

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

kfederman@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
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
RACHAEL E. KOSS
AIDAN P. MARSHALL
WILLIAM C. MUMBY

MARC D. JOSEPH
Of Counsel

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*Not admitted in California.
Licensed in Colorado.

Via Email and Overnight Mail

Robert Peterson
Project Manager
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Email: robert.peterson@cpuc.ca.gov

Tom Engels, PhD
Horizon Water and Environment, LLC
266 Grand Avenue, Suite 210
Oakland, CA 94610
Emails: tom@horizonh2o.com
estrellaproject@horizonh2o.com

Re: **Comments on Draft Environmental Impact Report for Estrella Substation and Paso Robles Area Reinforcement Project**

Dear Mr. Peterson & Mr. Engels:

On behalf of **California Unions for Reliable Energy** (“CURE” or “Commenters”), we submit these comments on the Draft Environmental Impact Report (“DEIR”) prepared by the California Public Utilities Commission (“CPUC”) for the Estrella Substation and Paso Robles Area Reinforcement Project (“Project”). The Project is proposed by Horizon West Transmission (“HWT”) (formerly NextEra Energy Transmission West, LLC) and Pacific Gas & Electric Company (“PG&E”) (collectively referred to as “Applicants”). The Proposed Project would construct and operate a new 230 kilovolt (kV) /70 kV substation and a new 7-mile-long 70 kV

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power line, and replacement/reconductoring of approximately 3 miles of existing 70 kV power line interconnecting with the substation.¹

The Project would be located in unincorporated San Luis Obispo County and within the City of Paso Robles, approximately 9 miles southeast of the San Miguel community, and 8.5 miles northeast of Templeton.² The DEIR estimates the Proposed Project will take 18 months to construct.³ Construction will take 8 months for the Estrella Substation, and an additional 10 months for the 70 kV power line.⁴ Proponent's environmental assessment estimated that the project would take 7 months to construct.⁵ The distribution components are expected within 15 years.⁶

We have reviewed the DEIR, its technical appendices, and reference documents with assistance of Commenters' expert consultants, whose comments and qualifications are attached. Based on our review of the DEIR, it is clear that the DEIR fails as an informational document under CEQA and lacks substantial evidence to support its conclusions that the Project's significant impacts would be mitigated to the greatest extent feasible.

There is also substantial evidence demonstrating that the Project's potentially significant environmental impacts are far more extensive than disclosed in the DEIR. Commenters and their expert consultants have identified numerous potentially significant impacts that the DEIR either mischaracterizes, underestimates, or fails to identify. Moreover, many of the mitigation measures described in the DEIR will not, in fact, mitigate impacts to the extent claimed. For example, Commenters' air quality expert Phyllis Fox Ph.D. found that Project construction emissions will exceed applicable significance thresholds, the risk of Valley Fever is significant and unmitigated, and Greenhouse Gas ("GHG") emissions from Project construction and operation are underestimated.⁷ The DEIR

¹Horizon Water and Environment, Estrella Substation and Paso Robles Area Reinforcement Project - *Draft Environmental Impact Report* ("DEIR"), December 2020, p. ES-1.

² DEIR, p. 2-15.

³ DEIR, p. 2-78.

⁴ DEIR, p. 4.8

⁵ Proponent's Environmental Assessment Estrella Substation and Paso Robles Area Reinforcement Project ("PEA"), p. 2-59.

⁶ DEIR, p. 2-16.

⁷ See **Exhibit A**, Phyllis Fox, Ph.D., P.E., Comments on the Draft Environmental Impact Report for the Estrella Substation and Paso Robles Area Reinforcement Project (Fox Comments").

fails to accurately disclose the severity of these impacts, and fails to effectively mitigate them.

Commenters' expert biologist Scott Cashen, M.S. concludes that the Project will have potentially significant and unmitigated impacts to wildlife and sensitive natural communities including Blue Oak Woodland, and special-status wildlife including Golden Eagle and other special status birds, amphibians, and bumble bees.⁸

Expert utility consultant David Marcus concludes that the DEIR fails to accurately describe the Project's environmental setting. Mr. Marcus explains that the Estrella substation is not needed to meet Paso Robles Distribution Planning Area ("DPA") peak loads, to improve distribution system reliability by reducing outages, or to mitigate the impacts of an outage of the Templeton-Paso Robles 70 kV transmission line, to mitigate the impacts of an outage of the Templeton 230/70 kV transformer, to mitigate the impacts of an N-2 (Category C) outage of both 230 kV lines that connect to the Templeton 230/70 kV transformer.⁹ Further, the DEIR fails to reference the additional transmission line to Cholame Substation to create a looped circuit referred in the Updated Appendix G of Proponent's Environmental Assessment. The failure to address this "likely" element of the Project is impermissible piecemealing under CEQA.¹⁰

Finally, agricultural consultant Gregory House concludes that Project construction will have significant permanent and temporary impacts to Important Agricultural areas that were not adequately analyzed or mitigated in the DEIR. As discussed further herein, the mitigation measures proposed to offset the permanent loss of agricultural lands are inadequate because they do not create new Important farmland, additionally replacement, de-compaction, and replanting measures were not adequately analyzed.¹¹

⁸ See **Exhibit B**, Scott Cashen, M.S., Comments on the Draft Environmental Impact Report for the Estrella Substation and Paso Robles Area Reinforcement Project (January 22, 2021) ("Cashen Comments").

⁹ See **Exhibit C**, David Marcus, M.S., Comments on the Draft Environmental Impact Report for the Estrella Substation and Paso Robles Area Reinforcement Project (January 22, 2021) ("Marcus Comments").

¹⁰ 14 14 Cal. Code Regs. ("CCR") § 15165.

¹¹ See **Exhibit D**, Gregory House, Review of Mitigation Measures Proposed for Agriculture and Forestry Resources, Estrella Substation and Paso Robles Area Reinforcement Project DEIR (February 11, 2021) ("House Comments").

CEQA prohibits a lead agency from approving a project if feasible alternatives or mitigation measures exist which would substantially lessen a project's significant environmental effects.¹² As discussed herein, there is substantial evidence demonstrating that adoption of Alternative PLR-3A and PLR-3B is feasible, and would substantially lessen the Project's previously disclosed significant environmental effects, and would meet all Project objectives. Commenters' experts present additional substantial evidence demonstrating that additional mitigation measures are necessary to mitigate the Project's numerous potentially significant environmental effects.

CEQA requires recirculation of a DEIR for public review and comment when significant new information must be added to the DEIR following public review, but before certification.¹³ The CEQA Guidelines clarify that new information is significant if "the DEIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the Project or a feasible way to mitigate or avoid such an effect."¹⁴ The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of conclusions drawn from it.¹⁵

The CPUC is tasked with ensuring that Californians receive safe, reliable utility service and infrastructure at reasonable rates, with a *commitment to environmental quality* and a prosperous California economy.¹⁶ In order to comply with this mandate, and the mandates of CEQA, the DEIR must be revised to resolve its inadequacies and recirculated for public review and comment.

I. STATEMENT OF INTEREST

CURE is a coalition of labor organizations whose members encourage sustainable development of California's energy and natural resources. CURE's members help solve the State's energy problems by building, maintaining, and

¹² Pub. Resources Code ("PRC") §21002; *Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 203; 14 CCR §15126.6.

¹³ PRC § 21092.1.

¹⁴ CEQA "Guidelines," 14 Cal. Code Regs. § 15088.5.

¹⁵ *Save Our Peninsula Comm. v. Monterey City Bd. of Supervisors* (1981) 122 Cal.App.3d 813, 822.

¹⁶ California Public Utilities Commission Annual Report, January 26, 2016, Cover letter to Honorable Edmund G. Brown Jr., Governor of the State of California, and distinguished members of the California State Legislature, *available at*: http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Annual_Reports/2015%20CPUC%20Performance%20and%20Accountability%20Annual%20Report_v004.pdf.

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operating conventional and renewable energy power plants and transmission facilities. Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. CURE has helped cut smog-forming pollutants in half, reduced toxic emissions, increased the use of recycled water for cooling systems, and pushed for groundbreaking pollution control equipment as the standard for all new power plants, all while helping to ensure that new power plants and transmission facilities are built with highly trained, professional workers who live and raise families in nearby communities.

Individual members of CURE and its member organizations include Cheryl Stoltenberg, Todd Kadota, Evan Lincer, Jonathon Montoya, Jeff Branson, and Thomas Grennan. These individuals live, work, recreate, and raise their families in Paso Robles, in the vicinity of the Project. Accordingly, they will be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be the first in line to be exposed to any health and safety hazards that exist onsite.

CURE has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members that they represent. Environmental degradation destroys cultural and wildlife areas, consumes limited fresh surface and ground water resources, causes water pollution, and imposes other stresses on the environmental carrying capacity of the state. This in turn jeopardizes future development by causing construction moratoriums and otherwise reducing future employment opportunities for CURE's members. CURE therefore has a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment.

Finally, CURE members are concerned about projects that risk serious environmental harm without providing countervailing economic benefits. For these reasons, CURE's mission includes improving California's economy and the environment by ensuring that new conventional and renewable power plants and their related transmission facilities use the best practices to protect our clean air, land and water and to minimize their environmental impacts and footprint.

II. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in limited

circumstances).¹⁷ The EIR is the very heart of CEQA.¹⁸ “The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”¹⁹

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.²⁰ “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.’”²¹ 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.”²²

Second, CEQA directs public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.²³ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”²⁴ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”²⁵

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported*

¹⁷ See, e.g., PRC § 21100.

¹⁸ *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

¹⁹ *Comtys. for a Better Env. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 (“*CBE v. CRA*”).

²⁰ 14 CCR § 15002(a)(1).

²¹ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

²² *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

²³ 14 CCR § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

²⁴ 14 CCR § 15002(a)(2).

²⁵ PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

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*study is entitled to no judicial deference.*²⁶ As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.”²⁷ Further, “an agency may abuse its discretion under CEQA by either failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence.”²⁸

III. THE DEIR FAILS TO PROVIDE A COMPLETE AND ACCURATE PROJECT DESCRIPTION

The DEIR does not meet CEQA’s requirements because it fails to include an accurate, complete and stable Project description, rendering the entire analysis inadequate. CEQA requires that an EIR “set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact.”²⁹ An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.³⁰ “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”³¹ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.³²

“Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance.”³³ As articulated by the court in *County of Inyo v. City of Los Angeles*, “a curtailed, enigmatic or unstable project description draws a red herring across the path of public input.”³⁴ Without a

²⁶ *Berkeley Jets*, 91 Cal. App. 4th at 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

²⁷ *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

²⁸ PRC § 21168.5.

²⁹ *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654 (citing 14 C.C.R. § 15124).

³⁰ *McQueen v. Board of Directors* (1988) 202 Cal. App. 3d 1136, 1143.

³¹ *Santiago County Water Dist. v. County of Orange* 118 Cal. App. 3d 818, 829-830.

³² *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 (“*Sundstrom*”).

³³ *Santiago County Water Dist. v. County of Orange* 118 Cal. App. 3d 818, 829-830.

³⁴ *Id.* at 197-198.

complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.³⁵

The purpose of an EIR is to reveal to the public “the basis on which its responsible officials either approve or reject environmentally significant action,” so that the public, “being duly informed, can respond accordingly to action with which it disagrees.”³⁶ Further, “[t]o be adequate, the EIR must include sufficient detail to enable those who did not participate in its preparation to understand and ‘meaningfully’ consider the issues raised by the proposed project.”³⁷

A. The DEIR's Project Description is Inadequate Because it Fails to Provide an Adequate Description of Vegetation Management Activities

The DEIR fails to provide a clear description of the vegetation management activities that would be implemented to comply with CPUC General Order (“G.O.”) 95 and PG&E and HWT wildfire mitigation plans.³⁸ As a result, the DEIR fails to provide sufficient detail about the environmental impacts associated with the Project's vegetation management activities.

The DEIR indicates that “Project proponents may [keep the 10-foot radius around new 70 kV power poles] clear of natural vegetation. Vegetation growing too close to conductors within the easement would be trimmed or removed for safety. Herbicides may be used for some vegetation maintenance activities.”³⁹

Commenters' biological expert, Mr. Cashen determined that this description is too vague to understand the environmental impacts of the Project.⁴⁰ Thus, to enable an accurate evaluation of environmental impacts from vegetation

³⁵ See, e.g., *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376.

³⁶ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392

³⁷ *California Oak Foundation v. City of Santa Clarita* 133 Cal.App.4th 1219, 1237 quoting *Santa Clarita Organization for Planning the Environment* 106 Cal.App.4th 715, 721; see also *Concerned Citizens of Costa Mesa Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929,935 [“To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions”].

³⁸ Cal. Pub. Util. Code § 8386(c)(8).

³⁹ DEIR, p. 2-87.

⁴⁰ Cashen Comments p. 2.
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management, the CPUC must clearly articulate: (1) the vegetation management activities that would be conducted between power poles and the distance those activities would extend from the power lines (conductors); (2) the methods that would be used to remove, trim, or otherwise manipulate vegetation (e.g., masticators, chainsaws, loppers, etc.); (3) the herbicide products that may be used; (4) the frequency (return interval) of vegetation management activities (by vegetation community, if applicable); (5) the vegetation communities that may be manipulated to comply with G.O. 95; (6) whether the 10-foot radius would be limited to vegetation that grows within 10 horizontal feet of any conductor (as indicated on DEIR p. 4.4-53), or whether it also would include vegetation within 10 vertical feet; and (7) why numerous oak trees along the 70 kV route, but not within a 10-foot radius of the power poles, would be trimmed or removed.⁴¹

The DEIR should be revised and recirculated to include an adequate description of the Project's vegetation management activities.

B. The DEIR's Project Description is Inadequate Because of Impermissible Piecemealing

1. Cholame Substation Reliability Piecemealing

The DEIR fails to explain that Estrella is not needed to mitigate reliability issues at and around the Cholame substation. As Mr. Marcus explains, although there are approximately 1500 Cholame-area customers at risk for scheduled outages every 1-2 years for maintenance work on the 70 kV line feeding Cholame substation, those outages are not a violation of NERC or CAISO or PG&E reliability criteria. PG&E has stated clearly that it has no plans to use the proposed Estrella substation as a source for a new 70 kV line to Cholame to supplement the existing single line there.⁴²

The updated Appendix G to the PEA states that "The proposed project provides a future opportunity to add an additional transmission line to Cholame Substation to create a looped circuit to improve reliability and operational flexibility on the 70 kV system. This line would likely be constructed within 2 to 3 years after

⁴¹ See DEIR, Figure 3-7.

⁴² CPUC, Data Request No. 5 (November 13, 2019) for the Estrella Substation and Paso Robles Area Reinforcement Project (A.17-01-023) *available at*: <https://www.cpuc.ca.gov/environment/info/horizonh2o/estrella/docs/2019-1113%20EstrellaDataRequestNo.5%20and%20Follow%20Ups.docx>. 3287-016acp

Estrella Substation is built.”⁴³ To the extent that building the Estrella Substation would lead to construction of a new 70 kV or 21 kV line from Estrella to Cholame, the DEIR should have addressed that result. The failure to do so constitutes impermissible piecemealing.

CEQA forbids piecemeal review of the significant environmental impacts of a project.⁴⁴ Agencies cannot allow “environmental considerations [to] become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.”⁴⁵ The CEQA Guidelines provide “Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project.”⁴⁶ The statement in the Updated Appendix G to the PEA that the “line [to Cholame substation] would likely be constructed within 2 to 3 years after Estrella Substation is built” should have been analyzed in the DEIR. The CEQA Guidelines provide “the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.”⁴⁷ The DEIR should be revised and recirculated to include an analysis of the cumulative impact of the additional line to Cholame, otherwise the impact must be analyzed in a subsequent EIR.

The DEIR must be revised and recirculated to address the piecemealing issues related to utility reliability.

IV. THE DEIR’S DESCRIPTION OF THE ENVIRONMENTAL SETTING IS INADEQUATE

The DEIR fails to adequately describe the environmental setting against which the Project’s environmental impacts are to be measured for several critical aspects of the Project. This contravenes the fundamental purpose of the

⁴³ Proponent’s Environmental Assessment Estrella Substation and Paso Robles Area Reinforcement Project, Updated Appendix G Distribution Need Analysis (August 2017) *available at*: <https://www.cpuc.ca.gov/environment/info/horizonh2o/estrella/docs/App%20G%20-%20Update%20%20v2.pdf>.

⁴⁴ 14 CCR § 15165; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1222; *Berkeley Jets*, 91 Cal.App.4th at 1358.

⁴⁵ *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.

⁴⁶ 14 CCR § 15165.

⁴⁷ *See* 14 CCR § 15165.

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environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting. CEQA requires that a lead agency include a description of the physical environmental conditions, or “baseline,” in the vicinity of the project as they exist at the time environmental review commences.⁴⁸ As the courts have repeatedly held, the impacts of a project must be measured against the “real conditions on the ground.”⁴⁹ The description of the environmental setting constitutes the “baseline” physical conditions against which the lead agency assesses the significance of a project’s impacts.⁵⁰

A. The DEIR Fails to Accurately Describe the Project’s Environmental Setting Related to Utility Capacity

CEQA requires a DEIR to identify baseline physical conditions in the environmental setting section “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.”⁵¹

1. Estrella Substation is Not Needed to Meet DPA Peak Loads

The DEIR failed to adequately describe the environmental setting with regard to utility service in the Project area. The DEIR states that the DPA loads “will exceed the available capacity of the Paso Robles system within 5 to 15 years.”⁵² Mr. Marcus found that the Paso Robles DPA loads will not exceed the DPA capacity of 212.55 Mw until 2047.⁵³ Mr. Marcus determined that Estrella Substation is not needed to meet a DPA capacity problem, because such a problem does not exist today, and is not projected to exist in this decade, nor well into the 2040s. The DEIR therefore mischaracterizes the environmental setting regarding utility capacity, in violation of CEQA.

⁴⁸ 14 CCR § 15125(a); *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 321 (“*CBE v. SCAQMD*”).

⁴⁹ *CBE v. SCAQMD*, 48 Cal. 4th at 321; *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the-Sea v. Bd. of Supervisors of Monterey County* (1986) 183 Cal.App.3d 229, 246.

⁵⁰ 14 CCR § 15125(a); *CBE v. SCAQMD*, 48 Cal. 4th at 321.

⁵¹ 14 CCR § 15125(a).

⁵² DEIR, p. 2-12.

⁵³ Marcus Comments p. 1.
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Without an accurate description of the environmental setting, the DEIR fails as an informational document under CEQA. A revised DEIR must be revised and recirculated.

2. *Templeton Outage*

The environmental setting analysis in the DEIR is inadequate because it fails to adequately explain the existing conditions related to power outages which would support the DEIR's conclusion that Estrella Substation is needed to mitigate an outage of the Templeton 230/70 kV transformer.⁵⁴ The DEIR does not explain why the new 230/70 kV substation could not be located 2 miles, which Mr. Marcus explains would result in reduced impacts.⁵⁵ Relocating the 230/70 kV substation farther from Templeton substation would also increase the claimed distribution benefits of the new substation, should it ever be used as a distribution substation.⁵⁶ The DEIR fails to adequately analyze these issues because it relies on an illusory baseline.

3. *N-2 Outage*

The DEIR fails to explain that the Project is not needed in light of existing conditions. Mr. Marcus determined that Estrella Substation is not needed to mitigate the impacts of an N-2 (Category C) outage of both 230 kV lines that connect to the Templeton 230/70 kV transformer.⁵⁷ Reliability rules allow load to be dropped after the outage of two separate transmission lines.⁵⁸ A double 230 kV line outage on the lines feeding Templeton would make the Templeton transformer unusable, as the DEIR asserts, and thus cause overloads on the underlying 70 kV system during high load periods. But the Project would not resolve this issue. As Mr. Marcus explains, even if Estrella were built as proposed, Paso Robles would still face a blackout after an N-2 outage of the Estrella-Paso Robles and Templeton-Paso Robles 70 kV lines.⁵⁹ The same is true for the environmentally preferred alternative described in the DEIR. Paso Robles is currently at risk of blackouts from a double transmission line outage, and Estrella would not change that fact. The DEIR explains that CAISO's original authorization of Estrella was based on

⁵⁴ Marcus Comments, p. 5.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

mitigating N-1 contingencies, and Estrella cannot be justified by its impact on N-2 contingencies.⁶⁰

Mr. Marcus determined that even if it were appropriate to build new facilities just to mitigate the consequences of an N-2 outage, it is unclear that Estrella would be adequate.⁶¹ The year after Estrella was approved, the CAISO concluded that the proposed new Estrella-Paso Robles line would overload after an N-2 outage of the two 230 kV lines connected to the Templeton substation.⁶² Therefore, the DEIR must be revised and recirculated to provide an accurate description of the existing utility conditions.

B. The DEIR Fails to Provide Sufficient Baseline Information on Golden Eagles

The DEIR fails to provide a complete and accurate description of the Project's environmental setting related to golden eagles, and thus, the DEIR's impact assessment and proposed mitigation for impacts to golden eagles are inadequate.

Golden eagles are protected under the federal Bald and Golden Eagle Protection Act, which prohibits take of golden eagles and their occupied and unoccupied nests, and are a fully protected species under State law.⁶³ The DEIR was required to carefully evaluate the Project's baseline conditions for golden eagles in order to evaluate whether the Project would disturb eagles, nests or habitat. Biologist Mr. Cashen determined that CPUC did not conduct adequate baseline surveys to establish these existing conditions.

First, the CPUC did not conduct protocol-level surveys for eagle nests. As Mr. Cashen explains, the USFWS recommends protocol-level surveys for occupied nesting territories within two miles of the area where take may occur.⁶⁴ Without this information, the DEIR lacks substantial evidence to conclude that the Project will not adversely impact eagles, nests, or habitat.

⁶⁰ *Id.* at 6.

⁶¹ *Id.* at 6.

⁶² CAISO, Preliminary Reliability Assessment Results (September 24-25, 2014) p. 91 *available at*: https://www.caiso.com/Documents/Presentation-PreliminaryReliabilityAssessmentResults-Sep24_2014.pdf.

⁶³ DEIR, p. 4.4-1,

⁶⁴ Cashen Comments, p. 4.
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Further, DEIR Figure 4.4-5 does not distinguish between active and inactive nests. Project impacts have the potential to be severe on golden eagles due to their intolerance to anthropogenic forms of disturbance, and their susceptibility to collision with, and electrocution from, power lines.⁶⁵ Additional information is required to determine Impacts of the Proposed Project and Project alternatives on golden eagle nest territories and important eagle-use areas.⁶⁶ A revised DEIR should clarify whether Figure 4.4-5 depicts all active and inactive nests, or only active nests. The DEIR should explain the methods used to confirm a nest was inactive, and identify the years each nest was last surveyed to determine its status.

Third, the DEIR appears to rely on incomplete reporting data. The California Natural Diversity Database (“CNDDDB”) staff often have a backlog of occurrence data that have not been entered into the database. This appears to be the case for golden eagle nest records. A revised DEIR should clarify whether the information provided in the DEIR includes unprocessed data that can be obtained by contacting CNDDDB staff and the US Fish and Wildlife Service.

Finally, the DEIR fails to mention that the eBird database has multiple records of golden eagles within the Paso Robles city limits between 2016 and 2020.⁶⁷ The DEIR erroneously suggests that the most recent observation on eBird was in 2015.⁶⁸ The eBird database suggest that four sightings of golden eagles have been registered since 2018, at Barney Schwartz Park, a distance of less than three miles from the Estrella Substation site.⁶⁹

⁶⁵ *Id.* at 3; U.S. Fish and Wildlife Service, Division of Migratory Bird Management. 2009. Final Environmental Assessment, Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act. Washington: Dept. of Interior. *See also* U.S. Fish and Wildlife Service. 2013 Apr. Eagle Conservation Plan Guidance: Module 1—Land-based Wind Energy, Ver 2. pp. ii and iii.

⁶⁶ Important eagle-use area is defined as: “an eagle nest, foraging area, or communal roost site that eagles rely on for breeding, sheltering, or feeding, and the landscape features surrounding such nest, foraging area, or roost site that are essential for the continued viability of the site for breeding, feeding, or sheltering eagles” (as defined at 50 CFR 22.26).

⁶⁷ eBird.org, Map Function, Golden Eagle Search, <https://ebird.org/map/goleag?neg=true&env.minX=-120.74407377548609&env.minY=35.52383762834864&env.maxX=-120.4924181968728&env.maxY=35.74316208344104&zh=true&gp=false&ev=Z&mr=1-12&bmo=1&emo=12&yr=all&byr=1900&eyr=2021>.

⁶⁸ DEIR, p. 4.4-19.

⁶⁹ eBird.org, Barney Schwartz Park, San Luis Obispo County, California, US: Sightings, *available at*: <https://ebird.org/hotspot/L3558694.3287-016acp>

A revised DEIR must identify the methods that were used to obtain information on golden eagle nests in the vicinity of the Proposed Project and Project alternatives.

V. THE DEIR RELIES ON INFORMATION BURIED IN PROPONENT'S ENVIRONMENTAL ASSESSMENT APPENDICES

The DEIR is inadequate as an informational document because readers of the DEIR are expected to search through appendices of the Proponent's Environmental Assessment in order to find pertinent information regarding greenhouse gas emissions, and utility distribution. For example, the GHG emission sulfur hexafluoride ("SF₆") calculations that the DEIR says are in appendix C of the DEIR are actually in appendix C of the Proponent's Environmental Assessment. It is not reasonable for the CPUC to approve this DEIR without the inclusion of the necessary information in the EIR that Applicants cite to.

The court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* determined that a reader of the EIR could not reasonably be expected to ferret out an unreferenced discussion in an earlier document, interpret that discussion's unexplained figures without assistance, and spontaneously incorporate them into the EIR's own discussion.⁷⁰ The court held "[t]he data in the EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project."⁷¹

Further, "information scattered here and there in EIR appendices or a report buried in an appendix, is not a substitute for a good faith reasoned analysis."⁷² The requirement of a detailed analysis ensures that stubborn problems or serious criticism are not "swept under the rug."⁷³ Here, the DEIR fails to include the detailed analysis required for the SF₆ analysis within the Greenhouse Gas Emissions section. Without persistent searching by Commenters' experts, we would have been unable to find the relevant information undergirding the DEIR's

⁷⁰ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.

⁷¹ *Id.*

⁷² *Id.*, quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239, quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723.

⁷³ *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.
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analyses. The CPUC cannot certify the DEIR, as is, because the relied on information is not actually incorporated or described and referenced clearly in the DIER.⁷⁴

The DEIR must be revised and recirculated to include the reference information undergirding the determinations made in the EIR.

VI. THE DEIR FAILS TO ADEQUATELY ANALYZE IMPACTS AND INCORPORATE ALL FEASIBLE MITIGATION MEASURES AND ALTERNATIVES AS REQUIRED BY CEQA

CEQA's purpose is to “[p]revent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the chances to be feasible.”⁷⁵ CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.⁷⁶

“CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.”⁷⁷ A public agency cannot approve a project if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.⁷⁸ CEQA defines “feasible” as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”⁷⁹

“The core of an EIR is the mitigation and alternatives sections.”⁸⁰ The CEQA Guidelines define mitigation as a measure which (1) avoids the impact altogether by not taking a certain action or parts of an action, (2) minimizes the impact by limiting the degree or magnitude of the action and its implementation, (3)

⁷⁴ See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.

⁷⁵ 14 CCR § 15002(a)(3).

⁷⁶ 14 CCR § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

⁷⁷ 14 CCR § 15021(a).

⁷⁸ 14 CCR § 15021(a)(2).

⁷⁹ 14 CCR § 15364.

⁸⁰ *Citizens of Goleta Valley v. Bd. of Supervisors (“Goleta II”)* (1990) 52 Cal.3d 553, 564. 3287-016acp

rectifies the impact by repairing, rehabilitating, or restoring the impacted environment, (4) reduces or eliminates the impact overtime by preservation and maintenance operations during the life of the action, and (5) compensates for the impact by replacing or providing substitute resources or environments.⁸¹ “In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.”⁸²

A lead agency is prohibited from approving a project with significant impacts unless it makes one or more of three findings:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.⁸³
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.⁸⁴
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.⁸⁵

Findings as to mitigation measures must be supported by substantial evidence.⁸⁶ Substantial evidence means “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.”⁸⁷ Substantial evidence “shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,”⁸⁸ but it should not include “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do

⁸¹ 14 CCR § 15370.

⁸² 14 CCR § 15021(b).

⁸³ 14 CCR § 15091(a)(1).

⁸⁴ 14 CCR § 15091(a)(2).

⁸⁵ 14 CCR § 15091(a)(3).

⁸⁶ 14 CCR § 15091(b); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 449.

⁸⁷ 14 CCR § 15384(a).

⁸⁸ 14 CCR § 15384(b).

not contribute to or are not caused by physical impacts on the environment.”⁸⁹ The DEIR should be revised and recirculated to incorporate all feasible mitigation measures recommended by Commenters, including undergrounding the entire 70 kV line as the environmentally superior alternative.^{90,91}

A. The DEIR Fails to Adequately Analyze Undergrounding the Entire 70 kV Line as a Feasible Alternative

CEQA provides that public agencies should not approve a project if there are feasible mitigation measures that would substantially lessen the significant environmental effects of the project.⁹² An agency may reject a mitigation measure if it finds it to be infeasible.⁹³ A feasible mitigation measure is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors.⁹⁴

The DEIR failed to explain why only a portion of the line was considered for undergrounding when, in fact, undergrounding the whole line is a feasible alternative which would reduce one or more significant impacts to less than significant levels, including aesthetic impacts, which the DEIR asserts are significant and unavoidable. The DEIR states that “[b]ecause of the extremely limited space, some of the new 70 kV line sections would have to be undergrounded using 70 kV solid dielectric cables and pothead structures.”⁹⁵ This rationale does not explain why undergrounding the entire 70 kV line is not feasible. Commenters recommend that feasible mitigation includes undergrounding the entire 70 kV power line, not just a 1.2 mile portion. It is without question, that an agency need not “adopt every nickel and dime mitigation scheme brought to its attention or proposed in the project EIR,” but it must incorporate “feasible mitigation measures” “when such measures would ‘substantially lessen’ a significant environmental

⁸⁹ 14 CCR § 15384(a).

⁹⁰ *Russel Covington, et al v. Great Basin Unified Air Pollution Control District, et al.* (2019) 43 Cal.App.5th 867, 882 (“*Covington*”).

⁹¹ Fox Comments, p. 2.

⁹² PRC § 21002.

⁹³ PRC § 21081.

⁹⁴ PRC §21061.1; 14 CCR § 15364.

⁹⁵ NextEra Transmission West and PG&E Co., Estrella Substation and Paso Robles Reinforcement Project Proponent’s Environmental Assessment, Response to Deficiency List No. 4, *available at*: <https://www.cpuc.ca.gov/environment/info/horizonh2o/estrella/docs/Estrella%20Def%204%20Response.pdf>.

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effect.”⁹⁶ Here, undergrounding the entire 70 kV line would substantially lessen significant impacts to biological resources and fire risk.

We concur with the DEIR that cost is not a sufficient reason to show that the alternative is financially infeasible.⁹⁷ CEQA Guidelines Section 15126.6(b) requires consideration of alternatives capable of eliminating or reducing significant environmental effects even though they may “impede to some degree the attainment of the project objectives, or would be more costly”.⁹⁸ The Court of Appeals determined in *Citizens of Goleta Valley v. Board of Supervisors*, “[t]he fact that an alternative may be more expensive or less profitable is not sufficient to show that the California Public Utilities Commission alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.”⁹⁹ Here, the DEIR contains no evidence demonstrating that the additional cost of undergrounding the 7-mile 70 kV power line would not render the project impractical. The DEIR therefore failed to adequately the infeasibility of undergrounding alternatives PLR-3A and PLR-3B.

1. *Undergrounding Is Feasible*

The DEIR fails to sufficiently demonstrate undergrounding’s infeasibility. In *Russel Covington, et al v. Great Basin Unified Air Pollution Control District, et al.*, the court determined the EIR’s response to comments was inadequate because the EIR made no attempt to explain whether mitigation measures proposed in public comments to address an impacts which the District’s EIR had declared significant and unavoidable were infeasible.¹⁰⁰ The court’s holding is consistent with CEQA’s statutory requirement that a lead agency cannot declare an impact to be significant and unavoidable unless it first adopts all feasible mitigation to reduce the impact to the greatest extent feasible.¹⁰¹

⁹⁶ *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1519.

⁹⁷ DEIR, p. 3-2, 3.

⁹⁸ 14 CCR § 15126.6(b).

⁹⁹ *Citizens of Goleta Valley v. Board of Supervisors* 197 Cal.App.3d 1167, 1181; see also *Kings County Farm Bureau v. City of Hanford* 221 Cal.App.3d 692, 736.

¹⁰⁰ *Covington* 43 Cal.App.5th at 883.

¹⁰¹ Pub. Res. Code §21081.

The DEIR did not determine whether undergrounding the entire 70 kV line was infeasible. Geotechnical investigations by Project proponent were conducted for the Estrella Substation and the 70kV power line.¹⁰² Bedrock was not encountered at any of the boring sites drilled.¹⁰³ Undergrounding the entire 70kV line was not considered and DEIR made no attempt to explain whether undergrounding the entire 70 kV line was infeasible. The route of Alternative PLR-3 would follow existing roads, would not exacerbate geologic hazards, and would not bring the project above the 10,000 MT CO₂e/yr.

There is insufficient evidence in the DEIR to establish that undergrounding the entire 70 kV power line is not a feasible mitigation measure. An EIR must contain a sufficient degree of analysis to enable the decisionmakers to make an intelligent and informed decision.¹⁰⁴ The DEIR made no attempt to explain why undergrounding the entire line was not feasible. The DEIR must be recirculated to determine whether undergrounding the entire transmission line is a feasible alternative, and if not, to include substantial evidence supporting a conclusion that undergrounding is not a feasible alternative.

2. Undergrounding Would Mitigate Biological Impacts

The DEIR indicates undergrounding the Project's power lines would reduce impacts to special-status birds by reducing the potential for avian collision and electrocutions.¹⁰⁵ In addition, the DEIR indicates undergrounding would substantially reduce the wildfire risk and associated ecological consequences.¹⁰⁶ Nevertheless, the DEIR's analysis of undergrounding is limited to Alternative PLR-3, which would involve undergrounding a relatively short segment of the power line route in the Golden Hill Road area north of SR 46. The DEIR provides the following rationale for Alternative PLR-3:

Alternative PLR-3: Strategic Undergrounding would involve undergrounding the portion of the Proposed Project's new 70 kV power line which has the greatest potential for aesthetic and other environmental impacts. During scoping for the Proposed Project, and based on CPUC staff and consultant's preliminary analysis of the Proposed Project's potential impacts, it was determined that the portion of the

¹⁰² DEIR, p. 4.7-5.

¹⁰³ DEIR, p. 4.7-5.

¹⁰⁴ 14 CCR § 15151.

¹⁰⁵ DEIR, Table 5-1.

¹⁰⁶ DEIR, p. 4.20-18.

line that passes through the Golden Hill Road area north of SR 46 had the greatest potential for impacts because this area does not have existing aboveground transmission or distribution electrical infrastructure and is an up-and-coming area with new commercial development, recreational uses, and existing single-family residential development.¹⁰⁷

The benefits of Alternative PLR-3 in reducing the risks of wildfire and avian impacts would be relatively limited because the majority of the Proposed Project's 70-kV route would be above ground, including in areas that currently do not have existing aboveground transmission or distribution electrical infrastructure. The DEIR provides no evidence that the risks of wildfire and avian impacts are greater in the Golden Hill Road area north of SR 46 relative to other portions of the Proposed Project's 70-kV route. Therefore, if the objective of undergrounding is to reduce "aesthetic and other environmental impacts," the CPUC must analyze a Project alternative that involves undergrounding the 70-kV power line along its entire route.¹⁰⁸

The CPUC recognized the benefits of undergrounding power lines in Rulemaking 00-01-005, in implementing Assembly Bill 1149, on January 6, 2000.¹⁰⁹ The CPUC recognized the benefits of undergrounding include aesthetics, increases in property value, public and worker safety, service reliability, reduction of fire danger, and reduced utility costs.¹¹⁰ Further, the rulemaking recognized "Increased public and worker safety is another undergrounding benefit. The potential reduction in fatalities and injuries due to contact with overhead facilities, as well as reduction of power outages caused by overhead incidents is a desirable goal."¹¹¹ The DEIR should be revised and recirculated to analyze the decrease in adverse biological impacts that would be accomplished by undergrounding the entire transmission line.

¹⁰⁷ DEIR, p. 3-74.

¹⁰⁸ Cashen Comments, p. 11.

¹⁰⁹ Order Instituting Rulemaking into Implementation of Assembly Bill 1149, Regarding Underground Electric and Communication Facilities (January 6, 2000) pp. 6, *available at*: http://docs.cpuc.ca.gov/word_pdf/RULINGS/5510.doc.

¹¹⁰ *Id.*

¹¹¹ *Id.*

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3. *Undergrounding Would Mitigate Fire Risk*

CPUC further recognized that undergrounding may reduce the danger of fire and other threats to life and property.¹¹² When power lines are near trees, direct contact can start fires (and of course cause outages). Such fires can endanger both lives and property. Further, fallen power poles, and live electric wires can frustrate emergency evacuation; as shown by vivid reports from the Oakland Hills fire.

For the reasons CPUC recognized in enacting Rulemaking 00-01-005, undergrounding in this Project is a preferable alternative to reduce fire risk associated with the 70kV power lines. Tree clearing, or fire retardant coatings would not be sufficient because if there is a lapse in tree clearing direct contact with trees can start fires and endanger public health and safety.

San Diego Gas Electric Company, in conjunction with the California Public Utilities Commission:

Adopted an ordinance creating an underground district in the area in which both the existing and new electric facilities are and will be located, requiring, among other things, (1) that, where practical and economically feasible, all existing overhead electric high voltage distribution facilities in such district shall be removed, (2) that, where practical and economically feasible, each property served from such overhead electric high voltage distribution facilities shall have installed, in accordance with the Utility's rules for underground service, all electrical facility changes on the premises necessary to receive service from the underground facilities of the Utility as soon as it is available, and (3) authorizing the Utility to discontinue its high voltage overhead service.¹¹³

This Project's 70 kV line should be undergrounded "in keeping with the [California Public Utilities] Commission's policy of encouraging, and when necessary ordering... utilities' distribution systems to be buried."¹¹⁴

¹¹² *Id* at 10.

¹¹³ San Diego Gas & Electric, Rule 20 Replacement of Overhead with Underground Electric Facilities (2014) *available at*: http://regarchive.sdge.com/tm2/pdf/ELEC_ELEC-RULES_ERULE20.pdf.

¹¹⁴ Public Utilities Commission of the State of California, Rules for Construction of Underground Electric Supply and Communication Systems, General Order No. 128, January 2006, *available at*: <https://www.sandiego.gov/sites/default/files/52591.pdf>.
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4. *Undergrounding Would Mitigate Impacts from Electro Magnetic Radiation*

Overhead transmission lines are a source of two fields: the electric field produced by the voltage and the magnetic field produced by the current. CPUC guidance specifically requires that “[t]he construction of a new transmission line will incorporate no-cost and low-cost magnetic field reduction measures. Magnetic field modeling is required.”¹¹⁵ The DEIR failed to discuss these fields and their impacts on sensitive receptors even though the proposed transmission line is within 50 feet of many homes.¹¹⁶ It also fails to comply with the CPUC design guidelines.

Contrary to assertions in the PEA, significant public health impacts have been consistently documented from exposure to electromagnetic fields, both extremely low-frequency ELF-EMF from sources like power lines and radiofrequency radiation (RFR) in referenced journal articles.¹¹⁷ These include short- and long-term health impacts, including those discussed in Dr. Fox’s Comments.^{118,119}

B. The DEIR Lacks Substantial Evidence to Conclude that Alternative Combination #2 is the Environmentally Superior Alternative.

The CPUC identified Alternative Combination #2 as the Environmentally Superior Alternative for this DEIR. Alternative Combination #2 would include Estrella Substation, Alternative PLR-1A, Alternative BS-2, and Alternative BS-3. There is substantial evidence that the proposed alternatives BS-2: Battery Storage to Address Distribution Objective, and BS-3: Third Party, Behind-the-Meter Solar and Battery Storage would increase the Project’s significant environmental effects. Commenters urge the CPUC to not select nor approve the Alternatives BS-2, or BS-3.

¹¹⁵ California Public Utility Commission, EMF Design Guidelines for Electrical Facilities, Table 3-1, pdf 9, July 21, 2006; <https://www.cpuc.ca.gov/General.aspx?id=4879>.

¹¹⁶ PEA, Appendix A.

¹¹⁷ Fox Comments, p. 85.

¹¹⁸ *Id.* at 86; Cindy Sage and David O. Carpenter (Editors), BioInitiative Report: A Rationale for Biologically Based Exposure Standards for Low-Intensity Electromagnetic Radiation, BioInitiative Working Group, December 31, 2012, Exhibit13.

¹¹⁹ Jiguparmar, How HV Transmission Lines Affects Humans and Plants; <https://electrical-engineering-portal.com/how-hv-transmission-lines-affects-humans-plants>.

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Alternative Combination #2 is not environmentally superior to the Proposed Project because it would have a number of environmental impacts that could be avoided by the Proposed Project. Those impacts include increased fire risk, accidents leading to significant on-site and off-site public health and off-site property damage, and significant increases in criteria pollutant and greenhouse gas emissions.¹²⁰ The DEIR lacks substantial evidence to conclude that Alternative Combination #2 is the environmentally superior alternative.

1. *Fire Risk*

Commenters concur with the DEIR that fire risk is associated with the Battery Storage Alternatives BS-2 and BS-3. The DEIR explains that there may be potentially increased fire risk associated with FTM BESS installations, particularly lithium-ion BESSs, and could pose a hazard to fire fighters and other first responders due to their chemical components.¹²¹ But, the DEIR fails to adequately analyze the significant impacts from BESS facilities accidents causing fires to on-site and off-site locations, and property damage worker and public health impacts associated with the release of hazardous air pollutants.

Lithium-ion batteries contain a flammable electrolyte and have the potential for “thermal runaway,” which is a self-perpetuating cascade process where one compromised battery cell ignites adjacent cells, potentially resulting in a large-scale fire.¹²² Fires have occurred at utility-scale lithium-ion BESS installations, including one at the 2 MW APS McMicken Battery Energy Storage facility in Surprise, Arizona in April of 2019.¹²³ The McMicken explosion injured four firefighters and destroyed the BESS and its container.¹²⁴

If Alternatives BS-2 or BS-3 are implemented, Dr. Fox recommends that the Project utilize available technologies and design methods to address thermal

¹²⁰ Fox Comments p. 62.

¹²¹ DEIR, p. 4.9-39.

¹²² DEIR, p. 4.9-39.

¹²³ *Id.*

¹²⁴ Fox Comments, p. 68, Arizona Public Service, *Technical Support for APS Related to McMicken Thermal Runaway and Explosion: McMicken Battery Energy Storage System Event Technical Analysis and Recommendations*. Available at: <https://www.aps.com/-/media/APS/APSCOM-PDFs/About/Our-Company/Newsroom/McMickenFinalTechnicalReport.ashx?la=en&hash=50335FB5098D9858BFD276C40FA54FCE>. Accessed December 14, 2020.
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runaway propagation.¹²⁵ In addition, better practices for ventilation, extinguishing, and cooling thermal runaway scenarios should be implemented in any BESS for this Project. Clean agent or aerosol extinguishing methods should not be the only barrier against thermal runaway, as they were in the McMicken BESS explosion.¹²⁶

The DEIR asserts, without substantial evidence, that flow battery technology, which could be used at FTM Sit 6, “would have reduced fire risk because the electrolyte material is not flammable.”¹²⁷ However, “reduced fire risk” does not mean the impact would not be significant.¹²⁸

The National Fire Protection Association identified impacts of energy storage systems, which were not adequately analyzed in the DEIR including: 1) Thermal runaway (rapid uncontrolled release of heat energy, resulting in fire or explosion); 2) Shock hazard from stranded energy; 3) Release of toxic and flammable gases; 4) Deep seated fires within metal or plastic casing, blocking firefighting agents; 5) Mechanical abuse; 6) Thermal abuse from exposure to external heat source; 7) Electrical abuse from overcharging; 8) Environmental impacts including rodent damage to wiring extreme heat, and floods.¹²⁹

Dr. Fox describes the serious risks of fires, explosions, and wildfires associated with the proposed BESS facilities.¹³⁰ These risks are mentioned, but not analyzed, in the DEIR. The DEIR must be revised and recirculated to adequately analyze the impacts from proposed Alternatives BS-2 and BS-3.

The Final Alternatives Screening Report for this Project states that “fire risk is a concern with BESS installations (particularly lithium-ion BESSs)... should BESS facilities catch fire, they could potentially pose a hazard to fire fighters and other first responders due to their chemical components. These issues will need to be fully evaluated in the EIR...”¹³¹ But the DEIR fails to adequately evaluate

¹²⁵ Fox Comments, p. 64.

¹²⁶ *Id.*

¹²⁷ DEIR, p. 4.9-39.

¹²⁸ Fox comment, p. 51.

¹²⁹ NFPA, Fire & Life Safety Policy Institute, Safety Through Better Public Policy, August 2019; <https://www.nfpa.org/News-and-Research/Resources/Emergency-Responders/High-risk-hazards/Energy-Storage-Systems>.

¹³⁰ Fox Comments, p. 48-55.

¹³¹ Estrella Substation and Paso Robles Area Reinforcement Project DEIR Appendix B, Final Alternatives Screening Report, p. 3-73.

impacts from BESSs. The DEIR fails to analyze these issues in a “risk of upset analysis.” CEQA requires that CPUC prepare a risk of upset analysis for Alternatives BS-2 and BS-3 if either alternative is being considered for adoption. Dr. Fox determined that an accident at these facilities would result in significant impacts, including potentially property damage, health impacts from toxic chemicals, and even mortality.¹³² The DEIR fails as an informational document under CEQA for failing to analyze and mitigate these risks.

The failure to conduct a risk of upset analysis in the DEIR constitutes impermissibly deferred analysis in violation of CEQA. CEQA Guidelines § 15126.4(a)(1)(B) provide that formulation of mitigation measures shall not be deferred until some future time.¹³³ “By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.”¹³⁴ The DEIR must be revised and recirculated to include adequate analysis of the impacts from fire risks associated with BESS facilities.

2. GHG Impacts from BESSs

The DEIR fails to take into account the GHG emissions resultant from operating the proposed BESSs. Batteries in BESS facilities must be charged with energy from the grid.¹³⁵ Generation of this energy emits GHGs and criteria pollutants. Further, a BESS requires electricity to operate its ancillary cooling and control systems, including inverters, transformers, and HVAC units.¹³⁶ The DEIR did not include emissions from any of these sources. As demonstrated below and by Dr. Fox’s comments GHG emissions from the Project are significant and unmitigated.¹³⁷

The DEIR contains no information on the next generation of electricity needed to operate the proposed BESSs. The DEIR is silent on the sources of the charging energy and makes no commitment that the batteries will be charged with renewable energy.¹³⁸ As the facility is a net consumer of electricity (to operate support equipment), operation of the Project will increase GHG and criteria

¹³² Fox Comments, p. 67.

¹³³ 14 CCR 15126.4(a)(1)(B).

¹³⁴ *Sundstrom* (1998) 202 Cal.App.3d 296, 305.

¹³⁵ Fox Comments, p. 70.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 71.

pollutant emissions to operate the BESS and when the batteries are charged with nonrenewable energy sources, which will occur whenever wind and solar are not available to meet incremental charging loads because they are already being fully used.¹³⁹

The DEIR fails to provide the key information required to estimate charging emissions, including the battery storage efficiency and expected energy output of the batteries. The storage capacity of the various BESS options, the amount of energy the batteries can store, is included in Table 3-18 of the DEIR. However, the expected energy output was not provided. All of this information is required to estimate emissions from Project operation.

The DEIR fails as an informational document under CEQA for failing to calculate direct and indirect GHG emissions from BESS battery charging and for failing to include the information required to calculate these emissions. Because the DEIR does not provide any data on the expected efficiency, capacity factor, or its expected charging energy requirements or energy generation, we used CAISO data for existing energy storage projects. Commenters' expert analysis is summarized in Exhibits 2A and 2B.¹⁴⁰

VII. THE DEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS TO AGRICULTURAL RESOURCES

The DEIR states that the Proposed Project would permanently convert roughly 15 acres of Important Farmland to non-agricultural uses.¹⁴¹ Specifically, the DEIR states that the Estrella Substation would be located on an approximately 15-acre portion of a 98.6-acre parcel of land which is currently planted with grape vines of 10-foot-wide span lengths.¹⁴² The DEIR fails to analyze and mitigate temporary and permanent significant impacts to farmland. The impacts to agricultural land from this Project are inconsistent with the San Luis Obispo General Plan Agriculture Element. The DEIR fails to analyze the Project's inconsistency with the General Plan.

¹³⁹ *Id.*

¹⁴⁰ Emission calculations by David Marcus. Calculations in Exhibits 2A and 2B and Marcus resume in Exhibit 3.

¹⁴¹ DEIR, p. 4.11-17.

¹⁴² DEIR, p. 2-15.

CEQA requires the agency to determine whether the Project would “Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.”¹⁴³

In 1993, the California State Legislature added a requirement to CEQA that the Resources Agency create an appendix to the CEQA Guidelines.¹⁴⁴ The Legislature required that this appendix propose methods to analyze significant effects on the environment from conversion of agricultural land. The findings for this statutory requirement states that:

- (a) Agricultural is the State’s leading industry and is important to the State’s economy.
- (b) The continued productivity of agricultural lands in California is important in maintaining a healthy agricultural economy.
- (c) The conversion of agricultural lands to nonagricultural use threatens the long-term health of the State’s agricultural industry.”¹⁴⁵

A. The DEIR Fails to Adequately Analyze Impacts to Farmland

The DEIR concludes that the Project would have significant and unavoidable impacts on agricultural resources.¹⁴⁶ The Project would entail the permanent conversion of Important Farmland including Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to non-agricultural use. Permanent conversion of agricultural land would occur as a result of removal of existing vineyards at the substation site and removal of existing vineyard and row crops for the placement of structures as part of the 70 kV power line route construction.¹⁴⁷ The County of San Luis Obispo Agriculture Element states that it is the policy of the County to preserve agricultural land from development, because “[o]nce agricultural land is

¹⁴³ 14 CCR § 15000 Appendix G.

¹⁴⁴ Osha R. Meserve, *Overview of Legal Restraints on Agricultural Land Mitigation Programs*, Prepared for Department of Conservation Division of Land Resource Protection (February 16, 2011) p. 2 available at: <http://www.caff.org/wp-content/uploads/2010/07/Ag-Mitigation-Handout-2-16-111.pdf>.

¹⁴⁵ Section 1 of Stats. 1993, c. 812 (SB 850).

¹⁴⁶ DEIR, p. 4.2-13.

¹⁴⁷ DEIR, p. 4.2-12.

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converted to non-agricultural use, it is virtually impossible to remove the non-agricultural use and convert the land back to agricultural production.”¹⁴⁸

1. *Temporary Impacts*

The DEIR states that temporary work for the Substation and staging areas would require “vegetation removal and grading, including grape vines (and roots) and grasses” of approximately 6.2 acres.¹⁴⁹ Mitigation measure AG2 would not be effective mitigation because the impact to farmland is not temporary. Removal of grape vines and roots is not a temporary impact. Grape vines do not reach full production until the third through fifth year, at which time the area could be fully restored.¹⁵⁰

The Proponent’s Environmental Assessment estimated that approximately 96.74 acres of farmland will be temporarily affected during construction of the Estrella Substation and power line route.¹⁵¹ This information, though, is not present in the DEIR. As discussed above, the court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* held “[t]he data in the EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project.”¹⁵² Further, “information scattered here and there in EIR appendices or a report buried in an appendix, is not a substitute for a good faith reasoned analysis.”¹⁵³ The requirement of a detailed analysis ensures that stubborn problems or serious criticism are not “swept under the rug.”¹⁵⁴ The extent of temporary impacts to farmland was not adequately analyzed in the DEIR.

The DEIR addresses the temporary impacts as follows:

“[T]emporary impacts to Prime Farmland, Farmland of Statewide Importance, and Unique Farmland would be significant if agricultural

¹⁴⁸ *Id.*

¹⁴⁹ DEIR, p. 2-73.

¹⁵⁰ House Comments, p. 4; Jancis Robinson et.al., *The Oxford Companion to Wine*, Third Edition, p. 741-742, Oxford University Press 2006.

¹⁵¹ PEA, p. 3.2-23.

¹⁵² *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.

¹⁵³ *Id.*, quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239, quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723.

¹⁵⁴ *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.
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uses/crops were not adequately restored following construction and/or if soil productivity were adversely affected over the long term (e.g., due to soil compaction).”¹⁵⁵

Here, the DEIR recognizes that “temporary” impacts to Farmland may be permanent “if soil productivity were adversely affected over the long term.”¹⁵⁶ However, the DEIR mischaracterized the impact here as temporary instead of a permanent conversion of farmland. Agricultural expert Mr. House comments that the lack of specificity as to how temporary impacts will be mitigated “is just a cipher or placeholder to acknowledge that something will need to be done after the construction is completed.”¹⁵⁷ This would constitute impermissibly deferred analysis under CEQA Guidelines § 15126.4(a)(1)(B) which provide that formulation of mitigation measures shall not be deferred until some future time.¹⁵⁸

The DEIR also fails to specify the degree of soil disturbance.¹⁵⁹ The depth of disturbance through excavation or severe compaction may make it impracticable to fully restore the disturbed site to pre-project conditions, and thus the mitigation measures will be insufficient. The DEIR should be revised to fully analyze the depth and degree of disturbance and compaction that will result from the Project.

The DEIR must be revised and recirculated to disclose the temporary impacts that may become permanent, and to require all feasible mitigation necessary to reduce temporary impacts to agricultural land to less than significant levels.

2. Land Evaluation and Site Assessment

The DEIR fails to provide a California Land Evaluation and Site Assessment (“LESA”) for the Estrella Substation site. The purpose of a LESA is provide agencies and decision makers with a succinct and technically developed methodology to assist with the assessment of the potentially significant effects on

¹⁵⁵ DEIR, p. 4.2-18.

¹⁵⁶ *Id.*

¹⁵⁷ House Comments, p. 2.

¹⁵⁸ 14 CCR 15126.4(a)(1)(B).

¹⁵⁹ House Comments, p. 2.

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the environment related to agricultural land conversions considered in the environmental review process including in CEQA reviews.¹⁶⁰

The California LESA Model evaluates measures of soil resource quality, a given project's size, water resource availability, surrounding agricultural lands, and surrounding protected resource lands.¹⁶¹ For any given project, the factors are rated, weighted, and combined, resulting in a single numeric score.¹⁶² The final project score becomes the basis for making a determination of a project's potential significance.¹⁶³ The California Land Evaluation and Site Assessment (LESA) Instruction Manual (1997) developed by the California Department of Conservation, Office of Land Conservation should be the guidance and instructional document utilized to conduct analysis for this Project.¹⁶⁴

A revised DEIR must be circulated to adequately analyze impacts to agricultural lands through a LESA Model.

B. The DEIR Fails to Adequately Mitigate Impacts to Farmland

1. Mitigation Measure AG-1

The DEIR in Mitigation Measure AG-1 provides for Compensation for Loss of Agricultural Land through a conservation easement. A conservation easement would not "replace or provide a substitute resource" for the permanent loss of unique farmland as required by CEQA.¹⁶⁵ A conservation easement to "promote the long-term preservation of agricultural lands in California" would not replace the 15.17 acres of Important Farmland on the Estrella Substation Site being converted to nonagricultural use.¹⁶⁶

¹⁶⁰ PRC § 21095.

¹⁶¹ California Department of Conservation, Land Evaluation & Site Assessment (LESA) Model, (2020) available at: https://www.conservation.ca.gov/dlrp/Pages/gh_lesa.aspx.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ California Department of Conservation, California Agricultural Land Evaluation and Site Assessment Model: Instruction Manual (1997) available at: <https://www.conservation.ca.gov/dlrp/Documents/lesamodl.pdf>.

¹⁶⁵ CEQA Guidelines § 15370(e); *Friends of Kings River v. County of Fresno* (2014) 232 Cal.App.4th 105,123.

¹⁶⁶ DEIR, p. 4.2-13.
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The court in *King & Gardiner Farms, LLC v. County of Kern* determined that:

“Entering into a binding agricultural conservation easement does not create new agricultural land to replace the agricultural land being converted to other uses. Instead, an agricultural easement merely prevents the future conversion of agricultural land subject to the easement. Because the easement does not offset the loss of agricultural land (in whole or in part), the easement does not reduce a project’s impact on agricultural land. Therefore, [the mitigation measure] does not provide effective mitigation for the conversion of agricultural land.”¹⁶⁷

Here, Proposed Mitigation Measure AG-1 does not provide effective mitigation for the conversion of agricultural land because a contribution of funds to the California Farmland Conservancy does not create any new Important Farmland.¹⁶⁸

The DEIR concludes that impacts from the permanent conversion of agricultural land are significant and unavoidable. However, the DEIR lacks the underlying analysis necessary to support this conclusion, and fails to demonstrate that all feasible mitigation is being implemented. An impact can only be labeled as significant and unavoidable after all available, feasible mitigation is considered. Review of the DEIR demonstrates that the Project fails to consider all feasible mitigation measures that would provide for new agricultural land to offset that which is being permanently converted. “[P]ublic agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects...”¹⁶⁹

Mr. House concurs with the DEIR’s conclusion that a conservation easement at a 1:1 ratio does not fully offset the significant impact because it does not create new Important Farmland.¹⁷⁰ Other California counties with comparably valuable agricultural lands to those that will be disrupted by the Project required notably higher mitigation ratios. In Yolo County, California, a county ordinance requires a

¹⁶⁷ *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 876.

¹⁶⁸ DEIR, p. 4.2-13.

¹⁶⁹ California Code of Regulation, Title 14, Chapter 3, § 21002.

¹⁷⁰ DEIR, p. 4.2-13.

3:1 ratio when prime agricultural land is converted from agricultural land to nonagricultural land, and 2:1 when converting non-prime farmland.¹⁷¹ The City of Davis implemented a 2:1 mitigation requirement for changes from agricultural land to nonagricultural land.¹⁷² Mr. House concludes that Mitigation Measure AG-1 should require replanting at a ratio of 3:1 because agricultural land is being converted to nonagricultural use. Mr. House further opines that the compensatory easement(s) should be located within 15 miles of the Project or within San Luis Obispo County, in order to adequately mitigate the loss of agricultural land.

If such land for a compensatory easement is not available, the mitigation measure is inadequate.¹⁷³ HWT and PG&E would not be required to identify a specific location, but such a location must actually exist.¹⁷⁴ A satisfactory mitigation measure would be to require HWT and PG&E to purchase the conservation easement with the oversight and approval of the CPUC.¹⁷⁵

The DEIR states that the amount of HWT's and PG&E's contribution shall be based on the market price for the commensurate land at the time the impacts occur.¹⁷⁶ The DEIR does not define what "commensurate" land means. Mr. House explains that "commensurate" must be defined by metrics such as soil quality, and equivalent supply of water for irrigation, in order to provide substantial evidence to support the selection of mitigation lands. Further, Mr. House explains that the mitigation land should have an equal or better LESA score than the land lost.¹⁷⁷

The DEIR should be revised to include feasible mitigation measures to reduce permanent impacts to agricultural resources to less than significant levels.

2. *Mitigation Measure AG-2*

Mitigation Measure AG-2 requires "removing any rock or material imported to stabilize the site, replacement of topsoil, de-compacting any soil that has been

¹⁷¹ Yolo County Zoning Code, Chapter 1, Article 4, Section 8-2.404(c)(1).

¹⁷² City of Davis Mun. Code, § 40A.03.025(c): ("Total mitigation for a development project shall not be less than a ratio of two acres of protected agricultural land for each acre converted from agricultural land to nonagricultural land.")

¹⁷³ *King & Gardiner Farms* (2020) 45 Cal.App.5th 814, 877-878.

¹⁷⁴ *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603,

¹⁷⁵ House Comments, p. 2.

¹⁷⁶ DEIR, p. 4.2-13.

¹⁷⁷ House Comments, p. 1.

compacted by heavy equipment and re-planting agricultural crops.”¹⁷⁸ As Mr. House explains, this mitigation measure is inadequate for the following reasons.

First, removal of all the rock that has been imported to stabilize the site is generally economically infeasible.¹⁷⁹ Mr. House determined that “a 95% cleanup job is about the best likely outcome, thus this aspect of the temporary construction will not be fully restored to pre-construction conditions.”¹⁸⁰ He concludes that this measure will thus not reduce the impact to a less-than-significant level. The DEIR should be revised and recirculated to fully mitigate the impacts from the introduction of rocks and material to the agricultural land on the Project site.

Second, Mr. House explains that replacement of topsoil “with fresh fill is insufficient to restore the landscape to its original condition.”¹⁸¹ Restoration of the site will take more than one year. HWT and PG&E should provide a plan to monitor the site and continue with restoration practices for two to three years in order to achieve the stated goals of restoring the soil to its pre-project condition.¹⁸² The DEIR’s Appendix F Mitigation Monitoring and Reporting Plan should be revised to clarify how long “Following Construction” the measure will be analyzed for effectiveness of restoration.¹⁸³ The CPUC should not “[c]onfirm restoration of agricultural lands is completed” until three to five years after construction is complete.

Third, de-compacting the soil on the Project should be done when the soil is dry, because ripping into wet soil “only causes additional damage” according to Mr. House.¹⁸⁴ The disruption of dry soil must take into account impacts to Air Quality from Valley Fever. But decompaction of wet soil may increase greenhouse gas emissions from the Project.

Fourth, GHG Emissions from decompaction of soil are significant and unmitigated. Research suggests that “tillage, soil decompaction after heavy machinery passages...impact not only primary production and soil [organic matter] inputs but also [organic matter] mineralization and therefore soil to atmosphere

¹⁷⁸ DEIR Appendix F, p. F-14.

¹⁷⁹ House Comments, p. 2.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² House Comments, p. 2.

¹⁸³ DEIR Appendix F, p. F-14.

¹⁸⁴ House Comments, p. 2.

carbon fluxes.”¹⁸⁵ This means, decompaction may release carbon stored in the soil into the atmosphere.¹⁸⁶ These emissions are a significant impact, but the DEIR failed to analyze them.

Further research suggests that “[t]he rapid rewetting of a dry soil often yields a pulse in soil CO₂ production.”¹⁸⁷ Additionally, “[t]he drying and rewetting process also releases physically protected soil organic matter, increasing the amount of extractable [carbon] by up to 200%.”¹⁸⁸ Soil compaction is also associated with increased risk of erosion and some studies have linked an increase in CO₂ following rewetting to mineralization of freshly exposed organic matter, and the subsequent mineralization of microbial carbon.¹⁸⁹ The physical breakdown of soil aggregates, which occurs due to compaction and exposure to rainfall has been associated with increased CO₂.¹⁹⁰ The DEIR should be revised and recirculated to analyze the impacts from decompaction of soil on GHG emissions.

Mr. House explains that replanting of agricultural crops may not be fully grown back to the size they were when removed until three to five years after replanting.¹⁹¹ Grape vines take more than one year to reach crop bearing age.¹⁹² Commenters’ agriculture expert Greg House determined that “it is therefore necessary for the mitigation that the act of replanting of the grape vines encompasses the several years (typically 3 to 5 years) it takes to develop mature grape vines.”¹⁹³ The Mitigation Measure AG-2 should only allow confirmation that restoration of agricultural land is completed, after the 5th year following replanting. Further, the Mitigation Monitoring and Reporting Program must restore the

¹⁸⁵ Marie-France Dignac et al., *Increasing Soil Carbon Storage: Mechanisms, Effects of Agricultural Practices and Proxies. A Review*, 37 *Agronomy for Sustainable Development* 14 (2017).

¹⁸⁶ House Comments, p. 2.

¹⁸⁷ Agata Novara et. al., *Effects of Soil Compaction, Rain Exposure and Their Interaction on Soil Carbon Dioxide Emission* 37 *Earth Surface Processes and Landforms* 994–999 (2012).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Agata Novara et. al., *Effects of Soil Compaction, Rain Exposure and Their Interaction on Soil Carbon Dioxide Emission* 37 *Earth Surface Processes and Landforms* 994–999 (2012).

¹⁹¹ House Comments, p. 4.

¹⁹² *Id.*

¹⁹³ *Id.*

temporary construction sites to their original slopes and contours for proper surface water drainage.¹⁹⁴

Finally, the impacts of hazardous waste on the future of agricultural land were not sufficiently analyzed in the DEIR. The monitoring of hazardous substances in the soil should be continued after construction. Monitoring on temporary construction sites should ensure hazardous substances do not remain in the soil after restoration of agricultural land.¹⁹⁵ The DEIR should be revised and recirculated to adequately analyze and mitigate impacts to agricultural resources.

C. Loss of Agricultural Land is Inconsistent with the San Luis Obispo County General Plan Agriculture Element

This Project's impacts to agricultural land conflicts with the San Luis Obispo County General Plan. The County of San Luis Obispo General Plan Agriculture Element provides that "It is the policy of San Luis Obispo County to protect and encourage agricultural operations as stated in the county general plan and in the right-to-farm ordinance."¹⁹⁶ The County determined "it is important to protect agricultural land now" because over 90 percent of the County's "prime" agricultural land, almost all of the "unique" agricultural land, over 60 percent of the lands of "local importance," and lands defined as being of local "potential" are in areas experiencing development activities.¹⁹⁷ The Agriculture Element further provides that "If the protection of agricultural land is not given a high priority now, the industry will not be able to withstand the pressure to convert to other uses and move on...The long-term result will be the loss of productive lands for future generations, as well as the loss of the history and lifestyle that provides the rural character that is San Luis Obispo County."¹⁹⁸

The CEQA Guidelines require a lead agency conducting environmental review of a project to consider whether the project would "conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over a project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ County of San Luis Obispo Agriculture Element (2010) p. 2-9.

¹⁹⁷ County of San Luis Obispo Agriculture Element (2010) p. 2-10.

¹⁹⁸ *Id.*

environmental effect.”¹⁹⁹ Here, the CPUC failed to consider that the project conflicts with the Agriculture Element, in violation of CEQA.

The DEIR must be revised to disclose and mitigate the inconsistency with the San Luis Obispo County General Plan Agriculture Element.

VIII. THE DEIR FAILS TO ADEQUATELY DISCLOSE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS ON BIOLOGICAL RESOURCES

The failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.²⁰⁰ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.²⁰¹ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."²⁰²

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."²⁰³

A. The DEIR Fails to Analyze and Mitigate Potentially Significant Impacts to Sensitive Vegetative and Riparian Communities

1. The DEIR Fails to Analyze Potentially Significant Impacts to Sensitive Communities

¹⁹⁹ 14 CCR § 15000 Appendix G.

²⁰⁰ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

²⁰¹ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

²⁰² *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

²⁰³ *Berkeley Jets*, 91 Cal.App.4th at 1355.

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The DEIR states that “the Proposed Project has been designed to avoid all riparian habitats.”²⁰⁴ This statement is not supported by substantial evidence. The 70 kV power line would cross a number of drainage features²⁰⁵ that qualify as “riparian areas.”²⁰⁶ The DEIR points to APM HYDRO-1 to justify the statement that: “riparian areas would be avoided and no direct impacts to riparian areas would occur as a result of Proposed Project construction.”²⁰⁷ However, APM HYDRO-1 only requires that permanent structures, staging and work areas, and access roads be sited outside of existing drainage features *to the extent feasible*.

The DEIR does not discuss factors that would make it infeasible to avoid impacts to riparian areas, nor does it explain why it was impractical for the CPUC to conduct the feasibility analysis prior to publication of the DEIR. Because avoidance of riparian areas is contingent on an undefined level of feasibility, it is impossible for the public to understand the likelihood that Project impacts to riparian areas would indeed be avoided. Similarly, because the DEIR does not discuss factors that would make restoration impracticable, it is impossible for the public to understand the likelihood that temporary impact areas would indeed be restored. This issue is compounded by the lack of ecological performance standards for restoration of habitat in temporary impact areas (except those containing blue oak woodland).

2. *The DEIR Fails to Mitigate Potentially Significant Impacts to Sensitive Communities*

The proposed mitigation measure for hydrological impacts, APM HYDRO-1 is not legally enforceable because it states that “permanent structures, staging and work areas, and access roads be sited outside of existing drainage features to the extent feasible.”²⁰⁸ “To the extent feasible” is not binding. Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.²⁰⁹ Failure to include enforceable mitigation measures is

²⁰⁴ DEIR, p. 4.4-10.

²⁰⁵ DEIR, p. 4.4-53.

²⁰⁶ Riparian areas in the Project area are not limited to the Central Coast cottonwood-willow riparian forest vegetation community discussed in the DEIR. *See definition in* National Research Council 2002. Riparian Areas: Functions and Strategies for Management. Washington, DC: The National Academies Press. p. 3.

²⁰⁷ DEIR, p. 4.4-51.

²⁰⁸ DEIR, p. 4.4-10.

²⁰⁹ Id. at §15126.4(a)(2).

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considered a failure to proceed in the manner required by CEQA.²¹⁰ In order to meet this requirement, mitigation measures must be incorporated directly into the EIR to be enforceable.²¹¹ The DEIR fails as an informational document for its lack of clear mitigation methods and lack of sufficient data to evaluate the proposed project.²¹² The DEIR must be revised and recirculated to mitigate impacts to sensitive vegetative and riparian communities.

B. The DEIR Fails to Adequately Analyze and Mitigate Potentially Significant Impacts to Blue Oak Woodlands

1. The DEIR Fails to Adequately Analyze Impacts to Blue Oak Woodlands

The DEIR states that impacts on blue oak woodland from the Proposed Project would be less than significant with mitigation. But Mitigation Measure BIO-4 is inadequate according to Commenters' expert biologist Scott Cashen to reduce impacts to oak trees to a less than significant level.²¹³

The DEIR states, "up to 0.13 acre of direct permanent impacts to blue oak woodlands would occur as a result of pole and tower installation, vegetation removal, and clearing activities. This would include up to three oak trees that would need to be removed for Proposed Project construction. Further, approximately 6.41 acres of blue oak woodlands would be temporarily affected from construction activities."²¹⁴

Mr. Cashen concludes that the DEIR's statement that permanent impacts to oak trees would be limited to removal of "up to three oak trees" is not supported by substantial evidence and does not appear to be accurate. According to Mr. Cashen's analysis, the statement is inconsistent with DEIR Figure 3-7, which depicts numerous locations along the reconductoring segment that would require "oak tree trimming/removal."²¹⁵ This suggests the CPUC has yet to determine how many oak

²¹⁰ *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672.

²¹¹ *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645, 651-52.

²¹² *Id.*

²¹³ Cashen Comments, p. 19.

²¹⁴ DEIR, p. 4.4-51.

²¹⁵ It is unclear if the proposed alignment (and MRV) for the 70 kV route between the Estrella Substation and North River Road would require additional trimming/removal of oak trees because unlike the detailed maps of the Project alternatives, the detailed map of the Proposed Project does not depict locations requiring oak tree trimming/removal.

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trees require removal. Further, it does not appear to account for tree removal activities associated implementation of G.O. 95. Additionally, it does not appear to account for tree removal or mortality in the Project’s “temporary” impact areas.

The DEIR must be revised and recirculated to clarify the extent and severity of the Project’s tree removal activities.

Further, PG&E’s fuel reduction programs can cause significant environmental impacts that were not analyzed in the DEIR. For example, fuels reduction treatments in coastal scrub communities promote invasion by non-native plants and may cause type conversion (i.e., one vegetation type is converted into another vegetation type), especially if the treatments exceed the historical disturbance regime frequency.²¹⁶ Therefore, the CPUC and Applicants need to clarify whether a fuel reduction program would (or might) be implemented as part of the Project. If a fuel reduction program might be implemented as part of the Project, the DEIR must disclose and analyze the environmental impacts of that fuel reduction program.

2. *The DEIR Fails to Mitigate Potentially Significant Impacts to Blue Oak Woodlands*

Temporary impacts disturbed by the Proposed Project would be restored “to the extent practicable, following construction.”²¹⁷ This is not a sufficient mitigation measure because it is not *enforceable*. CEQA requires enforceable mitigation measures.²¹⁸

In *Save the Agoura Cornell Knoll v. City of Agoura Hills*, the court determined that proposed mitigation measure of replanting trees was not adequate mitigation because “prior attempts to restore oak woodlands have failed.”²¹⁹ The court cited a September 2016 letter to the City of Agoura Hills Planning Director, the Resources Conservation District of the Santa Monica Mountains that reported: “To date, there have been no successful restorations of oak woodlands. It is relatively easy to plant oak trees, but the extensive ecological network and soils

²¹⁶ Keeley JE. 2006. Fire management impacts on invasive plants in the Western United States. *Conservation Biology* 20(2):375-384.

²¹⁷ DEIR, p. 4.4-51.

²¹⁸ 14 CCR § 15126.4(a)(2).

²¹⁹ *Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 702. 3287-016acp

that make a forest from those trees has been thus far impossible to recreate.”²²⁰ Further, the court went on to cite Appellants findings that “[a]ttempts to recreate oak woodlands as mitigation for other developments are often unsuccessful.”²²¹ The court concluded that, based on the record, substantial evidence supported a fair argument that the mitigation measure was inadequate to mitigate the project’s impacts to oak trees to a less than significant level.²²²

A case study from northwestern California similarly illustrates why blue oak has difficulty regenerating on sites where oaks were removed.²²³ Deciduous trees including blue oak and California black oak on the site, were not regenerating.²²⁴ The study authors determined that deciduous oaks, particularly blue oak, required artificial plantings given shade and protection from browsing for successful restoration.²²⁵ Restoration of a site on the Sierra Foothill Range and Field Station where blue oaks had been completely removed in the 1960s was finally successful after 2 attempts were thwarted by grasshopper and rodent browsing.²²⁶

The success criterion proposed in MM BIO-4 (i.e., “a minimum of 65 percent survival of woody plantings after 5 years”) provides no assurances that the replacement trees are likely to survive, or that they will ever provide structural elements and characteristics comparable to the trees that were removed. The CPUC should not assume blue oak plantings have a reasonable likelihood of replacing impacted trees until the plantings: (a) are at least 10 years old, (b) have reached the sapling stage, and (c) are protected from herbivory by cattle and deer.²²⁷

The DEIR states that “Blue oak woodland restoration or compensation may be completed at the work area, in the vicinity, or at a conservation bank with a service area that covers the Proposed Project or selected alternative.”²²⁸ It does not

²²⁰ *Id.* at 701.

²²¹ *Id.*

²²² *Id.*

²²³ Brooks, Colin N.; Merenlender, Adina M. 2001 *Determining the pattern of oak woodland regeneration for a cleared watershed in northwest California: a necessary first step for restoration* Ecology. 9(1): 1-12.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Fryer, Janet L. 2007. *Quercus douglasii* Fire Effects Information System, U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory, Available at: <https://www.fs.fed.us/database/feis/plants/tree/quedou/all.html>.

²²⁷ Cashen Comments, p. 19.

²²⁸ DEIR, p. 4.4-52.

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appear that there exists a conservation bank with a service area that covers the Proposed Project. The court in *King & Gardiner Farms* determined that because there was no evidence in the administrative record that a mitigation bank existed, the measure did not constitute sufficient mitigation under CEQA.²²⁹ Here, the DEIR does not contain substantial evidence showing that there are mitigation banks or preservation programs with a service area that covers the Proposed Project or selected alternative. Therefore, DEIR does not contain substantial evidence to support a finding that participation in a banking program would actually offset the impacts to Blue Oak Woodlands.

The DEIR should be revised and recirculated to ensure the mitigation measures proposed reduce oak woodland impacts to less than significant.

3. *The Project Contravenes the City of El Paso de Robles Oak Tree Preservation Ordinance*

The Paso Robles Oak Tree Preservation Ordinance was enacted for the “preservation of oak trees in order to maintain the heritage and character of the city of El Paso de Robles (“The Pass of the Oaks”) as well as preserve the beauty and identify of the community.”²³⁰ The removal of oak trees for this Project contravenes the intent of the ordinance.

Even if the Project does comply with the City of El Paso de Robles Oak Tree Preservation Ordinance (“Oak Tree Ordinance”), the impacts are not sufficiently mitigated. The Oak Tree Ordinance only applies to trees that have a dbh of 6 inches or greater, and it only requires replacement at a ratio of 25 percent of the diameter of trees that are removed. In addition, MM BIO-4 only requires 65 percent of the replacement trees to survive beyond 5 years. Thus, MM BIO-4 does not require replacement of small oaks (< 6 inches dbh), but it allows the Applicants to replace large oaks with small ones.²³¹ Commenters’ expert Mr. Cashen determined this would not mitigate the impacts because small oaks do not provide the same ecological values as large ones, and even if the replacement trees survive to maturity (most do not), it would take decades for them to replace the ecological values associated with the trees that are removed.²³²

²²⁹ *King & Gardiner Farms* (2020) 45 Cal.App.5th 814, 877.

²³⁰ El Paso de Robles Code of Ordinances, § 10.01.010.

²³¹ Under the City’s Oak Tree Ordinance, replacement trees may be as small as 1.5-inch (trunk caliper) in size.

²³² Cashen Comments, p. 20.

4. *The DEIR is not in Compliance with the City Paso Robles General Plan Conservation Element*

The Paso Robles General Plan requires the City “Preserve existing oak trees and oak woodlands. Promote the planting of new oak trees.”²³³ The DEIR fails to recognize that the Project is not consistent with the City of Paso Robles General Plan Conservation Element. CEQA Guidelines require a lead agency conducting environmental review of a project to consider whether the project would “conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over a project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.”²³⁴ The DEIR violates CEQA. The DEIR should be revised and recirculated to analyze and mitigate the inconsistency with the City of Paso Robles General Plan.

C. The DEIR Fails to Analyze and Mitigate Potentially Significant Impacts to Golden Eagle and Other Special Status Birds

The DEIR fails to ensure adequate mitigation for special-status species that are detected during the pre-construction survey. According to the DEIR, buffers would be installed around bird nests. However, mitigation for all other terrestrial wildlife species has been deferred to the pre-construction survey report, which would identify the “anticipated impacts and proposed mitigation.” This approach does not comply with CEQA, which prohibits deferral of: (a) the impact assessment; and (b) the mitigation, unless the lead agency establishes specific performance criteria for the mitigation and explains why it was impractical for the lead agency to identify the mitigation in the EIR.”

D. The DEIR Fails to Analyze and Mitigate Potentially Significant Impacts to Amphibians

1. *Western Spadefoot and California Red-Legged Frog*

²³³ City of El Paso de Robles General Plan 2003, Conservation Element p. CO-4, *available at*: <https://www.prcity.com/DocumentCenter/View/25852/20141119-Conservation-Element>.

²³⁴ 14 CCR § 15000 Appendix G.
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The DEIR failed to adequately analyze impacts to the Western spadefoot toads. Western spadefoot toads and California red-legged frog (“CRLF”) spend majority of the year below ground and are only detectable during a few weeks or months of the year.²³⁵ CRLF that disperse from aquatic habitat seek shelter under objects or in small mammal burrows.²³⁶ Terrestrial movements of both species generally occur at night. Therefore, Mr. Cashen explains that standard preconstruction surveys are not sufficient for detection.²³⁷ The DEIR does not require adequate analysis because the DEIR does not require special survey techniques designed to survey the California Red-legged Frog.²³⁸

The DEIR states that APM BIO-3 would require exclusion fencing as one of the measures that would ensure CRLF and Western Spadefoot toad individuals are not present during construction. But, neither APM BIO-3 nor MM-BIO-1 require installation of an exclusion fence around construction work areas. Thus, the claim that APM BIO-3 and Mitigation Measure BIO-1 “would ensure that CRLF and western spadefoot toad individuals are not present during these activities, such that they could be directly impacted” is not supported by substantial evidence.²³⁹

Mr. Cashen explains that the threat of trenches to CRLF and Western Spadefoot was not adequately analyzed in the DEIR. The DEIR states that APM BIO-4 and Mitigation Measure BIO-1 would require that all trenches and excavations in excess of 2 feet deep have a sloped escape ramp or be covered at the end of the day, which would minimize potential for CRLF or western spadefoot toad individuals to become entrapped in Proposed Project construction areas.²⁴⁰ The threat to CRLF and Western Spadefoot individuals is not limited to trenches in excess of 2 feet deep. Mortality to these species may occur if mitigation is limited to escape ramps and if trenches are not covered.²⁴¹ Mr. Cashen determined that inspecting trenches at the beginning of the workday would be effective for CRLF, but would not be effective for Western Spadefoots toads, which burrow under soil during the day.²⁴²

²³⁵ Cashen Comments, p. 12.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ See U.S. Fish and Wildlife Service. 2005 Aug. Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog. 26 pp.

²³⁹ DEIR, p. 4.4-43.

²⁴⁰ DEIR, p. 4.4-43.

²⁴¹ Cashen Comments, p. 13.

²⁴² *Id.*

E. The DEIR Fails to Mitigate Potentially Significant Impacts from Invasive Plants

The DEIR failed to provide adequate mitigation measures for impacts from invasive plants. Mr. Cashen explains that the best management practices in the California Invasive Plant Council guidelines are feasible and should be incorporated as mitigation measures for this Project.²⁴³ The DEIR does not incorporate any mitigation measures for invasive plants, nor does it establish performance standards for invasive plants in the “restoration” area. As a result, potentially significant impacts associated with the colonization or spread of invasive plants remains unmitigated.

The DEIR provides that after the 5 year monitoring period under Mitigation Measure BIO-2, the mitigation shall have ensured “[l]ess than 5 percent cover of invasive weeds within the restoration area.”²⁴⁴ But the Proponent’s Environmental Assessment (PEA) provided a stronger mitigation measure than the DEIR to prevent the spread of invasive plants. The PEA provides “Required construction best management practices (BMPs) will include dust suppression using water or soil binders and vehicle cleaning to prevent the spread of nonnative invasive plant species.”²⁴⁵ The DEIR fails to explain why it proposed less stringent mitigation for invasive plants, when the severity of the impact has not decreased. The CPUC should revise and recirculate the DEIR to require vehicle cleaning and additional mitigation recommended by Mr. Cashen in order to prevent the spread of invasive plants.

IX. THE DEIR FAILS TO ACCURATELY ANALYZE, QUANTIFY, AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS TO AIR QUALITY

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.²⁴⁶ An agency cannot

²⁴³ *Id.*

²⁴⁴ DEIR, p. 4.4-49.

²⁴⁵ PEA, p. 3.4-53.

²⁴⁶ 14 CCR § 15064(b).
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conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.²⁴⁷

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.²⁴⁸ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.²⁴⁹ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."²⁵⁰

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."²⁵¹

A. The DEIR Fails to Adequately Analyze the Project's Potentially Significant Impacts from Construction Emissions

The DEIR violates CEQA Guidelines section 15126.2, subdivision (a), which requires an EIR to "analyze any significant environmental effects the project might cause by bringing development and people into the area affected."²⁵² The CEQA Guidelines require an EIR identify "relevant specifics of ... health and safety problems caused by the physical changes."²⁵³ The DEIR and its appendices make no mention of a health risk analysis (HRA). The DEIR's discussion of health impacts is

²⁴⁷ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

²⁴⁸ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

²⁴⁹ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

²⁵⁰ *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

²⁵¹ *Berkeley Jets*, 91 Cal.App.4th at 1355.

²⁵² 14 CCR § 15126.2(a).

²⁵³ *Id.*

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therefore inadequate as a matter of law and the DEIR fails as an informational document.²⁵⁴

In *Sierra Club*, the County's failure to include a health risk analysis in the EIR enabled the California Supreme Court to find "the EIR insufficient because it failed to explain why it was not feasible to provide an analysis that connected the air quality effects to human health consequences."²⁵⁵ Here, the DEIR is likewise insufficient because it fails to connect the Project's air quality impacts with human health consequences.

1. *The DEIR Fails to Conduct a Health Risk Analysis*

The DEIR fails to analyze the health risk posed to sensitive receptors within 1000 feet of the Project's construction zone, in violation of CEQA. In *Sierra Club v. County of Fresno*, the County's failure to include a health risk analysis in the EIR enabled the California Supreme Court to find "the EIR insufficient because it failed to explain why it was not feasible to provide an analysis that connected the air quality effects to human health consequences."²⁵⁶ Here, the DEIR is likewise insufficient because it fails to connect the Project's air quality impacts with human health consequences. "Without such information, the general public and its responsible officials cannot make an informed decision on whether to approve the project."²⁵⁷ The DEIR should be revised and recirculated to include a quantified health risk analysis to connect the Project's impacts with human health consequences.

"CEQA requires that an EIR make a reasonable effort to discuss relevant specifics regarding the connection between two segments of information already contained in the EIR, the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely

²⁵⁴ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 134 Cal.App.4th 1184, 1220 ("After reading the EIRs, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIRs.").

²⁵⁵ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 525.

²⁵⁶ *Id.*

²⁵⁷ *Santa Clarita Organization for Planning the Environment* 106 Cal.App.4th 715, 724. 3287-016acp

produce.”²⁵⁸ Further, “[t]his discussion will allow the public to make an informed decision, as CEQA requires.”²⁵⁹

Proponent’s Environmental Assessment states “[s]ensitive receptors have been identified with a 1-mile radius of the [Estrella Substation] site, with the nearest residence located within 265 feet of the substation site.”²⁶⁰ Sensitive receptors are within 1,000 feet of the Proposed Project site, and therefore a health risk analysis is required. This omission of this information makes the DEIR’s impact analysis inadequate. The DEIR should be revised and recirculated to include a health risk analysis, and, if health risk is found to be significant, to implement all feasible mitigation to reduce impacts to less than significant levels.

Additionally, the DEIR failed to analyze construction-related health risks through a Health Risk Assessment. A Health Risk Assessment is defined in the Health and Safety Code as a type of analysis undertaken in connection with the siting of hazardous substances, “a detailed comprehensive analysis ... to evaluate and predict the dispersion of hazardous substances in the environment and the potential for exposure of human populations and to assess and quantify both the individual and population wide health risks associated with those levels of exposure.”²⁶¹

The Office of Environmental Health Hazard Assessment (“OEHHA”) recommends a formal health risk assessment for construction exposures lasting longer than 2-months, and “[e]xposures from projects lasting more than 6 months should be evaluated for the duration of the project.”²⁶² Here, Proposed Project construction will last longer than 18 months, which is significantly longer than the two-month short-term threshold set by OEHHA to trigger an HRA. Because Project construction will last more than six months, the OEHHA guidance specifies that cancer exposure from Project construction “should be evaluated for the duration of

²⁵⁸ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521.

²⁵⁹ *Id.*

²⁶⁰ PEA, p. 3.3-19.

²⁶¹ Health & Saf. Code, § 44306.

²⁶² Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, February 2015 (OEHHA 2015), Section 8.2.10: Cancer Risk Evaluation of Short Term Projects, pp. 8-17/18;

[https://oehha.ca.gov/air/crnrr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0.](https://oehha.ca.gov/air/crnrr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0)

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the project.”²⁶³ Therefore, CPUC must revise and recirculate the DEIR to include an HRA that quantifies and evaluates the health risks from Project construction.

The DEIR fails to include an HRA to determine the adverse health risk impacts that will be caused by exposure to toxic air contaminants (“TACs”) from the Project’s construction emissions. The DEIR fails to disclose the potentially significant cancer and asthma risk posed to nearby residents and children from TACs, and fails to mitigate it. Because the DEIR fails to support its conclusion that the Project will not have significant health impacts from diesel particulate matter emissions with the necessary health risk analysis, this finding is not supported by substantial evidence. The DEIR states, “Project construction-related diesel particulate matter and other TAC emissions would not be of a magnitude and duration great enough to result in significant air toxic risks to exposed sensitive receptors.”²⁶⁴ This statement lacks substantial evidence absent the completion of an HRA.

In *Sierra Club v. County of Fresno*, the court rejected the argument that the EIR sufficiently accounted for its lack of specificity by explaining that a Health Risk Assessment is typically prepared later in the CEQA process.²⁶⁵ The court held, absent a detailed analysis of the Project’s health risks, including analysis linking the emissions with human health impacts, the DEIR’s discussion of air quality impacts was inadequate. Here, the same standard applies. The CPUC must include a quantified health risk analysis in a revised DEIR to comply with *Sierra Club* and CEQA.

2. Commenters’ Experts Conducted a Health Risk Assessment

Commenters’ experts Dr. Fox and Mr. Marcus conducted a health risk assessment for construction impacts from this Project. Commenters’ health risk assessment determined that cancer and acute health impacts from diesel DPM would be significant for on-site construction workers and nearby residents and other sensitive receptors.²⁶⁶

²⁶³ OEHHA 2015 p. 8-18.

²⁶⁴ DEIR, p. 4.3-18.

²⁶⁵ *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 521.

²⁶⁶ Fox Comments, p. 20.

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Dr. Fox determined cancer health risks from Project construction are highly significant, “requiring additional construction mitigation.”²⁶⁷ Dr. Fox further determined that sensitive receptors in the vicinity of the Project will experience significant respiratory impacts.²⁶⁸ Further, Dr. Fox determined that the California 1-hour NOx standard would be exceeded along the reconductoring line.²⁶⁹

The significant health and air quality impacts in the Health Risk Assessment are summarized as follows:²⁷⁰

Summary of Maximum Project Level Health Risks				
Risk Metric	Scenario 1	Scenario 2	Significance Threshold	Significant?
Maximum Residential Cancer Risk	0.5 to 40 cancers per million	5 to 75 cancers/million	10 (per million)	Scenario 1 – Yes Scenario 2 - Yes
Maximum Acute Hazard Index from 1-Hour Exposure to DPM	0.1 to less than 0.5	1 to < 4	1.0	Scenario 1 – No Scenario 2 - Yes
Maximum Acute Impact from Exposure to 1-Hour NOx	100 to 500 ug/m ³	00 to 760 ug/m ³	339 ug/m ³	Scenario 1 – Yes Scenario 2 - Yes

The DEIR must be revised and recirculated to disclose these significant health risks and to incorporate additional mitigation to reduce health risk to less than significant levels.

3. Sensitive Receptors

The San Luis Obispo County Air Pollution Control District (“SLOCAPCD”) states that, if sensitive receptors are within 1,000 feet of the project site, an HRA may be required.²⁷¹

²⁶⁷ Fox Comments, p. 26.

²⁶⁸ *Id.* at 30.

²⁶⁹ *Id.* at 33.

²⁷⁰ *Id.* at 35.

²⁷¹ “CEQA Air Quality Handbook”, SLO County Air Pollution Control District, April 2012, *available at*: <https://storage.googleapis.com/slocleanair-3287-016acp>

Numerous sensitive receptors are within 1,000 feet of the Project site. The DEIR states that the nearest residence to the Estrella Substation site is approximately 265 feet southwest of the site.”²⁷² Numerous residences are located in proximity to the Project’s new 70 kV power line segment. The nearest of these are two residences within 20 feet of the alignment, with another two within 100 feet.²⁷³ The Proponent’s Environmental Assessment lists 660 residents within 300 feet of project work areas.²⁷⁴

Construction of the Proposed Project’s 70 kV reconductoring segment passes through an existing residential area of Paso Robles and would be near numerous sensitive receptors (i.e., residences).²⁷⁵ The Proposed Project’s new 70 kV power line segment would pass adjacent to Barney Schwartz Park and the Paso Robles Sports Club, as well as the Cava Robles RV Resort. Based on aerial imagery, the power line would pass approximately 100 feet west of the nearest RV campsite at the Cava Robles RV Resort.²⁷⁶ Tots Landing Daycare is located approximately 265 feet east of the reconductoring segment and Grace Baptist Church is located approximately 790 feet east of the reconductoring segment.²⁷⁷

The DEIR failed to adequately analyze health risk impacts to these sensitive receptors. Dr. Fox’s analysis demonstrates that the impacts are significant and unmitigated. The DEIR must be revised and recirculated to disclose and mitigate impacts to these receptors.

4. *MM AIR-1 Constitutes Impermissibly Deferred Analysis*

Mitigation AIR-1 is inadequate because it constitutes deferred analysis. CEQA Guidelines § 15126.4(a)(1)(B) provide that formulation of mitigation

org/images/cms/upload/files/CEQA_Handbook_2012_v2%20%28Updated%20Map2019%29_LinkedwithMemo.pdf (SLOAPCD, CEQA Air Quality Handbook).

²⁷² DEIR, p. 4.13-10; PEA, p. 3.3-19.

²⁷³ *Id.*

²⁷⁴ Proponent’s Environmental Assessment Estrella Substation and Paso Robles Area Reinforcement Project (May 2017) Appendix A. Affected Properties - List of Properties within 300 feet of project work areas sorted by Assessor’s Parcel Number (APN) *available at:*

https://www.cpuc.ca.gov/environment/info/horizonh2o/estrella/docs/Revised_PEAAppendicesOnly_May2017.pdf.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

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measures shall not be deferred until some future time.²⁷⁸ “Impermissible deferral of mitigation measures occur when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.”²⁷⁹ Here, the DEIR states that a Construction Activity Management Plan (“CAMP”) will be prepared, for review and approval by the Air Pollution Control District (“APCD”) prior to the start of construction.²⁸⁰

“An EIR is inadequate if ‘[t]he success or failure of mitigation efforts ... may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.’ ”²⁸¹ Here, the CAMP would require additional analysis and provide mitigation measures that should have been included for public review in the DEIR. The DEIR fails as an informational document for impermissibly deferred analysis and mitigation.

The CEQA Guidelines provide that “[t]he specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review...”²⁸² The DEIR does not state why specifying these CAMP performance standards was impractical or infeasible at the time the DEIR was drafted. In *Preserve Wild Santee v. City of Santee*, the city impermissibly deferred mitigation where the EIR did not state why specifying performance standards for mitigation measures “was impractical or infeasible at the time the EIR was certified.”²⁸³ The court determined that although the City must ultimately approve the mitigation standards, this does not cure these informational defects in the EIR.²⁸⁴ Further, the court in *Endangered Habitats League, Inc. v. County of Orange*, held that mitigation that does no more than require a report to be prepared and followed, or allow approval by a county department without setting any standards is inadequate.²⁸⁵ Here, the fact that the CAMP will be approved later by the APCD does not cure the informational defects in this DEIR.²⁸⁶

²⁷⁸ 14 CCR 15126.4(a)(1)(B).

²⁷⁹ *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 915-916.

²⁸⁰ DEIR, p. 4.3-17.

²⁸¹ *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, quoting *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92, quoting *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 670.

²⁸² 14 CCR § 15126.4(a)(1)(B).

²⁸³ *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.

²⁸⁴ *Id.*

²⁸⁵ *Endangered Habitats League, Inc. v. County of Orange*, (2005) 131 Cal.App.4th 777, 794.

²⁸⁶ *See Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 194.

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5. Diesel Particulate Matter

Diesel particulate matter (“DPM”) will be emitted from on-road and off-road equipment during Project construction and decommissioning. DPM is a potent human carcinogen.²⁸⁷ It is also chronically²⁸⁸ and acutely²⁸⁹ toxic. OEHHA concluded that “[e]xposure to diesel exhaust can have immediate health effects,” which include “inflammation in the lungs, which may aggravate chronic respiratory symptoms and increase the frequency or intensity of asthma attacks.”²⁹⁰

“The [statewide] risk from diesel PM is by far the largest, representing about 70 percent of the known statewide cancer risk from outdoor air toxics. The exhaust from diesel-fueled engines is a complex mixture of gases, vapors, and particles, many of which are known human carcinogens.”²⁹¹

Emissions of DPM from construction equipment could impact construction workers and nearby sensitive receptors. Dr. Fox determined that acute health impacts, which occur over a 1-hour exposure time, are the most likely health risk for this Project.²⁹² Further, the DEIR is deficient for failing to evaluate cancer and chronic impacts of DPM construction emissions. Short-term emissions of DPM during construction could result in significant cancer and chronic impacts to infants and young children in nearby homes.

The DEIR is deficient for failing to evaluate the acute health impacts of DPM during construction, given the proximity of sensitive receptors to numerous Project components. This impact could be mitigated by requiring the use of all Tier 4 Final

²⁸⁷ OEHHA, Health Effects of Diesel Exhaust; <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf>. See also: OEHHA, Diesel Exhaust Particulate; [https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,\(ug%2Fm3\)%2D1](https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,(ug%2Fm3)%2D1).

²⁸⁸ OEHHA Acute, 8-hour and Chronic Reference Exposure Level (REL) Summary, June 28, 2016; <https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary>.

²⁸⁹ Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.

²⁹⁰ OEHHA and the American Lung Association of California, Health Effects of Diesel Exhaust; <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf>.

²⁹¹ California Air Resources Board, Air Quality and Land Use Handbook: A Community Health Perspective (April 2005), Appendix A, p. A-5.

²⁹² Fox Comments, p. 31.

construction equipment equipped with diesel particulate traps. The DEIR should be revised and recirculated to require the use of Tier 4 Final construction equipment as binding mitigation.

B. The DEIR's Construction Mitigation is Inadequate

The DEIR provides that construction air quality impacts remain significant and unavoidable after implementation of the Construction Mitigation Plan in Appendix F.²⁹³ The EIR must accurately reflect the net health effect of proposed air quality mitigation measures.²⁹⁴

Agencies are required to implement all feasible mitigation measures unless those measures are truly infeasible.²⁹⁵ The DEIR failed to require all feasible mitigation. The DEIR failed to impose the mitigation measures required by SLOAPCD CEQA Guidelines.

1. The DEIR Does Not Comply with SLOAPCD Standard Mitigation Measures for Construction Equipment

SLOACD CEQA guidance requires the implementation of “standard mitigation measures for construction equipment” when construction emissions exceed significance thresholds,²⁹⁶ as identified in Dr. Fox’s Comment.²⁹⁷ Mitigation Measure APM AIR-1 in the Mitigation Monitoring and Reporting Plan²⁹⁸ includes some, but not all, of the standard mitigation measures for construction equipment required to comply with the SLOAPCD CEQA Guidance. The following required mitigation measures were omitted from DEIR Appendix F:

- Diesel idling within 1,000 feet of sensitive receptors is not permitted;
- Staging and queuing areas shall not be located within 1,000 feet of sensitive receptors²⁹⁹

²⁹³ DEIR, Appendix F.

²⁹⁴ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 526.

²⁹⁵ *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 967.

²⁹⁶ SLOAPCD, CEQA Air Quality Handbook, pp. 2-6 to 2-7.

²⁹⁷ Fox Comment p. 6.

²⁹⁸ DEIR, Appendix F, p. F-14 to F-16.

²⁹⁹ SLOAPCD, CEQA Air Quality Handbook, p. 2-3.
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These omissions from the DEIR are highly concerning because a substantial portion of Project construction will occur within 1,000 feet of sensitive receptors. DEIR APM AIR-1 requires “All on and off -road diesel equipment shall not idle for more than 5 minutes.”³⁰⁰ This mitigation is insufficient because it will allow up to 5 minutes of idling, where the SLOAPCD CEQA guidelines prohibit any diesel idling with 1,000 feet of sensitive receptors.³⁰¹ DPM from idling construction equipment and construction equipment staging and queuing in these areas could result in significant acute health impacts.³⁰² These omitted SLOAPCD measures must be included as Project mitigation.

Further, the SLOAPCD CEQA guidance requires the following additional diesel idling restrictions to protect public health and air quality that are omitted from the DEIR’s Mitigation Monitoring and Reporting Plan in Appendix F:³⁰³

- Signs that specify the no idling requirements must be posted and enforced at the construction site
- Idling restrictions for on-road vehicles
- Signs must be posted in the designated queuing areas and job sites to remind drivers of the 5 minute idling limits.
- Off-road diesel equipment shall comply with the 5 minute idling restriction
- Signs shall be posted in the designated queuing areas and job sites to remind off-road equipment operators of the 5 minute idling limit.

The DEIR also excludes several required SLOAPCD standard mitigation measures for fugitive dust.³⁰⁴ The SLOAPCD CEQA Guidance requires “standard mitigation measures for construction equipment” and may require the implementation of a Construction Activity Management Plan (CAMP)³⁰⁵ when fugitive dust PM10 emissions exceed maximum daily fugitive dust PM10 emissions of 3.04 tons/quarter, as here. For projects with grading areas greater than 4-acres or that are within 1,000 feet of any sensitive receptor, both of which occur for the

³⁰⁰ DEIR, p. 2-92.

³⁰¹ SLOAPCD, CEQA Air Quality Handbook, p. 2-3.

³⁰² Fox Comments, p. 15.

³⁰³ SLOAPCD, CEQA Air Quality Handbook, p. 2-3.

³⁰⁴ SJVAPCD, Summary of Comments and Responses to Proposed Revisions to the GAMAQI-2012, May 31, 2012, p. 3; <https://www.valleyair.org/transportation/GAMAQIDRAFT-2012/GAMAQIResponsetoComments5-10-12%20.pdf>.

³⁰⁵ *Id.*, p. 2-6, Section 2.3.

Project, the SLOAPCD CEQA Guidance identifies 14 required fugitive dust mitigation measures.³⁰⁶

2. The DEIR Does not Require with Best Available Control Technology for Construction Equipment

The SLOAPCD CEQA guidance requires best available control technology (“BACT”) for ROG and NO_x when construction emissions exceed significance thresholds, as identified in Phyllis Fox’s Comment. The SLOAPCD CEQA guidance for BACT specifies:

- Further reducing emissions by expanding use of Tier 3 and Tier 4 off-road and 2010 on-road compliant engines;
- Repowering equipment with the cleanest engines available; and
- Installing California Verified Diesel Emissions Control Strategies.³⁰⁷

The DEIR relies on the use on the use of Tier 4 construction equipment to reduce the Project significant health risks to less than significant levels, without requiring Tier 4 equipment as binding mitigation. In particular, the DEIR fails to disclose that its construction emission calculations assumed the use of 100% Tier 4 *final* engines in its CalEEMod emissions modeling, which have much lower NO_x and ROG emissions than Tier 2, Tier3, or even Tier 4 Interim engines.³⁰⁸ Thus, “expanding the use of Tier 3 engines” is not mitigation and is not BACT. Rather, it allows higher construction emissions than the already significant construction emissions estimated in the DEIR and does not mitigate significant impacts.³⁰⁹ The DEIR’s conclusion that this significant construction health risk impact will be less than significant with mitigation is therefore unsupported and based on the use of equipment that is not mandated for the Project.

Dr. Fox concludes that APM AIR-2 should be modified to state: “All diesel-powered construction equipment shall use Tier 4 Final construction equipment, to be confirmed on site by the on-site construction supervisor during each day of use.”³¹⁰ If a Tier 4 final engine is not available for select construction equipment,

³⁰⁶ *Id.*, p. 2-9, pdf 21, “Fugitive Dust Mitigation Measures: Expanded List”.

³⁰⁷ *Id.* at p. 2-7; Best Available Control Technology (BACT) for Construction Equipment <http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm>

³⁰⁸ Fox Comments, p. 12.

³⁰⁹ *Id.* at 13.

³¹⁰ *Id.*

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controls shall be installed on the highest tier equipment available to achieve Tier 4 Final standards. Effective controls include diesel particulate filters for PM_{2.5} (“DPM”)²⁵ and selective catalytic reduction (“SCR”) for NO_x.³¹¹ As Dr. Fox notes, Tier 4 Final (2015) construction equipment has significantly lower NO_x and ROG emissions than either Tier 3 or “transitional Tier 4” (2011) equipment.³¹²

Finally, the DEIR does not disclose the NO_x emission factor that was used in the CalEEMod analysis for construction equipment.³¹³ However, Appendix C, which contains the CalEEMod output, does disclose that Tier 4 Final engines were assumed for all construction equipment.³¹⁴ Thus, NO_x emissions would be 5 to 8 times higher than reported in Table 4.3-5, requiring substantially more mitigation for NO_x than disclosed in the DEIR.³¹⁵ Thus, APM AIR-2 does not reduce NO_x and ROG emissions, but rather allows a significant increase in NO_x and ROG emissions, compared to emissions reported in DEIR Table 4.3-5.³¹⁶

C. The DEIR Fails to Adequately Analyze and Mitigate Fugitive Dust Which Poses a Potentially Significant Risk to Human Health through Valley Fever

Valley Fever is caused by microscopic fungus known as *Coccidioides immitis* (“CF”), which lives in the top 2 to 12 inches of soil in many parts of the state of California.³¹⁷ When soil is disturbed by activities such as digging, grading, or driving, or is disturbed by environmental conditions such as high winds, fungal spores can become airborne and can potentially be inhaled. The infectious dose is very low, typically less than 10 spores.³¹⁸ The Centers for Disease Control determined that “as little as one spore may transmit disease.”³¹⁹

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

³¹⁴ DEIR, Appendix C, pdf 3: “Construction Off-road Equipment Mitigation—Change to assume all equipment Tier 4 Final.” See also Appendix C, pdf 420, 560, 561.

³¹⁵ Fox Comments, p. 14.

³¹⁶ *Id.*

³¹⁷ Cal. Lab. Code § 6709(a).

³¹⁸ Jennifer McNary and Mary Deems, Preventing Valley Fever in Construction Workers, March 4, 2020, pdf 10; <https://www.safetybayarea.com/media/2020-3A.pdf>.

³¹⁹ Centers for Disease Control and Prevention
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California Labor Code section 6709 recognized that San Luis Obispo County contains work areas where Valley Fever is highly endemic.³²⁰ Highly endemic means that the annual incidence rate of Valley Fever is greater than 20 cases per 100,000 persons per year.³²¹ The incidence rate for Valley Fever for San Luis Obispo County are among one of the highest rates in the state.³²² Substantial evidence supports the DEIR's conclusion that "the potential for...Valley Fever infections is high."³²³ But, the DEIR fails to adequately analyze impacts to construction workers and nearby sensitive receptors from exposure to Valley Fever. Further, the DEIR erroneously concludes that "[m]itigation measures that reduce fugitive dust will also reduce the chances of dispersing CI spores."³²⁴

1. The DEIR Fails to Adequately Analyze the Risk from Valley Fever.

Dr. Fox explains that construction workers are at significant risk of developing Valley Fever. However, the potentially exposed population is much larger than construction workers because the non-selective raising of dust during Project construction will carry the very small spores, 0.002-0.005 millimeters ("mm"), into off-site areas, potentially exposing large non-construction worker populations.³²⁵

Many of the Project components, for example, are adjacent to sensitive receptors, including residential areas, schools, and parks, resulting in significant public health impacts. Valley fever spores can be carried on the winds into surrounding areas, exposing farm and vineyard workers, students at nearby schools, and residents adjacent to many of the construction sites. Valley Fever spores, for example, have been documented to travel as much as 500 miles³²⁶ and, thus, dust raised during construction could potentially expose a large number of

³²⁰ *Id.* at (b).

³²¹ *Id.*

³²² DEIR, p. 4.3-9.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ Comment by Dr. Phyllis Fox; Schmelzer and Tabershaw, 1968, p. 110; Pappagianis and Einstein, 1978, p. 527 ("The northern areas were not directly affected by the ground level windstorm that had struck Kern County but the dust was lifted to several thousand feet elevation and, borne on high currents, the soil and arthrospores along with some moisture were gently deposited on sidewalks and automobiles as "a mud storm" that vexed the residents of much of California." The storm originating in Kern County, for example, had major impacts in the San Francisco Bay Area and Sacramento).

³²⁶ David Filip and Sharon Filip, Valley Fever Epidemic, Golden Phoenix Books, 2008, p. 24.
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people hundreds of miles away. The DEIR failed to identify this significant risk to sensitive receptors.

2. The Mitigation Measures Proposed for Valley Fever Impacts are Inadequate

The DEIR erroneously concludes, with no support, that “[m]itigation measures that reduce fugitive dust will also reduce the chances of dispersing CI spores.”³²⁷ Dr. Fox determined that conventional dust control measures such as those included in DEIR Appendix F and in APM AIR-3 are not effective at controlling Valley Fever as they largely focus on visible dust or larger dust particles, the PM10 fraction, not the very fine particles where the Valley Fever spores are found.³²⁸ Thus, Dr. Fox determined implementation of conventional dust control measures will not provide sufficient protection for both on-site workers and the general public.

In order to reduce the Project’s potentially significant Valley Fever impacts to the greatest extent feasible, Dr. Fox recommends that the Project include the following measures from the South Coast Air Quality Management District to mitigate fugitive dust:

- 1) Apply water every 4 hours to the area within 100 feet of a structure being demolished, to reduce vehicle track out.
- 2) Use a gravel apron, 25 feet long by road width, to reduce mud/dirt track out from unpaved truck exit routes.
- 3) Apply dust suppressants (e.g., polymer emulsion) to disturbed areas upon completion of demolition.
- 4) Apply water to disturbed soils after demolition is completed or at the end of each day of cleanup.
- 5) Prohibit demolition activities when wind speeds exceed 25 mph.
- 6) Apply water every 3 hours to disturbed areas within a construction site.

³²⁷ DEIR, p. 4.3-9.

³²⁸ See, e.g., Cummings and others, 2010, p. 509; Schneider et al., 1997, p. 908 (“Primary prevention strategies (e.g., dust-control measures) for coccidioidomycosis in endemic areas have limited effectiveness.”).

- 7) Require minimum soil moisture of 12% for earthmoving by use of a moveable sprinkler system or a water truck. Moisture content can be verified by lab sample or moisture probe.
- 8) Limit on-site vehicle speeds (on unpaved roads) to 15 mph by radar enforcement.
- 9) Replace ground cover in disturbed areas as quickly as possible.
- 10) All trucks hauling dirt, sand, soil, or other loose materials are to be tarped with a fabric cover and maintain a freeboard height of 12 inches.³²⁹

3. *Proposed Mitigation Measures Do Not Comport with San Luis Obispo County, California, or Federal Labor Regulations.*

In response to Valley Fever outbreaks within San Luis Obispo County, its Public Health Department, in conjunction with the California Department of Public Health, developed recommendations to limit exposure to Valley Fever based on scientific information from the published literature.^{330,331} The recommended measures, which failed to control Valley Fever, go far beyond the conventional dust control measures included in the DEIR.³³² Controls recommended to minimize workers' dust exposure and risk of Valley Fever in endemic areas are not required by the DEIR's construction mitigation measures:^{333,334}

The California Department of Public Health provides that "Employers can reduce worker exposure by incorporating the following elements into the company's Injury and Illness Prevention Program and project-specific health and safety plans:

³²⁹ SCAQMD, Fugitive Dust Mitigation Measure Table XI-A, <http://www.aqmd.gov/docs/default-source/ceqa/handbook/mitigation-measures-and-control-efficiencies/fugitive-dust/fugitive-dust-table-xi-a.doc?sfvrsn=2>.

³³⁰ McNary and Deems, 2020, pdf 16 *et seq.*

³³¹ California Department of Public Health, Preventing Valley Fever Exposure and Preventing Work-Related Coccidioidomycosis (Valley Fever), June 2012, pp. 4-7; <http://elcosh.org/record/document/3684/d001224.pdf>. See also Wilken et al., 2015, and Sondermeyer Cooksey et al. (Exhibit --).

³³² DEIR, Appendix F.

³³³ CDPH Preventing Work-Related Coccidioidomycosis (Valley Fever) Preventing Valley Fever Exposure, available at: [http://elcosh.org/document/3684/d001224/preventing+work-related+coccidioidomycosis+\(valley+fever\).html](http://elcosh.org/document/3684/d001224/preventing+work-related+coccidioidomycosis+(valley+fever).html).

³³⁴ McNary and Deems, 2020, pdf 30-45.
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1. Determine if the worksite is in an area where Valley Fever is endemic...
2. Train workers and supervisors on the location of Valley Fever endemic areas, how to recognize symptoms of illness, and ways to minimize exposure. Encourage workers to report respiratory symptoms that last more than a week to a crew leader, foreman, or supervisor.
3. Limit workers' exposure to outdoor dust in disease-endemic areas. For example, suspend work during heavy wind or dust storms and minimize amount of soil disturbed.
4. When soil will be disturbed by heavy equipment or vehicles, wet the soil before disturbing it and continuously wet it while digging to keep dust levels down.
5. Heavy equipment, trucks, and other vehicles generate heavy dust. Provide vehicles with enclosed, air-conditioned cabs and make sure workers keep the windows closed. Heavy equipment cabs should be equipped with high efficiency particulate air (HEPA) filters. Two-way radios can be used for communication so that the windows can remain closed but allow communication with other workers.
6. Consult the local Air Pollution Control District regarding effective measures to control dust during construction. Measures may include seeding and using soil binders or paving and laying building pads as soon as possible after grading.
7. When digging a trench or fire line or performing other soil-disturbing tasks, position workers upwind when possible.
8. Place overnight camps, especially sleeping quarters and dining halls, away from sources of dust such as roadways.
9. When exposure to dust is unavoidable, provide NIOSH-approved respiratory protection with particulate filters rated as N95, N99, N100, P100, or HEPA. Household materials such as washcloths, bandanas, and handkerchiefs do not protect workers from breathing in dust and spores.”³³⁵

Dr. Fox recommends that the CPUC implement each of these measures as additional mitigation measures in a revised DEIR.

Labor Code section 6709 requires employers in counties in which Valley Fever is highly endemic to provide training on Valley Fever “before an employee

³³⁵ CDPH Preventing Work-Related Coccidioidomycosis (Valley Fever) Preventing Valley Fever Exposure, available at: [http://elcosh.org/document/3684/d001224/preventing+work-related+coccidioidomycosis+\(valley+fever\).html](http://elcosh.org/document/3684/d001224/preventing+work-related+coccidioidomycosis+(valley+fever).html).
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begins work that is reasonably anticipated to cause exposures to substantial dust disturbance.” The training required by Labor Code section 6709 includes “[p]ersonal and environmental exposure prevention methods that may include, but are not limited to, water-based dust suppression, good hygiene when skin and clothing is soiled by dust, limiting contamination of drinks and food, working upwind from dusty areas when feasible, wet cleaning dusty equipment when feasible, and *wearing a respirator when exposure to dust cannot be avoided.*”³³⁶ The DEIR fails to mention wearing a respirator, or any type of respiratory protection while on the construction site, a condition required by other laws applicable to the Project.³³⁷

The United States Department of Labor Occupational Safety and Health Administration (“OSHA”) requires that a respirator “shall be provided to each employee when such equipment is necessary to protect the health of such employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protection program, which shall include the requirements outlined in paragraph (c) of this section. The program shall cover each employee required by this section to use a respirator.”³³⁸

Dr. Fox recommends that the Project implement a mandatory respiratory protection program that requires National Institute for Occupational Safety and Health (“NIOSH”)-approved respirators be worn while performing or in the near vicinity of job activities that create airborne dust.³³⁹ NIOSH approved respirators are necessary because “Household materials such as washcloths, bandanas, and handkerchiefs do not protect workers from breathing in dust and spores.”³⁴⁰ The DEIR, APM AIR-3, and MM AQ-1 should be revised and recirculated to include these feasible mitigation measures.

³³⁶ *Id.*

³³⁷ See PRC § 21002.1(c) (project with significant and unavoidable impacts may not be approved unless otherwise permissible under applicable laws and regulations).

³³⁸ 29 C.F.R. § 1910.134(a)(2) (2006).

³³⁹ Phyllis Fox Comment Letter

³⁴⁰ CDPH Preventing Work-Related Coccidioidomycosis (Valley Fever) Preventing Valley Fever Exposure, *available at*: [http://elcosh.org/document/3684/d001224/preventing+work-related+coccidioidomycosis+\(valley+fever\).html](http://elcosh.org/document/3684/d001224/preventing+work-related+coccidioidomycosis+(valley+fever).html).

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4. *DEIR Dust Control Mitigation Measures (APM AIR-3) Are Inadequate to Control Valley Fever*

Commenters' expert analysis determined that none of the mitigation measures in APM AIR-3 will significantly control Valley Fever spores, as discussed below and in Dr. Phyllis Fox's comments.^{341,342}

a. *APM AIR-3: Reduce the Amount of the Disturbed Area Where Possible*

The DEIR requires that the amount of disturbed area should be reduced "where possible."³⁴³ Valley Fever can only be controlled by eliminating disturbed areas. This is clearly not feasible at an active construction site. Instead, dust suppressants, such as polymer emulsions, should be applied to disturbed areas upon completion of disturbance, e.g., demolition.³⁴⁴ Further, ground cover should be replaced "as quickly as possible" in disturbed areas.³⁴⁵

This mitigation measure violates CEQA. CEQA requires mitigation measures be enforceable through binding conditions. Without determining which disturbed areas can be reduced "where possible", it is impossible to verify that the mitigation is achievable.

CEQA prohibits deferring identification of mitigation measures when there is uncertainty about the efficacy of those measures.³⁴⁶ An agency may only defer formulation of mitigation measures when there is a clear commitment to mitigation that will be measured against specific performance criteria.³⁴⁷ Since the proposed

³⁴¹ South Coast Air Quality Management District (SCAQMD), Fugitive Dust, Fugitive Dust Table XI-A; <http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/mitigation-measures-and-control-efficiencies/fugitive-dust>.

³⁴² Western Governors' Association, WRAP Fugitive Dust Handbook, September 7, 2006 (WRAP Handbook); <https://www.wrapair.org/forums/dej/fdh/>.

³⁴³ DEIR, p. 2-93.

³⁴⁴ SCAQMD, Table XI-A.

³⁴⁵ SCAQMD, Table XI-A.

³⁴⁶ 14 C.C.R. § 15126.4(a)(1)(B); *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 366; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308–309.

³⁴⁷ 14 C.C.R. § 15126.4(a)(1)(B); *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 366; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308–309. *56 POET, LLC v. California Air Res. Bd.* (2013) 218 Cal.App.4th 681, 736, 739–740, as modified on denial of reh'g (Aug. 8, 2013), review denied (Nov. 20, 2013); see also *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 (EIR deficient for failure to specify performance standards in 3287-016acp

measure is not enforceable and lacks specific performance criteria that defines “where possible”, or that reduction of disturbed areas is even feasible, this measure violates CEQA and the DEIR fails to support with evidence that impacts will be mitigated below the threshold of significance.

b. APM AIR-3: Use Water Trucks or Sprinkler Systems to Prevent Airborne Dust from Leaving the Site.

This measure requires the “use water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site.” This is too general to be implemented and enforced. CEQA requires an EIR identify mitigation measures which are both effective and enforceable. “Effective” means the measures can reasonably be expected to avoid or reduce a potential significant impact.³⁴⁸ “Enforceable” means the measures are stated as conditions of approval in a permit, agreement or other legally binding document or incorporated into a plan, policy, regulation, or project design.³⁴⁹

APM AIR-3 would allow water trucks to drive along roads once a day or less frequently without accessing off-road areas where soil is being disturbed. Dr. Fox explains that this is inadequate to reduce impacts, and recommends that, at a minimum, water should be applied every 4 hours within 100 feet of a structure being demolished, every 3 hours to disturbed areas and to disturbed soils after demolition is completed, and at the end of each day of cleanup.³⁵⁰ Soil should be wet both before and while digging and workers should stay upwind of digging, when feasible.³⁵¹ Sprinkler systems should be specified for areas inaccessible by water trucks. Further, Dr. Fox recommends that watering frequency should be increased when wind speeds exceed levels known to raise dust in the local area, typically around 15 mph at the Project site. An on-site wind measuring station should be required to monitor wind speed.³⁵²

plan for active habitat management of open space preserve).

³⁴⁸ 14 CCR § 15126.4(a)(1)(A).

³⁴⁹ 14 CCR § 15126.4(a)(1)(A).

³⁵⁰ Fox Comments, p. 62; SCAQMD, Table XI-A and WRAP Handbook, Table 3-7.

³⁵¹ Fox Comments, p. 62; CDPH, Preventing Valley Fever in Construction Workers, pdf 44;

<https://www.cdph.ca.gov/Programs/CCDC/DEODC/OHB/CDPH%20Document%20Library/CDPH-VF-Webinar-Slides.pdf>.

³⁵² Fox Comments, p. 62. SCAQMD, Table XI-A.

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This measure does not specify a method to verify that the use of water trucks prevents airborne dust from leaving the site. Dr. Fox recommends that real time monitoring for tiny Valley Fever spores should be required at all construction site boundaries.³⁵³

This measure also fails to address ground areas that are planned to be reworked at dates more than one month after initial grading. These areas should be sown with a fast germinating, non-invasive grass seed and watered until vegetation is established. All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods.

X. THE DEIR FAILS TO ACCURATELY ANALYZE, QUANTIFY, AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS FROM GREENHOUSE GAS EMISSIONS

CEQA requires the lead agency to use scientific data to evaluate GHG impacts directly and indirectly associated with a project.³⁵⁴ The analysis must “reasonably reflect evolving scientific knowledge and state regulatory schemes.”³⁵⁵ In determining the significance of GHG emission impacts, the agency must consider the extent to which the project may increase GHG emissions compared to the existing environmental setting and the “extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.”³⁵⁶

³⁵³ Fox Comments, p. 62.

³⁵⁴ See 14 C.C.R. § 15064.4(a) (lead agencies “shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project); 14 C.C.R. § 15064(d) (evaluating significance of the environmental effect of a project requires consideration of reasonably foreseeable indirect physical changes caused by the project); 14 C.C.R. § 15358(a)(2) (defining “effects” or “impacts” to include indirect or secondary effects caused by the project and are “later in time or farther removed in distance, but are still reasonably foreseeable” including “effects on air”); CEQA Guidelines, Appendix G, § VIII: Greenhouse Gas Emissions (stating agencies should consider whether the project would “generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.”).

³⁵⁵ 14 C.C.R. § 15064.4(b); see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504 (holding that lead agencies have an obligation to track shifting regulations and to prepare EIRs in a fashion that keeps “in step with evolving scientific knowledge and state regulatory schemes”).

³⁵⁶ 14 C.C.R. § 15064.4(b)(1); (3).

A. The DEIR Fails to Adequately Analyze GHG Impacts

The DEIR concludes that the Project's GHG impacts would be less than significant without mitigation.³⁵⁷ The DEIR further states the impacts are negligible and substantially lower than the SLOCAPCD's operational significance thresholds.³⁵⁸ DEIR Table 4.8-1 indicates that the major source of GHG emissions is construction, primarily "ground-based construction" (2,025 MT CO₂e) and helicopter emissions (699 MT CO₂e).³⁵⁹ A secondary source of operational emissions is sulfur hexafluoride (SF₆) from Project equipment (96 MT CO₂e).³⁶⁰ Dr. Fox concludes that these emissions are underestimated and exclude the major source of Project GHG emissions, operation of the BESS facilities. The DEIR fails as an informational document by failing to provide accurate modeling of the GHG impacts.

1. Operational GHG Emissions

The Project will emit three sources of GHG emissions: (1) sulfur hexafluoride (SF₆) used in Project equipment; (2) helicopters used in construction of power lines; (3) charging of BESSs.³⁶¹ The DEIR fails to support its analysis of the SF₆ emissions and omits the latter two sources of emissions from its analysis. These informational deficiencies violate CEQA.

Dr. Fox and Mr. Marcus determined that the net operational emission increases from the Project are: 60.93 tons of CO₂e per year; 0.48 pounds of SO₂ per year; and 4.30 pounds of NO_x per year.³⁶² The proposed Project as submitted to the CPUC included provisions for three new distribution circuits with a total load-serving capacity of approximately 28 MW. While the DEIR admits that there will be no need for these circuits through at least 2029, based on the current Paso Robles DPA load forecast,³⁶³ it also says that PG&E anticipates needing new distribution capacity within 15 years. Assuming that there would eventually be 28 MW of new storage built in lieu of the proposed new distribution circuits from the Estrella substation, and assuming that storage would operate comparably to

³⁵⁷ DEIR, pp. 4.8-6.

³⁵⁸ DEIR, p. 4.3-18.

³⁵⁹ DEIR, p. 4.8-4.

³⁶⁰ DEIR, Table 4.8-1, pdf 407.

³⁶¹ Fox Comments, p. 81.

³⁶² Fox Comments, p 73.

³⁶³ DEIR, p. 2-12, Table 2-5.

existing storage during the great majority of hours when it was not being dispatched to meet local reliability needs, Dr. Fox and Mr. Marcus conclude that the total incremental GHG emissions attributable to the Project would be 28 times the annual emissions of 60.93 tons of CO₂e per MW calculated above, or **1,552 MT CO₂e/yr**.³⁶⁴ Similarly, they conclude that the NO_x emissions attributable to the Project would be 28 times the annual emissions of 4.30 lb/yr calculated above, or **120.4 lb/yr**.³⁶⁵ These emissions are significant and unmitigated. A revised DEIR must be circulated to disclose these significant GHG emissions and mitigate the impacts from increased emissions.

B. The DEIR Fails to Include Adequate GHG Mitigation Measures

The DEIR fails to adopt all feasible mitigation measures to reduce the Project's significant greenhouse gas ("GHG") impacts to less than significant levels before declaring the impacts "significant and unavoidable." This violates CEQA's requirement that "lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring and reporting, of mitigating the significant effects of greenhouse gas emissions."³⁶⁶ In *Russel Covington*, the court determined the EIR was deficient due to its conclusory responses to comments proposing specific mitigation measures to address fugitive emissions of Reactive Organic Gas ("ROG") that exceeded the threshold of significance, and because its rejection of those proposed measures was not supported by substantial evidence or reasoned explanation showing they were infeasible.³⁶⁷

Before it can approve the Project, the CPUC must certify the Project's Final EIR and make mandatory CEQA findings. Those findings must include (1) that the Final EIR complies with CEQA, (2) that the City has mitigated all significant environmental impacts to the greatest extent feasible, and (3) that any remaining significant environmental impacts are acceptable due to overriding considerations.³⁶⁸ Where, as here, the Project will have a significant effect on the environment, the CPUC may not approve the Project unless it finds that it has "eliminated or substantially lessened all significant effects on the environment

³⁶⁴ Total GHG emissions from operating the BESSs = (60.93 ton/yr/MW)*28 MW*(0.91 MT/ton) = **1,552 MT/yr**.

³⁶⁵ Fox Comments, p. 86.

³⁶⁶ 14 CCR § 15126.4(c).

³⁶⁷ Covington, 43 Cal.App.5th at 867.

³⁶⁸ 14 CCR sections 15090, 15091.

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where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”³⁶⁹

The DEIR estimates that the Project’s operational GHG emissions would be negligible and substantially lower than the SLOCAPCD’s operational significance thresholds. The DEIR deemed these impacts less than significant.

The DEIR states that like the Project, GHG emissions from Alternatives would be largely one-time, construction-related emissions. The DEIR determined that total construction emissions would be 2,6724 metric tons of carbon dioxide equivalents (“MT CO₂e”). The total annualized emissions would be 187 MT CO₂e. ROG and NO_x emissions would exceed significance thresholds, even with implementation of Mitigation measure AIR-1, and the impact remains significant and unavoidable.

Commenters reviewed the Project’s proposed GHG mitigation measures, and concluded that the DEIR fails to require all feasible mitigation available to reduce the Project’s GHG impacts.³⁷⁰

The DEIR must be revised and recirculated to consider alternative mitigation measures and incorporate all feasible measures identified as binding mitigation for the Project. Only if the Project’s GHG impacts remain significant after requiring all such feasible mitigation can the CPUC consider declaring the Project’s GHG impacts to be significant and unavoidable.

XI. THE DEIR FAILS TO ADEQUATELY ANALYZE, QUANTIFY AND MITIGATE SIGNIFICANT IMPACTS FROM NOISE

The DEIR deemed impacts from helicopter noise significant and unavoidable. Mitigation measures are insufficient to reduce noise levels to those allowed under the San Luis Obispo County General Plan Noise Element.³⁷¹ Unlike construction noise, helicopters noise is not exempt from the County of San Luis Obispo noise regulations.³⁷²

³⁶⁹ PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

³⁷⁰ Fox Comments, p. 87-88.

³⁷¹ County of San Luis Obispo General Plan, Noise Element, May 1992, Resolution 92-227.

³⁷² San Luis Obispo County, CA Noise Ordinance § 23.06.042.

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Noise sensitive receptors in proximity to the Project site and distribution line segment include numerous residences and a recreation area, the Hunter Ranch Golf Course.³⁷³ Sensitive receptors within 1,427 feet of helicopter landing zones or pole installation sites would be subjected to noise levels exceeding the FTA's recommended significance threshold.³⁷⁴ Likewise, all sensitive receptors along or within 1,304 feet of the flight path would be subject to level flight noise in excess of 90 dBA.³⁷⁵ The most severe impacts associated with helicopter activities would be those along the reconductoring segment, where there are numerous residences in close proximity to the existing 70 kV power line and construction work areas.³⁷⁶

There are numerous residences within 50 feet of the potential work areas for the reconductoring segment. There are residences as close as 100 feet to planned helicopter landing zones and helicopters operating above pole installation locations could be as close as about 250 feet to residences.³⁷⁷ At this distance, helicopter noise levels could be in range of about 83 to 87 dBA.³⁷⁸ Ground level idling is below 90 dBA at all distances.³⁷⁹ Helicopter activities may occur approximately 132 days during the 18-month construction period for the substation and the 70 kV power line.³⁸⁰

As stated previously, before it can approve the Project, the CPUC must certify the Project's Final EIR and make mandatory CEQA findings. Those findings must include (1) that the Final EIR complies with CEQA, (2) that the City has mitigated all significant environmental impacts to the greatest extent feasible, and (3) that any remaining significant environmental impacts are acceptable due to overriding considerations.³⁸¹ Where, as here, the Project will have a significant effect on the environment, the CPUC may not approve the Project unless it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."³⁸²

³⁷³ DEIR, p. 4.13-25.

³⁷⁴ DEIR, p. 4.13-17.

³⁷⁵ DEIR, p. 4.13-17.

³⁷⁶ DEIR, p. 4.13-17.

³⁷⁷ PEA, 3.12-20.

³⁷⁸ *Id.*

³⁷⁹ DEIR, p. 4.13-17.

³⁸⁰ DEIR, p. 2-78.

³⁸¹ 14 CCR sections 15090, 15091.

³⁸² PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

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The DEIR did not detail why operating helicopters in close proximity to noise-sensitive receptors is unavoidable. The DEIR merely states that “[n]o other feasible mitigation is available to reduce these impacts” to a less-than-significant level.³⁸³ This statement is conclusory and lacks substantial evidence to support it. The DEIR fails as an informational document because it does not sufficiently analyze, mitigate, or consider alternatives to helicopter use during construction.

XII. THE DEIR FAILS TO ADEQUATELY ANALYZE CUMULATIVE IMPACTS

CEQA requires an EIR’s cumulative impacts analysis evaluate the incremental impact of the project in conjunction with, or collectively with, other closely related past, present, and reasonably foreseeable probable future projects.³⁸⁴ “Cumulative impacts” are defined as “two or more individual effects, which, when considered together, are considerable or which compound or increase other environmental impacts.”³⁸⁵ The purpose of this requirement is to avoid “piecemeal” approval of projects without consideration of the total environmental effects the project would have when taken together.³⁸⁶ The adequacy of an EIR’s discussion of cumulative impacts is determined by standard of practicality and reasonableness.³⁸⁷

A. The DEIR Fails to Adequately Analyze Cumulative Agricultural Impacts

The DEIR correctly determines that the Project would have significant cumulative impacts on the loss of important farmland in San Luis Obispo County.³⁸⁸ However, the cumulative impacts analysis is inadequate because it is too general. “The analysis should not be so general that the potential combined impacts of the project and a key nearby project are not disclosed.”³⁸⁹ In *City of Long Beach v. City of Los Angeles*, the court held that the fact that “CEQA does not require quantified

³⁸³ DEIR, p. 4.13-18.

³⁸⁴ 14 CCR § 15355(b); *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 905.

³⁸⁵ 14 CCR § 15355.

³⁸⁶ Cecily Talbert Barclay and Matthew S. Gray, *California Land Use and Planning Law* (Solano Press, 37th ed. 2020) p. 180.

³⁸⁷ *Environmental Protection & Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 525; 14 CCR § 15130(b).

³⁸⁸ DEIR, p. 6-21.

³⁸⁹ *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 490. 3287-016acp

analysis does not mean that all meaningful information on a subject can be omitted from an EIR's cumulative impacts analysis.”³⁹⁰ Here, the DEIR is inadequate because it omits meaningful information to determine the cumulative impact on agricultural resources.

The DEIR only includes the Paso Robles Gateway Project. The DEIR fails to list any other projects that might have a cumulative impact on conversion of important farmland. CEQA Guidelines section 15130 require that an adequate cumulative impact analysis include a list of the projects producing related or cumulative impacts, a summary of the expected environmental impacts from those projects and a reasonable analysis of the cumulative impacts of the relevant projects.³⁹¹ When using a list approach, the EIR should define the relevant area affected and provide a reasonable explanation for the geographic limitation used.³⁹² The DEIR does not clarify why projects farther than 0.8 miles away were not included in cumulative impacts, where the loss of agricultural resources in San Luis Obispo County cumulatively impacts the whole County. The DEIR's explanation that only projects within the “Activity Area” were considered is insufficient. “Activity Area” includes the immediate areas in which physical actions that are part of the Proposed Project, reasonably foreseeable distribution components and alternatives would take place. The geographic limitation is not sufficient to explain why the loss of important farmland was not determined to be the entire County of San Luis Obispo. The DEIR should be revised and recirculated to address cumulative impacts with a larger geographic limitation or provide a reasonable explanation for the geographic limitation chosen. The DEIR should be revised in accordance with the California Supreme Court's holding in *Laurel Heights Improvement Association v. Regents of University of California*, that an EIR must be recirculated when the draft EIR was so fundamentally inadequate and conclusory that meaningful public review and comment were precluded.³⁹³

Further, the DEIR states that the impact from “other changes in the existing environment that, because of their location or nature, could result in conversion of Farmland to nonagricultural use” is less than significant.³⁹⁴ This statement is not

³⁹⁰ *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 490.

³⁹¹ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 729.

³⁹² *Cecily Talbert Barclay and Matthew S. Gray, California Land Use and Planning Law* (Solano Press, 37th ed. 2020) p. 181.

³⁹³ *Id.* at 190; *Laurel Heights Improvement Association v. Regents of University of California* (1992) 6 Cal. 4th 1112, 1114.

³⁹⁴ DEIR, p. 4.2-15.

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supported by substantial evidence. The DEIR further states that “with increasing urbanization and development, there is potential for loss of Farmland to non-agricultural uses.”³⁹⁵ This impact should not be deemed less than significant.

B. The DEIR Fails to Adequately Analyze Cumulative Biological Impacts

The DEIR concludes that “[t]he Proposed Project, reasonably foreseeable distribution components, and alternatives would not make a cumulatively considerable contribution to this significant cumulative impact. The contribution of the Proposed Project, reasonably foreseeable distribution components, and alternatives cumulative impact would be less than significant with mitigation.”³⁹⁶ This statement does not comport with the substantial evidence in the DEIR that provides: 1) the Project would result in significant impacts on a suite of sensitive biological resources;³⁹⁷ 2) impacts from the Proposed Project (and all alternatives), in combination with impacts from other projects, would result in a significant cumulative impact on biological resources;³⁹⁸ 3) there is potential for the Project to have a cumulatively considerable incremental contribution to the significant cumulative impact.³⁹⁹

The DEIR provides that the Project’s significant impacts would be reduced to a less-than-significant level with implementation of the APMs and mitigation measures identified in Section 4.4 of the DEIR and these measures would ensure that impacts on protected species, communities, and habitats are reduced to a level that would protect their continued existence.⁴⁰⁰ The APMs and mitigation measures are designed to reduce significant impacts not eliminate the impacts entirely.⁴⁰¹

Mr. Cashen determined that there would be residual impacts after implementation of all APMs and mitigation measures.⁴⁰² For example, because the DEIR’s compensatory habitat requirement is limited to impacts to blue oak

³⁹⁵ DEIR, p. 4.2-15.

³⁹⁶ DEIR, p. 6-22.

³⁹⁷ DEIR, p. 6-22.

³⁹⁸ DEIR, p. 6-22.

³⁹⁹ DEIR, Table 6-3.

⁴⁰⁰ DEIR, p. 6-22.

⁴⁰¹ Cashen Comments, p. 14.

⁴⁰² Cashen Comments, p. 14.

woodland, there would be residual impacts to special-status species associated with grasslands and agricultural lands.⁴⁰³ Similarly, there may be residual impacts on the golden eagle and other special-status birds because the DEIR does not require compensatory mitigation for fatalities caused by electrocutions and collisions with the new power line facilities.⁴⁰⁴ Whereas these residual impacts may not rise to the level of significance at the Project-level, they may be significant at the cumulative level when combined with the residual impacts of other projects.⁴⁰⁵ For example, the DEIR notes that the impact on avian fatalities would not be limited to the Project, but rather, that the Project would incrementally increase a fatality risk that already exists in the area.⁴⁰⁶ The Project's contribution to this potentially significant cumulative impact is cumulatively considerable because it would place seven miles of new power lines in an area that supports foraging raptors, and that has multiple golden eagle nests.⁴⁰⁷

Mr. Cashen determined that none of the DEIR's biological resource mitigation measures are designed to alleviate the cumulative impact. The APMs and mitigation measures do not address potentially significant cumulative impacts, and CPUC's conclusion that the Project's contribution to those cumulative impacts would be less than cumulatively considerable is not supported by substantial evidence.

XIII. THE DEIR FAILS TO ADEQUATELY ANALYZE SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL CHANGES

A. The DEIR Fails to Adequately Analyze Significant Irreversible Agricultural Impacts

The Conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to nonagricultural use is a significant irreversible environmental change. The loss of agricultural land beneath the substation is an irreversible environmental change under Section 15126.2(d) of the CEQA Guidelines. This change "generally commits future generations to similar uses."⁴⁰⁸ The Project also involves uses that may cause "irreversible damage...from

⁴⁰³ See DEIR, Table 4.4-1.

⁴⁰⁴ Cashen Comments, p. 14.

⁴⁰⁵ Cashen Comments, p. 14.

⁴⁰⁶ DEIR, p. 4.4-50.

⁴⁰⁷ DEIR, Table 4.4-1.

⁴⁰⁸ 14 CCR § 15126.2(d).

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environmental accidents associated with the project.”⁴⁰⁹ Significant irreversible changes were not considered in the DEIR with respect to agricultural impacts. The DEIR should be revised and recirculated to include impacts to agricultural resources as a significant irreversible agricultural impact from the Proposed Project, Alternatives PLR-1A, PLR-1C, and SE-PLR-2.

B. The DEIR Fails to Adequately Analyze Significant Irreversible Impact from Hazards

The DEIR fails to adequately analyze impacts from battery handling and transportation accidents and battery disposal. Dr. Fox determined that transportation of batteries could result in crush or puncture damage, possibly leading to the release of electrolyte material along transport routes or in storage.⁴¹⁰ Dr. Fox further determined that such releases would result in significant irreversible changes because irreversible damage could result from a potential environmental accident associated with the Project.⁴¹¹ The DEIR provides that “significant irreversible changes from accidents are not expected.”⁴¹² This statement is not supported by substantial evidence.

CEQA Guidelines Section 15126.2(d) requires discussion of “significant irreversible environmental changes which would be caused by the proposed project should it be implemented.”⁴¹³ The CEQA Guidelines provide further that “irreversible damage can result from environmental accidents associated with the project.”⁴¹⁴

Lithium-ion batteries are sensitive to damage, especially during handling and transport.⁴¹⁵ They are also sensitive to high ambient temperatures,⁴¹⁶ which will be experienced by the Project’s batteries as they will likely have to pass through sensitive biological habitat. Battery accidents frequently occur during handling,

⁴⁰⁹ *Id.*

⁴¹⁰ Fox Comments, p. 60.

⁴¹¹ 14 CCR § 15126.2(d); DEIR, p. 6-2.

⁴¹² DEIR, p. 6-3.

⁴¹³ 14 CCR § 15126.2(d).

⁴¹⁴ 14 CCR § 15126.2(d).

⁴¹⁵ Kjell-Arne Jonsson, The Dangerous Consequences of Taking Shortcuts When Shipping Lithium-Ion Batteries, March 9, 2018; <http://info.nefab.com/lib-blog/lithium-ion-batteries-shipping-shortcuts>.

⁴¹⁶ Allianz Risk Consulting, Lithium-Ion Batteries, Risk Bulletin, 2017; <https://www.agcs.allianz.com/content/dam/onemarketing/agcs/agcs/pdfs-risk-advisory/risk-bulletins/ARC-Lithium-Ion-Batteries.pdf>.

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loading, and unloading in warehouses and during transportation.⁴¹⁷ The DEIR fails to discuss the risk of accidents during battery storage, handling, and transportation to the site and thus fails as an informational document under CEQA. A revised EIR is necessary to adequately analyze all impacts from battery storage and transportation.

XIV. CONCLUSION

For the reasons discussed above, the DEIR for the Project remains wholly inadequate under CEQA. It must be thoroughly revised to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for public review. Until the DEIR has been revised and recirculated, as described herein, the CPUC may not lawfully approve the Project.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Kelilah D. Federman
Associate Attorney

KDF:acp
Attachments

⁴¹⁷ FAA Office of Security and Hazardous Materials Safety, Lithium Batteries & Lithium Battery-Powered Devices, August 1, 2019; https://www.faa.gov/hazmat/resources/lithium_batteries/media/Battery_incident_chart.pdf.