. The Initial Study and MND Fail to Describe the Project's Energy Consumption**

The Initial Study claims the cannabis activities for the Project are expected to consume 810,000 kWh of electricity per year.<sup>25</sup> This number is derived from the land use permit application, but the application does not describe how that number was calculated. The County's unsubstantiated assertion regarding the Project's energy consumption fails to comply with CEQA's requirement that the Project include an accurate project description.

Appendix F of the CEQA Guidelines identifies several items which should be included within a project description:

1. Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment for the project.
2. Total energy requirements of the project by fuel type and end use.
3. Energy conservation equipment and design features.
4. Identification of energy supplies that would serve the project.

---

<sup>21</sup> City Boy Farms, Pesticide Application and Storage Plan (undated).

<sup>22</sup> Initial Study at p. 63.

<sup>23</sup> *Ibid.*

<sup>24</sup> *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 659 ("The decisionmakers and general public should not be forced to sift through obscure minutiae or appendices in order to ferret out the fundamental baseline assumptions that are being used for the purpose of environmental analysis.")

<sup>25</sup> Initial Study at p. 52.

4705-004acp

September 19, 2019

Page 8

5. Total estimated daily vehicle trips to be generated by the project and the additional energy consumed per trip by mode.<sup>26</sup>

All five items described in Appendix F are applicable to the proposed Project; however, the County did not include any of this information in the Initial Study. The assumptions and methods for how the County determines the Project's energy use is critical to evaluating whether the Project's operation may have a significant impact on energy. Without this information, decisionmakers and the public cannot properly evaluate the Project's potential impacts on energy use.

#### **D. The Initial Study and MND Fail to Fully Disclose the Manufacturing Process**

The County does not disclose the specific activities anticipated to be a part of the manufacturing process in the Initial Study or MND. Instead, the Initial Study simply states the Project will include "an 8,000 square-foot metal manufacturing building to be used for commercial manufacturing, the non-store front dispensary, ancillary processing and office activities."<sup>27</sup> The record shows the Project will perform activities during the manufacturing process which are prohibited in areas zoned for agriculture.

Land Use Ordinance § 22.40.070.A states: "Cannabis manufacturing facilities in the Agriculture land use category are limited to the processing of the raw cannabis materials grown onsite."<sup>28</sup> Specifically, the County issued guidance on what qualifies as processing under the ordinance.<sup>29</sup> The County prohibits "combining raw cannabis with other ingredients or compounding cannabis extractions with other ingredients to create a product for consumption or use by the end-user, or to create an intermediate product to be used in manufacturing at a different location" on land zoned for agriculture.<sup>30</sup>

---

<sup>26</sup> CEQA Guidelines, appen. F.

<sup>27</sup> Initial Study at p. 2.

<sup>28</sup> Land Use Ordinance § 22.40.070.A.

<sup>29</sup> County of San Luis Obispo, Department of Planning and Building, AG Cannabis Manufacturing Guidance Document (Mar. 13, 2018).

<sup>30</sup> *Ibid.*

4705-004acp



September 19, 2019

Page 9

As described in the cannabis application, the Project includes manufacturing of oils, edibles and topicals,<sup>31</sup> which necessarily involves combining cannabis with other ingredients through a process called infusion. The inclusion of this type of processing is confirmed by the cultivation plan included with the land use application, which identifies and the explains the process for infusing products,<sup>32</sup> and is also identified in the manufacturing building floor plan attached to the Initial Study and MND.<sup>33</sup> Moreover, as recently as May 29, 2019, the Applicant confirmed infusion had not been eliminated from the Project, but instead it “has been pushed back into phase 3.”<sup>34</sup> Because the Project includes a manufacturing component prohibited in an area zoned for agriculture, the Project may have potentially significant impacts due to conflicts with the land use ordinance.

### III. THE INITIAL STUDY FAILS TO ADEQUATELY DESCRIBE THE ENVIRONMENTAL SETTING

An initial study must include an identification of the environmental setting.<sup>35</sup> The environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project’s impacts.<sup>36</sup> “The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project’s likely near-term and long-term impacts.”<sup>37</sup>

“An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings.”<sup>38</sup> Substantial evidence is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even

---

<sup>31</sup> City Boy Farms, Cannabis Application Supplement (undated) p. 3 (hereinafter “Cannabis Application”).

<sup>32</sup> City Boy Farms, Cultivation Plan (undated) pp. 8-11.

<sup>33</sup> See Initial Study at p. 93.

<sup>34</sup> Letter from County of Santa Barbara to City Boy Farms re: DRC2017-00123 (CB Farms) Environmental Review Information Request (May 29, 2019).

<sup>35</sup> CEQA Guidelines § 15063(d)(2).

<sup>36</sup> *Id.* § 15125(a); see also *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 38 Cal. 4th 310, 320-21 (CEQA Guidelines § 15125(a) applies to an initial study).

<sup>37</sup> CEQA Guidelines § 15125(a).

<sup>38</sup> *Id.* § 15063(a)(3).

4705-004acp

September 19, 2019  
Page 10

though other conclusions might also be reached.”<sup>39</sup> It includes “facts, reasonable assumption predicated upon facts, and expert opinion supported by facts,”<sup>40</sup> but does not include “[a]rgument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly erroneous or inaccurate.”<sup>41</sup>

#### **A. The Initial Study Fails to Describe the Baseline Air Quality Conditions**

The Initial Study contains no discussion of the baseline air quality conditions in the Project vicinity.<sup>42</sup> Instead, the document simply identifies the applicable air basin, regional air pollution control district, and clean air plan.<sup>43</sup> The Initial Study does not contain any information regarding (1) the County’s air quality attainment status for criteria pollutants, (2) air quality data from any of the County’s nine air monitoring stations, (3) the sources of air pollution in the County, or (4) an emissions inventory of these sources throughout the County. Without an adequate discussion of the current air quality in the Project area, decisionmakers and the public have no baseline to compare the Project’s potential impacts on air quality.

#### **B. The Initial Study Fails to Accurately Describe the Potential for Special-Status Species to Occur in the Project Area**

The County relies on two biological resource assessments to support its discussion of the environmental setting for biological resources. The Initial Study primarily relies on a July 2018 report conducted by Kevin Merk Associates, LLC (“KMA Report”).<sup>44</sup> The KMA Report includes a review of relevant literature and databases, as well as a site survey visit on April 26, 2018.<sup>45</sup> However, the report did not consider the March 30, 2018 letter from the California Department of Fish and

---

<sup>39</sup> *Id.* § 15384(a).

<sup>40</sup> *Id.* § 15384(b).

<sup>41</sup> *Id.* § 15384(a).

<sup>42</sup> Initial Study at p. 27.

<sup>43</sup> *Ibid.*

<sup>44</sup> Letter from Kevin B. Merk, Kevin Merk Associates, LLC to Jason Kallen, City Boy Farms, Inc. re: Biological Resources Assessment for Proposed Agricultural Project at 4225 South El Pomar Road, Templeton, San Luis Obispo, California (July 11, 2018) (*hereinafter* “KMA Report”).

<sup>45</sup> *Id.* at pp. 2-3 (discussion of methods)

4705-004acp

September 19, 2019

Page 11

Wildlife (“CDFW”), providing comments on the potential impacts to special-status species.<sup>46</sup>

The Initial Study also relies on a September 2018 supplemental report conducted by Terra Verde Environmental Consulting (“Terra Verde Report”) for a proposed cannabis operation at the property directly adjacent to the proposed Project.<sup>47</sup> The Terra Verde Report includes a review of relevant literature and databases, as well as a site survey visit on May 10, 2018.<sup>48</sup> This report also did not consider any input directly from the CDFW prior to publication.

*1. The Initial Study Fails to Adequately Describe the Potential for Special-Status Species to Occur Within the Project Area*

As a threshold matter, the Initial Study does not provide any substantive discussion regarding the potential for special-status species to occur in the Project area.<sup>49</sup> Instead, the Initial Study directs the reader to Attachment 2 of the KMA Report, which provides a table describing the potential for special-status species to occur within the Project vicinity.<sup>50</sup> Omitting critical information from the Initial Study regarding the environmental setting for biological resources in the Project area prevents meaningful review and analysis of whether the Project may have a significant effect on the special-status species and its habitats. It is the burden of the lead agency to provide enough information in the CEQA documents so that the environmental impacts can be properly evaluated.<sup>51</sup> Decisionmakers and the public are not required to sift through technical documents to determine what special-status species could potentially be impacted by the Project during its construction and operation.<sup>52</sup>

---

<sup>46</sup> Letter from Julie A. Vance, California Department of Fish and Wildlife to Brandi Cummings, County of San Luis Obispo, Department of Planning and Building (Mar. 30, 2018) (*hereinafter* “CDFW Letter”).

<sup>47</sup> Terra Verde Environmental Consulting, LLC, Biological Resources Assessment: 4337 South El Pomar Cannabis Cultivation Project (Sept. 27, 2018) (*hereinafter* “Terra Verde Report”).

<sup>48</sup> *Id.* at p. 2-3 (discussion of methods).

<sup>49</sup> *See generally* Initial Study at p. 34-39.

<sup>50</sup> *Id.* at p. 40.

<sup>51</sup> CEQA Guidelines § 15063(a).

<sup>52</sup> *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 659. 4705-004acp

September 19, 2019

Page 12

*2. The Biological Resource Assessments Conflict with CDFW's Findings and Recommendations*

The County's reliance on the two biological resource assessments is misplaced because the reports' conclusions conflict with CDFW's findings and recommendations. If there is a disagreement among expert opinion supported by facts over the significance of an effect on the environment, CEQA mandates that the lead agency treat the effect as significant.<sup>53</sup> Because CDFW, the trustee agency with relevant subject matter expertise on these issues, concludes the Project may have potentially significant impacts on several special-status species, an EIR must be prepared.

a. Tricolored Blackbird

The KMA Report concludes the tricolored blackbird ("TRBL") is not expected to occur on the Project site because no suitable habitat is present onsite.<sup>54</sup> Similarly, the Terra Verde Report concludes the TRBL is not expected to occur on the adjacent property because no suitable habitat exists.<sup>55</sup> These conclusions conflict with the CDFW's findings.<sup>56</sup>

TRBL are known to occur within 4.5 miles of the Project.<sup>57</sup> The CDFW concludes the Project site could serve as habitat for the TRBL due to the presence of a blue line stream along the Project's eastern boundary.<sup>58</sup> The Initial Study confirms the existence of an ephemeral stream which runs along the northern and eastern property line.<sup>59</sup> Because the Project site contains potential habitat, the CDFW concludes the Project site, and adjacent areas, could support TRBL nesting colonies.<sup>60</sup>

The CDFW cautions that without appropriate avoidance and minimization measures, Project construction and operation could have potentially significantly

---

<sup>53</sup> CEQA Guidelines § 15064(g).

<sup>54</sup> KMA Report, attach. 2 at p. 4.

<sup>55</sup> Terra Verde Report, appen. B.

<sup>56</sup> CDFW Letter at pp. 4-5

<sup>57</sup> *Id.* at p. 4.

<sup>58</sup> *Ibid.*

<sup>59</sup> Initial Study at p. 41.

<sup>60</sup> CDFW Letter at p. 4.

4705-004acp

September 19, 2019

Page 13

impacts on TRBL by causing “nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.”<sup>61</sup> Depending on the timing of construction, “disturbance to nesting colonies could cause abandonment, significantly impacting TRBL populations.”<sup>62</sup>

The CDFW recommends a qualified wildlife biologist conduct surveys for nesting TRBL consistent with *Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*.<sup>63</sup> Although the Project area and neighboring property were each surveyed a single time, neither survey was performed consistent with the applicable CDFW guidelines for this species.<sup>64</sup> Because the Initial Study fails to properly investigate and accurately describe the potential presence of TRBL, substantial evidence supports a fair argument the Project may have significant, unmitigated impacts to this species.

b. Least Bell’s Vireo

The KMA Report concludes the Least Bell’s Vireo (“LBV”) is not expected to occur on the Project site because no suitable habitat is present onsite.<sup>65</sup> Similarly, the Terra Verde Report concludes the LBV is not expected to occur on the adjacent property because no suitable habitat exists.<sup>66</sup> These conclusions conflict with the CDFW’s findings.<sup>67</sup>

LBV are known to occur within 8 miles of the Project area.<sup>68</sup> The CDFW concludes the Project site could serve as potential habitat for the LBV due to the blue line stream along the Project’s eastern boundary.<sup>69</sup> The Initial Study confirms the existence of an ephemeral stream which runs along the northern and eastern property lines.<sup>70</sup> Because the Project site contains potential habitat, the CDFW concludes the Project site, and adjacent areas, could support LBV nesting colonies.<sup>71</sup>

---

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.* (internal citation omitted).

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> KMA Report, attach. 2 at p. 3.

<sup>66</sup> Terra Verde Report, appen. B.

<sup>67</sup> CDFW Letter at pp. 5-6.

<sup>68</sup> *Id.* at p. 5.

<sup>69</sup> *Ibid.*

<sup>70</sup> Initial Study at p. 41.

<sup>71</sup> CDFW Letter at p. 5.

September 19, 2019

Page 14

The CDFW cautions that without appropriate avoidance and minimization measures for the LBV, Project construction and operation could have potentially significant impacts on LBV by causing “nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.”<sup>72</sup> “Breeding habitat loss resulting from urban development, water diversion, and spread of agricultur[e] [sic] is the primary threat to LBV.”<sup>73</sup> Depending on the timing of construction, “disturbance to nesting colonies could cause abandonment, significantly impacting LBV populations.”<sup>74</sup>

The CDFW recommends a qualified wildlife biologist conduct surveys for LBV consistent with the United States Fish and Wildlife (“USFWS”) *Least Bell’s Vireo Survey Guidelines*.<sup>75</sup> Although the Project area and neighboring property were each surveyed a single time, neither survey was performed consistent with the applicable USFWS guidelines for this species. Because the Initial Study fails to properly investigate and accurately describe the presence of LVB, substantial evidence supports a fair argument the Project may have significant, unmitigated impacts to this species.

### c. San Joaquin Kit Fox

The KMA Report concludes the San Joaquin Kit Fox (“SJKF”) is not expected to occur on the Project site because the site is outside the range for the species.<sup>76</sup> The Terra Verde Report concludes the SJKF is not expected to occur on the adjacent property because no suitable habitat exists.<sup>77</sup> These conclusions conflict with the CDFW’s findings.<sup>78</sup>

SJKF are known to occur within 8 miles of the Project area.<sup>79</sup> The CDFW concludes the Project could serve as potential habitat to the SJKF because it is bordered by grassland habitat to the west.<sup>80</sup> The CDFW also emphasizes the “SJKF

---

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.* (internal citation omitted).

<sup>75</sup> *Id.* at p. 6.

<sup>76</sup> KMA Report, attach. 2 at p. 3.

<sup>77</sup> Terra Verde Report, appen. B.

<sup>78</sup> CDFW Letter at pp. 6-8.

<sup>79</sup> *Id.* at p. 6.

<sup>80</sup> *Id.* at p. 7.

4705-004acp

September 19, 2019

Page 15

may be attracted to the project areas due to the type and level of ground-disturbing activities and loose, friable soils resulting from intensive ground disturbance. As a result, there is the potential for SJKF to occupy or colonize in the Project area.”<sup>81</sup>

The CDFW cautions that without appropriate avoidance and minimization measures for the SJKF, Project activities could have potentially significant impacts on the SJKF by causing “den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.”<sup>82</sup> “Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF. The project area contains potentially suitable SJKF habitat. Therefore, subsequent ground-disturbing activities have the potential to significantly impact local SJKF populations.”<sup>83</sup>

The CDFW recommends a qualified wildlife biologist conduct surveys for SJKF within 200 feet of the Project area following the USFWS’ *Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to Ground Disturbance Activities*.<sup>84</sup> Although the Project area and neighboring property were each surveyed a single time, neither survey is consistent with the applicable USFWS guidelines for this species. Because the Initial Study fails to properly investigate and accurately describe the presence of SJKF, substantial evidence supports a fair argument the Project may have significant, unmitigated impacts to this species.

#### d. California Red Legged Frog

The KMA Report concludes the California red-legged frog (“CRLF”) is not expected to occur on the Project site because the site does not have aquatic habitat with sufficient a hydroperiod to support the CRLF.<sup>85</sup> In addition, the KMA Report did not identify any ponds in the area where the CRLF could move through the site on a seasonal basis.<sup>86</sup> The Terra Verde Report concludes the CRLF is not expected

---

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.* (internal citation omitted).

<sup>84</sup> *Ibid.*

<sup>85</sup> KMA Report, attach. 2 at p. 3.

<sup>86</sup> *Ibid.*

4705-004acp

September 19, 2019

Page 16

to occur on the adjacent property because no suitable habitat exists.<sup>87</sup> These conclusions conflict with the CDFW's findings.<sup>88</sup>

The CDFW confirms the CRLF have potential to occur in the vicinity of the Project area because the Project site could serve as habitat due to the presence of a blue line stream along the eastern edge of the property. The Initial Study confirms the existence of an ephemeral stream which runs along the northern and eastern property lines.<sup>89</sup> "CRLF requires a variety of habitats including aquatic breeding habitats and upland dispersal habitats."<sup>90</sup> "CRLF habitat includes nearly any area within 1-2 miles of a breeding site that stays moist and cool through the summer; this includes non-breeding aquatic habitat in pools of slow-moving streams, perennial or ephemeral ponds, and upland sheltering habitat such as rocks, small mammal burrows, logs, densely vegetated areas, and even, man-made structures."<sup>91</sup>

The CDFW cautions that without appropriate avoidance and minimization measures for the CRLF, Project activities could have potentially significant impacts due to "exposure to fertilizers and pesticides including herbicides and fungicides, which may pose contamination threats to CRLF and direct mortality."<sup>92</sup> Habitat loss from water diversions, stream maintenance for flood control, and degraded water quality are primary threats to the CRLF.<sup>93</sup> "Potential suitable sheltering habitat for CRLF may occur within or adjacent to the Project site. Therefore, subsequent ground-disturbing activities have the potential to significantly impact CRLF."<sup>94</sup>

The CDFW recommends a qualified wildlife biologist conduct surveys for CRLF in accordance with the *USFWS Revised Guidance on Site Assessment and Field Surveys for the California Red-Legged Frog*.<sup>95</sup> Although the Project area and neighboring property were each surveyed a single time, neither survey is consistent with the applicable USFWS guidelines for this species. Because the Initial Study

---

<sup>87</sup> Terra Verde Report, appen. B.

<sup>88</sup> CDFW Letter at pp. 8-9.

<sup>89</sup> Initial Study at p. 41.

<sup>90</sup> CDFW Letter at p. 8.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

4705-004acp



September 19, 2019  
Page 17

fails to properly investigate and accurately describe the presence of CRLF, substantial evidence supports a fair argument the Project may have significant, unmitigated impacts to this species.

e. Burrowing Owl

The KMA Report concludes the burrowing owl (“BUOW”) is not expected to occur on the Project site because the grassland habitat did not contain signs of suitable prey base and no ground squirrel colonies were observed which could provide suitable nest sites.<sup>96</sup> The Terra Verde does not discuss the presence or absence of BUOW.<sup>97</sup> The KMA Report’s conclusion that the BUOW is not expected to occur in the Project area conflicts with the CDFW’s findings.<sup>98</sup>

BUOW inhabit open grassland containing small mammal burrows.<sup>99</sup> The CDFW found that the “Project area is bordered by grass land habitat that has the potential to support BUOW. Therefore, there is potential for BUOW to colonize the Project site.”<sup>100</sup> The CDFW cautions that without appropriate avoidance and minimization measures for the BUOW, Project construction have potentially significant impacts on the BUOW by causing “burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduced health and vigor of eggs and/or young, and direct mortality of individuals.”<sup>101</sup>

“Habitat loss and degradation are considered the greatest threats to BUOW.”<sup>102</sup> “Subsequent ground-disturbing activities associated with the Project has the potential to significantly impact local BUOW populations. In addition, and as described in CDFW’s *Staff Report on Burrowing Owl Mitigation*, excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.”<sup>103</sup>

---

<sup>96</sup> KMA Report, attach. 2 at p. 3.

<sup>97</sup> Terra Verde Report, appen. B.

<sup>98</sup> CDFW Letter at pp. 9-11.

<sup>99</sup> *Id.* at p. 9.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Id.* at pp. 9-10.

<sup>102</sup> *Id.* at p. 10.

<sup>103</sup> *Ibid.* (internal citation omitted).

4705-004acp

September 19, 2019

Page 18

The CDFW recommends a qualified wildlife biologist conduct surveys for BUOW following the California Burrowing Owl Consortium's *Burrowing Owl Survey Protocol Mitigation Guidelines* and the CDFW's *Staff Report on Burrowing Owl Mitigation*.<sup>104</sup> Although Project area was surveyed, the survey was not consistent with the applicable guidelines for this species, which requires three or more surveillance surveys during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable and include a 500-foot buffer around the Project area.<sup>105</sup> Because the Initial Study fails to properly investigate and accurately describe the presence of BUOW, substantial evidence supports a fair argument the Project may have significant, unmitigated impacts to this species.

### **C. The Initial Study Fails to Adequately Describe the Project's Energy Consumption**

The Initial Study only contains a single sentence regarding the baseline energy use: "Electricity is provided to the project site by Pacific Gas and Electric Co.; the project site is not served by a natural gas service provider."<sup>106</sup> This simplistic description falls well short of what is required by CEQA. Appendix F of the CEQA Guidelines provides guidance on the information to be included in the discussion of the environmental setting for energy resources.

The environmental setting for energy resources should discuss the "existing energy supplies and energy use patterns in the region and locality."<sup>107</sup> The Initial Study fails to describe the Project site's current energy consumption, the existing energy supplies, or the energy use patterns in the County where the Project is located. Without this information, decisionmakers and the public cannot compare the Project's potential energy impacts. Therefore, the Project's energy impacts cannot be properly assessed without disclosure of the baseline conditions.

---

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> Initial Study at p. 52.

<sup>107</sup> CEQA Guidelines, appen. F.

4705-004acp

September 19, 2019  
Page 19

**IV. THE COUNTY’S CONCLUSORY DISCUSSION OF THE PROJECT’S POTENTIAL ENVIRONMENTAL IMPACTS RENDERS THE INITIAL STUDY AND MND LEGALLY DEFICIENT**

The County fails to clear the low bar set by CEQA regarding the adequacy of an initial study’s discussion of potentially significant environmental impacts. The adequacy of a lead agency’s discussion of environmental issues is an issue distinct from the extent to which the agency is correct in its determination of whether the impacts are significant.<sup>108</sup> The designation of an adverse environmental impact as “less than significant” does not excuse an agency’s failure to reasonably describe the nature and magnitude of the adverse effect.<sup>109</sup> An adequate description of adverse environmental impacts is necessary to inform the critical discussion of mitigation measures at the core of CEQA.<sup>110</sup> It is prejudicial error if a CEQA document omits material which is necessary to informed decisionmaking and public participation.<sup>111</sup>

The critical inquiry is whether the discussion sufficiently performs the function of facilitating informed agency decisionmaking and informed public participation.<sup>112</sup> Although an initial study does not require the same level of detail as an EIR, the initial study must support its conclusions with “expert opinion supported by facts, technical studies or other substantial evidence to document its findings.”<sup>113</sup> A conclusory discussion of an environmental impact can be determined to be inadequate as an informational document without reference to substantial evidence.<sup>114</sup> In essence, the lead agency must disclose the analytical route it traveled from evidence to conclusion.<sup>115</sup>

On numerous occasions, the County fails to document its conclusions with substantial evidence. Instead, the County repeatedly relies on conclusory assertions with no reference to evidence in the record.

---

<sup>108</sup> *Sierra Club v. County of Fresno [Friant Ranch]* (2018) 6 Cal.5th 502, 514.

<sup>109</sup> *Id.* at p. 514.

<sup>110</sup> *Id.* citing *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

<sup>111</sup> *Id.* at 515.

<sup>112</sup> *Id.* at 513.

<sup>113</sup> CEQA Guidelines § 15063(a)(3).

<sup>114</sup> *Friant Ranch*, 6 Cal.5th at 514.

<sup>115</sup> *Id.* at p. 513.

4705-004acp

September 19, 2019

Page 20

For example, the Initial Study concludes the Project's potential direct and cumulative GHG emissions are less than significant and less than cumulatively considerable because the Project is expected to generate less than the 1,150 metric tons of GHG emissions.<sup>116</sup> However, the Initial Study never identifies the amount of GHG emissions the Project will produce. Nor does it provide the assumptions used to arrive at that number. Without knowing this information or the assumptions and method used to calculate the GHG emissions, decisionmakers and the public cannot verify that the Project's GHG emissions are less than significant.

In another instance, the Initial Study concludes the Project's construction related air emissions will fall below the general thresholds triggering construction-related dust mitigation.<sup>117</sup> However, the Initial Study fails to document the amount of reactive organic compounds, nitrous oxides, diesel particulate matter, and fugitive dust emissions that may result from the Project's construction.<sup>118</sup> Without an accounting of the Project's emissions, decisionmakers and the public cannot verify that the Project's construction impacts on air quality are less than significant.

## V. THE COUNTY MUST PREPARE AN ENVIRONMENTAL IMPACT REPORT

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.<sup>119</sup> "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government."<sup>120</sup> The EIR 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."<sup>121</sup>

CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.<sup>122</sup> CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in

---

<sup>116</sup> Initial Study at p. 59.

<sup>117</sup> *Id.* at p. 29.

<sup>118</sup> *Ibid.*

<sup>119</sup> See Pub. Resources Code § 21000; CEQA Guidelines § 15002.

<sup>120</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

<sup>121</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>122</sup> See Pub. Resources Code § 21100.

4705-004acp

September 19, 2019

Page 21

the “fair argument” standard. Under this standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.<sup>123</sup>

In contrast, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

- (1) Revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and
- (2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.<sup>124</sup>

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”<sup>125</sup> The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.<sup>126</sup> An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>127</sup>

---

<sup>123</sup> *Id.* §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

<sup>124</sup> Pub. Resources Code § 21064.5.

<sup>125</sup> *See, e.g., Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

<sup>126</sup> *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>127</sup> *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to 4705-004acp

September 19, 2019

Page 22

As discussed previously, “substantial evidence” required to support a fair argument is “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”<sup>128</sup> “[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”<sup>129</sup>

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”<sup>130</sup> Deferring formulation of mitigation measures to post-approval studies is generally impermissible.<sup>131</sup>

As detailed below, substantial evidence supports a fair argument that the Project may result in significant impacts to agriculture, biological resources, energy, hazards and hazardous materials, and water quality. Therefore, the County must prepare an EIR analyzing the Project’s potentially significant impacts and adopt all feasible mitigation measures to reduce those impacts to a less than significant level.

#### **A. Substantial Evidence Supports a Fair Argument the Project May Result in Significant Impacts to Agriculture by Converting Farmland of Statewide Importance to Non-Agriculture Use**

The Initial Study contends the Project is consistent with policies of the Agriculture Element of the County’s General Plan.<sup>132</sup> Specifically, the Initial Study concludes the Project is consistent with AGP14, which encourages eligible property

---

support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

<sup>128</sup> CEQA Guidelines § 15384(a).

<sup>129</sup> *Id.* § 15064(g).

<sup>130</sup> *Id.* § 15126.4(a)(2).

<sup>131</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code § 21061.

<sup>132</sup> Initial Study at pp. 24-26.

4705-004acp

September 19, 2019

Page 23

owners to participate in the County's agriculture preserve program,<sup>133</sup> because the project site is not governed by a land use contract.<sup>134</sup> The Initial Study also concludes the Project does not conflict with zoning for agricultural uses because cannabis activities are conditionally allowed.<sup>135</sup> Even though the Project site is not currently subject to a land use contract, it is eligible to participate in the program because it is identified as Farmland of Statewide Importance and located in the El Pomar Agricultural Preserve.<sup>136</sup> However, the proposed Project could either be prevented from entering into a land use contract or be required modify the Project because some of the proposed operations could be incompatible on land subject to a land use contract.

Certain cannabis activities, such as outdoor cultivation, soil dependent indoor cultivation, soil dependent nurseries, and particular manufacturing activities, are permitted on land subject to a land use contract.<sup>137</sup> Other activities, such as non-soil dependent indoor cultivation and cannabis nurseries, may be permitted following review and approval by the Agricultural Preserve Review Committee ("Review Committee").<sup>138</sup> Some activities, such as compounding, infusing/producing final products with other ingredients not grown on-site, distribution facilities, and testing facilities, are prohibited on property subject to a land use contract.<sup>139</sup>

As discussed in Section II.D., the Project includes infusing final products with other ingredients not grown on-site.<sup>140</sup> This manufacturing activity is specifically prohibited land zoned for agriculture as well as on property subject to a land use contract.<sup>141</sup> Therefore, the Project is inconsistent with AGP14 and conflicts with existing zoning for agriculture use.

In addition, the Project includes indoor cultivation and a cannabis nursery, which are both non-soil dependent.<sup>142</sup> These activities may be permitted on land

---

<sup>133</sup> County of San Luis Obispo, Agriculture Element (Mar. 10, 2010) p. 2-26.

<sup>134</sup> Initial Study at p. 25.

<sup>135</sup> *Id.* at p. 26.

<sup>136</sup> *Id.* at p. 23.

<sup>137</sup> County of San Luis Obispo, Rules of Procedure to Implement the California Land Conservation Act of 1965 (June 2018) p. 10 (*hereinafter* "Ag Preserve Rules")

<sup>138</sup> *Id.* at pp. 10, 15.

<sup>139</sup> Land Use Ordinance § 22.40.070; Ag Preserve Rules at p. 10.

<sup>140</sup> Cannabis Application Supplement at p. 3.

<sup>141</sup> Land Use Ordinance § 22.40.070; Ag Preserve Rules at p. 10.

<sup>142</sup> Initial Study at p. 3.

4705-004acp

September 19, 2019

Page 24

subject to a land use contract, but are subject to review and recommendations by the Review Committee upon an application for a land use permit.<sup>143</sup> The record contains no evidence that the Review Committee evaluated, or will evaluate, whether the proposed Project is consistent with the County's Rules of Procedure to Implement the California Land Conservation Act of 1965. The Review Committee was not identified in the Initial Study's project description or as a consulted agency.<sup>144</sup>

The Review Committee's assessment of the Project must occur prior to approval of a land use permit because the Project could still be modified in such a manner that the Applicant will have discretion to enter into a land use contract.<sup>145</sup> If the County approves the land use permit application without allowing the Review Committee to assess the Project, then the County eliminates that possibility. Therefore, the Project may result in significant impacts to agriculture because it converts Farmland of Statewide Importance into a non-agricultural use.

**B. Substantial Evidence Supports a Fair Argument the Mitigation Measure BIO-8 Fails to Reduce Potentially Significant Impacts to a Level of Insignificance**

To reduce the impacts to special-status nesting birds, the MND implements mitigation measure BIO-8. BIO-8 requires the Applicant limit "any tree or shrub removal" between September 1 and February 15, if feasible.<sup>146</sup> If initial site disturbance, grading, and tree removal cannot be conducted during this time period, then a qualified biologist must conduct a pre-construction survey for active bird nests within the limits of the Project.<sup>147</sup>

BIO-8 also mandates that the surveys be conducted within two weeks prior to any construction activities.<sup>148</sup> If no active nests are located, ground disturbing may proceed.<sup>149</sup> "If active nests are located, then all construction must be conducted outside a non-disturbance buffer zone to be developed by the project biologist on the

---

<sup>143</sup> *Id.* at pp. 10, 15.

<sup>144</sup> Initial Study, ex. A.

<sup>145</sup> CEQA Guidelines § 15124(d)(1).

<sup>146</sup> Initial Study at p. 46.

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

4705-004acp



September 19, 2019

Page 25

species (i.e., 50 feet for common species and at least 500 feet for raptors and special status species), slope aspect and surrounding vegetation.”<sup>150</sup> The Project may not directly disturb any nests until the young are no longer reliant on the nests as determined by the biologist.<sup>151</sup>

BIO-8 fails to reduce impacts to special-status nesting birds in four respects. First, the measure limits “tree and shrub removal” to the specified time period, if feasible, but the measure does not require that all construction activities occur between September 1 and February 15, if feasible.<sup>152</sup> As a result, construction activities could be permitted during the nesting season without conducting pre-construction surveys to determine whether any nesting birds are present, potentially impacting special-status species.

Second, the time period identified in the measure is inconsistent with CDFW recommendations. The CDFW recommends that “construction be timed to avoid the normal birding season (February 1 through September 15).”<sup>153</sup> As with the first identified deficiency, construction activities could occur without the necessary surveys, potentially impacting special-status species.

Third, the measure does not require that the pre-construction surveys be conducted consistent with applicable species-specific survey guidelines. For example, the CDFW recommends that if surveys take place during the normal bird-breeding season for TRBL, a qualified wildlife biologist conduct surveys in accordance with CDFW’s *Staff Guidance Regarding Avoidance of Impacts to Tricolored Black Bird Breeding Colonies on Agricultural Fields in 2015*.<sup>154</sup> The pre-construction survey for the TRBL should be conducted “no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities.”<sup>155</sup> Different survey requirements exist for each special-status species.<sup>156</sup> In addition, the measure fails to require species-specific buffer zones and monitoring consistent with potentially applicable USFWS

---

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

<sup>153</sup> CDFW Letter at p. 4.

<sup>154</sup> *Ibid.*

<sup>155</sup> *Id.* at pp. 4-5.

<sup>156</sup> *See id.* at pp. 6, 10.

4705-004acp

September 19, 2019  
Page 26

or CDFW guidelines. Without adequate pre-construction surveys, the Project could potentially impact several special-status species.

Lastly, if a special-status nesting bird is detected during the pre-construction survey, the measure does not require that the Applicant consult with CDFW. The CDFW recommends that should a special-status species be detected, the it should be consulted to discuss how to implement the project and avoid take.<sup>157</sup> The CDFW also recommends acquiring an incidental take permit prior to any ground-disturbing activities if avoidance through implementation of the non-disturbance buffer is not feasible.<sup>158</sup>

Because the mitigation measure fails to incorporate all CDFW recommendations and permits activities that may cause potentially significant impacts to special-species, the County cannot conclude the Project's impacts to special-status nesting birds are insignificant.

**C. Substantial Evidence Supports a Fair Argument the MND Fails to Include Feasible Mitigation Measures to Reduce Potentially Significant Impacts to Special-Status Species to a Level of Insignificance**

The MND fails to include feasible mitigation measures to ensure potentially significant impacts to several special-status species are reduced to a level of insignificance. Without proper avoidance and minimization measures for special-status species, the Project could result in potentially significant impacts. The County must prepare and EIR examining the potentially significant impacts to the SJKF, the CRLF, and the BUOW, and adopt the feasible mitigation measures consistent with the CDFW's recommendations.

*1. The MND Fails to Include Feasible Mitigation Measures to Ensure Potentially Significant Impacts to the San Joaquin Kit Fox Are Reduced to a Level of Insignificance*

As discussed in Section III.B.2.c., the CDFW concludes that the Project area contains potentially suitable SJFK habitat, and therefore, subsequent ground-

---

<sup>157</sup> *See id.* at pp. 5-6, 10

<sup>158</sup> *Ibid.*

4705-004acp

September 19, 2019

Page 27

disturbing activities have the potential to impact local SJKF populations.<sup>159</sup> However, the MND fails to include feasible mitigation measures to ensure the Project's potentially significant construction impacts are reduced to a level of insignificance. The CDFW recommends implementing two mitigation measures to reduce the impacts to SJKF.

First, the CDFW recommends a qualified wildlife biologist conduct pre-construction surveys consistent with applicable USFWS survey guidelines in all areas of potentially suitable habitat no less than 14 days and no more than 30 days prior to the beginning of ground disturbing activities.<sup>160</sup> Second, if a SJKF is detected, then CDFW must be consulted to discuss how to avoid take.<sup>161</sup> If avoidance is not feasible, then the CDFW recommends acquiring an incidental take permit prior to ground disturbing activities.<sup>162</sup>

*2. The MND Fails to Include Feasible Mitigation Measures to Ensure Potentially Significant Impacts to the California Red-Legged Frog Are Reduced to a Level of Insignificance*

As discussed in Section III.B.2.d., the CDFW concludes that the Project area contains potentially suitable CRLF habitat, and therefore, subsequent ground-disturbing activities have the potential to impact local CRLF populations.<sup>163</sup> However, the MND fails to include feasible mitigation measures to ensure the Project's potentially significant construction impacts are reduced to a level of insignificance. The CDFW recommends implementing three mitigation measures to reduce the impacts to CRLF.

First, the CDFW recommends a qualified wildlife biologist conduct a surveys for CRLF within 48 hours prior to commencing construction work (two night surveys immediately prior to construction or as otherwise directed by USFWS).<sup>164</sup> Second, if a CRLF is detected during preconstruction surveys or at any time during construction, then construction should cease and the CDFW must be consulted to

---

<sup>159</sup> *See id.* at p. 7.

<sup>160</sup> *Ibid.*

<sup>161</sup> *Id.* at p. 8.

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*

<sup>164</sup> *Id.* at p. 9.

4705-004acp

September 19, 2019

Page 28

discuss a relocation plan for CRLF prepared by a qualified wildlife biologist.<sup>165</sup> Third, the CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31).<sup>166</sup> When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor construction activities daily.<sup>167</sup>

3. *The MND Fails to Include Feasible Mitigation Measures to Ensure Potentially Significant Impacts to Burrowing Owls Are Reduced to a Level of Insignificance*

As discussed in Section III.B.2.e., the CDFW concludes that the Project area contains potentially suitable BUOW habitat, and therefore, subsequent ground-disturbing activities have the potential to impact local BUOW populations.<sup>168</sup> However, the MND fails to include feasible mitigation measures to ensure the Project's potentially significant construction impacts are reduced to a level of insignificance. The CDFW recommends implementing three mitigation measures to reduce the impacts to BUOW.

First, the CDFW recommends a qualified wildlife biologist conduct a habitat assessment and survey consistent with the California Burrowing Owl Consortium's *Burrowing Owl Survey Protocol and Mitigation Guidelines* and the CDFW's *Staff Report on Burrowing Owl Mitigation*.<sup>169</sup> Specifically, these reports suggest three or more surveillance surveys within a 500-foot buffer around the project area and conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.<sup>170</sup>

Second, the CDFW recommends no-disturbance buffers, as outlined in the *Staff Report on Burrowing Owl Mitigation* to be implemented prior to ground-

---

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*

<sup>168</sup> *See id.* at pp. 9-10.

<sup>169</sup> *Id.* at p. 10.

<sup>170</sup> *Ibid.*

4705-004acp

September 19, 2019

Page 29

disturbing activities.<sup>171</sup> These no-distance buffers are set at different distances depending on the time of year and level of disturbance.<sup>172</sup>

Third, the CDFW emphasizes that if BUOW are found within the recommended buffers and avoidance is not possible, exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA.<sup>173</sup> However, if necessary, the CDFW recommends that burrow exclusion be conducted by a qualified biologist and only during the non-breeding season and after the burrow is confirmed empty through non-invasive methods, such as surveillance.<sup>174</sup> The CDFW further recommends replacement of occupied burrows with artificial burrows at a ratio of 1:1.<sup>175</sup>

#### **D. Substantial Evidence Supports a Fair Argument the Project May Have Significant Impacts on Energy Resources**

The Initial Study contends the Project is not expected to result in wasteful, inefficient, or unnecessary consumption of energy resources because:

- The project will be constructed with fixtures and equipment that meets current building codes for energy efficiency and conservation.
- The project will be conditioned on meter electricity used for cannabis activities to provide the Department of Planning and Building with quarterly energy usage monitoring reports based on those meter readings. Ongoing monitoring will ensure that project consumption remains consistent with energy use estimate provided in the application.<sup>176</sup>

This simplistic, conclusory analysis fails to adequately address whether the Project would result in wasteful, inefficient, or unnecessary consumption of energy resources. Appendix F of the CEQA Guidelines recommends consideration of the following items when determining whether a Project's energy impacts are significant:

---

<sup>171</sup> *Ibid.*

<sup>172</sup> *Id.* at pp. 10-11.

<sup>173</sup> *Id.* at p. 11.

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

<sup>176</sup> Initial Study at p. 52.

4705-004acp

September 19, 2019

Page 30

1. The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials may be discussed.
2. The effect of the project on local and regional energy supplies and on requirement's for additional capacity.
3. The effects of the project on peak and base period demands for electricity and other forms of energy.
4. The degree to which the project complies with existing energy standards.
5. The effects of the project on energy resources.
6. The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.<sup>177</sup>

The Initial Study fails to consider almost all these items. "In California, the top-producing state, indoor cultivation is responsible for about 3% of all electricity use, or 9% of household use."<sup>178</sup> "Cannabis cultivation equipment, particularly lighting and climate control equipment required for indoor and mixed-light cannabis cultivation operations using high-intensity lighting, requires a relatively large amount of energy (or electricity) for operation."<sup>179</sup> "[S]pecific energy uses in indoor grow operations include high-intensity lighting, dehumidification to remove water vapor and avoid mold formation, space heating or cooling during non-illuminated periods and drying, pre-heating of irrigation water, generation of CO<sub>2</sub> by burning fossil fuel, and ventilation and air conditioning to remove waste heat."<sup>180</sup>

A prime example of how the Project's operation could result in wasteful, inefficient or unnecessary consumption of energy resources is the Project's use of high intensity discharge ("HID") lighting.<sup>181</sup> Multiple types of lights can be used in the cultivation of cannabis.<sup>182</sup> The type of lighting implemented in indoor grow operations can make a significant difference in energy consumption. "For indoor grow operations, LED fixtures are being successfully applied to vegetative rooms,

---

<sup>177</sup> CEQA Guidelines, appen. F.

<sup>178</sup> Evan Mills, *The Carbon Footprint of Indoor Cannabis Production* (Apr. 2012).

<sup>179</sup> California Department of Food and Agriculture, *Medical Cannabis Cultivation Program, Literature Review on the Impacts of Cannabis Operation* (Feb. 2017) p. 3-16 (hereinafter "Cannabis Literature Review").

<sup>180</sup> *Ibid.*

<sup>181</sup> Project Description at p. 3.

<sup>182</sup> Cannabis Literature Review at p. 3-12.

4705-004acp

September 19, 2019

Page 31

saving up to 50% of the lighting energy compared to the standard practices. For flower rooms, double-ended, high-pressure sodium (HPS) fixtures save 20-25% compared to the standard HPS fixtures.”<sup>183</sup> Since feasible alternatives exist which could reduce the electricity use during the Project’s operation, the proposed Project could result in a potentially significant impact due to wasteful, inefficient or unnecessary energy use.

The Initial Study also fails to examine the effect of the project on local and regional energy supplies and the potential need for additional capacity. It is certainly possible the Project may require additional electricity than could be supplied to the site by PG&E because the record does not include any evidence that PG&E will be able to meet the increased electricity demand created by the Project’s operation, especially when considering the Project site currently consumes little to no electricity.<sup>184</sup> The County cannot conclude the Project’s energy impacts are less than significant when it has failed to conduct a proper inquiry of the utility’s ability to meet the substantial electricity needs of the Project. The additional electricity may also necessitate upgrades to the electrical system, which would need to be evaluated during this CEQA process.

Because of the deficiencies identified above, substantial evidence supports a fair argument the Project may have significant, unmitigated impacts on energy due to inefficient, wasteful, or unnecessary electricity consumption due to operation of the Project.

#### **E. Substantial Evidence Supports a Fair Argument the Project May Have A Significant Impact on Hazards and Hazardous Materials**

The Applicant proposes material handling, storage and waste management measures to ensure the safe handling of hazardous materials;<sup>185</sup> however, the Initial Study and MND fail to transform this proposal into an enforceable mitigation measure. The MND includes mitigation measures to reduce the Project’s

---

<sup>183</sup> Southwest Energy Efficiency Project, A Budding Opportunity: Energy Efficiency Best Practices for Cannabis Grow Operations (Dec. 2017) p. ii, 3-6; *see also* Duane Jonlin, A Low-Energy High: Managing Energy Use for Commercial Indoor Cannabis Cultivation, Energy Engineering (Apr. 2017) p. 1.

<sup>184</sup> Initial Study at p. 4.

<sup>185</sup> Initial Study at p. 63.

4705-004acp

September 19, 2019

Page 32

construction impacts,<sup>186</sup> but these measures do not address the Project's operation impacts.<sup>187</sup> Without an enforceable mitigation measure specifically addressing the Project's potential impacts from the use of pesticides and fertilizers during operation, the Project may create a significant hazard to the public and environment.

**F. Substantial Evidence Supports a Fair Argument the Project Could Substantially Decrease Precious Groundwater Reserves in the Paso Robles Groundwater Basin**

Cannabis cultivation and nursery sites that require a land use permit and are in a groundwater basin at Level of Severity III must provide an estimate of water demand and a detailed description of how the new water demand will be offset.<sup>188</sup> All water demand within an identified Area of Severe Decline must offset at a minimum 2:1 ratio unless a greater offset is required through land use permit approval.<sup>189</sup> The offset clearance must be obtained "through a County-approved water conservation program for the respective groundwater basin."<sup>190</sup>

The County acknowledges the "project site is located within the Paso Robles Groundwater Basin (LOS III Basin) and within an Area of Severe Decline (Figure 11)," triggering a 2:1 water use offset ratio.<sup>191</sup> It then claims "[a]n applicant may choose to offset their water use by removing existing irrigated crops on the same site and must document that the replacement of the existing crop will result in a water demand that is equal to, or less than, the current demand."<sup>192</sup> However, the County's assertion that the Project may meet the offset requirements in this manner is incorrect. In fact, the Project cannot be approved because there are no offset options for the Project under the current ordinance.

---

<sup>186</sup> *Id.* at pp. 63-64.

<sup>187</sup> Of note, the Initial Study fails to disclose the specific details of mitigation measures HAZ-1 and HAZ-2 during its analysis of the Project's potential impacts due to hazardous waste. *See id.* at p. 63.

<sup>188</sup> Land Use Ordinance § 22.40.050.D.5.a., 22.40.060.D.5.a.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> Initial Study at p. 67.

<sup>192</sup> *Ibid.*

4705-004acp



September 19, 2019

Page 33

Land Use Ordinance § 22.30.204 sets forth the Countywide Water Conservation Program for the Paso Robles Groundwater Basin.<sup>193</sup> Under the ordinance, there are three scenarios that may affect a property.<sup>194</sup> Which scenario applies depends on (1) whether there is an existing irrigated crop production on site within the 5 years preceding the application and (2) whether the site is within an area of severe decline.<sup>195</sup>

Under Scenario 1, if there **is** an existing crop production on the site within the 5 years preceding the application date, the property can be replanted in the same crop type and acreage with an ag offset exemption.<sup>196</sup> Under Scenario 2, if there **is not** an existing irrigated crop production on site within the 5 years preceding the application date **and** if the site **is not** in an “area of severe decline”, new irrigated crop may be allowed under certain circumstances.<sup>197</sup> Under Scenario 3, if there **is not** an existing irrigated crop production on the site within the 5 years preceding the application date **and** if the site **is** within the “area of severe decline,” then there are no options for new or expanded crop production.<sup>198</sup>

The proposed Project falls within the third scenario because the proposed site does not have an existing irrigated crop production within the past 5 years and is in area of severe decline. The record does not contain any evidence that the property was actively farming within the five years preceding submission of the application for the land use permit. In fact, the Initial Study admits “[t]here are currently no active farming operations on site.”<sup>199</sup> Therefore, the proposed Project cannot proceed because there is no available water supply to support the proposed activity.<sup>200</sup>

Even if active farming occurred within 5 years preceding the application date, it would not qualify as an existing irrigated crop production because the on-site

---

<sup>193</sup> Land Use Ordinance § 22.30.204.

<sup>194</sup> *Id.* § 22.30.204; *see also* County of San Luis Obispo, Countywide Water Conservation Program, Pas Robles Groundwater Basin (PGRWB), <https://www.slocountywwcp.org/prgwb-new-ag> (last accessed Sept. 19, 2019).

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*

<sup>199</sup> Initial Study at p. 23.

<sup>200</sup> Land Use Ordinance § 22.40.050.D.5.b. (prohibiting water transport from off-site by vehicle for cannabis operations).

4705-004acp

September 19, 2019

Page 34

orchard implemented dry farming.<sup>201</sup> Dry farming refers to “crop production during a dry season, utilizing the residual moisture in the soil from the rainy season.”<sup>202</sup> This farming practice works to conserve soil moisture during long dry periods primarily through a system of tillage, surface protection, and the use of drought resistant varieties.<sup>203</sup> Irrigation is typically eliminated altogether when dry farming is implemented.<sup>204</sup>

The purpose of the offset clearance is to allow for new or conversion of existing irrigated crop production overlying the Paso Robles Groundwater Basin while protecting the critical resource of groundwater.<sup>205</sup> The Project, as proposed, cannot satisfy this purpose through the elimination of almond and walnut trees because these orchards do not rely on groundwater. Therefore, the proposed Project cannot proceed because the existing crops do not meet the applicable criteria under the ordinance, and no practicable alternative exists.<sup>206</sup>

Finally, even if a plausible argument could be made that the site contained an active irrigated crop production within the five years preceding the land use application, the proposed water offset plan cannot satisfy the offset requirement. The Water Demand, Offset, and Conservation Plan concludes the Project’s water offset will be a net positive for the Paso Robles Groundwater Basin because it will be removing 10 acres of almond and walnut trees, which collectively currently consume approximately 20-acre feet of water per year.<sup>207</sup> As explained previously, the on-site almond and walnut trees do not use groundwater. Therefore, removal of the on-site orchards would not satisfy the offset requirement because it would not benefit the groundwater supply, which the offset requirement is meant to protect.<sup>208</sup>

Furthermore, the Initial Study erroneously states that the offset study proposes that the Project will achieve the water offset by paying an in-lieu water

---

<sup>201</sup> Initial Study at pp. 4 (“the walnut and almond trees have historically been dry farmed”), 23 (“project site ... has been used for the dry farming of almond and walnut trees”).

<sup>202</sup> California Ag Water Stewardship Initiative, Dry Farming, [http://agwaterstewards.org/practices/dry\\_farming/](http://agwaterstewards.org/practices/dry_farming/) (last accessed Sept. 19, 2019).

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.*

<sup>205</sup> Land Use Ordinance § 22.30.204.

<sup>206</sup> *Id.* § 22.40.050.D.5.b. (prohibiting water transport from off-site by vehicle for cannabis operations).

<sup>207</sup> City Boy Farms, Water Demand, Offset, and Conservation Plan (undated).

<sup>208</sup> Land Use Ordinance § 22.30.204.

4705-004acp

September 19, 2019  
Page 35

offset fee based on the future water demand.<sup>209</sup> Instead, the water offset plan proposes meeting the 2:1 ratio by removing 10 acres of almond and walnut trees. Even if the Project proposed to pay an offset fee, it could not do so under the Land Use Ordinance because the Project site is in an area of severe decline.<sup>210</sup>

## VI. THE COUNTY'S ANALYSIS OF THE PROJECT'S POTENTIAL CUMULATIVE IMPACTS IS INADEQUATE

The County's analysis of whether the Project's impacts are cumulatively considerable falls well short of the type of analysis required by CEQA. Cumulative impacts are defined as "two or more individual effects which, when considered together, are considerable or ... compound or increase other environmental impacts."<sup>211</sup> Stated another way, "a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts."<sup>212</sup>

A cumulative impact analysis "assesses cumulative damage as a whole greater than the sum of its parts."<sup>213</sup> Such an analysis is necessary because "[t]he full environmental impact of a proposed ... action cannot be gauged in a vacuum."<sup>214</sup> "[A]n agency may not ... [treat] a project as an isolated 'single shot' venture in the face of persuasive evidence that is but one of several substantially similar operations.... To ignore the prospective cumulative harm under such circumstances could be to risk ecological disaster."<sup>215</sup>

The County explains its assessment of the cumulative impacts of the Project as follows:

---

<sup>209</sup> Initial Study at pp. 68-69.

<sup>210</sup> County of San Luis Obispo, Countywide Water Conservation Program, Paso Robles Groundwater Basin: Agriculture Offset Off-Site, <https://www.slocountywwcp.org/new-ag-offset-off-site> (last accessed Sept. 19, 2019).

<sup>211</sup> CEQA Guidelines § 15355.

<sup>212</sup> *Id.* § 15130(a)(1).

<sup>213</sup> *Environmental Protection Information Center v. Johnson* (1985) Cal. App. 3d 604, 216.

<sup>214</sup> *Whitman v. Board of Supervisors* (1979) 88 Cal. App. 3d 397, 408 (quoting *Akers v. Resor* (W.D. Tenn. 1978) 443 F. Supp. 1355, 1360).

<sup>215</sup> *Whitman*, 88 Cal. App. 3d at 408.

4705-004acp

September 19, 2019

Page 36

The potential for adverse cumulative effects were considered in response to each question in sections 1 through 20 of this form. In addition to project specific impacts, this evaluation considered the project's potential for incremental effects that are cumulatively considerable. As described in Section 1, 3, and 4, there were determined to be potentially significant effects related to aesthetics, air quality, and biological resources. However, the mitigation measures included in each of these sections would reduce the effects to a level below significance. As a result of this evaluation, there is no substantial evidence that, after mitigation, there are cumulative effects associated with this project. Therefore, this project has been determined not to meet this Mandatory Finding of Significance.<sup>216</sup>

First, the County's assertion it examined whether the Project's impacts on aesthetics and biological resources are cumulatively considerable is facially incorrect. Unlike the Initial Study's air quality section, the aesthetics and biological resources section contain no discussion of the Project's cumulative impacts.<sup>217</sup> Moreover, the County fails to mention the Initial Study's discussion of cumulative GHG emissions (albeit conclusory with no supporting evidence).<sup>218</sup>

Second, the County fails to conduct a proper inquiry of the Project's cumulative energy impacts. In considering a project's cumulative impacts, the lead agency should generally undertake a two-step analysis. First, the agency should determine whether the combined effects from both the proposed project and other projects would be cumulatively significant.<sup>219</sup> If the agency answers this inquiry in the affirmative, the agency should then analyze whether "the proposed project's *incremental* effects are cumulatively considerable."<sup>220</sup> "An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. 'Cumulatively considerable' means the incremental effects of an individual project are significant

---

<sup>216</sup> Initial Study at p. 92.

<sup>217</sup> *Compare id.* at p. 29 with pp. 16-21, 33-47.

<sup>218</sup> *Id.* at p. 59.

<sup>219</sup> *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 120.

<sup>220</sup> *Id.* (emphasis added).

4705-004acp

September 19, 2019

Page 37

when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”<sup>221</sup>

The Initial Study’s cumulative impacts discussion fails to describe or consider relevant development projects near the Project. In fact, the Initial Study does not discuss the *eleven* proposed cannabis operations located within 6 miles of the Project, including a similarly sized cannabis operation on the neighboring property:

Project Name	Address	Project Summary
DRC2018-00183 Caldwell_Smyth	4339 South El Pomar Dr., Templeton, CA	3 one-acre outdoor cannabis cultivations and the use of 40,000 sq/ft of greenhouse structures for 22,000 sq/ft of indoor cannabis cultivation and supportive uses including drying, curing (10,000 sq/ft), and storage (8,000 sq/ft). Product will be process onsite in a to be built 5,000 sq/ft building. <sup>222</sup>
DRC2018-00016 Finley Family Farms	630 El Pomar Dr., Templeton, CA	Cannabis cultivation including 3 – 1-acre outdoor cultivation sites and 1 2,200sq/ft greenhouse. <sup>223</sup>
DRC2018-00060 Babcock	150 Vaquero Rd., Templeton, CA	Three 1-acre outdoor cannabis cultivation sites, manufacturing, distribution and mobile dispensary. <sup>224</sup>
DRC2018-00066 Mazzi Farms	4948 S. El Pomar Rd., Templeton, CA	Indoor cannabis cultivation consisting of (Phase I) one 1,250sq/ft and (Phase II) two 4,000sq/ft (9250 total sq/ft) greenhouses. <sup>225</sup>

<sup>221</sup> CEQA Guidelines § 15064(h)(1).

<sup>222</sup> Letter from Trevor Keith, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2018-00183 Cladwell\_Smyth (Oct. 23, 2018).

<sup>223</sup> Letter from Marvin Rose, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2018-00016 Finley Family Farms (Mar. 13, 2018).

<sup>224</sup> Letter from Marvin Rose, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2018-00060 Babcock (May 17, 2018).

<sup>225</sup> Letter from Marvin Rose, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2018-00066 Mazzi Farms (May 29, 2018).

4705-004acp

September 19, 2019

Page 38

DRC2018-00083 Heiser/Lambert	3520 Creston Rd., Paso Robles, CA	3 one-acre outdoor cannabis cultivation sites and 22,000 sq/ft indoor cannabis cultivation. <sup>226</sup>
DRC2018-00102 Draeger	5790 Rocky Canyon Rd., Paso Robles, CA	2 acres outdoor and 12,000 SQ/FT indoor (to be built) cannabis cultivations. <sup>227</sup>
DRC2018-000229 Beem_Nesbitt	717 Marquita Ave., Templeton, CA	3 acres outdoor and 22,000 square-foot indoor cannabis cultivation, alongside a cannabis nursery, non-storefront retail (delivery) and processing facility. <sup>228</sup>
DRC2019-00040 Hunter_Graham	720 Marquita Ave., Templeton, CA	(1) 1.95 acres outdoor cannabis cultivation, (2) 8,460 sf indoor cannabis cultivation (within existing greenhouse), (3) a new 5,513 sf building for cannabis processing and manufacture, (4) 3,600 sf cannabis nursery within an existing greenhouse, (5) cannabis transport, and (6) cannabis dispensary (non-store front). <sup>229</sup>
DRC2019-00042 Nahail	Neal Springs Rd., Templeton, CA	3 acres outdoor cannabis cultivation. <sup>230</sup>
DRC2019-00044 Old Bones Farms_Mahony	7440 Old Adobe Way, Templeton, CA	3 acres outdoor and 22,000 square feet indoor cannabis cultivation, nursery, manufacturing, non-storefront retail, and distribution transport-only. <sup>231</sup>

<sup>226</sup> Letter from Marvin Rose, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2018-00083 Heiser/Lambert (June 19, 2018).

<sup>227</sup> Letter from Marvin Rose, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2018-000102 Draeger (July 6, 2018).

<sup>228</sup> Letter from Trevor Keith, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2018-000229 Beem\_Nesbitt (Jan. 9, 2019).

<sup>229</sup> Letter from Trevor Keith, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2019-00040 Hunter\_Graham (Apr. 15, 2019).

<sup>230</sup> Letter from Trevor Keith, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2019-00042 Nahail (Apr. 5, 2019).

<sup>231</sup> Letter from Trevor Keith, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2019-00044 Old Bones Farms\_Mahoney (Apr. 18, 2019).

4705-004acp

September 19, 2019

Page 39

DRC2019-00055 DRC2019-00056 Rumsey	Superior Ct., Creston, CA	22,000 sq/ft indoor cannabis cultivation and ancillary nursery, manufacturing, and distribution transport-only. <sup>232</sup>
DRC2019-00059	6447 Webster Rd., Creston, CA	22,000 sq./ft. indoor cannabis cultivation, 17,000 sq./ft. nursery, manufacturing, and distribution transport-only. <sup>233</sup>

The County must prepare an EIR analyzing the cumulative impacts of all past, present, and probable future cannabis operations near the Project. Then, the County must analyze whether the Project's incremental contributions are cumulatively considerable and provide substantial evidence to support its conclusions. The areas where the Project's impacts may be cumulatively considerable are aesthetics, air quality, biological resources, energy, geology and soils, GHGs, groundwater quality, noise, public services, transportation, and utilities and service systems.<sup>234</sup>

## VII. CONCLUSION

The Initial Study and MND are inadequate because the CEQA documents fail to adequately describe the Project, establish the existing environmental setting, and identify, analyze, and mitigate all potentially significant impacts to agriculture, air quality, biological resources, energy, GHGs, hazards and hazardous materials, water quality, and land use. In addition, the Project's impacts are potentially cumulatively considerable. Due to these deficiencies, the County cannot conclude the Project's impacts are mitigated to a less than significant level.

CEQA requires an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.<sup>235</sup> As discussed in

---

<sup>232</sup> Letter from Trevor Keith, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2019-00054 Rumsey (Apr. 16, 2019); Letter from Trevor Keith, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2019-00056 Rumsey (Apr. 16, 2019).

<sup>233</sup> Letter from Trevor Keith, County of San Luis Obispo, Department of Planning and Building to 5th Legislative Assistant, et al. re: This Is a New Project Referral: DRC2019-00059 (Apr. 10, 2019).

<sup>234</sup> See generally Literature Review.

<sup>235</sup> CEQA Guidelines § 15063(b)(1).

4705-004acp

September 19, 2019

Page 40

detail above, substantial evidence supports a fair argument the Project could result in significant adverse impacts not identified in the Initial Study and MND. Moreover, substantial evidence supports a fair argument the proposed mitigation measures will not reduce potentially significant impacts to a level of insignificance.

We urge the County to fulfill its responsibilities under CEQA by withdrawing the MND and preparing an EIR to address the issues raised in this comment letter and other public comments in the record. This is the only way the County, decisionmakers, and the public can ensure the Project's significant environmental, public health and safety impacts are mitigated to less than significant levels.

Sincerely,



Andrew J. Graf  
Associate

AJG:acp

Attachments

4705-004acp