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January 12, 2022

Via Email and Overnight Mail

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

Dear Mr. Pratt & Dr. Engels:

On behalf of **California Unions for Reliable Energy (“CURE”** or “Commenters”), we submit these comments on the Recirculated Draft Environmental Impact Report (“RDEIR”) prepared by the California Public Utilities Commission (“CPUC”) for the Estrella Substation and Paso Robles Area Reinforcement Project (“Project”) pursuant to the California Environmental Quality Act (“CEQA”).¹ CURE provided comments on the DEIR on February 19, 2021, identifying many egregious defects in the document.² The CPUC then revised and recirculated the document with some new analysis. Although the RDEIR addresses some of the errors we identified, there are still many more errors remaining, as well as new ones. Thus, the RDEIR fails to meet the requirements of CEQA.

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

² Letter from Kelilah Federman, Adams Broadwell Joseph & Cardozo, to Robert Peterson, Project Manager, California Public Utilities Commission and Tom Engels, PhD, Horizon Water and Environment, LLC (Feb. 19, 2021)

https://ia.cpuc.ca.gov/environment/info/horizonh2o/estrella/docs/rdeir/4_Adams%20Broadwell_2021_3_287-016acp%20-%20Final%20Comments%20Estrella%20Substation%20and%20Exhibits%20A-D.pdf (“CURE DEIR Comments”).

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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 power line, and replacement/reconductoring of approximately 3 miles of existing 70 kV power line interconnecting with the substation.³ 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.⁴ The RDEIR estimates the Proposed Project will take 21 months to construct.⁵ Proponent’s environmental assessment estimated that the project would take 7 months to construct.⁶ The distribution components are expected within 15 years.⁷ The RDEIR indicates that the proposed Estrella Substation site was increasing in size from 15 acres to 20 acres.⁸ The Project would result in the permanent conversion of 18.9 acres of Important Farmland to non-agricultural uses.⁹

We have reviewed the RDEIR, 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 RDEIR, it is clear that the RDEIR still 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 RDEIR. We prepared these comments with the assistance of Commenters’ air quality expert Phyllis Fox Ph.D. Dr. Fox found that Project construction emissions will exceed applicable significance thresholds, the risk of Valley Fever is still significant and unmitigated, health risk impacts are not analyzed or mitigated, and Greenhouse Gas (“GHG”) emissions from Project construction and operation are

³Horizon Water and Environment, Estrella Substation and Paso Robles Area Reinforcement Project – *Recirculated Draft Environmental Impact Report* (“DEIR”), November 2021, p. ES-1.

⁴ DEIR, p. 2-15.

⁵ RDEIR, p. 1-12.

⁶ Proponent’s Environmental Assessment Estrella Substation and Paso Robles Area Reinforcement Project (“PEA”), p. 2-59.

⁷ DEIR, p. 2-16.

⁸ RDEIR, p. 1-2.

⁹ RDEIR, p. 1-13.

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underestimated.¹⁰ The RDEIR fails to accurately disclose the severity of these impacts, and fails to effectively mitigate them.

Commenters' expert 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 RDEIR. As discussed herein, and in CURE's prior comments on the DEIR, 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 and may be potentially significant and unmitigated.¹¹ Mr. House concluded that the RDEIR's discussion regarding additional conversion of Important Farmland fails to adequately disclose and mitigate the full extent of the impact.

Commenters' expert biologist Scott Cashen, M.S. concluded that the Project may 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.¹² These issues were not addressed or mitigated in the RDEIR and Mr. Cashen's comments have been reattached here for reference.

Commenters' expert utility consultant David Marcus concluded that the DEIR failed 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

¹⁰ See **Exhibit A**, Phyllis Fox, Ph.D., P.E., Comments on the Recirculated Draft Environmental Impact Report for the Estrella Substation and Paso Robles Area Reinforcement Project (January 12, 2022) ("Fox Comments").

¹¹ See **Exhibit B**, Gregory House, Estrella Substation and Paso Robles Area Reinforcement Project Revised DEIR Review of Mitigation Measures Proposed for Agriculture and Forestry Resources (January 10, 2022) ("House Comments").

¹² See **Exhibit C**, 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").

transformer.¹³ Further, the DEIR failed 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.¹⁴ These issues have not been addressed in the RDEIR and Mr. Marcus's comments have been attached here for reference.

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 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 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

¹³ See **Exhibit D**, 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").

¹⁴ 14 Cal. Code Regs. ("CEQA Guidelines") § 15165.
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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. THE CPUC LACKS SUBSTANTIAL EVIDENCE TO SUPPORT ITS CONCLUSIONS IN THE RDEIR REGARDING THE PROJECT'S SIGNIFICANT IMPACTS AND FAILS TO INCORPORATE ALL FEASIBLE MITIGATION MEASURES NECESSARY TO REDUCE IMPACTS TO A LESS THAN SIGNIFICANT LEVEL

CEQA has two basic purposes, neither of which the RDEIR satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a Project before harm is done to the environment.¹⁵ The EIR is the "heart" of this requirement.¹⁶ 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."¹⁷

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."¹⁸ An adequate EIR must contain facts and analysis, not just an agency's conclusions.¹⁹ CEQA requires

¹⁵ CEQA Guidelines § 15002(a)(1); *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.

¹⁶ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

¹⁷ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹⁸ CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹⁹ *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

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an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.²⁰

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.²¹ If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.²² CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.²³ Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.²⁴ A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.²⁵ This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”²⁶

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.²⁷ As discussed in CURE’s Comments on the DEIR, there is substantial evidence demonstrating that adoption of Alternative PLR-3A and PLR-3B is feasible, and would substantially lessen the Project’s

²⁰ PRC § 21100(b)(1); CEQA Guidelines § 15126.2(a).

²¹ CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass’n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

²² PRC §§ 21002.1(a), 21100(b)(3).

²³ *Id.*, §§ 21002-21002.1.

²⁴ CEQA Guidelines, § 15126.4(a)(2).

²⁵ *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

²⁶ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

²⁷ PRC §21002; *Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 203; CEQA Guidelines §15126.6.

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.

The RDEIR fails to satisfy the basic purposes of CEQA. The RDEIR's conclusions regarding air quality, health risk, hazards, agricultural, and biological impacts are not supported by substantial evidence. In preparing the RDEIR, the City: (1) failed to provide sufficient information to inform the public and decision-makers about potential environmental impacts; (2) failed to accurately identify and adequately analyze all potentially significant environmental impacts; and (3) failed to incorporate feasible measures to mitigate environmental impacts to a less than significant level; and (4) failed to analyze all feasible alternatives to reduce impacts to a less than significant level. The City must correct these shortcomings and recirculate a revised EIR for public review and comment.

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.²⁸ In order to comply with this mandate, and the mandates of CEQA, the RDEIR must be further revised to resolve its inadequacies and recirculated for public review and comment.

III. LACK OF TIMELY INFORMATION AND POTENTIAL NEED TO SUBMIT ADDITIONAL COMMENTS

The CPUC was required, but failed, to make all documents referenced or relied on in the RDEIR available for the duration of the public comment period.²⁹ Access to these materials was essential to our review and evaluation of the CPUC's findings. Despite our efforts to obtain immediate access to all materials referenced in the RDEIR, the CPUC only granted us access to some of these materials. The CPUC failed to provide access to the 129 letters received during the public review period for the DEIR.³⁰

²⁸ 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.

²⁹ See PRC, § 21092(b)(1); CEQA Guidelines § 15087(c)(5).

³⁰ RDEIR, p. 1-2.
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On November 19, 2021, we requested that the CPUC provide immediate access to any and all documents referenced, incorporated by reference, and relied upon in the RDEIR.³¹ The CPUC provided some of the documents referenced in the RDEIR. Based on the CPUC's failure to provide all documents referenced in the RDEIR, including the approximately 129 letters received by the CPUC, we provide these initial comments on the RDEIR and reserve our right to submit supplemental comments on the RDEIR at a future date.

IV. THE CPUC ARBITRARILY INCREASED THE TIMELINE FOR PROJECT CONSTRUCTION, ARTIFICIALLY REDUCING POTENTIALLY SIGNIFICANT IMPACTS

The RDEIR assumes, without explanation, that the revised Project would take 21 months to construct, three months longer than the original 18-month Project construction schedule that was estimated in the DEIR.³² As a result of this change, the Project's construction emissions are spread over a longer period, which may result in fewer average daily emissions. The arbitrary change in the length of the construction period is unsupported by evidence. The RDEIR fails to support this change and does not provide an analysis of the impacts associated with the change. The CPUC may, based on the lower average daily emissions, estimate that Project construction emissions will be less than those analyzed in the DEIR, which would be improper without the opportunity for public participation and analysis.

An HRA is required given that the Project construction will last 21 months. Because Project construction will last more than six months, the OEHHHA guidance specifies that cancer exposure from Project construction "should be evaluated for the duration of the project." Therefore, CPUC must revise and recirculate the RDEIR to include an HRA that quantifies and evaluates the health risks from the 21-month Project construction.

³¹ Letter from Sheila Sannadan, Adams Broadwell Joseph & Cardozo, to Rachel Peterson, Executive Director, California Public Utilities Commission and Trevor Pratt, CEQA Project Manager, California Public Utilities Commission (November 19, 2021) (on file with author).

³² RDEIR, p. 1-12.
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V. THE CPUC ARBITRARILY INCREASED THE ACREAGE OF IMPORTANT FARMLAND THAT WILL BE CONVERTED AND FAILS TO ANALYZE THE RESULTANT SIGNIFICANT IMPACTS

The RDEIR states that the Project will convert 18.9 acres of Important Farmland, whereas the DEIR stated that only 15 acres would be converted.³³ This change is not supported by evidence in the record. Greg House's comments suggest that the RDEIR failed to analyze and mitigate the potentially significant impacts of the Project on agricultural resources. The RDEIR states that HWT "did not provide substantial evidence to ensure the agricultural resources will remain used for agricultural purposes."³⁴ The RDEIR was circulated to discuss this impact, but fails to adequately mitigate the additional permanent conversion of agricultural land as discussed in Greg House's comments. Mr. House concluded that the conversion of Important Farmland is not adequately mitigated by the implementation of a conservation easement at 1:1 ratio to land permanent lost to agriculture does not fully offset the significant impact because it does not create any new Important Farmland.³⁵ This impact is still not remedied in the RDEIR.

Mr. House recommended feasible mitigation measures including: increasing the ratio; donating additional funds to a local land trust or the California Council of Land Trusts; and implement strategies recommended by the California Department of Water Resources Agricultural and Land Stewardship Framework and Strategies guidebook.³⁶ These measures were not analyzed or required in the RDEIR. As a result, the impacts associated with the additional 5 acres of converted Important Farmland is significant and unmitigated. The RDEIR must be revised and recirculated to adequately analyze and mitigate impacts to agricultural resources.

VI. THE RDEIR STILL FAILS TO PROVIDE AN ADEQUATE PROJECT DESCRIPTION

The RDEIR fails to remedy the issues raised in CURE's Comments on the DEIR with respect to the Project Description. The RDEIR fails to provide clarity

³³ RDEIR, p. 1-12.

³⁴ *Id.* at 1-7.

³⁵ House Comments, p. 1.

³⁶ *Id.*

regarding whether the new 5 acres within the Project site will be required to undergo vegetation management practices. The Kidwell communication referred to in the RDEIR does not clarify whether the vegetation management guidelines will be followed, or whether the land will be fallowed, or farmed.³⁷ The public has no way of knowing with certainty, that vegetation management activities will occur in a safe manner so as to protect sensitive biological communities on the Project site. This issue must be remedied in a revised and recirculated DEIR for public review and input.

The RDEIR failed to address CURE's comments on the DEIR regarding impermissible piecemealing of the Project and the Cholame substation. 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 Estrella Substation is built."³⁸ 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.³⁹ 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."⁴⁰ 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."⁴¹ 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.

³⁷ RDEIR, p. 1-13.

³⁸ 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%202%20v2.pdf>.

³⁹ CEQA Guidelines § 15165; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1222; *Berkeley Jets*, 91 Cal.App.4th at 1358.

⁴⁰ *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.

⁴¹ CEQA Guidelines § 15165.

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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.”⁴² 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 RDEIR must be revised and recirculated to address the piecemealing issues related to utility reliability.

VII. THE RDEIR STILL FAILS TO PROVIDE AN ADEQUATE BASELINE

CEQA requires the lead agency to include a description of the physical environmental conditions in the vicinity of a project as they exist at the time environmental review commences.⁴³ The RDEIR 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 including utility capacity and biological resources.

The environmental setting analysis in the DEIR is still 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 and is not needed to meet Paso Robles DPA peak loads.⁴⁴ Further, 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.⁴⁵ A double 230 kV line outage on the lines feeding Templeton would make the Templeton transformer unusable, as the DEIR asserted, 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.⁴⁶ It is not clear based on the evidence in the record that this Project is necessary for Paso Robles’ utility needs.

⁴² See CEQA Guidelines § 15165.

⁴³ CEQA Guidelines, § 15125(a); see also *Communities for A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 321.

⁴⁴ Marcus Comments, p. 5.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.*

The biological baseline issues raised in CURE's Comments on the DEIR were likewise not addressed in the RDEIR. CURE found that the DEIR failed to provide sufficient baseline information regarding golden eagles, and this issue is completely ignored in the RDEIR. The DEIR relied on incomplete reporting data in determining where golden eagles nests may be near the Project site. The DEIR was not based on substantial evidence regarding golden eagle nest territories and important eagle use areas. The RDEIR fails to mention that the eBird database has multiple records of golden eagles within the Paso Robles city limits between 2016 and 2020.⁴⁷ The DEIR erroneously stated that the most recent observation on eBird was in 2015.⁴⁸ 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.⁴⁹ A revised EIR must identify the methods that were used to obtain information on golden eagle nests in the vicinity of the Proposed Project and Project alternatives and ensure Project elements are not endangering or harming the protected golden eagle.

All baseline issues raised in CURE's comments on the DEIR still stand, and have not been remedied in the revisions to the DEIR. The CPUC must correct these shortcomings and recirculate a revised EIR for public review and comment.

VIII. THE RDEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE SIGNIFICANT IMPACTS TO AGRICULTURAL RESOURCES

The RDEIR states that the Project would “permanently convert 2.65 acres of Farmland of Statewide Importance and 11.78 acres of Unique Farmland to non-agricultural uses. Additionally, 0.69 acres of Prime Farmland, 4.58 acres of Farmland of Statewide Importance, and 19.68 acres of unique farmland would be temporarily affected by the Proposed Project construction activities.”⁵⁰

⁴⁷ 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>.

⁴⁸ DEIR, p. 4.4-19.

⁴⁹ eBird.org, Barney Schwartz Park, San Luis Obispo County, California, US: Sightings, *available at*: <https://ebird.org/hotspot/L3558694>.

⁵⁰ RDEIR, p. 2-R.4.2-13
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Mr. House confirmed his prior analysis on the DEIR, that the RDEIR still fails to analyze the full extent of the conversion of agricultural land. Mr. House concludes that the CPUC has underestimated the amount of land that will be permanently converted. The DEIR recognized that “temporary” impacts to Farmland may be permanent “if soil productivity were adversely affected over the long term.”⁵¹ However, the DEIR mischaracterized Project impacts 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.”⁵² 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.⁵³

Mr. House found that the removal of rock that was imported to stabilize the site will likely be a permanent, rather than temporary, impact.⁵⁴ “While it is theoretically possible to remove all the placed rock and other imported materials, in practice this is generally economically infeasible, and it may as well be acknowledged 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.”⁵⁵ Further, Mr. House confirmed that de-compacting soil will likewise not return the Project site’s soil to pre-construction conditions. Mr. House wrote, “ripping compacted soil is a standard practice and while it can’t fully recreate the original conditions of a natural soil profile, ripping is the prescribed method to alleviate compacted soils. As with the top soil/vegetation/life-of-the-soil aspect discussed earlier, these measures may not bring the soil system back into balance and a semblance of what existed prior to the project activities.”⁵⁶

Mr. House also found that the RDEIR fails to adequately analyze and mitigate impacts associated with soil disturbance, hazardous materials, and restoration of slopes and contours on the Project site.⁵⁷ These represent potentially significant issues that have yet to be analyzed and mitigated by the CPUC. The

⁵¹ DEIR, p. 4.2-18.

⁵² House Comments, p. 2.

⁵³ CEQA Guidelines 15126.4(a)(1)(B).

⁵⁴ House Comments, p. 2.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

RDEIR must be revised and recirculated to fully analyze and mitigate all of the Project's potentially significant impacts to agricultural resources.

IX. THE RDEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE SIGNIFICANT AIR QUALITY IMPACTS

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.⁵⁸ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁵⁹

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁶⁰ 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.⁶¹ 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."⁶²

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."⁶³

⁵⁸ 14 CCR § 15064(b).

⁵⁹ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁶⁰ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

⁶¹ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁶² *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

⁶³ *Berkeley Jets*, 91 Cal.App.4th at 1355.

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

The RDEIR concludes that construction ROG and NOx emissions are significant and unavoidable, even with the implementation of Mitigation Measure AQ-1.⁶⁴ But, Dr. Phyllis Fox concluded that the RDEIR fails to require all feasible mitigation, which would significantly reduce construction ROG and NOx emissions to below the significance thresholds.⁶⁵

Further, the RDEIR 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.”⁶⁶ The CEQA Guidelines require an EIR identify “relevant specifics of ... health and safety problems caused by the physical changes.”⁶⁷ 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.”⁶⁸ Here, the DEIR is likewise insufficient because it fails to connect the Project's air quality impacts with human health consequences in a health risk analysis. The RDEIR's discussion of health impacts is therefore inadequate as a matter of law and the RDEIR fails as an informational document.⁶⁹

i. Construction Health Risk Impacts Are Significant and Unmitigated

The RDEIR refutes the evidence presented by CURE's experts Dr. Fox and Dr. Kapahi “that cancer and acute health impacts from diesel particulate matter (“DPM”) would be significant for on-site construction workers and nearby residents and other sensitive receptors.”⁷⁰ But, the RDEIR does not provide substantial evidence to rebut the Health Risk Assessment performed by Dr. Fox and Dr.

⁶⁴ RDEIR, pdf 196.

⁶⁵ Fox Comments, p. 3.

⁶⁶ 14 CCR § 15126.2(a).

⁶⁷ *Id.*

⁶⁸ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 525.

⁶⁹ *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.”).

⁷⁰ RDEIR, p. 1-5.

Kapahi. The RDEIR asserts that the information CURE provided “was not adequate to conduct a thorough review to determine if their model accurately represents the Proposed Project, as it did not include key details required to make their study reproducible regarding the specific sources’ spatial representation and actual emissions assigned to specific sources were not provided.”⁷¹

Dr. Fox concluded that the RDEIR utilized data from the HRA presented by CURE in some areas, but failed to implement in others. The RDEIR states, “the decision to recirculate the air quality section, and specifically the Impact AQ-3 discussion, had already been made based on the HRA findings described above” referring to the HRA conducted by Dr. Fox and Dr. Kapahi.⁷² But, the RDEIR fails to rely on our HRA which also found significant acute health impacts along the 70kV power line and the reconductoring segment and significant cancer risks east of the reconductoring segment.⁷³ The CPUC should have utilized the substantial evidence presented by CURE’s HRA uniformly across its analysis, rather than cherry picking the data.

The RDEIR concludes, absent substantial evidence that construction health risk impacts are unavoidable.⁷⁴ Dr. Fox concluded that, if the use of Tier 4 Final engines is made enforceable and Mitigation Measure AQ-1 is revised to require the use of Tier 4 Final engines and/or lower tier engines equipped with diesel particulate filters, Impact AQ-3 could be less than significant.⁷⁵ The RDEIR must be revised and recirculated to adequately address and mitigate health risk impacts associated with Project construction.

The RDEIR’s conclusions regarding Impact AQ-3 are also inadequate and not based on substantial evidence. The RDEIR states that “the nearest sensitive receptors to the site are approximately 215 feet southwest of the site.”⁷⁶ But goes on to assert that “However, the nearby sensitive receptors to the Estrella Substation site are not downwind from the most prominent wind directions so the majority of the construction emissions that would occur at this site are unlikely to disperse toward these receptors.”⁷⁷ This statement is misleading and is not based

⁷¹ RDEIR, p. 1-10.

⁷² RDEIR, p. 1-10.

⁷³ Fox Comments, Exhibit 20, Secs. 4.1, 4.2.

⁷⁴ RDEIR, p. 2-R.4.3-28.

⁷⁵ Fox Comments, p. 10.

⁷⁶ RDEIR, p. 2-R.4.3-25.

⁷⁷ *Id.*

on the standard required by law. SLOCAPCD requires a health risk assessment where long-term projects occur within 1,000 feet of a sensitive receptor location.⁷⁸ The SLOCAPCD does not require such sensitive receptors be downwind, such a standard would be untenable. The RDEIR therefore relies on an inaccurate standard in analyzing health risk impacts associated with AQ-3. The RDEIR must be revised and recirculated to accurately analyze and mitigate such impacts.

ii. Health Risk Impacts Associated With Helicopter Emissions are Significant and Unmitigated

The RDEIR states that helicopters may be utilized for delivery of Project components, tower installation and removal, conductor installation and will be required to land for staging, storage, refueling and operation of the helicopters during construction.⁷⁹ The RDEIR fails to discuss the construction health risk impacts associated with operation and emissions of helicopters for Project construction. Dr. Fox wrote that helicopters emit highly toxic air pollutants, which may be hazardous to human health and safety absent mitigation. The RDEIR fails to include a health risk analysis for impacts associated with helicopter emissions.

Dr. Fox concluded that helicopters that use jet fuel emit other hazardous air pollutants that should have been evaluated in a health risk analysis for both construction and operation. Helicopters used during construction and operation pose potentially significant health impacts to construction workers, as well as nearby sensitive receptors because several of the landing zones are near residences and other sensitive receptors.⁸⁰ These potentially significant impacts must be mitigated in revised and recirculated EIR to comply with CEQA.

Neither the RDEIR or the DEIR identify at-risk receptors or provide any mitigation to assure that impacted parties are relocated during construction or operational helicopter operations.⁸¹ The DEIR's only recognition of this issue asserts: "Construction of the Proposed Project may require some individuals to temporarily leave their homes to ensure their safety during helicopter operations..."⁸² This is not enforceable mitigation under CEQA. Mitigation measures must be fully enforceable through permit conditions, agreements or other

⁷⁸ *Id.*

⁷⁹ RDEIR, p. 2-R.2-72; -73; -74; -78.

⁸⁰ Fox Comments, p. 13.

⁸¹ Fox Comments, p. 15.

⁸² DEIR, p. 4.14-5.

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legally binding instruments.⁸³ Failure to include enforceable mitigation measures is considered a failure to proceed in the manner required by CEQA.⁸⁴ In order to meet this requirement, mitigation measures must be incorporated directly into the EIR to be enforceable.⁸⁵

Thus, the RDEIR fails as an informational document under CEQA for failing to identify and mitigate the potentially significant chronic and acute health impacts of helicopter use during Project construction and operation. The RDEIR must be revised and recirculated to adequately analyze and mitigate these potentially significant impacts.

B. The RDEIR Fails to Adequately Analyze and Mitigate the Project's Potentially Significant Operational Air Emissions

The RDEIR asserts that the BESS facilities may decrease criteria pollutants emitted from electricity generation by decreasing the use of peaker plants and making more efficient use of renewable energy.⁸⁶ However, absent enforceable conditions on the operation of the BESS, this is not necessarily true. In fact, Dr. Fox found that BESS charging could increase criteria pollutant emissions.⁸⁷ The RDEIR must be revised and recirculated to adequately analyze and mitigate this potentially significant impact.

C. The RDEIR Fails to Adequately Analyze and Mitigate Potentially Significant Impacts Associated with Valley Fever

The RDEIR asserts that “Since valley fever is endemic to the area, nearby sensitive receptors may already have developed immunity.”⁸⁸ This statement is misleading. The chances of a person developing immunity and then getting a recurrent case of valley fever are exceedingly low. But, the chances of a person getting a new case of valley fever are significantly higher. In fact, it is exceedingly rare for a recurrent case of Valley Fever to affect an individual. CURE found no evidence to support the CPUC’s assertion that immunity would protect workers and

⁸³ Id. at §15126.4(a)(2).

⁸⁴ *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672.

⁸⁵ *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645, 651-52.

⁸⁶ RDEIR, p. 2-R.4.3-38.

⁸⁷ Fox Comments, p. 16.

⁸⁸ RDEIR, p. 2-R.4.3-28.

sensitive receptors. Substantial evidence supports the opposite conclusion, that immunity does not protect sensitive receptors from Valley Fever at all.

As suggested in the RDEIR, Coccidioidomycosis is endemic in San Luis Obispo County, and since 2005, an average of 128 cases have been reported each year to County residents.⁸⁹ It is estimated that between 30-60% of all residents in an endemic area are exposed to the Coccidioidomycosis fungus, thus potentially exposing between 81,000 and 162,000 residents of San Luis Obispo County to the disease.⁹⁰ Although 60% of those infected show little or no symptoms, of those who are diagnosed from symptoms, more than 40% need to be hospitalized.⁹¹

The incidence rate for Valley Fever for San Luis Obispo County are among one of the highest rates in the state.⁹² Substantial evidence supports the DEIR's conclusion that "the potential for...Valley Fever infections is high."⁹³ But, the RDEIR fails to adequately analyze impacts to construction workers and nearby sensitive receptors from exposure to Valley Fever. The RDEIR incorrectly asserts that impacts from Valley Fever are unavoidable. It is disingenuous to assert that impacts associated with Valley Fever are "unavoidable," they are not. Dr. Fox offers substantial mitigation that the CPUC should require in a recirculated revised EIR including:

- Use only heavy equipment with enclosed cabs and temperature-controlled, high efficiency particulate air-filtered air. Minimize the amount of digging by hand. Instead use heavy equipment with the operator in an enclosed, air conditioned, HEP-filtered cab. (The RDEIR only requires: "Provide air-conditioned cabs for vehicles that generate heavy dust and make sure workers keep windows and vents closed.")
- Continuously wet the soil before while digging or moving the earth. (The RDEIR only requires "use water, appropriate soil stabilizers, and/or re-vegetation to reduce airborne dust.")

⁸⁹ San Luis Obispo County Public Health Department, Epidemiologic Profile of Coccidioidomycosis in San Luis Obispo County, CA 1996-2012 (May, 2014)
https://www.slocounty.ca.gov/Departments/Health-Agency/Public-Health/Forms-Documents/Data-Reports/Other-Reports/Valley-Fever-Report_1996-2012.pdf

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² DEIR, p. 4.3-9.

⁹³ *Id.*

- Landing zones for helicopters and areas where bulldozers, graders, or skid steer operate require continuous wetting. This is particularly critical where landing zones are adjacent to residential areas.
- When digging in soil is required, train workers to reduce the amount of dust inhaled by staying upwind when possible.
- Increase awareness of Valley Fever by educating the workers and supervisors on the distribution of endemic areas, ways to reduce exposure, how to recognize symptoms of Valley Fever, the need to report symptoms to a supervisor to obtain medical evaluation, where to seek care, and effective controls, including proper use of construction equipment and respirators. The RDEIR includes an incomplete version of this measure
- Require the use of powered air-purifying respirators with high efficiency particulate air (HEPA) filters.
- Implement a mandatory and comprehensive respirator program⁹⁴ that specifically requires NIOSH-approved respirators while performing in or near job activities that create airborne dust. The program must include medical clearance, training, fit testing, and procedures for cleaning and maintaining respirators.
- Provide coveralls to prevent street clothes from being contaminated with fungal spores and taken home or elsewhere. The RDEIR only requires “If workers’ clothing is likely to be heavily contaminated with dust, provide coveralls and change rooms, and showers where possible.”
- Alternatively, require change of clothing and shoes at worksite to prevent workers from taking dust and spores home.
- Provide workers with lockers or other storage areas to keep street clothes and work clothes separate.
- Encourage workers to shower and wash their hair at the workplace.
- Wash equipment before moving it off-site.
- Coordinate with local medical clinics that have a protocol for evaluation, follow-up, and treatment of Valley Fever to provide prompt evaluation and care.
- Clean tools, equipment, and vehicles with water to remove soil before transporting off site.
- Track and report all suspected Valley Fever illnesses that occur at the worksite to the San Luis Obispo Department of Public Health

⁹⁴ 8 CCR §5144, Respiratory Protection: <https://www.dir.ca.gov/title8/5144.html>.
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The RDEIR should be revised and recirculated to adequately mitigate Valley Fever impacts through these measures.

D. The RDEIR Fails to Adequately Analyze and Mitigate Impacts from Electromagnetic Radiation

Dr. Fox concluded that electromagnetic field (“EMF”) remains significant and unmitigated. The RDEIR dismisses EMF impacts even though the proposed transmission line is within 50 feet of many homes.⁹⁵ Rather, the RDEIR asserts that the CPUC does not consider EMF to be an environmental issue under CEQA as “there is no agreement among scientists that EMF creates a potential health risk and because CEQA does not define or adopt standards for defining any potential risk from EMF.”⁹⁶ However, the lack of agreement among scientists is not a valid reason for declining to review and mitigate a significant impact under CEQA. Where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the effects to be significant and prepare an EIR.⁹⁷

In fact, there is substantial agreement in the scientific community that electromagnetic fields cause health impacts. The RDEIR ignores the recent evidence that Dr. Fox included in her comments on the DEIR and instead cites earlier studies. Dr. Fox concludes that the evidence cited in the RDEIR in support of the EMF health effects uncertainty theory is out of date, including a May 1999 NIEHS report, a June 2001 IARC report, a June 2002 DHS report, and a 2007 WHO Report.⁹⁸ In contrast, the evidence I cite in Exhibit 21 to my 2/22/2021 comments in support of adverse health impacts from exposure to electromagnetic radiation is based on a long-term collaboration of 29 international scientists from 10 countries holding medical degrees, PhDs, and MPHs. Their work was done independent of governments and industries with vested interests, employing a multidisciplinary approach to the EMF issue. Their work, summarized in Exhibit 21 to my 2/22/2021 comments, presents substantial evidence for the following

⁹⁵ Fox Comments, p. 23.

⁹⁶ RDEIR, Section 2.9, pdf 145-151.

⁹⁷ *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 935; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317–1318; CEQA Guidelines § 15064(f)(5).

⁹⁸ Fox Comments, p. 23.

adverse impacts of EMF fields from locating the transmission line adjacent to residential areas including:

Short-Term Health Impacts:

- Headaches
- Fatigue
- Anxiety
- Insomnia
- Prickling and/or burning skin
- Rashes
- Muscle pain

Long-Term Health Impacts:

- Impacts on gene and protein expression
- Genotoxic effects, including RFR⁹⁹ and ELF DNA damage
- Adverse impacts on stress proteins
- Adverse impacts on immune function
- Adverse impacts on neurology and behavior
- Brain tumors and acoustic neuromas
- Childhood cancers (leukemia)
- Adult cancers (breast cancer promotion)
- Adverse impacts on melatonin, leading to Alzheimer's disease and breast cancer
- Changes in nervous system and brain function
- Impacts on DNA
- Impacts on stress proteins
- Impacts on the immune system
- Risk of leukemia
- Risk of neurodegenerative disease
- Risk of miscarriage

The RDEIR does not address the more recent evidence of adverse health impacts but rather cites to earlier studies that suggest lack of consensus.¹⁰⁰ Thus, Dr. Fox's evidence of adverse impacts from EMF due to the location of the

⁹⁹ RFR = radiofrequency radiation; ELF = extremely low frequency.

¹⁰⁰ Fox Comments, p. 23.

transmission line within 50 feet of many homes is un rebutted, and requires mitigation to comply with CEQA. Dr. Fox recommended mitigation in her comments on the DEIR, including undergrounding and adopting CPUC design guidelines.¹⁰¹ The RDEIR is silent on mitigation of these significant impacts. The RDEIR must be revised and recirculated to adequately address and mitigate potentially significant impacts from EMF.

E. 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.¹⁰² An agency may reject a mitigation measure if it finds it to be infeasible.¹⁰³ 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.¹⁰⁴

The RDEIR 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.”¹⁰⁵ 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

¹⁰¹ *Id.*

¹⁰² PRC § 21002.

¹⁰³ PRC § 21081.

¹⁰⁴ PRC §21061.1; CEQA Guidelines § 15364.

¹⁰⁵ 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.”¹⁰⁶ Here, undergrounding the entire 70 kV line would substantially lessen significant impacts to biological resources and fire risk. The RDEIR must be revised and recirculated to adequately analyze this feasible and environmentally superior alternative.

X. THE RDEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE SIGNIFICANT GHG IMPACTS

The RDEIR failed to adequately analyze and mitigate the impacts associated with Project operational GHG impacts. Operation of the BESS results in some BESS discharge during hours when solar is not available and the marginal fuel is natural gas, increasing emissions.¹⁰⁷ This results in more energy used for charging than is generated, because BESS efficiency will necessarily be less than 100%.¹⁰⁸ As a result, BESS operation in response to economic signals will certainly increase emissions in some hours, and likely increase emissions when netted over a full year.¹⁰⁹ The resulting net emissions will be located throughout the Western U.S. Grid. It is not possible to identify the level of emissions from any particular geographic location. However, the net increase in GHG emission is attributable to the Project, regardless of where they occur, as GHG emissions are a global issue. The RDEIR is silent on the mode of operation or fuel used for the BESS alternatives, and thus the RDEIR fails as an informational document under CEQA.

In sum, the operation of the BESS in Alternative BS-2 may increase GHG and criteria pollutant emissions. Thus, these emissions should be included in a revised and recirculated EIR or a condition should be imposed to require that the BESS be operated to assure no increase in GHG emissions. An enforceable condition should be required in the RDEIR prohibiting BESS operation in a manner that would increase either GHG or criteria pollutant emissions.

The RDEIR fails to mention the potentially significant indirect GHG emissions that will result from the Project, though the CPUC has previously analyzed such impacts. For the PG&E Windsor Substation Project, the CPUC utilized BAAQMD’s GHG screening level of 10,000 metric tons per year for the analysis of the Project’s direct and indirect GHG emissions generated by Project

¹⁰⁶ *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1519.

¹⁰⁷ Fox Comments, p. 17.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

operation.¹¹⁰ In that Project, the CPUC concluded that “the substation transformers would leak small amounts of SF6, which is used as a circuit breaker electrical insulation medium. Although sulfur hexafluoride is a nonhazardous, inert gas, it has a global warming potential 23,900 times that of CO2.”¹¹¹ Similarly, the CPUC analyzed indirect emissions associated with the use of electricity from PG&E’s electrical grid by stationary sources at the power plant.¹¹² The RDEIR here, fails to adequately quantify and mitigate the Project’s indirect emissions from charging the BESS or operating Project components. The RDEIR must be revised and recirculated to adequately quantify and mitigate potentially significant indirect GHG emissions.

XI. THE RDEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE SIGNIFICANT IMPACTS ON BIOLOGICAL RESOURCES

The RDEIR fails to adequately analyze and mitigate impacts to biological resources. CURE’s Comments on the DEIR still stand, and Scott Cashen’s comments have been attached hereto for reference, because a majority of CURE’s arguments were neither addressed nor remedied in the RDEIR.

The RDEIR states that the changes to the DEIR include:

- Increasing the length of the paved access road at the substation up to the second entrance to the 70 kV substation from 15 feet to 700 feet;
- Changing the height of the substation’s chain-link fence from ‘approximately 7-foot tall’ to ‘a minimum of 7 feet tall;’
- Increasing the estimate for the amount of cut and fill required for substation construction from 50,000 cubic yards to 68,000 cubic yards, not including an additional 16,500 cubic yards of topsoil that would be stripped and stockpiled (with 4,000 cubic yards of this amount to be reused during restoration activities);
- Changing the estimated temporary disturbance area during construction of the Estrella Substation from 6.20 acres to 0.09 acres; and

¹¹⁰ PG&E Windsor Substation Project Final MND/Initial Study (October 2013) https://ia.cpuc.ca.gov/Environment/info/aspen/windsorsub/fmnd/5-07_greenhouse_gas_emissions.pdf.

¹¹¹ *Id.* p. 5-77.

¹¹² CalAm Monterey Peninsula Water Supply Project Draft EIR (April 2015) p. 4.11-7, https://ia.cpuc.ca.gov/Environment/info/esa/mpwsp/deir/4-11_greenhouse_gas_emissions.pdf. L3788-005acp

- Increasing the length of the main substation access road from 1,100 feet long to 1,700 feet long.¹¹³

These new issues were not adequately analyzed for their impacts to biological resources. As discussed in our prior comments, the risk of bird strikes and mortality is significant and unmitigated. 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.¹¹⁴ This cumulatively significant risk to avian species is further exacerbated through the RDEIR's failure to adequately mitigate and instead increasing the risks to avian species in the Project vicinity.

The additional trenching necessary to support the expanded Project components listed above will further exacerbate the threats to California red-legged frog and Western spadefoot toads. As previously addressed in CURE DEIR comments and in Scott Cashen's comments, mortality to these species may occur if mitigation is limited to escape ramps and if trenches are not covered.¹¹⁵ Mr. Cashen determined that inspecting trenches at the beginning of the workday would be effective for California red-legged frog, but would not be effective for Western Spadefoots toads, which burrow under soil during the day.¹¹⁶ The RDEIR does not remedy these issues, but further exacerbates threats to these sensitive biological communities.

Additionally, the expanded Project components listed above will require additional removal of vegetation. The RDEIR does not clarify how much additional vegetation will be required to be removed as result of the changes to the Project in the RDEIR. The RDEIR fails to quantify impacts to oak trees from the changes to the DEIR and thus fails to mitigate potentially significant impacts. The RDEIR must be revised and recirculated to adequately address and mitigate Project impacts to vegetative and biological resources.

As requested by CURE, the CPUC clarified that “[p]reparation of the site would typically be limited to mowing vegetation, as needed, to minimize the risk of fire.”¹¹⁷ Commenters appreciate the clarification that the Project may include a fuel

¹¹³ RDEIR, p. 1-2.

¹¹⁴ DEIR, p. 4.4-50.

¹¹⁵ Cashen Comments, p. 13.

¹¹⁶ *Id.*

¹¹⁷ RDEIR, p. 2-R.2-78.

reduction program, but the RDEIR still fails to disclose and analyze the environmental impacts of the fuel reduction efforts. The RDEIR must be revised and recirculated to fully address and mitigate impacts associated with the measures that will be implemented to “minimize the risk of fire.”¹¹⁸

The RDEIR fails to address the rest of the biological resources impacts raised in CURE DEIR Comments. Our comments and Mr. Cashen’s comments are attached hereto, and incorporated by reference. The CPUC should refer to CURE’s DEIR Comments and adequately address and mitigate all biological resources impacts of the Project in a revised and recirculated EIR.

XII. CONCLUSION

For all the reasons discussed above, the RDEIR for the Project remains wholly inadequate under CEQA. It must be thoroughly revised to include an adequate description of the Project, adequate baseline, feasible mitigation and feasible alternatives, adequate analysis of the potentially significant impacts to air quality, health risk, biological resources, GHG, and agricultural resources. This revision will necessarily require that the RDEIR be recirculated for public review. Until the RDEIR has been revised and recirculated, as described herein, the CPUC may not lawfully approve the Project.

Thank you for your consideration to these comments.

Sincerely,



Kelilah D. Federman

KDF:acp

¹¹⁸ *Id.*
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