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Via Email and Overnight Mail

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Re: Comments on the Initial Study / Mitigated Negative Declaration for North Central Valley Energy Center Project (Site Approval No. PA-1700279)

Dear Mr. Sanfilippo and Mr. Kwong:

On behalf of Citizens for Responsible Industry ("Citizens"), we submit these comments on the Initial Study and Mitigated Negative Declaration (collectively, "MND")[1] prepared pursuant to the California Environmental Quality Act ("CEQA")[2] by the County of San Joaquin ("County") the North Central Valley Energy Center Project (Site Approval No. PA-1700279) ("Project"), proposed by William Earl Jr & Marilyn Lucille Van Tassel and North Central Valley Energy Storage, LLC ("Applicant").

The Project proposes to construct a 132-megawatt ("MW") battery energy storage system ("BESS"), which will include battery storage containers and associated on-site support facilities including a project collector substation, inverters, collector lines, fencing, access roads, operations and maintenance

[1] San Joaquin County Community Development Department, Initial Study / Mitigated Negative Declaration, PA-1700279 (SA) (November 2021) https://files.ceqanet.opr.ca.gov/239271-2/attachment/NSaC7iB3Cl--YKV4k8oH5RM9XQ8tkz9j4RbPNb0HEv2C63FcM4ByRp7JLPeDH3yk7o4ZZgO3qaHnHgwK0.

[2] Pub. Resources Code § 21000 *et seq.*; 14 Cal. Code Regs. ("CEQA Guidelines") §§ 15000 *et seq.*

building, a supervisory control and data acquisition ("SCADA") system, and other ancillary facilities and equipment. The Project also includes construction of a 115-kilovolt ("kV") overhead generation transmission line ("gen-tie line"), to connect the BESS to the adjacent PG&E Bellota substation. The Project will include expansion of the Bellota substation footprint to support grid interconnection of the Project. The subject parcels (Assessor Parcel Numbers 093-100-24, 093-100-20, 093-100-04, 093-100-05, and 093-100-16) are located at 24300 and 3670 East Flood Road, Linden, California 95236, on the south side of E. Flood Road and 0.8 miles west of Escalon-Bellota Road in unincorporated San Joaquin County.[3]

The Project site is zoned AU-40 (Agriculture-Urban Reserve) within General Plan designation A/G (General Agriculture). The parcel upon which the Project is proposed is currently under a Williamson Act contract and is designated as Agricultural Preserve (R-69-C1). The site was historically and is currently used for grazing. There are two residents located adjacent to and surrounded by the Project site. The Project is located within the San Joaquin Valley Air Pollution Control District ("SJVAPCD"), which is in nonattainment for the federal 8-hour Ozone standard, and CARB has designated the SJVAB as a nonattainment area for the state 1-hour and 8-hour Ozone standards.

We have reviewed the MND, its technical appendices, and reference documents with assistance of Citizens' expert consultants, whose comments and qualifications are attached. Based on our review of the MND, it is clear that the MND 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 less than significant levels, as asserted in the MND.

There is also substantial evidence to support a fair argument that the Project's potentially significant environmental impacts are far more extensive than disclosed in the MND. Citizens and their expert consultants have identified numerous potentially significant impacts that the MND either mischaracterizes, underestimates, or fails to identify. Moreover, many of the mitigation measures described in the MND will not, in fact, mitigate impacts to the extent claimed.

We prepared these comments with the assistance of air quality and hazards expert Dr. Phyllis Fox, Ph.D.; expert conservation biologist and wildlife ecologist Dr.

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[3] San Joaquin County Community Development Department, Mitigated Negative Declaration for Site Approval No. PA-1700279 North Central Valley Energy Center Project ("MND").

Shawn Smallwood, Ph.D.; and agriculture and forestry expert Greg House. Dr. Phyllis Fox's technical comments and curriculum vitae are attached hereto as Exhibit A.[4] Dr. Cashen's technical comments and curriculum vitae are attached hereto as Exhibit B.[5] Mr. House's technical comments and curriculum vitae are attached hereto as Exhibit C.[6] Both comment letters and all attachments thereto are incorporated by reference as if fully set forth herein.[7] The County must address and respond to the comments of these experts separately.

Dr. Fox provides substantial evidence demonstrating that Project construction emissions will exceed applicable significance thresholds, that Greenhouse Gas ("GHG") emissions from Project construction and operation are underestimated, and that potentially significant GHG and energy impacts from the Project's BESS were not adequately analyzed or mitigated. Dr. Fox finds that health impacts associated with Valley Fever were not adequately analyzed or mitigated. Dr. Fox also determines that the risk of wildfire is significant and unmitigated. The MND fails to accurately disclose the severity of these impacts and fails to effectively mitigate them. Dr. Fox presents substantial evidence supporting a fair argument that the Project has potentially significant impacts on air quality, GHG, health risk, and wildfire, such that an EIR must be prepared.

Dr. Smallwood concludes that the County failed to conduct adequate baseline surveys to ascertain the current use of the Project site by numerous federally and state-listed special status species, failed to analyze the Project site's importance as a wildlife corridor, and failed to address the potentially significant impacts to wetlands, bird collision and mortality, and habitat loss. The mitigation measures proposed in the MND do not adequately mitigate potentially significant impacts to biological resources. Moreover, substantial evidence, demonstrated in Dr. Smallwood's comments, supports a fair argument that the Project has potentially

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[4] See **Exhibit A,** Phyllis Fox, Ph.D., P.E., Comments on the Initial Study/Mitigated Negative Declaration for the CALNEVA Battery Energy Storage System/Photovoltaic Solar Energy System Project (Fox Comments").

[5] See **Exhibit B,** Shawn Smallwood, Comments on the Initial Study and Mitigated Negative Declaration for the Hooper Solar Project ("Smallwood Comments").

[6] See **Exhibit C,** House Agricultural Consultants, Comments on MND, San Joaquin County Site Approval No. PA-1700279 ("House Comments").
with Focus on Agriculture Resources

[7] Citizens reserves the right to supplement these comments, and to file further comments at any and all future proceedings and hearings related to the Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* ("*Bakersfield*") (2004) 124 Cal. App. 4th 1184, 1199-1203; *see Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

significant impacts on biological resources that remain unmitigated, such that an EIR must be prepared.

Mr. House concludes that the Project is not a compatible use with the existing Williamson Act Contract for the Project site. Mr. House concludes that the Project site is suitable for irrigated agriculture and that the LESA water resources availability analysis was not based on substantial evidence. Further, Mr. House finds that the Project may cause runoff into the neighboring Linden Hills Vineyard which is a Certified Sustainable, Certified Green vineyard. The air quality impacts from the Project may further negatively impact the neighboring Linden Hills Vineyard. These impacts were not adequately analyzed or mitigated in the MND. Substantial evidence in Mr. House's report supports a fair argument that the Project may cause substantial impacts on agricultural resources, such that an EIR must be prepared.

I. STATEMENT OF INTEREST

Citizens is a coalition of labor organizations whose members encourage sustainable development of California's energy and natural resources. The coalition includes San Joaquin County residents and other members and organizations, including California Unions for Reliable Energy ("CURE") and its local affiliates, and the affiliates' members who live, recreate, work, and raise families in San Joaquin County and in communities near the Project site. Thus, Citizens, its participating organizations, and their members stand to be directly affected by the Project's impacts.

Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. CURE's members help solve the State's energy problems by building, maintaining, and operating conventional and renewable energy power plants, energy storage, and transmission facilities. 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, energy storage, and transmission facilities are built with highly trained, professional workers who live and raise families in nearby communities.

Individual members of Citizens and its member organizations live, work, recreate, and raise their families in San Joaquin County, 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.

Citizens 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 Citizens' members. Citizens therefore has a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment.

Finally, Citizens' members are concerned about projects that risk serious environmental harm without providing countervailing economic benefits. For these reasons, Citizens' 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 lead agencies analyze any project with potentially significant environmental impacts in an EIR.[8] "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."[9] 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."[10]

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[8] See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.
[9] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goletta Valley*), internal citations omitted.
[10] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.[11] CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard. Under that standard, a lead agency "shall" prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.[12]

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

> (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur*, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.[13]

Courts have held that if "no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR."[14] The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration.[15] An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.[16]

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[11] See Pub. Resources Code, § 21100.
[12] Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602 (*Quail Botanical*).
[13] Pub. Resources Code, § 21064.5 (emphasis added).
[14] See, e.g., *Communities for a Better Environment. v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.
[15] *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.
[16] *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (*Friends of B Street*) ("If there was substantial evidence

"Substantial evidence" required to support a fair argument is defined as "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."[17]

According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064, subdivision (f):

> [I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are "fully enforceable through permit conditions, agreements, or other measures."[18] Deferring formulation of mitigation measures to post-approval studies is generally impermissible.[19] Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.[20] If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.[21] Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation.[22]

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that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact").

[17] CEQA Guidelines, § 15384, subd. (a).

[18] Pub. Resources Code §21081.6(b).

[19] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

[20] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical, supra,* 29 Cal.App.4th at p. 1604, fn. 5.

[21] *Ibid.*

[22] *Ibid.*

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project's potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less than significant level. Because the MND lacks basic information regarding the Project's potentially significant impacts, the MND's conclusion that the Project will have a less than significant impact on the environment is unsupported.[23] The County failed to gather the relevant data to support its finding of no significant impacts, and substantial evidence shows that the Project may result in potentially significant impacts. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

III. THE MND FAILS TO PROVIDE A COMPLETE PROJECT DESCRIPTION

CEQA requires that an Initial Study include a description of the project and an identification of the environmental setting.[24] "An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action."[25] Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.[26] Further, "[a]n accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action… 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."[27] Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.[28]

The Project will include expansion of the Bellota substation footprint to support grid interconnection of the Project. The MND relies on an inadequate Project Description because it does not sufficiently address the Bellota Substation Expansion, nor describe the proposed Battery Energy Storage System ("BESS"). As

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[23] Pub. Resources Code, § 21064.5.
[24] CEQA Guidelines, § 15063, subd. (d).
[25] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.
[26] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ("*Sundstrom*").
[27] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.
[28] *See, e.g., Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376.

a result of these deficiencies, the Project description in the MND misleads the public and the Community Development Department by failing to describe the scope of the Project and its impacts. Without this information, the County lacks adequate information to determine whether an MND is applicable to the Project in the first place. As explained below, when properly described, the true scope of the Project demonstrates that there is substantial evidence to support a fair argument that an EIR must be prepared.

A. The MND's Project Description is Inadequate Because it Fails to Provide an Adequate Description of the Bellota Substation Expansion

CEQA requires that a project description include all relevant parts of a project, including future expansions or later phases of the project that will foreseeably result from project approval. [29] A project description must include an analysis of the environmental effects of future expansion if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.[30]

The MND does not provide any substantive information about the expansion of the Bellota Substation. Dr. Fox reviewed the MND and determined that the document fails to detail how many transformers the substation will have, and at what voltage they will operate.[31] This information is critical to determine the electricity demand the Project will require and the resultant emissions to generate the electricity.[32] An EIR must be prepared which adequately discloses the Project description including the foreseeable expansion of the Bellota Substation.

B. The MND's Project Description is Inadequate Because it Fails to Describe the Battery Energy Storage System

The MND fails to provide information regarding the type of lithium-ion battery or battery chemistry. This information is critically important for worker

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[29] *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 C3d 376; CEQA Guidelines, § 15063, subd. (d).
[30] *Id.*
[31] Fox Comments, p. 10.
[32] *Id.*

safety and on-site and off-site impacts in the event of an accident.[33] Absent this information, the opportunity for meaningful public review is drastically limited. Dr. Fox concludes that the MND fails to provide the Material Safety Data Sheet ("MSDS") for the batteries or otherwise characterize their chemical composition, a "*sine qua non* for assessing the fire, explosion, health, and other risks of the battery storage facility."[34]

The Site Approval Application filed by the Applicant provides that the "BESS would utilize lithium-ion batteries housed in Conex containers."[35] But this information was notably absent from the MND to allow for meaningful public review and opportunity to comment. An EIR must be prepared which adequately discloses the full Project Description including the above-described elements.

Further, the MND fails to provide information regarding the design of the BESS, including battery layout. The MND also fails to describe the type of cooling system the BESS will contain.[36] The MND fails to disclose the type of fire detection and fire suppression systems in place in the BESS and substation components. Dr. Fox concludes that this information is critical to determine environmental impacts of the BESS component.[37] An EIR must be prepared which fully discloses all components of the Project.

IV. THE MND FAILS TO PROVIDE AN ADEQUATE DESCRIPTION OF THE ENVIRONMENTAL SETTING

The MND 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 environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting. [38] 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

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[33] *Id.* at 6.
[34] *Id.*
[35] San Joaquin County, Application – Site Approval, North Central Valley Energy Storage, LLC, p. 2 of 9.
[36] Fox Comments, p. 6.
[37] *Id.* at 7.
[38] CEQA Guidelines, § 15063, subd. (d).

review commences.[39] As the courts have repeatedly held, the impacts of a project must be measured against the "real conditions on the ground."[40] The description of the environmental setting constitutes the "baseline" physical conditions against which the lead agency assesses the significance of a project's impacts.[41] An Environmental Setting is required "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.[42]

The MND states that "[t]he natural communities that were historically present have been substantially altered as a result of grazing and agricultural production activities."[43] This statement is not supported by any substantial evidence. By contrast, Dr. Smallwood reviewed relevant biological data about the Project site and concludes that the Project site contains more than 90% native wildlife species, and the hydrology of the site has been little altered from historical conditions.[44] Further Dr. Smallwood concludes that "[t]he IS/MND characterization of the likelihoods of species occurrences is too incomplete to serve as a sound basis for analyzing project impacts to wildlife."[45]

The MND does not provide an adequate baseline analysis. Absent the baseline analysis, the public and the County cannot fully determine "the conditions of the environment that preceded the project [as] the baseline against which to measure the adverse environmental change."[46] Absent an adequate environmental setting analysis, the MND is inadequate as a matter of law, for failure to provide a baseline against which to measure project impacts. An EIR must be prepared which adequately analyzes the Project's baseline.

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[39] CEQA Guidelines, § 15125(a); *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 321 ("*CBE v. SCAQMD*").
[40] *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.
[41] CEQA Guidelines, § 15125(a); *CBE v.* SCAQMD, 48 Cal. 4th at 321.
[42] 14 CCR § 15125(a).
[43] Biological Resources Assessment, p. 1.
[44] Smallwood Comments, p. 15.
[45] *Id.* at 16.
[46] Fat v. County of Sacramento (2002) 97 Cal.App4th 1270, 1279, quoting *Lewis v. Seventeenth Dist. Agricultural Assn.* (1985) 165 Cal.App.3d 823, 836.
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A. The MND Fails to Describe the Existing Setting for Wetlands

The MND fails to provide a complete and accurate description of the Project's environmental setting related to wetlands, and thus, the MND's impact assessment and propose mitigation for impacts to wetlands are inadequate.

Dr. Shawn Smallwood conducted a site visit and viewed the Project site from the roadside on November 26, 2021 and December 1, 2021. On both visits Dr. Smallwood saw the Project site contained wetland features, which were dry at the time of his visits.[47] Dr. Smallwood concludes, based on the information obtained during site visits, that Vernal pools and swales remain.[48]

Further, Dr. Smallwood concludes that the wetland features of the Project constitute an important habitat corridor for wildlife movement in the area, counter to the MND's argument that the surrounding vineyard and PG&E's substation diminish the Project site's value as habitat.[49] Dr. Smallwood explains that the MND fails to adequately detail the importance of the wetland features to the "[m]any animals moving through the region [who] may perceive the grassland/wetland complex of the project site as an island of opportunity for stopover during migration, dispersal and home range patrol."[50] Contrary to the MND's unsupported studies, Dr. Smallwood observed thousands of birds landing on the Project site at the time of his site visits. The Project site's wetland features serve as a critical host to the species that pass through and inhabit the Project area.

The only information in the Project Description regarding wetlands is the Site Plan Figure 4, which shows that the PG&E Bellota Substation Expansion Area and the Transmission Line Right-of-Way. The MND provides that the Project "will result in the permanent loss of waters and wetlands within the proposed substation expansion area."[51] The MND fails to fully disclose the environmental setting with respect to wetlands, and therefore fails to proceed in the manner required by law.

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[47] *Id.* at 1.
[48] *Id.* at 15.
[49] *Id.*
[50] *Id.*
[51] IS/MND, p. 10.

B. The MND Fails to Describe the Existing Setting for Sandhill Crane

The MND and Biological Resource Assessment in Appendix D to the MND are silent as to the presence of Sandhill Crane on the Project site. Dr. Smallwood detected Sandhill Crane on the Project site on his site visit November 26, 2021.[52] Dr. Smallwood's observations provide substantial evidence supporting a fair argument that the species is present on the Project site, and that the site provides habitat for it.

The Greater Sandhill Crane is listed as threatened under the California Endangered Species Act, primarily because of the loss of suitable breeding habitat, human disturbance, predation on the local breeding population in northeastern California, and the continued loss of winter foraging habitat.[53] The Greater Sandhill Crane is featured in a Pacific Flyway Management Plan.[54] "Power line collisions are presently believed to be the primary mortality factor for all age classes of post-fledged cranes."[55] The presence of Sandhill Cranes was not analyzed as part of the environmental setting of the Project. Therefore, the biological resource impact analysis and mitigation is inadequate.

An EIR must be prepared with an updated Environmental Setting with respect to Sandhill Crane to satisfy CEQA.

C. The MND Fails to Describe the Existing Setting for Peregrine Falcon

The MND does not provide baseline information regarding the presence of Peregrine falcon on the Project site. Dr. Smallwood detected a Peregrine Falcon on his site visit on November 26, 2021.[56] Dr. Smallwood's observations provide substantial evidence supporting a fair argument that the species is present on the Project site, and that the site provides habitat for it.

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[52] Smallwood Comments, p. 3.
[53] California Department of Fish and Game, Wildlife Management Division, Nongame Bird and Mammal Program, 5-Year Status Review: Greater Sandhill Crane (Grus canadensis tabida) Reported to: California Fish and Game Commission (1994) https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=3521 p. 1.
[54] *Id.*
[55] *Id.* at 3.
[56] Smallwood Comments, p. 3.

The Peregrine Falcon was delisted from the California Endangered Species Act and remains a fully protected species in California.[57] The most frequent known cause of peregrine injury and mortality is collision with obstacles, such as powerlines, antennas and guy wires, chain-link and wire fences, and windows.[58] Project impacts have the potential to be severe on peregrine falcons due to their susceptibility with, and electrocution from, power lines. Additional information is required to determine impacts of the Project on Peregrine falcons.

An EIR must be prepared which adequately analyzes the environmental setting around Peregrine Falcons, in order to determine the appropriate mitigation measures.

D. The MND Fails to Describe the Existing Setting for Red-Tailed Hawk

Dr. Smallwood detected Red-tailed Hawk on the Project site during his December 1, 2021 site visit and his November 26, 2021 site visit. Dr. Smallwood's observations provide substantial evidence supporting a fair argument that the species is present on the Project site, and that the site provides habitat for it.

The MND and the Biological Resources Assessment is silent as to the potential presence of Red-tailed Hawk and potential Project impacts on the species. Red-tailed Hawk are protected under the Migratory Bird Treaty.[59] Habitat loss, electrocution on powerlines, and collisions at wind farms are threats to this hawk's survival.[60] The Project may impact habitat and result in collisions with Project features, further threatening the species. An accurate analysis of the Project's impacts to this species is therefore critical.

The MND is legally inadequate for failure to analyze the environmental setting with respect to Red-tailed Hawk. An EIR must be prepared which

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[57] *See*, Fish and Game Code, §3511.
[58] Ronald M. Jurek, State of California, the Resources Agency, Department of Fish and Game, Wildlife Management Division, Nongame Bird and Mammal Section, "Five-Year Status Report American Peregrine Falcon" (1989) https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=26083 p. 4.
[59] 16 U.S. Code § 703.
[60] The Peregrine Fund, Red-tailed Hawk *Buteo jamaincensis*, (2021) https://www.peregrinefund.org/explore-raptors-species/hawks/red-tailed-hawk.

adequately analyzes the environmental setting in order to determine the significance of Project impacts on Red-tailed Hawk and appropriate mitigation.

E. The MND Fails to Describe the Existing Setting for Red-Shouldered Hawk

The MND is silent as to the presence of Red-shouldered Hawk on the Project site. Dr. Smallwood encountered Red-shouldered Hawk on his November 26, 2021 and December 1, 2021 site visits.[61] Dr. Smallwood's observations provide substantial evidence supporting a fair argument that the species is present on the Project site, and that the site provides habitat for it.

Red-shouldered Hawk are protected under the Migratory Bird Treaty.[62] The MND does not provide an adequate baseline analysis with respect to Red-shouldered Hawk. Absent the baseline analysis, the Public cannot fully determine "the conditions of the environment that preceded the project [as] the baseline against which to measure the adverse environmental change."[63] Absent an adequate environmental setting analysis, the MND is inadequate as a matter of law, for failure to provide a baseline against which to measure project impacts on the Red-shouldered Hawk.

F. The MND Fails to Describe the Existing Setting for American Kestrel

The MND fails to provide an adequate baseline against which to measure the adverse environmental change to American Kestrel habitat on the Project site. Dr. Smallwood detected American Kestrel on his site visits on November 26, 2021 and December 1, 2021.[64] Dr. Smallwood's observations provide substantial evidence supporting a fair argument that the species is present on the Project site, and that the site provides habitat for it.

This species was not listed in the MND or Biological Resources Assessment. As such, the MND does not provide an adequate baseline analysis with respect to American Kestrel. Absent the baseline analysis, the Public cannot fully determine

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[61] Smallwood Comments, p. 3.
[62] 16 U.S. Code § 703.
[63] Fat v. County of Sacramento (2002) 97 Cal.App4th 1270, 1279, quoting *Lewis v. Seventeenth Dist. Agricultural Assn.* (1985) 165 Cal.App.3d 823, 836.
[64] Smallwood Comments, p. 3.

"the conditions of the environment that preceded the project [as] the baseline against which to measure the adverse environmental change."[65] Absent an adequate environmental setting analysis, the MND is inadequate as a matter of law, for failure to provide a baseline against which to measure project impacts to American Kestrel populations.

G. The MND Fails to Describe the Existing Setting for Swainson's Hawk

The MND fails to analyze the potential presence of Swainson's Hawk which is listed as threatened under the California Endangered Species Act. This is a major omission in the MND's impact analysis. Studies have shown that Swainson's hawks may travel up to 18 miles from the nest to forage.[66] To reverse the decline of Swainson's hawk populations, it is CDFW's policy that new development projects that adversely modify nesting or foraging habitat within 10 miles of an active nest should mitigate the project's impacts by providing compensatory mitigation.[67] According to CDFW, the 10-mile foraging radius recognizes the need to strike a balance between the biological needs of reproducing pairs (including eggs and nestlings) and the economic benefit of development(s) consistent with Fish and Game Code Section 2053.[68]

Dr. Smallwood explains that, although the Project site does not provide nesting habitat for Swainson's hawks, it provides foraging habitat for Swainson's hawks that nest in the area. Loss of foraging habitat is one of the primary threats to Swainson's hawks in California.[69] In addition to generating a potentially significant impact under CEQA, the loss of foraging habitat from the Project site may result in the take (killing) of Swainson's hawks, which would be a violation of Section 2080 of California Fish and Game Code.[70] Because the MND does not

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[65] Fat v. County of Sacramento (2002) 97 Cal.App4th 1270, 1279, quoting *Lewis v. Seventeenth Dist. Agricultural Assn.* (1985) 165 Cal.App.3d 823, 836.
[66] California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo swainsoni*) in the Central Valley of California.
[67] *Ibid.*
[68] *Ibid.* p. 2.
[69] California Department of Fish and Wildlife. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California.
[70] California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo swainsoni*) in the Central Valley of California.

incorporate mitigation for the loss of foraging habitat from the Project site, Project impacts on the Swainson's hawk remain potentially significant.

An EIR must be prepared which adequately analyzes the environmental setting, impacts to Swainson's hawks, and sufficiently mitigates significant impacts.

H. The MND Fails to Provide Sufficient Baseline Information on Burrowing Owl

The MND provides that the Burrowing Owl has the potential to be present on the Project site. Burrowing Owl is a California Species of Special Concern.[71] The overriding characteristics of burrowing owl habitat are burrows for roosting and nesting, and relatively short vegetation with only sparse shrubs or taller vegetation.[72] Burrowing owls have been observed nesting along the within a mile of the Project site and the Project site provides suitable nesting and foraging habitat for burrowing owls. Dr. Smallwood observed a Burrowing Owl on the Project site, and thus presented substantial evidence to support a fair argument that Burrowing Owl have a high likelihood of being present on the Project site.

The lack of presence of Burrowing Owls during the site survey by the Applicant's consultant does not lessen the likelihood that Burrowing Owls frequent the Project site. In fact, Dr. Smallwood explains that burrowing owls can be difficult to detect due to their cryptic coloration, extensive use of burrows, and tendency to flush (fly away) when approached.[73] As a result, burrowing owl researchers and the CDFW have concluded that four independent breeding season surveys are necessary to provide reliable information on the presence of burrowing owls.[74] Data from the four surveys (termed "detection surveys" in CDFW's Staff Report on Burrowing Owl

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[71] *Id.*

[72] Gervais JA, DK Rosenberg, LA Comrack. 2008. Burrowing Owl (*Athene cunicularia*). Pages 218-226 *In:* Shuford WD, T Gardali, editors. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

[73] Klute DS, LW Ayers, MT Green, WH Howe, SL Jones, JA Shaffer, SR Sheffield, TS Zimmerman. 2003. Status assessment and conservation plan for the western Burrowing Owl in the United States. Bio Tech Pub FWS/BTP-R6001-2003. Washington: US Fish and Wildlife. Available at: <https://www.fws.gov/mountain-prairie/migbirds/species/birds/wbo/Western%20Burrowing%20Owlrev73003a.pdf>.

[74] California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. Appendix D (Breeding and Non-breeding Season Surveys and Reports).

Mitigation) are essential to avoiding, minimizing, and properly mitigating the direct and indirect effects of the Project on burrowing owls.

The County's consultant did not conduct any "detection surveys" for burrowing owls. Dr. Smallwood explains that, because burrowing owls that nest at higher elevations migrate to lower elevations in winter, it is unlikely the consultant would have incidentally detected burrowing owls during their biological reconnaissance surveys. As a result, the County lacks the information needed to properly disclose and evaluate Project impacts to burrowing owls, and perhaps more importantly, to ensure effective mitigation.[75] The environmental setting analysis is therefore not supported by substantial evidence.

An EIR must be prepared that fully and adequately analyzes the environmental setting with respect to burrowing owls.

I. The MND Fails to Provide Sufficient Baseline Information on California Tiger Salamanders, Western Spadefoot, Vernal Pool Tadpole Shrimp, and Vernal Pool Fairy Shrimp

Dr. Smallwood concludes that the MND provided inadequate baseline data because "[n]o detection surveys have been performed on site for California tiger salamanders, western spadefoot, vernal pool fairy shrimp, and vernal pool tadpole shrimp."[76] Absent such detection surveys for these species, which are likely to occur at the Project site, Dr. Smallwood explains the MND's environmental setting analysis and baseline is not supported by substantial evidence. Without an adequate baseline analysis, the Public cannot fully determine "the conditions of the environment that preceded the project [as] the baseline against which to measure the adverse environmental change."[77] Thus, the MND is inadequate as a matter of law, for failure to provide a baseline against which to measure project impacts to California Tiger Salamanders, Western Spadefoot, Vernal Pool Tadpole Shrimp, and Vernal Pool Fairy Shrimp populations.

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[75] *Id.* at pp. 5, 6 and 29.
[76] Smallwood Comments, p. 3.
[77] Fat v. County of Sacramento (2002) 97 Cal.App4th 1270, 1279, quoting *Lewis v. Seventeenth Dist. Agricultural Assn.* (1985) 165 Cal.App.3d 823, 836.

An EIR must be prepared which adequately analyzes the environmental setting with respect to California Tiger Salamanders, Western Spadefoot, Vernal Pool Tadpole Shrimp, and Vernal Pool Fairy Shrimp.

V. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT AIR QUALITY IMPACTS

A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.[78] "[S]ignificant effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment."[79] An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial."[80] Substantial evidence, for purposes of the fair argument standard, includes "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."[81]

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[82] 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 MND 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.[83] Even when the substantial evidence standard is applicable to agency decisions to certify an MND 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.'"[84]

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[78] Pub. Resources Code § 21151; CEQA Guidelines § 15064(f); *Citizens for Responsible Equitable Envt'l Dev. v. City of Chula Vista* ("*CREED*") (2011) 197 Cal.App.4th 327, 330-31; *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 ("*CBE v. SCAQMD*").
[79] Pub. Resources Code § 21068; CEQA Guidelines § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.
[80] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.
[81] Pub. Resources Code § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.
[82] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[83] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[84] *Berkeley Jets*, 91 Cal.App.4th at 1355.

Citizens' experts provide substantial evidence that the Project will have significant impacts on air quality and public health. An EIR must be prepared to further evaluate and mitigate potentially significant impacts to air quality.

A. Project Health Impacts Are Potentially Significant and Unmitigated

Dr. Fox concludes that acute health impacts from diesel particulate matter ("DPM") during construction would be significant for construction workers and offsite receptors, including those at nearby residences and in adjacent agricultural fields.[85] The IS/MND must be revised and recirculated to include an acute health risk assessment for both Project construction and operation to reduce health risk to less than significant levels.

B. The MND Fails to Conduct a Health Risk Analysis

The MND fails to analyze the health impacts of construction to on-site workers or nearby sensitive receptors. CEQA requires lead agencies to disclose the health risks posed by hazardous air pollutants released during construction. Construction workers are at the greatest risk. The MND indicates that 8 to 42 workers would be required to construct the various phases of the Project.[86] Additionally, there are nearby sensitive receptors that would be exposed to construction emissions. The nearest homes are about 350 feet away and agricultural works are adjacent to the facility boundaries.[87] These workers and residents are sensitive receptors which would be exposed to DPM emissions during Project construction.

CEQA requires that a project's health risks "must be 'clearly identified' and the discussion must include 'relevant specifics' about the environmental changes attributable to the Project and their associated health outcomes."[88] Courts have held that an environmental review document must disclose a project's potential health risks to a degree of specificity that would allow the public to make the correlation between the project's impacts and adverse effects to human health.[89]

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[85] Fox Comments, p. 49.
[86] IS/MND, Appendix A, Table 1, p. 5, pdf 7.
[87] IS/MND, Appendix A, Section 3.1, p. 5.
[88] IS/MND, p. 518.
[89] *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

Instructively, the Office of Environmental Health Hazard Assessment's ("OEHHA") risk assessment guidelines[90] recommend a formal health risk analysis ("HRA") for short-term construction exposures lasting longer than 2 months and exposures from projects lasting more than 6 months should be evaluated for the duration of the project.[91]

The construction of this Project will last for 17 months. The construction of the substation (5 months), collector substation (4 months), BESS (7 months), and decommissioning (7 months) all last longer than 2 months.[92] CEQA requires that the health risk from each of these construction phases be quantified and disclosed. And under the OEHHA risk assessment guidelines, which are used throughout California for assessing health risks under CEQA, the Project should be subject to a quantified HRA.

A quantified HRA is commonly conducted to determine if a Project's construction hazardous air pollutant ("HAP") emissions would cause a significant health impact.[93] The HRA is based on pollutants other than conventional air quality pollutants; that is, ROG, NOx, PM10, PM2.5, CO, and SO_2.

Construction equipment emits DPM, which is a HAP and potent carcinogen.[94] Construction workers, workers at nearby dairies and farming operations and nearby residents will be exposed to DPM emissions during construction. An EIR

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[90] IS/MND, Appendix B1, pdf 34.
[91] 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/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0.
[92] IS/MND, Appendix A, p. 2 pdf 4.
[93] Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessment, February 2015; may be requested at https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf.
[94] Cal/EPA OEHHA and American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf. See also OEHHA, Appendix A: Hot Spots Unit Risk and Cancer Potency Values, p. 1 (DPM unit risk = 3 E-4); https://oehha.ca.gov/media/CPFs042909.pdf and 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.

must be prepared which adequately links the Project's air quality effects to human health consequences.[95]

C. The MND 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* ("CI"), which lives in the top 2 to 12 inches of soil in many parts of the state of California.[96] 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.[97] The Centers for Disease Control determined that "as little as one spore may transmit disease."[98]

The MND provides that Valley Fever is considered endemic in San Joaquin County.[99] Between 2013 and 2017, the number of Valley Fever cases tripled in San Joaquin County.[100] But, California Labor Code section 6709 recognized that San Joaquin County contains work areas where Valley Fever is highly endemic. [101] Highly endemic means that the annual incidence rate of Valley Fever is greater than 20 cases per 100,000 persons per year.[102] In fact, the San Joaquin County Public Health Services Department reported 269 cases of Valley Fever in 2018.[103]

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[95] *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.").
[96] Cal. Lab. Code § 6709(a).
[97] Jennifer McNary and Mary Deems, Preventing Valley Fever in Construction Workers, March 4, 2020, pdf 10; https://www.safetybayarea.com/media/2020-3A.pdf.
[98] Centers for Disease Control and Prevention
[99] IS, p. 6.
[100] San Joaquin County Public Health Services, *What you need to know about Valley Fever in San Joaquin County & California,* (June 2018) http://www.sjcphs.org/assets/20180620_HS_What%20You%20Need%20to%20know%20VF%20Brochure_Eng.pdf.
[101] Cal. Lab. Code § 6709(a).
[102] *Id.*
[103] IS, p. 6.
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i. The Mitigation Measures Proposed for Valley Fever Impacts are Inadequate and Do Not Comport with San Joaquin County, California, or Federal Labor Regulations

Dr. Fox concludes that conventional dust control measures, such as those recommended in the IS/MND,[104] are not effective at controlling Valley Fever[105] because 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.[106]

The MND provides that "Mitigation Measure (MM-) AQ-1 and MM-AQ-2 would be implemented to further reduce the risk of Valley Fever exposure… with the implementation of MM-AQ-1 and MM-AQ-2, impacts to construction workers and nearby sensitive receptors, would less than significant with mitigation."[107] This statement is not supported by substantial evidence. Rather, substantial evidence supports a fair argument that an EIR is required because there may be a significant impact from Valley Fever that was not analyzed in the MND.

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:

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.

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[104] IS/MND, Appendix C, p. 21, pdf 23.

[105] *See, e.g.*, Cummings and others, 2010, p. 509 (Exhibit --); Schneider et al., 1997, p. 908 ("Primary prevention strategies (*e.g.*, dust-control measures) for coccidioidomycosis in endemic areas have limited effectiveness.") Exhibit--.

[106] Fox Comments, p. 40.

[107] IS, p. 6.

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."[108]

Dr. Fox recommends that the County implement each of these measures as additional mitigation measures in an EIR.

Labor Code section 6709 requires employers in counties in which Valley Fever is highly endemic to provide training on Valley Fever "before an employee 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*."[109] The MND fails to mention wearing a respirator, or any type of respiratory protection

[108] 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.
[109] *Id.*

while on the construction site, a condition required by other laws applicable to the Project.[110]

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."[111]

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.[112] NIOSH approved respirators are necessary because "Household materials such as washcloths, bandanas, and handkerchiefs do not protect workers from breathing in dust and spores."[113]

The SJVAPCD-approved dust control plan is not available for public review. Thus, the County lacks substantial evidence to support the MND's conclusion that Valley Fever impacts would be reduced to less than significant levels based on compliance with the plan. A CEQA document may not rely on hidden studies or documents that are not provided to the public.[114]

If the SJVAPCD-approved dust control plan has not yet been developed, then this constitutes impermissibly deferred mitigation. [115] Deferring formulation of mitigation measures to post-approval studies is generally impermissible.[116]

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[110] See PRC § 21002.1(c) (project with significant and unavoidable impacts may not be approved unless otherwise permissible under applicable laws and regulations).
[111] 29 C.F.R. § 1910.134(a)(2) (2006).
[112] Phyllis Fox Comment Letter
[113] 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.
[114] *Santiago Cty. Water Dist. v. Cty. of Orange* (1981) 118 Cal.App.3d 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").
[119] IS/MND, p. 16.
[119] IS/MND, p. 16.
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Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.[117] If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.[118] Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation If the SJVAPCD has not been developed, then there are no performance criteria for the Public to weigh to determine whether the Valley Fever mitigation is adequate. An EIR should be circulated to include adequate and enforceable mitigation measures to reduce Valley Fever impacts to less than significant levels.

VI. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT ENERGY IMPACTS

The MND concludes, without substantial evidence, that the Project's energy impacts are less than significant.[119] The MND's energy impact section consists of 1 page including, with no supporting analysis, that "due to the inherent nature of the project as a BESS, the Project would not result in a wasteful use of energy. Impacts would be less than significant."[120] Dr. Fox concludes that, "[b]ecause of the laws of thermodynamics, no battery can be 100 percent efficient." [121] Further, "charging energy input to the battery will always have to be greater than electricity generated by discharging the battery. Thus, batteries are always net consumers of energy and, absent offsetting factors, will result in increased GHG emissions due to their net electricity consumption. The IS/MND failed to estimate these emissions."[122]

CEQA requires that environmental documents circulated for public review include a discussion of the potential energy impacts of proposed projects and a detailed statement of mitigation measures designed to "minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful,

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[119] IS/MND, p. 16.
[119] IS/MND, p. 16.
[119] IS/MND, p. 16.
[120] *Id.*
[121] Fox Comments, p. 28.
[122] *Id.*

inefficient, and unnecessary consumption of energy." Pub. Res. Code § 21100(b)(3); CEQA Guidelines, Appendix F, Energy Conservation ("Appendix F"), § I.

Energy impacts may include:

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

Appendix F, Section II(C). "If analysis of the project's energy use reveals that the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary use of energy, or wasteful use of energy resources, the EIR shall mitigate that energy use."[123] Appendix F of the CEQA Guidelines declares as goals of the energy analysis: promoting conservation of energy and increasing reliance on renewable energy sources. [124]Finally, Appendix F lists potential mitigation measures to be considered, such as measures to "reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal," and other measures to reduce peak energy demand and promote energy conservation.[125]

Recent cases interpreting Appendix F hold that, to comply with CEQA, the lead agency must not only describe a project's energy impacts, it must also quantify them.[126]

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[123] CEQA Guidelines § 15126.2(b).
[124] Appendix F § I.
[125] CEQA Guidelines, Appendix F § II.D.
[126] *Ukiah Citizens for Safety First v. City of Ukiah ("Ukiah Citizens")* (2016) 248 Cal.App.4th 256, 264-65 (energy impact analysis requires clarification and technical information regarding project-related energy usage and conservation features); *Spring Valley Lake Association v. City of Victorville ("Spring Valley")* (2016) 248 Cal.App.4th 91, 103 (EIR must show factual basis of its assumptions

The Project's BESS is an energy storage device. Its sole purpose is to receive, store and return up to 132 MW of electric energy to the electric grid. In addition to storing energy, the Project will consume some of the energy it absorbs due to battery inefficiency. Yet, the MND fails to include any analysis of the Project's direct energy consumption impacts from battery inefficiency, indirect energy impacts on grid electricity demand, or energy conservation measures, as required by Appendix F, Instead, the MND concludes, with no supporting evidence, that the Project's energy impacts would be less than significant

The MND fails as an informational document and is deficient as a matter of law because it fails to disclose or quantify the energy impacts of the Project, fails to include any conditions restricting battery charging to use of renewable energy, and fails to describe potential energy mitigation measures, as required by CEQA.[127]

VII. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT GREENHOUSE GAS IMPACTS

The MND fails to adequately analyze the potentially significant greenhouse gas emissions of the Project. Dr. Fox concludes that the modeling in the MND is flawed.[128] The MND only analyzes the GHG impacts associated with running the air condition in the BESS. Dr. Fox finds that GHG emissions associated with charging the BESS would be an additional 7,728 metric tons per year of CO2 equivalents from the 132 MW battery storage system combined with the 140.7 metric tons of CO2 equivalents from Project construction and operation and decommissioning and the associated PG&E substation.[129] The combined total of 7,868.7 metric tons per year is 8.7 times greater than the significance threshold of

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that both energy use and greenhouse gas emissions will be reduced); *California Clean Energy Committee v. City of Woodland ("CCEC")* (2014) 225 Cal.App.4th 173, 210 ("CEQA EIR requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount"). This is consistent with longstanding precedent which holds that unsupported conclusions are entitled to no judicial deference. *Comtys. for a Better Env't v. City of Richmond ("CBE v. Richmond")* (2010) 184 Cal.App.4th 70, 85; *Topanga*, 11 Cal.3d at 515 (EIR must provide reader with analytic bridge between ultimate findings and the facts in the record).

[127] *People v. County of Kern* (1976) 62 Cal.App.3d 761, 774–775.

[128] Fox Comments, p. 29.

[129] *Id.*

900 metric tons per year stated in the MND.[130] Thus, Dr. Fox concludes that GHG emissions are significant and unmitigated.

Dr. Fox proposes the following mitigation:

(1) Project design features/on-site reduction measures;
(2) GHG offsets off-site within San Joaquin County;
(3) GHG offsets off-site within the State of California;
(4) GHG offsets off-site within the United States;
(5) GHG offsets off-site internationally;
(6) Charging restrictions that constrain battery charging to hours when CAISO renewable resources would otherwise be curtailed, but the curtailment would be demonstrably avoided by using otherwise curtailed generation as battery-charging energy, or if such demonstrations are not feasible; and
(7) Charging restrictions that constrain battery charging to hours when solar generation is potentially being curtailed, which would at a minimum mean no charging during nighttime hours.

Dr. Fox's analysis and conclusions present substantial evidence supporting a fair argument that there are significant and unmitigated impacts for which an EIR must be prepared for this Project.

VIII. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT HAZARDS IMPACTS

The MND concludes, absent substantial evidence that the Project would not "create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials to the environment" and that such impact would be less than significant.[131] Dr. Fox concludes that this assessment is false.

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[130] *Id.*
[131] IS/MND, p. 21.

BESS facilities are designed as asserted (with SCADA systems, trained personnel, battery monitoring systems), but serious accidents still occur.[132] Further, the IS/MND fails to provide any of the design details to confirm these assertions and to demonstrate they would be effective.[133] Lithium-ion batteries contain hazardous substances that would be released in an accident.[134] Many accidents have occurred at BESS facilities worldwide.[135] Dr. Fox concludes that the risk of upset from the Project would significantly endanger the surrounding community and sensitive receptors.

The Project site is surrounded to the west and south with active row crop farming operations. Livestock operations are to the north and east and workers will be present at both. Further, there are several residences located just 300+ feet from the battery storage containers (indicated by red arrows).[136] The proximity of the Project to these uses may endanger lives and property in a BESS accident scenario. Dr. Fox concludes that the MND fails to adequately evaluate the impact of BESS accidents on nearby sensitive receptors.[137]

The MND does not provide an adequate description or analysis of the type of battery storage system and safety features to enable the public or the County to accurately analyze its impacts. The Site Approval Application filed by the Applicant provides that the "BESS would utilize lithium-ion batteries housed in Conex containers."[138] But this information was not provided in the MND for public review. The MND fails as an informational document for omitting this information.

As Dr. Fox explains, "[t]he BESS must include an early warning system that gives time to shut the system down before an event occurs. Conventional sensors, such as heat and smoke sensors, detect fires only after an event happens, which is too late to safely shut down the system.[139] The IS/MND fails to disclose the type of sensors that will be used. Further, the BESS fire protection system should eliminate oxygen and/or remove flammable gasses via ventilation and provide water

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[132] Fox Comments, p. 8.
[133] *Id.*
[134] *Id.*
[135] Fox Comments, p. 8.
[136] IS/MND, Appendix A, Section 3.1, p. 5, pdf 11.
[137] Fox Comments, p. 9.
[138] San Joaquin County, Application – Site Approval, North Central Valley Energy Storage, LLC, p. 2 of 9.
[139] Fox Comments, p. 9.

deluge for all battery containers. The IS/MND does not contain any of the information required to review the fire safety of the proposed BESS, failing as an informational document under CEQA."[140]

Dr. Fox concludes that the MND fails to analyze the risks and impacts of battery accidents and fails to mitigate them.[141] She explains that thermal runaway events are one of the most catastrophic failure modes of lithium-ion batteries.[142] In a thermal runaway, multiple cells fail due to a failure starting in one cell. They can occur due to an internal battery failure, exposure to excessive temperatures, external short circuits due to faulty wiring, or internal shorts due to cell defects. Thermal runaways vent toxic and highly flammable gases and release significant energy in the form of heat. If ignited, these gases can cause enclosed areas to over pressurize, resulting in an explosion and severe damage to the battery and surrounding equipment and people. In a large battery pack, as proposed for the Project, heat generated by one failed cell can heat up neighboring cells and lead to a thermal cascade through the battery pack.[143] The MND is silent on these types of events, thus omitting critical information which Dr. Fox explains is necessary to accurately assess hazards impacts.

Dr. Fox further concludes that the MND fails as an informational document for failure to provide information on the layout of batteries and thus fails as an informational document under CEQA. She explains that the MND should have included a diagram showing BESS facility layout, including number of battery storage buildings, battery spacing, design of the sprinkler system, location and design of ancillary facilities, and details of gas monitoring system (gases monitored, frequency, detection limits) in order to allow the public to determine risk of upset from BESS.[144]

The nearest fire station to the Project site is in Linden, 4.5 miles west of the Project site.[145] The MND is silent on whether this station is equipped to handle a

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[140] *Id.* at 7.
[141] *Id.* at 10.
[142] *Id.* at Figure 2.
[143] IMIA Conference, October 2019. See also: Nicolas Ponchaut, Kevin Marr, Francesco Colella, Vijay Somandepalli, and Quinn Horn, Thermal Runaway and Safety of Large Lithium-Ion Battery Systems; https://docplayer.net/32905291-Thermal-runaway-and-safety-of-large-lithium-ion-battery-systems-quinn-horn-ph-d-p-e-principal-engineer-exponent-inc.html.
[144] Fox Comments, p. 22.
[145] IS/MND, p. 31.

major fire at the BESS. As Linden is a small town, Dr. Fox opines that it likely is not. The next nearest community is Stockton, about 15 miles east of the Project. A major accident at the BESS would likely require Stockton assistance, which would delay response, aggravating impacts.

Firefighters are a significant at-risk population because batteries may rupture when exposed to extreme heat/fire, leaking corrosive materials, and/or emit toxic fumes, regardless of the specific battery technology. Burning batteries may emit acrid smoke, irritating fumes, and toxic fumes of fluoride, resulting in acute and chronic health effects in responding firefighters (and any nearby workers and residents). Acute health hazards include chemical inhalation burns and damage to lungs, eyes, and skin. Cobalt, present in lithium-ion batteries, is a suspected human carcinogen.[146]

Dr. Fox proposes the following mitigation measures should be required in an EIR included to minimize fire risk, including:[147]

- Adequate separation of battery containers and other major equipment;
- Concrete fire walls between containers (not disclosed in the IS/MND);
- Use of noncombustible materials within the insulation of battery containers and the ventilation and suppression systems;
- An adequate on-site water supply for firefighting;
- Fire brigade site visits to identify and plan to prevent any ignition scenarios and thermal runaway;
- Remote and continuous on-line monitoring and early detection sensors;
- Venting to avoid the buildup of gas; and
- Automatic fire suppression system in compliance with NFPA 855.

These additional measures are necessary to reduce the Project's hazardous materials impacts to less than significant levels. The MND does not provide substantial evidence that the risk of fire is adequately mitigated. Dr. Fox concludes that there is no evidence in the record to show that there are adequate water supplies on the Project site to fight a BESS fire. Further, Dr. Fox concludes that the MND fails as an informational document under CEQA for failing to include an MSDS and other characterization data on the batteries that would be used and for failing to evaluate the health and other impacts of a BESS fire.

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[146] Fox Comments, p. 23.
[147] *Id.*

Additionally, Dr. Fox concludes that an explosion at the proposed BESS would be equivalent to 114 tons of TNT.[148] This is sufficient to seriously damage adjacent residents, on-site workers,[149] other Project facilities, and nearby farming and dairy operations, resulting in significant property damage, mortality, and health impacts to residents, agricultural, dairy, and other workers. The MND fails as an informational document under CEQA for failing to disclose and evaluate the risk and consequences of explosions and fires at the proposed BESS. Dr. Fox concludes that there is no BESS technology at this site that will not have significant impacts, given the proximity of sensitive receptors.[150] The MND fails to analyze the impact of a BESS explosion igniting a wildfire. An EIR must be prepared to thoroughly analyze and disclose the impacts of a BESS accident and to impose mitigation.

Further, the MND fails to analyze the potentially significant irreversible environmental change that would be caused by the Project, through environmental accidents associated with the Project.[151] Dr. Fox concludes that accidents during handling and transportation could result in injuries to and deaths of workers, motorists, and residents. The IS/MND is silent on how the batteries would be transported to the site and the risks this transportation poses to adjacent populations and facilities.[152]

Therefore, a fair argument can be made that the Project may cause significant impacts from hazards requiring the preparation of an EIR.

IX. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT IMPACTS TO AGRICULTURAL RESOURCES

The MND found that the Project has a less than significant impact associated with the Project's conflict with "existing zoning for agricultural use, or a Williamson Act contract."[153] But, substantial evidence supports a fair argument that the Project

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[148] The 2 MW battery at the Arizona McMicken facility is equivalent to 1.72 tons of TNT. Thus, the Project's 132 MW BESS is equivalent to (1.72)(132/2) = **114 tons TNT;** Dr. Fox Comments, p. 26.
[149] IS/MND, Appendix A, p. 12, pdf 18.
[150] Fox Comments, p. 26.
[151] CEQA Guidelines § 15126.2.
[152] Fox Comments, p. 26.
[153] IS/MND, p. 3.

will have a significant impact due to its conflict with zoning requiring agricultural use and the Williamson Act contract on which the Project site sits.

The MND provides that, "although the location of the Project Site is located in proximity to Prime Farmland and Unique Farmland, the Project would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to nonagricultural uses or significantly compromise the long-term productivity of such farmland."[154] This statement is not supported by substantial evidence. The County provided Citizens' counsel with the Application Control Sheet for the Project filed December 1, 2017 which describes the Project site as containing Prime Soil.

A. The MND Fails to Adequately Analyze and Mitigate Impacts to Farmland

i. Williamson Act Contract

The Project site's five parcels (APNs 093-100-24, 093-100-20, 093-100-04, 093-100-05, and 093-100-16) are zoned as AG-40, General Agricultural -40 Acres and designated as Agricultural Preserve (R-69-C1). Of these parcels, the two privately owned parcels (APNs 093-100-24 and 093-100-20), are single lots that are currently under the California Land Conservation Act and subject to Williamson Act Contract No. 73-C1-220. The contract restricts development to uses that are compatible with the Williamson Act and Development Title Section 9-1805. "Compatible use," as defined in the Williamson Act, includes uses determined by the County to be compatible with the agricultural, recreational, or open space use of land within the preserve and subject to contract (Government Code Section 51201[e]). "Compatible use" includes agricultural use, recreational use or open-space use unless the board or council finds after notice and hearing that the use is not compatible with the agricultural, recreational or open-space use to which the land is restricted by contract pursuant to this chapter. This Project would be neither agricultural use, recreational use, nor open space use, and is thus incompatible with the Williamson Act Contract.

Further, Development Title Section 9-1810.3 specifically lists the compatible uses for which San Joaquin County may approve Site Approval or Use Permit applications. Battery Energy Storage Systems are not listed as compatible uses

[154] IS/MND, p. 3.

under Williamson Act Contracts in San Joaquin County.[155] The Project is therefore incompatible with the Williamson Act Contract.

ii. Conversion of Farmland

The MND concludes, without substantial evidence, that the Project would not involve changes which "could result in conversion of Farmland, to non-agricultural use."[156] The Site Approval application for the Project provides that "[a]pproximately 6 acres (5-acre facility and 1-acre switchyard) will be removed from agricultural use."[157] This constitutes a potentially significant impact under CEQA which was not adequately analyzed or mitigated in the MND.

Mr. Greg House concludes that the Project's California Land Evaluation and Site Assessment ("LESA") in the MND is not supported by substantial evidence, and the value of the farmland is likely higher than that analyzed in the MND.[158] Mr. House explains that the existing on-site well should have been considered in the analysis regarding the water resource availability factor because the existence of the onsite well "unequivocally indicate that irrigated agriculture is possible and suitable for the proposed project site."[159] Utilizing a correct water resource availability factor, Mr. House calculates that the LESA score of the Project site would be 42.75, well above the 39-point significance threshold.

The MND's conclusion that impacts to farmland are less than significant is therefore not based on substantial evidence. In fact, substantial evidence supports a fair argument that the Project will have significant impacts on agricultural resources onsite, such that an EIR must be prepared.

San Joaquin County's local policy LU-7.2, Agricultural Support Uses states that new agricultural support development and non-farming activities shall be compatible with surrounding operations and shall not have a detrimental impact on the operation or use of surrounding agricultural properties.[160] Mr. House concludes

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[155] Development Title Section 9-1810.3(b) http://www.sjgov.org/commdev/cgi-bin/cdyn.exe/handouts-planning_ca_sjc_dev_T09-D18?grp=handouts-planning&obj=ca_sjc_dev_T09-D18.
[156] IS/MND, p. 3.
[157] San Joaquin County, Application – Site Approval, North Central Valley Energy Storage, LLC, p. 4 of 9.
[158] House Comments, p. 1.
[159] *Id.*
[160] IS/MND p. 4.

that this Project may have detrimental impacts on the operation and use of surrounding agricultural properties, specifically the neighboring Linden Hills Vineyard which is Certified Sustainable, Certified Green. Mr. House explains that the Project may cause runoff of contamination into the neighboring site,[161] and that the Project may also adversely impact the neighboring Linden Hills Vineyard through air pollutants from construction, resulting in significant impacts. Ozone has been found to be particularly damaging to grape leaves, grapevines, and yield and quality of the fruits.[162]

There is substantial evidence supporting a fair argument that the Project will have potentially significant and detrimental impact on the neighboring Linden Hills Vineyard. The County must prepare an EIR to adequately analyze and mitigate agricultural resource impacts.

iii. Inadequate Mitigation

The MND does not provide any mitigation for impacts to agricultural resources. Thus, the MND fails to adequately mitigate the Project's potentially significant impacts on agricultural resources. An EIR must be prepared which adequately analyzes and mitigates Project impacts on agricultural resources.

B. Loss of Agricultural Land is Inconsistent with the San Joaquin County General Plan

The San Joaquin General Plan provides that "[a]s the agriculture center of California, San Joaquin's farmland and agricultural heritage are preserved."[163] The Project directly contravenes this goal laid out in the General Plan, due to the conversion of agricultural land to nonagricultural use. Further, the General Plan prioritizes "minimizing growth impacts on agricultural land."[164] The Project flies in the face of this priority by converting agricultural land to non-agricultural use. The General Plan goes on to provide that it is the Policy of the County that "[t]he County's communities will continue to grow and develop while natural resource

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[161] House Comments, p. 1.
[162] L.H. Weinstein, Effects of Air Pollution on Grapevines, Boyce Thompson Institute for Plant Research, Cornell University, Ithaca, N.Y., U.S.A. p. 276, https://ojs.openagrar.de/index.php/VITIS/article/view/6066/5745.
[163] General Plan, p. 2-2.
[164] *Id.* at 2-17.

lands (agriculture and open space) will be preserved."[165] This Project does not provide for the preservation of agricultural and open space, and in fact, will destroy the utility of the agricultural land and biological habitat corridors on the Project site.

The Project also contravenes the General Plan's Guiding Principle 3.1 Efficient Growth and Development, which states that the County will "Maintain clear boundaries (e.g., agricultural and open space separators and wildlife corridors) among cities and unincorporated communities."[166] With this Project, the County will allow for utility to be immediately adjacent to residential, and agricultural land uses. This Project directly contravenes the Guiding Principles laid out in the General Plan.

The Environmental Setting and Land Use sections of a CEQA document are required to "discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans."[167] The MND's failure to detail the inconsistency with the General Plan is an additional CEQA violation. An EIR must be prepared to adequately analyze and mitigate the potentially significant impacts from Project's inconsistency with the General Plan.

X. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES

The San Joaquin General Plan provides that "[t]he ability of natural resources to sustain and regenerate themselves in the face of commercial agriculture or urbanization is extremely limited. The encroachment of development into sensitive habitat areas for plants and wildlife can eliminate these species or create stresses on the species that make it difficult to survive."[168] The Project will adversely impact the already threatened and endangered species that inhabit the Project site and utilize the site as a habitat corridor.

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[165] *Id.* at 3.1-1.
[166] General Plan at 3.1-2.
[167] CEQA Guidelines § 15125(d); CEQA Guidelines, Appendix G, Section XI.
[168] San Joaquin County General Plan, p. 2-6 ("General Plan").

A. Substantial Evidence Supports a Fair Argument that the Project Will Have Potentially Significant, Unmitigated Impacts on Special Status Species

i. California Tiger Salamander

The MND concludes, absent substantial evidence, that California Tiger Salamanders have only a moderately potential to occur at the Project site. The MND states that "[t]he Project site provides only marginal aestivation habitat due to a scarcity of small mammal burrows, confined to the northwestern portion of the Project site."[169] Dr. Smallwood concludes, based on his own site observations, that this statement is not correct.

Dr. Smallwood observed small gopher burrows across most of the project site such that "California tiger salamanders could find ample opportunities for subterranean aestivation."[170] Further, the County's argument that the "closest CNDDB occurrences recorded this species approximately 1.4 miles northwest of the Project Site in a large vernal pool complex within grazed grassland. The area between that CNDDB occurrence and the Project Site is largely occupied by orchards and row crops, which may limit movement of California tiger salamanders."[171] This statement is not supported by substantial evidence. Dr. Smallwood cites in his letter to substantial evidence that California tiger salamanders are known to travel as far as 2.2 km between aestivation sites and breeding ponds.[172]

The Project proposes destruction of the California tiger salamander habitat on the Project site. Dr. Smallwood concludes that the planned construction would destroy the fossorial mammal burrows and other subterranean cavities that occur within the construction footprint.[173] In fact, most of the ground squirrel burrow complexes he saw at the site are located within the planned construction footprint.[174] Construction for the Project would destroy these burrows along with the pocket gopher burrows and any soil cracks within the construction footprint

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[169] Biological Resources Assessment, p. 24.
[170] Smallwood Comments, p. 20.
[171] Biological Resources Assessment, p. 24.
[172] Smallwood Comments, p. 20.
[173] *Id.*
[174] *Id.*

that could also be used by California tiger salamanders for aestivation.[175] Dr. Smallwood explains that construction would destroy many, if not most, of the California tiger salamanders that normally would breed in the vernal pools and other wetland pools on the site.[176]

The MND provides that "the Project would avoid wetlands on-site and no direct or indirect effects to breeding habitat would occur."[177] This statement is not supported by substantial evidence. Project construction would result in disturbance and direct removal of habitat for California tiger salamander.[178] The MND acknowledges that Project construction could also potentially cause injury or mortality of individual California tiger salamanders that could occupy upland refugia onsite.[179] The MND does not adequately analyze or mitigate the impacts to California tiger salamander. Substantial evidence supports a fair argument that the Project will have a potentially significant and unmitigated impact on California tiger salamanders. An EIR must be prepared which adequately analyzes and mitigates the impacts to California tiger salamanders.

ii. Northern Harrier

Dr. Smallwood concludes that the site of the expansion of PG&E's substation is perfectly suitable for nesting substrate for Northern Harrier. Project construction will destroy Northern Harrier nesting and foraging habitat. This constitutes a significant and unmitigated environmental impact. As such, substantial evidence supports a fair argument that the Project may have a potentially significant impact on Northern Harrier such that an EIR must be prepared.

The MND is silent as to the required mitigation to prevent take of Northern Harrier. The San Joaquin County Multi-Species Habitat Conservation and Open Space Plan ("SJMSCP") requires that:

A setback of 500 feet from nesting areas shall be established and maintained during the nesting season for the period encompassing nest building and continuing until fledglings leave nests. This setback applies whenever construction or other ground-disturbing activities must begin during the nesting season in the presence of

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[175] *Id.*
[176] *Id.*
[177] Biological Resources Assessment, p. 37.
[178] *Id.*
[179] *Id.*

nests which are known to be occupied. Setbacks shall be marked by brightly colored temporary fencing.

Dr. Smallwood explains that the County must conduct additional site surveys to determine whether Northern Harrier nests on the Project site are occupied before construction or ground-disturbing activities may begin. Absent such mitigation, Dr. Smallwood concludes that impacts to Northern Harrier populations on the Project site may be significant and unmitigated. Given that the MND does not require such mitigation, there is substantial evidence to support a fair argument that the Project may have significant adverse impacts on Northern Harrier.

iii. Habitat Loss

The Project would result in habitat loss to Killdeer, Horned Larks, Mourning Doves, Bats, and numerous other special status species on the Project site. Dr. Smallwood calculates that the loss of the habitat on the Project site would cause California to have 95,020 fewer birds over the next century due solely to loss of terrestrial habitat, resulting in a potentially significant impact.[180] The Project site's destruction of habitat would cause a loss of 950 birds per year.[181] This constitutes a significant impact that was not adequately analyzed nor mitigated in the MND.

The Project would also encompass on-site structures and trees, which likely provide bats with roosting opportunities. Dr. Smallwood explains that the bats in these roosts, and those coming from offsite, likely forage over the Project site. He concludes that the Project would destroy their foraging opportunities at the site, and would therefore reduce the numerical capacities of bats in the region.[182] This constitutes a potentially significant impact that was not analyzed or mitigated in the MND

Substantial evidence supports a fair argument that the Project will result in significant and unmitigated impacts. An EIR must be prepared which adequately analyzes and mitigates the Project's impacts on loss of habitat on birds and bats.

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[180] Smallwood Comments, p. 23.
[181] *Id.*
[182] Smallwood Comments, p. 23.

iv. Wildlife Movement

The MND states, without reference to substantial evidence, that "it is likely that site-specific conditions such as adjacent land uses, fencing, and the existing PG&E Bellota substation limit the value of the Project Site as a habitat linkage. Therefore, mitigation for impacts to wildlife movement corridors and habitat linkages is not warranted."[183]

Dr. Smallwood concludes that the Project's impacts to wildlife movement corridors and habitat linkages are significant and require mitigation.[184] Dr. Smallwood explains that the Project will "[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors…"[185] Dr. Smallwood asserts that wildlife movement must include stopover opportunities for birds and bats, and staging habitat during dispersal, migration or home range patrol.[186] Many species of wildlife likely use the site of the proposed project for movement across the region. The project would cut wildlife off from stopover and staging opportunities, and would lengthen the distances that wildlife must travel before finding alternate stopover habitat.[187] He therefore concludes that the Project would interfere with wildlife movement in the region.

Further, Dr. Smallwood finds that many animals moving through the region perceive the grassland/wetland complex of the Project site as an island of opportunity for stopover during migration, dispersal and home range patrol. In fact, this is what he observed of the site during his surveys (e.g., see Photo 1). Thousands of birds landed on the site while he watched, and raptors perched on the transmission towers and transmission lines next to and over the site.[188] Dr. Smallwood concludes, based on these direct observations, that the site remains of high value to wildlife movement in the region, and its neighboring land uses likely enhance the importance of the site to wildlife movement.[189]

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[183] Biological Resources Assessment, p. 40.
[184] Smallwood Comments, p. 24.
[185] *Id.*
[186] *Id.*
[187] *Id.*
[188] Smallwood Comments, p. 24.
[189] *Id.*

There is substantial evidence supporting a fair argument that impacts to wildlife movement are significant and unmitigated. An EIR must be prepared which adequately analyzes and mitigates these potentially significant impacts.

Photo 6. *Thousands of European starlings use the project site, including this flock with the PG&E substation in the background, 1 December 2021.*

v. Collision Mortality

In his comments on the MND, Dr. Smallwood concludes that the Project is likely to have a significant impact on avian species due to collisions with the Projects power lines and fencing that the MND failed to adequately disclose and mitigate. The Project's gen-tie line connecting the battery energy storage facility to the Bellota Substation are especially hazardous to birds. Dr. Smallwood calculates that the Project's gen-tie line, as proposed, would kill 3,450 birds.[190] This constitutes a significant and unmitigated impact.[191]

The MND does not disclose or analyze the avian collision and electrocution hazard associated with the Project's gen-tie line, nor does it require implementation of the bird-friendly design strategies recommended by Avian Power Line Interaction Committee ("APLIC").[192] As a result, installation of the new gen-tie line represents

[190] Smallwood Comments, p. 25.
[191] *Id.*
[192] Avian Power Line Interaction Committee (APLIC). 2006. Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006. Edison Electric Institute and APLIC. Washington, D.C.

an unexamined, potentially significant impact to birds (especially raptors and waterfowl).

Dr. Smallwood calculates that if the Project's proposed fencing were in place for 100 years, the Project's fencing would kill 7,600 birds. Dr. Smallwood's predictions regarding the level of avian mortality is based on substantial evidence, and demonstrates a significant unmitigated impact that the MND failed to consider. An EIR must be prepared which adequately analyzes and mitigates bird mortality from collision with Project elements.

vi. Cumulative Biological Impacts

Substantial evidence supports a fair argument that the Project would have significant, unmitigated cumulative impacts to biological resources. As Dr. Smallwood explains, "[g]iven that North America has lost nearly a third of its birds over the past half century, an appropriate cumulative effects analysis is warranted. An EIR should be prepared, and it should include an appropriate, serious analysis of cumulative impacts. It needs to address cumulative impacts from habitat loss and habitat fragmentation, and from collision mortality."[193]

B. The Mitigation Measures Proposed in the MND Do Not Adequately Mitigate Impacts to Biological Resources

Dr. Smallwood concludes that, due to the MND's failure to analyze the presence of special status species on the Project site, the mitigation proposed is inadequate to reduce impacts to less than significant levels.

Dr. Smallwood explains that "planting vegetation to discourage ground squirrels, or plowing the ground or dispensing anti-coagulant poisons, fumigants or traps would qualify as actions likely to take any or all of the aforementioned special-status species. Uninformed by protocol-level detection surveys for these and

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Available at: <https://www.aplic.org/uploads/files/2613/SuggestedPractices2006(LR-2watermark).pdf>. *See also* Avian Power Line Interaction Committee (APLIC). 2012. Reducing Avian Collisions with Power Lines: The State of the Art in 2012. Edison Electric Institute and APLIC. Washington, D.C. Available at: <https://www.aplic.org/uploads/files/15518/Reducing_Avian_Collisions_2012watermarkLR.pdf>.

[193] Smallwood Comments, p. 26.

other special-status species, implementation of the proposed Incidental Take Minimization Measures would be reckless."[194]

Further, Dr. Smallwood concludes that the SJMSCP fails to mitigate the Project's impacts to multiple special-status species.[195] The Preserves acquired by mitigation fees in the SJMSCP are not supportive of most of the covered species, and for those species occurring in these Preserves, they are numbering many fewer than had the Preserves provided suitable habitat. In exchange for destruction of occupied habitat at project sites, the SJMSCP is generally conserving unoccupied lands as mostly vacant Preserves. Furthermore, the SJMSCP appears to be falling far short of its detection survey and monitoring requirements per the implementation agreement. Dr. Smallwood concludes that the SJMSCP measures (shown in the figure below) provide inadequate mitigation for projects such as the proposed Project.[196]

The landowner/developer for this site has requested coverage pursuant to the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). In accordance with that agreement, the Applicant has agreed to:

i) SJMSCP Incidental Take Minimization Measures and mitigation requirement:

1. Incidental Take Minimization Measures (ITMMs) will be issued to the project and must be signed by the project applicant prior to any ground disturbance but no later than six (6) months from receipt of the ITMMs. If ITMMs are not signed within six months, the applicant must reapply for SJMSCP Coverage. Upon receipt of signed ITMMs from project applicant, SJCOG, Inc. staff will sign the ITMMs. This is the effective date of the ITMMs.
2. Under no circumstance shall ground disturbance occur without compliance and satisfaction of the ITMMs.
3. Upon issuance of fully executed ITMMs and prior to any ground disturbance, the project applicant must:
   a. Post a bond for payment of the applicable SJMSCP fee covering the entirety of the project acreage being covered (the bond should be valid for no longer than a 6 month period); or
   b. Pay the appropriate SJMSCP fee for the entirety of the project acreage being covered; or
   c. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
   d. Purchase approved mitigation bank credits.
4. Within 6 months from the effective date of the ITMMs or issuance of a building permit, whichever occurs first, the project applicant must:
   a. Pay the appropriate SJMSCP for the entirety of the project acreage being covered; or
   b. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
   c. Purchase approved mitigation bank credits.

Failure to satisfy the obligations of the mitigation fee shall subject the bond to be called.

[194] Smallwood Comments, p. 35.
[195] *Id.* at 36.
[196] *Id.* at 35.

Further, the MND provides inadequate mitigation through MM-BIO-2 which provides:

> Rare Plant Salvage and Translocation Plan. If avoidance of special-status plant species is not feasible, a qualified botanist shall prepare a rare plant salvage and translocation plan prior to Project implementation. The rare plant salvage and translocation plan shall include the following, at a minimum: identification of occupied habitat to be preserved and occupied habitat to be removed; identification of on-site or off-site preservation, restoration, or enhancement locations; methods for preservation, restoration, enhancement, and/or translocation; goals and objectives for preservation, restoration, enhancement, and/or translocation; replacement ratio; a monitoring program to ensure mitigation success; adaptive management and remedial measures in the event that the performance standards are not achieved; and financial assurances for conservation of mitigation lands; and a mechanism for conservation of any mitigation lands required in perpetuity.

MM-BIO-2 impermissibly defers mitigation until after Project approval. Deferring formulation of mitigation measures to post-approval studies is generally impermissible.[197] Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.[198] If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.[199] Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation.[200]

The MND states that "North Central Valley Energy Storage, LLC intends to avoid impacts to nesting raptors and migratory birds to the maximum extent feasible through careful project design."[201] This is an aspirational statement, which does not bind the Applicant to actually mitigate project impacts to nesting raptors

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[197] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.
[198] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical, supra,* 29 Cal.App.4th at p. 1604, fn. 5.
[199] *Ibid.*
[200] *Ibid.*
[201] Biological Resources Assessment, p. 38.

and migratory birds. CEQA requires mitigation measures be fully enforceable through permit conditions, agreements or other legally binding instruments.[202] Failure to include enforceable mitigation measures is considered a failure to proceed in the manner required by CEQA.[203] The MND is thus inadequate under CEQA.

Substantial evidence above and in Dr. Smallwood's Comments supports a fair argument that the Project's impacts to biological resources are significant and unmitigated. An EIR must be prepared which adequately analyzes and mitigates significant impacts to biological resources.

XI. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT IMPACTS TO HYDROLOGY AND WATER QUALITY

The MND fails to adequately analyze and mitigate impacts to wetlands. Under CEQA, a potentially significant impact occurs when a project removes, fills, or interrupts hydrology or, by other means, adversely affects waters of the State or jurisdictional waters of the U.S. (wetlands), as defined by section 404 of the Clean Water Act.[204]

The Project site contains Freshwater Emergent Wetlands and 1.31 acres of aquatic resources within the Project Site: three types of potential wetlands and three types of non-wetland waters. The setback requirement under San Joaquin County Code Development Title 9-1510.5, which requires a natural bank buffer (wetland setback) of any waterway to protect habitat and water quality is not sufficient to adequately mitigate impacts to wetlands.[205] The MND provides that "a buffer of a minimum width of open space of 100 feet, measured from mean high water level of natural bank or 50 feet back from existing riparian habitat (whichever is greater), will be included in the Project design."[206] Project design features are not mitigation measures. The MND's analysis essentially compresses the analysis of impacts and mitigation measures into a single issue, which

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[202] CEQA Guidelines at §15126.4(a)(2).
[203] *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672.
[204] CEQA Guidelines, Appendix G (IX)(c) (hydrology/ drainage), (IV)(c) (federally protected wetlands).
[205] San Joaquin County Code Development Title 9-1510.5; Smallwood Comments, p. 35.
[206] IS/MND, p. 24.

disregards the requirements of CEQA.[207] An EIR must be prepared which adequately analyzes and mitigates potentially significant impacts to wetlands.

Dr. Smallwood concludes that, although the project, as planned, would be constructed west of the ephemeral drainages, vernal pools and swales that have been mapped on the project site, the project nevertheless risks potentially significant impacts to these wetlands. Based on the schematics of the project provided in the IS/MND and in the Biological Resources Assessment, construction grading for the energy storage facilities would extend to within only 28 m of wetland features, and the expansion of the PG&E substation would destroy a reach of ephemeral drainage.[208] Project construction would alter hydrological flows into the wetlands would risk loading the wetlands with silt.[209] It is not uncommon for gully and rill erosion to initiate from the edge of construction grading, and for the eroded material to load downslope wetland features.[210] Pools loaded with silt become shallower and less suitable for breeding by California tiger salamanders (Smallwood and Morrison 2008). By altering hydrological flows into the wetlands and by loading wetlands with silt from nearby graded areas, Dr. Smallwood concludes that the Project would potentially cause significant impacts to the wetlands on site and to California tiger salamander.[211]

Additionally, Mr. House concluded that the Project may cause runoff of contamination into the neighboring site or wetlands.[212] There is a fair argument that the effects anticipated from the Project will inflict significant impacts on these fragile ecosystems from even the slightest alterations. A more detailed analysis of hydrological and biological impacts in a full EIR is necessary to identify the extent of wetlands and to develop specific criteria which may be used to measure the success of mitigation.

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[207] *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656.
[208] Smallwood Comments, p. 21.
[209] *Id.*
[210] *Id.*
[211] *Id.*
[212] House Comments, p. 1.

XII. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT NOISE IMPACTS

The MND concludes, without substantial evidence, that the Project's noise impacts are less than significant. But, the MND fails to adequately analyze the proximity of and impact to nearby sensitive receptors, living in the residences immediately adjacent to the Project site. The MND provides that "The Project Site surrounds two existing rural residences located in the western portion of the site"[213] But the impacts to these residences and the sensitive receptors residing in them are notably absent from the noise impact section of the MND.

An EIR must be prepared which adequately analyzes and mitigates potentially significant noise impacts to the residences encompassed within the Project site.

XIII. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT CUMULATIVE IMPACTS

A. The Project Will Have Potentially Significant Cumulative Impacts

i. Cumulative Biological Impacts

Dr. Smallwood concludes that an EIR should be prepared, and it should include an appropriate, serious analysis of cumulative impacts. It needs to address cumulative impacts from habitat loss and habitat fragmentation, and from collision mortality. The MND fails to adequately analyze the cumulative loss of habitat in San Joaquin County and the surrounding community, and fails to mitigate these potentially significant impacts.

ii. Cumulative Air Quality and GHG Emissions

The MND fails to analyze the potentially significant cumulative air quality and GHG impact of the Project in conjunction with other projects in the vicinity. CEQA requires the analysis of cumulatively considerable impacts of the Project.

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[213] IS/MND, p. 26.

"Cumulatively considerable" under CEQA means that "the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."[214] When the incremental effect of a project is cumulatively considerable, the lead agency must evaluate cumulative impacts in an EIR.[215] The MND fails as an informational documents under CEQA for failing to analyze the cumulative impacts of "probable future projects" combined with the Project's impacts.

The San Joaquin County website identifies 86 planned projects including two in Linden and 37 in nearby Stockton.[216] Dr. Fox concludes that all of these Projects would increase emissions of criteria pollutants and GHGs, further deteriorating ambient air quality in the San Joaquin Valley air basin where the Project is located. Thus, these projects combined with the proposed Project could result in cumulatively significant impacts that were not evaluated or mitigated in the MND.

XIV. THE COUNTY CANNOT MAKE THE FINDINGS TO APPROVE A SITE APPROVAL PERMIT FOR THE PROJECT

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy constitutes a significant land use impact and, in itself, indicates a potentially significant impact on the environment.[217] Any inconsistencies between a proposed project and applicable plans must be discussed in the Project's CEQA document.[218] A project's inconsistencies with local plans and policies also constitute significant impacts under CEQA.[219] Further, San Joaquin County Development Code Section 9-215 requires that the Director determined the Project's consistency with established policies, standards, and required findings before approval.[220] '

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[214] CEQA Guidelines §15064(h)(1).
[215] CEQA Guidelines §15064.
[216] San Joaquin County, List of Active Planning Applications; https://www.sjgov.org/commdev/cgi-bin/cdyn.exe?grp=planning&htm=actlist&typ=apd.
[217] *See Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.
[218] CEQA Guidelines § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).
[219] *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; *see also, County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376.
[220] San Joaquin County Development Title Chapter 9-215.
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San Joaquin County's local policy LU-7.2, Agricultural Support Uses states that new agricultural support development and non-farming activities shall be compatible with surrounding operations and shall not have a detrimental impact on the operation or use of surrounding agricultural properties.[221] There is substantial evidence supporting a fair argument that the Project may have detrimental impacts on the operation and use of surrounding agricultural properties, specifically the neighboring Linden Hills Vineyard which is Certified Sustainable, Certified Green. Mr. House concludes that the Project may cause runoff of contamination into the neighboring site.[222] The Project may also adversely impact the neighboring Linden Hills Vineyard through air pollutants from construction. Ozone has been found to be particularly damaging to grape leaves, grapevines, and yield and quality of the fruits.[223] The County must prepare an EIR to adequately analyze and mitigate agricultural resource impacts.

The MND fails to analyze the Project's inconsistency with general plan requirements that agricultural land remain in agricultural use, as discussed above. An EIR must be prepared to adequately disclose and mitigate the significant environmental impacts discussed above.

XV. CONCLUSION

For the reasons discussed above, the MND for the Project is wholly inadequate under CEQA. An EIR must be circulated to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. Until an EIR have been issued and recirculated, as described herein, the County may not lawfully approve the Project.

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[221] IS/MND p. 4.
[222] House Comments, p. 1.
[223] L.H. Weinstein, Effects of Air Pollution on Grapevines, Boyce Thompson Institute for Plant Research, Cornell University, Ithaca, N.Y., U.S.A. p. 276, https://ojs.openagrar.de/index.php/VITIS/article/view/6066/5745.

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

Sincerely,

Kelilah Federman

Kelilah D. Federman

Attachments

KDF:acp

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