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March 23, 2026

**VIA EMAIL &
ONLINE PUBLIC COMMENT PORTAL**

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Re: Appellant SAFER's Comment on the Recirculated Partial Final Supplemental Environmental Impact Report for the NorthLake Specific Plan Project, March 24, 2026 Board of Supervisors Meeting Agenda Item 8

Dear Chair Solis, Honorable Board of Supervisors, and Ms. Sackett:

This comment is submitted on behalf of Appellant **Supporters Alliance for Environmental Responsibility ("SAFER")** regarding the Recirculated Partial Final Supplemental Environmental Impact Report ("RPFSEIR") for the NorthLake Specific Plan Project (SCH No. 2015031080, Project No. R2015-00408-(5), Vesting Tentative Tract Map No. 07336, Tentative Parcel Map No. 07335, Conditional Use Permit No. RPPL2023004316, Environmental Assessment No. RPPL2023004887), including all actions related or referring to the proposed development of 2,295 dwelling units, located east of Interstate (I) 5, west of Castaic Lake, and north of the community of Castaic, California in unincorporated Los Angeles County ("**Project**"). The Project is scheduled to be heard on appeal as Agenda Item 8 at the Los Angeles County Board of Supervisor's March 24, 2026 meeting.

On January 11, 2021, in the case of *Center for Biological Diversity et al. v. County of Los Angeles et al.*, Case No. 19STCP01610, the Los Angeles County Superior Court ordered Los Angeles County ("**County**") to set aside its approval of the Project and decertify the 2018 Supplemental EIR ("**2018 SEIR**" or "**SEIR**") (hereinafter, "**Court Ruling**"). The County is

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attempting to recirculate the EIR by revising the **vehicle miles traveled (“VMT”)** and biological resources analyses, among other sections in the 2018 SEIR. However, the VMT and biological resources analyses are patently inadequate, and must be updated to account for significant new information since the certification of the 2018 SEIR.

SAFER’s review of the RPFSEIR and Recirculated Partial Draft Supplemental Environmental Impact Report (“RPDSEIR”) was assisted by transportation expert Norman Marshall of Smart Mobility and expert wildlife biologist Scott Cashen, M.S., whose written comments and CVs are attached as Exhibit A and B, respectively. Mr. Cashen cites several key biological resources studies in his comment letter, which are also included and attached as Exhibit C.

Substantial expert evidence demonstrates that the Project will result in significant VMT and biological resources impacts; the RPFSEIR lacks substantial evidence that the Project will not result in significant VMT and biological resources impacts; and the RPFSEIR fails to adequately mitigate the Project’s significant VMT and biological resources impacts. The County must correct the errors in the RPFSEIR and recirculate a subsequent draft EIR that fully analyzes **and mitigates the Project’s significant VMT and biological resources impacts.**

LEGAL STANDARD

I. CEQA AND ENVIRONMENTAL IMPACT REPORT

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 CCR § 15002(a)(1).) **“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.’”** (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) Second, CEQA requires public agencies to avoid or **reduce environmental damage when “feasible” by requiring “environmentally superior”** alternatives and all feasible mitigation measures. (14 CCR § 15002(a)(2) and (3); *see also Berkeley Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1349,1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an Environmental Impact Report (EIR) except in certain limited circumstances. (*See, e.g., Pub. Resources Code, § 21100.*) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. **The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.”** (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004), 124 Cal.App.4th 1184, 1220.) The EIR also functions as a **“document of accountability,”** intended to **“demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.”** (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.)

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Jets*, 91 Cal.App.4th at 1355 (quoting, *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 391 409, fn. 12).) A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.) As discussed below and in Mr. Marshall and Mr. Cashen’s attached expert comment letters, the RPFSEIR for this Project fails to adequately analyze and mitigate the Project’s significant VMT and biological resources impacts. Here, the RPFSEIR evaluates the NorthLake Specific Plan and revises and tiers from the 2018 SEIR, which tiers from the 1992 NorthLake Specific Plan EIR. (RPDSEIR, p. 1-3.) However, we found that the RPFSEIR prepared by the County here is inadequate for several reasons set forth below.

II. RECIRCULATION OF AN ENVIRONMENTAL IMPACT REPORT UNDER CEQA

CEQA Guidelines Section 15088.5 sets forth the standard requiring recirculation prior to final project approval. Recirculation of an EIR is required when “significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification [of the Final EIR].” (14 CCR § 15088.5(a).) New information added to an EIR is significant when “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement.” (*Id.*) The Guidelines require recirculation when:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (14 CCR § 15088.5(a); *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043)

Based on the expert review of traffic engineer Mr. Marshall and wildlife biologist Mr. Cashen, the Project would result in a substantial increase in the severity of VMT and biological resources impacts than previously analyzed under the 2018 SEIR; and feasible mitigation

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measures to reduce the severity of VMT and biological resources impacts have not been properly evaluated and disclosed to the public. Therefore, in accordance with Section 15088.5 of the CEQA Guidelines, the County must revise and recirculate the EIR to fully analyze and mitigate **the Project's significant VMT and biological resources impacts** and provide the public with a meaningful opportunity to comment upon the significant adverse VMT and biological resources impacts of the Project.

DISCUSSION

I. THE RPFSEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S SIGNIFICANT VMT IMPACTS.

Transportation expert Norm Marshall reviewed the County's analysis of the Project's VMT impacts. Mr. Marshall's comment letter and CV are attached as Exhibit A and his comments are briefly summarized here. As discussed below, based on Mr. Marshall's review of the RPFSEIR and RPDSEIR, he concluded that:

1. The residential component would result in a highly significant VMT impact.
2. The NorthLake Specific Plan VMT is almost entirely residential.
3. The residential component should be analyzed using home-based VMT per capita.
4. VMT per service population is an invalid metric.
5. Maximum possible VMT mitigation is required. (*See* Ex. A, pp. 1-10.)

A. The Project Would Result In a Substantial Increase in the Severity of VMT Impacts Above Levels Previously Analyzed Under the 2018 SEIR.

Mr. Marshall found that the RPFSEIR fails to disclose a very significant impact from the Project's **residential component**, requiring the County to revise its VMT analysis and recirculate a draft EIR. (*See* Ex. A, pp. 2-5.)

According to Mr. Marshall, the Transportation Analysis included in Appendix C-1 of the RPDSEIR includes outputs from the Los Angeles County VMT Tool demonstrating that the **Project's residential component would result in a highly significant VMT impact.** (Ex. A, p. 2.) Mr. Marshall's comment letter reproduces **the VMT Tool outputs for the Project's Single-Family Housing, Multifamily Housing, and the entire Project** at Figures 1, 2 and 3. (*Id.*, pp. 3-5.)

Mr. Marshall explains that **"Los Angeles County has a higher VMT threshold for the northern portion of the county than for the more densely populated southern portion of the county."** (Ex. A, p. 2.) The North County Residential VMT per capita Baseline is 20.7, with a significance threshold of 17.2 (16.8 percent below the baseline). (*Id.*) Based on the VMT Tool outputs, **Mr. Marshall concluded that the Project's residential uses substantially exceed this threshold:**

- Single-family 28.9 exceeds the threshold of 17.2 by 68%

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- Multi-family 21.7 exceeds the threshold of 17.2 by 26%
- Combined uses 25.9 exceeds the threshold of 17.2 by 51%

(Ex. A, p. 2.) In addition, the VMT Tool relied upon in the RPDSEIR's Transportation Analysis also concludes that "project is not presumed to have a less than significant impact on VMT." (pp. 10-11, 13-15; Ex. A, pp. 3-5.) As such, Mr. Marshall concluded that the Project's residential component will result in substantially more severe VMT impacts than previously analyzed in the 2018 SEIR. (Ex. A, p. 2.) Because the RPDSEIR's Transportation Analysis and Mr. Marshall's expert comments are substantial evidence of a significant VMT impact, the County must revise and recirculate a draft EIR that fully analyzes and mitigates the Project's significant VMT impacts.

B. The RPFSEIR's Conclusion that the Project Will Not Have a Significant VMT Impact Is Not Supported by Substantial Evidence Because It Erroneously Relies on an Outdated VMT Per Service Population Metric.

Mr. Marshall explains that Los Angeles County requires VMT to be analyzed as follows:

Residential projects are to be analyzed using the residential threshold. In mixed-use projects, each component is to be analyzed separately, i.e., the residential components are to be analyzed using the residential threshold. The residential component should be analyzed using home-based VMT per capita. (Ex. A, pp. 7-8.)

As discussed below, the RPFSEIR improperly relies on the invalid "VMT per service population" metric to evaluate VMT impacts under CEQA. (Ex. A, pp. 8-9.)

Mr. Marshall notes that the RPFSEIR's analysis of the Project's VMT impacts relies on a "VMT per service population" metric, which is defined as "[t]he total service population is the sum of the number residents and the number of employees." (Ex. A, p. 8.) However, Mr. Marshall explains that this approach is flawed because it obscures the Project's actual VMT impacts. (*id.*, pp. 8-9.) According to Mr. Marshall, combining the Project's residential and commercial employee VMT into a single service population, "is a misguided attempt to reduce complex VMT issues to a single metric," especially given that the Project is "is more a residential project than a mixed use project." (*Id.*, p. 8.) He further explains that:

Adding residents and employees together makes no sense because the VMT generated by an average employee is significantly larger than the VMT generated by an average resident. "Residents" include many nondrivers including children. Therefore, if there is a higher proportion of employees relative to the residents, calculated VMT per service population will be higher, and if there is a lower proportion of employees relative to residents, a lower VMT per service population will result. These differences do not represent real information about the VMT impacts of either the residential or employment components. (*Id.*)

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Additionally, the VMT per service population metric is meaningless without knowing the percentages of residents and employees. (Ex. A, p. 8.) Here, 97 percent of the Project is residential. (*See id.*, p. 6 [Figure 4].) Nevertheless, the RPFSEIR relies on the combined VMT service population metric to assert that removing employment uses including over 545,000 square feet of industrial uses and 99,000 square feet of commercial uses VMT impacts. (*Id.*, p. 9.) As Mr. Marshall explains:

[T]his result is just a computational quirk that results from removing employees with higher VMT per employment and leaving mostly residents with lower VMT per resident. As documented above, the predominant residential VMT component in the NorthLake project is highly significant, and this VMT per service population calculation does not address this issue.

In fact, the RPDSEIR uses the VMT per service population metric to support the opposite conclusion than what should be drawn. The reason for the highly-significant residential VMT is that the planned housing is far from job centers, and this necessitates long commutes and trips to services. Removing most of the jobs will not improve this situation and would likely aggravate it. (*Id.*)

It is invalid to apply a VMT per service population rate that is inflated by the higher VMT per employee component embodied in the combined rate. (*Id.*, p. 8.) Instead, these Project components must be analyzed separately, with the residential component analyzed using home-based VMT per capita. (*Id.*, pp. 7-8.)

Moreover, even if the VMT per service population metric could be applied, the RPFSEIR still failed to adequately analyze VMT impacts because it applied an incorrect and outdated threshold of significance to measure impacts. The Department 29, 2025 comment on the Draft SEIR states that the County applied an outdated threshold to measure VMT impacts. (RPFSEIR, p. A.2-3.) Specifically, the DOT explains that the County incorrectly applied the prior Northlake Specific Plan VMT per service population (27.03) as the significance threshold for determining an impact. However, the VMT per Service Population (27.03) is the baseline for comparison to the previously approved Project. The County was required to apply the VMT per Service Population (25.70) per the methodology required by the County Department of Public Works. As such, even if the incorrect VMT per service population of 27.0

service population threshold would still exceed the significance threshold of 25.70. Also, the Revised Project's VMT per service population of 27.0 exceeds the VMT per service population of the Previously Approved Project of 25.7. (Ex. A, p. 6). Therefore, even using this flawed metric, it is clear that the Revised Project has more significant traffic impacts than the Previously Approved Project, requiring a recirculated Draft EIR. (14 CCR §15088.5(a)(2) (A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.)

Thus, -than-significant conclusion for VMT impacts is legally untenable. A recirculated draft EIR should be prepared that includes an adequate analysis of the

C. The RPFSEIR Fails to Include Feasible Mitigation Measures to Reduce the Project's Significant VMT Impacts.

As discussed above, the Project's residential component will result in significant VMT impacts. (*See* Ex. A, p. 2.) However, the RPFSEIR requires no mitigation to reduce VMT impacts, even though the RPFSEIR includes a Caltrans comment letter dated May 29, 2025, stating:

To further support VMT reduction and for the County's consideration, we recommend that the project incorporate a Transportation Demand Management (TDM) program. TDM strategies such as enhanced transit connectivity, subsidized transit passes, carpool/vanpool programs, employer-based trip reduction incentives, bicycle and pedestrian infrastructure, and telecommuting support can materially reduce project-level VMT. These measures should be quantified, monitored, and integrated into project conditions or mitigation measures to ensure accountability and effectiveness. (RPFSEIR, p. A.2-4.)

Rather than including mitigation measures to reduce VMT impacts as recommended by Caltrans, the RPFSEIR provided the following **inadequate response to Caltrans' comment**:

While TDM programs are effective in reducing VMT, here, VMT impacts were determined to be less than significant, and therefore no mitigation is necessary or required. (RPFSEIR, p. 2-11.)

As Mr. Marshall concludes, "[t]his response is woefully inadequate." (Ex. A, p. 10.) Moreover, Caltrans recommended a **comprehensive TDM program should be developed and**: "These measures should be quantified, monitored, and integrated into project conditions or mitigation measures to ensure accountability and effectiveness." (RPFSEIR, p. A.2-4.) Therefore, the RPFSEIR fails to include feasible mitigation measures to reduce the severity of VMT impacts, which have not been properly evaluated and disclosed to the public. (14 CCR § 15088.5(a).) A revised draft EIR should be prepared and recirculated that includes adequate mitigation measures to reduce the Project's significant VMT impacts

II. THE RPFSEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S SIGNIFICANT BIOLOGICAL RESOURCES IMPACTS.

Wildlife biologist Scott Cashen, M.S. reviewed the County's analysis of the Project's impacts on biological resources, including its significant impacts to the special-status species known as the western spadefoot toad ("WST"). As discussed below, based on his review of the most recent RPFSEIR and RPDSEIR, the 2018 SEIR, and relevant biological studies, Mr. Cashen concludes that the County fails to adequately analyze and mitigate the Project's significant biological resources impacts, particularly its impacts to WST. Mr. Cashen's comment letter and CV are attached as Exhibit B and his comments are summarized here.

With regard to the Project's significant impacts to the WST—a special-status species listed as a California Species of Special Concern and proposed threatened species under the federal Endangered Species Act—the Court ruled in favor of the petitioners regarding two issues related to WST:

- (1) **The County's failure to establish the baseline for WST habitat** that must be re-created to preserve the WST population presently existing on the Project site; and
- (2) **The measures to mitigate the Project's significant impacts on the WST population** were improperly deferred and did not comply with CEQA requirements. (Ex. B, p. 2.)

In an attempt to rectify these violations of CEQA, the County prepared the **Western Spadefoot Toad Impact Assessment and Habitat Mitigation and Monitoring Plan** ("WST Plan") that is included in the RPFSEIR. However, as discussed below, Mr. Cashen reviewed the environmental documents prepared for the Project and the scientific literature pertaining to the WST and concluded that the WST Plan fails to satisfy either of the Court's requirements for several critical reasons, including:

- **The *WST Plan and EIR fail to demonstrate there was ever a dedicated effort to locate all potential WST breeding sites, some of which are very small and are only evident during wet years.*** The Applicant was unaware of 5 potential breeding pools until the pools were incidentally detected while conducting the 2004/2005 fairy shrimp surveys. Three additional pools were subsequently discovered sometime after 2005 (despite being located along a dirt road). This strongly suggests potential WST breeding pools were primarily identified through chance encounters rather than rigorous field investigations and mapping.
- The Court ruled that the Applicant cannot use data collected during a drought year to establish the baseline for WST habitat. However, the 3 potential breeding pools that were discovered sometime after 2005 were only surveyed during a drought year (2014). **The *WST Plan and RPFSEIR fail to disclose presence of [three breeding] pools, which were inappropriately omitted from analysis of pools that may require compensatory mitigation.***
- The DSEIR provides evidence that Grasshopper Creek contains potential breeding habitat for WST. However, focused surveys for WST were not conducted in Grasshopper Creek. **The *WST Plan and RPFSEIR provide no analysis of Project impacts to potential WST breeding habitat in Grasshopper Creek.***

- Under CEQA, the environmental baseline corresponds with environmental conditions at the Project site when the Notice of Preparation (“NOP”) for the Environmental Impact Report was published (i.e., March 2015). The *WST Plan and RPFSEIR inappropriately assume that data from the 2004/2005 fairy shrimp surveys represent the environmental baseline with respect to WST habitat that must be re-created to preserve the WST population presently existing on the Project site.* The 2004/2005 fairy shrimp surveys were not designed to document the WST baseline. Even if one assumes the 2004/2005 fairy shrimp surveys provided an accurate index of WST habitat in 2004/2005, habitat conditions could have changed by 2015 (e.g., pools that were unsuitable for WST in 2005 developed suitable habitat conditions by 2015).
- The WST Plan and RPFSEIR cite the 2006 Fairy Shrimp Report as evidence that pools VP3 through VP7 do not contain a sufficient hydroperiod to support breeding WST. However, the *2006 Fairy Shrimp Report states pools VP3 through VP7 “were inundated for one to three months,” which is long enough to support breeding WST.*
- The *WST Plan fails to provide reliable evidence that GLA calculated the maximum size of breeding ponds that would be impacted by the Project.* Among other reasons, GLA’s measurements were based on imagery of ponding conditions during a year with below-average rainfall. BonTerra measured the ponds during a year with well above-average rainfall. If BonTerra’s measurements are used, *the Applicant must provide 1.7 acres of compensatory mitigation (aquatic breeding habitat) to satisfy the Court Ruling.*
- The *proposed mitigation ponds would not reduce impacts on the WST to less-than-significant levels because the metapopulation dynamics necessary for WST persistence would be eliminated.* The three ponds proposed by the Applicant would be located immediately next to each other and would provide no habitat diversity. This would make the WST population (if successfully translocated) highly susceptible to extirpation due to a stochastic event (e.g., disease, extreme drought, landslide).
- The *WST Plan fails to provide hydrologic analysis to support the assertion that the created ponds would provide 1.07 acres of WST breeding habitat.* The proposed ponds would have substantially different geometry than the ponds impacted by the Project. Because the proposed ponds would be deeper and have steeper slope ratios, and because the proposed ponds would be surrounded by 3-foot berms, they would not provide the requisite 0.95 acres of WST breeding habitat needed to offset impacts to WST breeding habitat at the

Project site (except perhaps during years with exceptionally high levels of precipitation).

- ***Most of the proposed “WST Conservation Area” would not provide terrestrial habitat for WST due to relatively steep slopes and distance from the proposed ponds.*** Terrestrial habitat surrounding the ponds would be subject to various types of anthropogenic disturbance that are not compatible with WST conservation. At a minimum, because the habitat immediately adjacent to the ponds is proposed for rare plant mitigation, it would be subject to repeatedly trampling during the 15 to 20 years of rare plant monitoring and maintenance activities.
- The ***proposed performance standard for hydrology*** is a minimum of 60 consecutive days of inundation (“ponding”) during average or above-average rainfall years. The performance standard ***is inappropriate because it does not reflect hydrologic conditions at the breeding ponds that would be impacted by the Project.*** At least 2 of the existing breeding ponds are capable of supporting WST reproduction during years with significantly below-average rainfall. Thus, created ponds that only provide breeding habitat during average or above-average rainfall years would provide less population resiliency. Moreover, the ***RPFSEIR allows the Project Biologist to circumvent the performance standard by adding supplemental water to the created ponds.***
- The proposed performance standards for WST breeding activities applies to 2 of the 3 created ponds. Therefore, the ***performance standards could be achieved even if one of the ponds is a complete failure, thereby resulting in a net loss of WST breeding habitat.***
- The ***proposed performance standards for WST breeding activities lack quantification components essential to demonstrating population viability.*** The performance standards could be achieved by a single tadpole in 2 of the 3 ponds, even if both tadpoles die.
- The ***proposed timeline (i.e., 1 or 2 years) for achieving the performance standards for WST breeding activities is not commensurate with the timeline needed to assume viability of the WST population at the mitigation site.*** Most amphibian translocation projects fail to establish a viable population at the receptor site. However, it often takes several years for the results to become evident. Consequently, success of the Applicant’s WST mitigation program can only be demonstrated after long-term monitoring.
- The ***“contingency mitigation” proposed in the WST Plan is deferred and was not incorporated as mandatory mitigation in the RPFSEIR.***

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(Ex. B, pp. 2-4 [emphases added].)

For these reasons, a recirculated draft EIR should be prepared that adequately analyzes and mitigates the Project's significant impacts to WST and WST habitat.

A. The RPFSEIR Fails to Establish an Accurate Baseline for Special-Status WST Supported by Substantial Evidence.

Before analyzing a project's impacts, an EIR must first identify and describe "the physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation is published." (14 CCR § 15125(a).) This information is critical to the EIR's impact analysis because it serves as the baseline against which a project's predicted effects can be described and quantified. (14 CCR § 15125(a); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447.) A description of important environmental resources that will be adversely affected by the project is critical to a legally adequate discussion of the environmental setting, and emphasis is to be placed on rare or unique environmental resources when describing the environmental setting. (14 CCR § 15125(c); *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722-30.) While an agency has discretion in deciding how to measure existing conditions, it must be supported by substantial evidence. (*Communities for a Better Env't. v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 328.) "CEQA analysis must employ realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project's likely impacts." (*Smart Rail*, 57 Cal.4th at 449.)

Here, and as further discussed below, Mr. Cashen found that the assessment of baseline conditions provided in the RPFSEIR and WST Plan is fatally flawed because:

- (a) the baseline with respect to potential WST breeding habitat was inappropriately narrowed down to the ponds where WST were incidentally detected during the 2004/2005 fairy shrimp surveys;
- (b) the 2014 surveys do not establish the baseline because the surveys were conducted during a prolonged drought;
- (c) no additional habitat assessments or surveys were conducted prior to publication of the [Notice of Preparation ("NOP") of the SEIR in March 2015]; and
- (d) the GLA surveys in 2023 and 2024 were not designed to provide updated information on the environmental baseline because the surveys were confined to the 3 ponds where WST had previously been detected. (Ex. B, pp. 9-10.)

As a result, Mr. Cashen concluded that "the RPFSEIR and WST Plan fail to establish the maximum amount of WST breeding habitat that could be impacted by the Project." (*Id.*, p. 10.) Therefore, the RPFSEIR—similar to the 2018 SEIR—fails to establish an accurate baseline for special-status WST supported by substantial evidence. A revised draft EIR should be prepared and recirculated to adequately address the issues with the baseline for WST.

1. The RPFSEIR relies on improperly narrow and incomplete baseline for WST breeding habitat.

Mr. Cashen found that the RPFSEIR and WST Plan improperly relied on baseline for potential WST breeding that was narrowed down to ponds where WST was incidentally detected during the 2004/2005 fairy shrimp surveys. (Ex. B, pp. 10-11.) In doing so, the WST adopts an unsupported assumption that ponds lacking sufficient hydroperiod during that survey period would continue to be unsuitable. (*Id.*, p. 10.) The WST Plan expressly states that ponds VP3, VP4, VP5, and VP7 were “too shallow” and dried out during the 2004/2005 surveys—an exceptionally wet year—and therefore their lack of suitability for WST is “unambiguously established.” (WST Plan, p. 8.) This conclusion, however, improperly treats a single season of observations that occurred over two decades ago as determinative of long-term conditions.

As Mr. Cashen explains, the WST Plan’s reasoning is also inconsistent with CEQA’s requirement that the environmental baseline reflect conditions at the time that the NOP for the SEIR prepared for the Project was published in March 2015. (Ex. B, p. 10.) According to Mr. Cashen, the hydroperiod of ephemeral ponds is highly variable and depends on dynamic factors such as vegetation, soil conditions, geomorphology, and the timing and intensity of rainfall. (*Id.*) He further explains that the conditions observed in 2004/2005 do not establish whether these ponds could have supported breeding by 2015, especially given the potential for changes in vegetation, soil compaction from cattle, or slope failures that may have altered pond depth and duration. (*Id.*) By failing to conduct additional WST habitat assessments or surveys prior to NOP publication in March 2015, the County fails to establish an accurate baseline for WST breeding habitat that could be impacted by the Project in the RPFSEIR and WST Plan.

Mr. Cashen further notes that the WST Plan mischaracterizes the underlying survey data it relied upon to determine the presence of WST breeding habitat on the Project site. (Ex. B, p. 11.) For example, the 2006 Fairy Shrimp Report documented that the ponds VP3 through VP7 were inundated for one to three months, which exceeds the 30-day hydroperiod identified in the WST Plan as sufficient to support larval development. (*Id.*) Thus, even the data relied upon by the WST Plan suggests that these ponds may provide suitable breeding habitat for WST. (*Id.*)

Additionally, Mr. Cashen found that the RPFSEIR and WST Plan failed to establish an accurate baseline for WST breeding habitat because they relied on 2014 surveys that were conducted during a prolonged drought. (Ex. B, p. 11.) The RPFSEIR and WST Plan rely on incomplete and skewed survey data by omitting or discounting ponds surveyed only during the 2014 drought year. Mr. Cashen explains that the WST Plan treats wet-year observations as **definitive evidence, but fails to acknowledge that “surveys conducted during an exceptionally dry year cannot be used as evidence that ponds are incapable of supporting WST.”** (*Id.*) Because several ponds were either not reexamined after 2004/2005 (i.e. VP3, VP4, and VP5) or were only surveyed during drought conditions (i.e. VP7), the RPFSEIR and WST Plan fail to identify the full extent of potential WST breeding habitat that may be impacted, resulting in an improperly narrow and incomplete baseline.

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2. The GLA 2023 and 2024 surveys that the RPFSEIR relies on were improperly limited to previously detected ponds and therefore fail to establish an accurate baseline for WST breeding habitat.

As discussed in the WST Plan, the January 11, 2021 Court Ruling concluded that:

The evidence indicates Grasshopper Canyon has the potential to increase its number of breeding pools in wet years and thus to support a larger WST population. This potential will be lost if the applicant mechanically duplicates the number of breeding pools that it finds from surveys taken before the grading of Grasshopper Canyon begins. (WST Plan pp. 4-5.)

The Court Ruling further stated:

The Relocation Plan as a mitigation measure is intended to reduce the impacts of the destruction of the WST habitat to less than significant. This requires that the habitat that is to be destroyed must be measured in a manner that obtains its maximum dimensions so that those potential dimensions may be realized in the new circumstances at the site where the WST is relocated. (WST Plan pp. 4.)

The RPFSEIR and WST Plan claim to address these issues through reliance on surveys conducted by GLA during the 2022/2023 and 2023/2024 rainfall seasons. However, as Mr. Cashen explains, these surveys—and the RPFSEIR and WST Plan’s conclusions derived from them—are fundamentally flawed and do not establish an accurate environmental baseline for WST breeding habitat. (Ex. B, pp. 2, 11-13.) **For example, Mr. Cashen’s comments note that:**

[T]he Project Applicant proposes to mechanically construct 3 ponds to replace 4 ponds that would be impacted by the Project (3 occupied and 1 potentially occupied by WST). Although additional surveys were conducted for WST during the 2022/2023 and 2023/2024 rainfall seasons, the surveys were confined to the 3 ponds where WST had previously been detected. The surveys merely confirmed that WST continued to occupy those ponds. Consequently, the WST Plan is based on the same (limited) survey data that were evaluated by the Court. (Ex. B, p. 2.)

As such, the GLA 2023 and 2024 surveys the RPFSEIR and WST Plan rely on were improperly limited to previously detected ponds and therefore fail to establish an accurate baseline for WST breeding habitat. Critically, the RPFSEIR and WST Plan rely on the same constrained survey **data to analyze impacts and design mitigation for the Project’s significant effects on WST and its habitat, thereby compounding the error identified by the Court.**

Mr. Cashen further explains that the WST Plan’s reliance on the GLA surveys extends to its quantification of impacts, which also fails to demonstrate that the County has accurately identified the maximum extent of WST breeding habitat that would be lost as a result of the Project. (See Ex. B, pp. 11-13.) Rather than conducting comprehensive, field-based measurements, Mr. Cashen found that the WST Plan relies on aerial imagery—particularly a

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single April 2011 photograph characterized as showing “near-maximum ponding”—to estimate pond size. (*Id.*, pp. 11-12.) However, as Mr. Cashen points out, aerial measurements are inherently imprecise due to image distortion and may not accurately reflect actual maximum ponding conditions for WST, particularly where higher rainfall years were not analyzed. (*Id.*, p. 12.) This is further underscored by the fact that substantially greater precipitation occurred in other years for which no imagery was used, undermining the assumption that 2011 reflects maximum ponding. (*Id.*)

Mr. Cashen also notes that the WST Plan fails to substantiate the size of all impacted ponds based on the data used to inform the GLA surveys. (Ex. B, p. 12.) Notably, he found that Pond 3 was not clearly delineated in the WST Plan and could not be independently verified using the imagery relied upon. (*Id.*) At the same time, Mr. Cashen explains that the WST Plan discounts the pond dimensions reported in the 2006 Fairy Shrimp Report without demonstrating that those measurements are inaccurate, even though they were collected during a wetter year that may better represent maximum pond size. (*Id.*, pp. 12-13.)

Because the WST Plan’s conclusions regarding baseline conditions and impact quantification are grounded in the limited and methodologically flawed 2023 and 2024 GLA surveys, the RPFSEIR fails to identify the full extent of potential WST breeding habitat that may be impacted by the development of the Project. As a result, the baseline is not properly established, and the proposed mitigation does not satisfy the Court’s requirement to measure habitat impacts at their maximum extent. Additionally, as further discussed below, when the dimensions reported in the 2006 Fairy Shrimp Report are applied, Mr. Cashen found that the Project would require approximately 1.7 acres of compensatory mitigation for aquatic breeding habitat, rather than the smaller acreage assumed in the WST Plan. (Ex. B, p. 13.)

In conclusion, similar to the 2018 SEIR, the RPFSEIR fails to establish an accurate baseline for special-status WST supported by substantial evidence. Accordingly, a revised draft EIR should be prepared and recirculated that includes an adequate baseline for WST breeding habitat.

B. The RPFSEIR Lacks Substantial Evidence to Determine that the Project Will Not Have Significant Impacts on WST and its Habitat.

1. The RPFSEIR and WST Plan’s impact analysis relies on an incomplete and unreliable identification of existing ponds.

The RPFSEIR and WST Plan assert that only eight ponds exist on the Project site and that WST occupy only three of them. (Ex. B, p. 5.) According to Mr. Cashen, this conclusion is based largely on survey efforts that were not designed to detect WST and therefore do not provide substantial evidence of the species’ actual occurrence and distribution. (Ex. B, pp. 5-6.) The 2004/2005 surveys focused on fairy shrimp, with WST detections occurring only incidentally, making it unclear whether adequate effort was devoted to identifying all occupied habitat. (*Id.*) As Mr. Cashen notes, these subsequent survey efforts do not remedy the deficiencies. (*Id.*) This is because the 2014 surveys were conducted during a drought year and

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included only a subset of ponds, while the 2023 and 2024 GLA surveys were limited to ponds where WST had already been detected. (*Id.*, p. 6.) According to Mr. Cashen, such a limited approach fails to evaluate the full range of potential breeding habitats and instead reinforces prior assumptions without comprehensive or methodologically sound survey data. (*Id.*)

As a result, the conclusion that WST are limited to three ponds is not supported by substantial evidence. The RPFSEIR and WST Plan’s failure to adequately assess all potential WST habitats undermines the accuracy of the baseline, and therefore, the RPFSEIR and WST Plan’s impact analysis and conclusions cannot be relied upon. (Ex. B, pp. 5-6.)

2. The RPFSEIR and WST Plan fail to adequately evaluate Pond 3 (VP6) and other potential WST breeding habitat.

The WST Plan acknowledges that Pond 3 (VP6) has a hydroperiod suitable for WST breeding, yet it was not surveyed during GLA’s most recent 2023 and 2024 site visits. (Ex. B, pp. 5-6.) As Mr. Cashen explains, the WST Plan nevertheless relies on the absence of detections to conclude that WST are not present, even though the pond has only been surveyed a limited number of times and has not been revisited since 2005. (*Id.*) Under these circumstances, Mr. Cashen explains that non-detection cannot reasonably be interpreted as the absence of occurrence. (*Id.*, p. 6.)

Moreover, there is substantial evidence—including evidence from the County Biologist—that Pond 3 may support WST breeding. (WST Plan, p. 10.) According to Mr. Cashen, amphibian tadpoles were observed at the Project site during earlier surveys, indicating that the pond provides conditions suitable for amphibian reproduction. (Ex. B, p. 6.) This further indicates that the WST Plan’s conclusion that the pond is unoccupied is unsupported by substantial evidence.

Mr. Cashen also points out that the WST Plan raises concerns regarding the accuracy of its own pond mapping and WST habitat analysis. (Ex. B, p. 6.) The location of Pond 3 is described only as “approximate,” suggesting that it may not have been accurately identified during surveys of the site. (*Id.*) As such, the WST Plan’s calculations of potential WST habitat area and the extent of impacts associated with this pond are not supported by substantial evidence. (*Id.*) Therefore, the RPFSEIR and WST Plan’s analysis and conclusions regarding the Project’s impacts to WST and its breeding habitat cannot be relied upon. (*Id.*)

3. The RPFSEIR and WST Plan improperly omit additional vernal pools and rely on drought-year survey data.

Mr. Cashen’s review found that the record demonstrates the surveys relied upon to analyze the Project’s impacts on WST did not include a comprehensive search of all potential WST breeding pools. (Ex. B, pp. 6-7.) According to Mr. Cashen, several small or ephemeral pools were discovered only incidentally during earlier 2004/2005 surveys, indicating that additional habitats may exist that were never comprehensively identified or evaluated. (*Id.*) This

lack of a complete inventory of potential WST breeding pools undermines the RPFSEIR and WST Plan's conclusions regarding the Project's impacts on WST and its habitat.

In 2014, three additional pools were identified and surveyed during drought conditions, but these surveys did not adequately represent the duration of ponding or the conditions present during wetter years. (Ex. B, p. 7.) Despite this limitation, the WST Plan improperly excludes these pools from its analysis, relying on drought-year data to conclude that they do not provide suitable habitat. (*Id.*) As such, the RPFSEIR and WST Plan's conclusions regarding the Project's impacts on WST and its habitat are not supported by substantial evidence.

This approach is inconsistent with the Court's ruling that drought-year data cannot be used to constrain the baseline for WST habitat. (Ex. B, p. 7.) As Mr. Cashen concludes, by omitting these pools from the analysis without conducting follow-up surveys under normal or wet conditions, the RPFSEIR and WST Plan fail to account for potential WST breeding habitat that may be significantly impacted by the Project. (*Id.*)

4. The RPFSEIR and WST Plan fail to evaluate Grasshopper Creek as WST breeding habitat.

Substantial evidence indicates that potential WST breeding habitat may exist within Grasshopper Creek and associated pools, yet these areas were not evaluated in the WST Plan. (*See* Ex. B, pp. 7-8.) As Mr. Cashen notes, the DSEIR documents the presence of amphibian tadpoles in pools along Grasshopper Canyon, demonstrating that these aquatic features are capable of supporting amphibian reproduction. (*Id.*, p. 7.) Mr. Cashen explains that unlike fairy shrimp, WST are not limited to vernal pools and are known to breed in a variety of aquatic environments, including intermittent streams and temporary pools. (*Id.*) According to Mr. Cashen, this ecological adaptability makes it especially important to survey creek-based habitats, which may provide suitable breeding conditions during and after rainfall events. (*Id.*)

Moreover, historical survey data and photographic evidence further support the potential suitability of Grasshopper Creek as WST breeding habitat. (Ex. B, pp. 7-8.) Mr. Cashen points out that survey observations indicate that portions of the creek retain water long enough to support amphibian development, even during relatively dry years. (*Id.*, p. 7.) The failure to assess these habitats represents a significant omission that further undermines the adequacy of the RPFSEIR and WST Plan's analysis of the Project's impacts on WST breeding habitat. (*Id.*, pp. 7-8.)

5. The RPFSEIR and WST Plan rely on an inadequate analysis of upland habitat for WST.

The RPFSEIR and WST Plan's analysis of upland habitat is also unsupported by substantial evidence. (Ex. B, pp. 13-14.) According to Mr. Cashen, the WST Plan improperly assumes a 1,000-foot buffer around WST breeding ponds as the extent of upland habitat use. (*Id.*, p. 13.) However, the plan provides no citation or other empirical evidence for this assumption.

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(*Id.*, p. 13.) **As a result, the RPFSEIR and WST Plan’s analyses likely underestimate the species’ actual range.**

As Mr. Cashen notes, available scientific studies and expert evidence indicate that WST routinely utilize upland habitat well beyond 1,000 feet from breeding pools. (*Id.*, pp. 13-14.) For example, CDFW’s 2017 comment letter to the County on the DSEIR and telemetry studies document average movement distances exceeding 1,300 feet, with some individual western spadefoots traveling significantly farther. (*Id.*) As such, the WST Plan’s buffer distance does not accurately describe the full extent of upland habitat necessary to support WST populations. (*Id.*) By relying on an unsupported and underestimated buffer around WST breeding ponds, the RPFSEIR fails to account for the full extent of upland habitat that may be adversely impacted by the Project. As a result, the RPFSEIR’s conclusions regarding the Project’s impacts on WST and its breeding habitat are not supported by substantial evidence.

In conclusion, these deficiencies in the identification of WST breeding ponds, evaluation of potential habitats, and analysis of upland areas demonstrate that the RPFSEIR and WST Plan’s findings and conclusions regarding the Project’s impacts on WST breeding habitat are not supported by substantial evidence. Instead, the analysis is based on incomplete surveys, omitted habitats, and unsupported assumptions that underestimate the extent of WST habitat. Because the environmental baseline is not accurately established and key habitat areas have not been evaluated, the RPFSEIR lacks substantial evidence to support its conclusion that impacts to WST breeding habitat will be less than significant. Accordingly, the impact analysis and proposed mitigation measures are inadequate under CEQA. A revised draft EIR should be prepared and recirculated that adequately analyzes the Project’s impacts on WST and its potential breeding habitat.

C. The RPFSEIR Fails to Adequately Respond to Comments Regarding the Project’s Impacts to WST Metapopulation Dynamics.

A lead agency must respond to comments received on a draft EIR. Responses to comments must be detailed and must provide a reasoned, good faith analysis. (14 CCR § 15088(c).) Responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. “Conclusory statements unsupported by factual information” are not an adequate response. (14 CCR § 15088(b), (c).)

“Where comments from responsible experts...disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. There must be good faith, reasoned analysis in response.” (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1367.) Evaluation and response to public comments is also essential. Failure to comply with the requirement can lead to disapproval of a project. (14 CCR § 15088.) An agency’s responses to comments must specifically explain the reasons for rejecting suggestions received in comments and for proceeding with a project despite its environmental impacts. Such explanations must be supported with specific references to empirical information, scientific authority, and/or explanatory information. (*Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.) Here,

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the RPFSEIR fails to respond to issues raised by experts in comments on the RPDSEIR concerning WST metapopulation dynamics. (*See* Ex. B, pp. 4-5.)

For example, Mr. Cashen explains that the RPFSEIR and WST Plan propose to replace four impacted WST breeding ponds with three newly constructed ponds located next to each other, as well as relocate WST into those ponds. (Ex. B, pp. 4-5.) However, as Mr. Cashen points out, because the ponds would be nearly identical in size and hydroperiod and clustered in one location, the WST Plan eliminates habitat diversity and concentrates the population into a single area. (*Id.*) Mr. Cashen further notes that this approach fails to account for how WST populations function in the wild. (*Id.*, p. 4.) Mr. Cashen explains that WST exist as a metapopulation consisting of multiple, separate breeding groups that are connected by occasional movement between ponds. (*Id.*, pp. 4-5.) He further notes that these dynamics are critical because populations naturally fluctuate with rainfall, and smaller groups may disappear during droughts but later recover through recolonization from other ponds. (*Id.*, p. 5.) By clustering all mitigation ponds together, Mr. Cashen explains that the Project eliminates this structure and makes the entire population vulnerable to a single event, such as flooding, fire, or disease. (*Id.*)

Even though CBD raised these concerns in comments on the RPDSEIR, the County failed to meaningfully respond. (Ex. B, p. 5.) Instead, it relied on the fact that CDFW approved the WST Plan, without addressing whether the plan maintains metapopulation dynamics. This response, however, does not provide a good-faith, reasoned analysis or evidence that the Project will avoid significant impacts to WST population viability. (Ex. B, pp. 4-5.) By ignoring these expert comments, the RPFSEIR violates CEQA. (*Berkeley Jets*, 91 Cal.App.4th at 1367.)

D. The RPFSEIR's Mitigation Measures to Reduce Impacts to Special-Status WST Violate CEQA.

A fundamental purpose of an EIR is to identify ways in which the significant environmental impacts of a proposed project can be mitigated or avoided. (PRC §§ 21002.1(a), 21081(a)(1).) “A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium.” (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.) Here, the County admits the Project will result in many serious impacts to biological resources, including the special-status WST, but fails to comply with CEQA's requirements to ensure that mitigation will reduce those impacts below significance.

A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727.) “Mitigating conditions are not mere expressions of hope.” (*Lincoln Place Tenants Ass'n v. City of L.A.* (2005) 130 Cal.App.4th 1491, 1508.) An EIR's mitigation measures must be fully enforceable and must actually rectify, reduce, or eliminate an impact on the environment. (14 CCR §§ 15370; 15126.4(a)(2).) The EIR must also provide substantial evidence that adopted mitigation measures will be effective at reducing the project's impacts. (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168-69.) Except in limited circumstances, CEQA does not allow the

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formulation of mitigation measures to be deferred to a later time after EIR certification. (14 CCR § 15126.4(a)(1)(B).)

As discussed below, the RPFSEIR includes inadequate mitigation measures to reduce impacts to special-status WST that are ineffective, vague, and deferred. It also fails to support its conclusions with substantial evidence that mitigation measures will reduce impacts to less-than-significant in violation of CEQA.

1. Mitigation Measure 5.2-9 is inadequate to reduce impacts to WST.

Mitigation Measure 5.2-9 in the RPFSEIR includes several measures intended to implement the WST mitigation program. The first measure states:

Prior to implementing the Spadefoot Relocation Plan, two focused surveys during average or above-average rainfall years will be conducted within the prior appropriate seasons. If any additional ephemeral ponds are determined to be occupied besides those identified in recent surveys (i.e., 2015), the Spadefoot Relocation Plan will be modified to include replacement of the additional occupied pond as well as those identified in recent surveys. (RPFSEIR, pp. 4-23–24.)

This requirement of Mitigation Measure 5.2-9 is inadequate because it consists of deferred, ineffective, and vague mitigation. “A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) “[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.)

Mr. Cashen notes, “[t]he reference to ‘recent surveys’ in 2015 is confusing because surveys were not conducted in 2015, nor would surveys in 2015 be considered ‘recent.’” (Ex. B, p. 23 [citing WST Plan, Table 1.].) He further notes:

[T]he survey requirements are vague and therefore result in mitigation with uncertain efficacy. Specifically, MM 5.2-9 does not identify: (a) the ponds that must be surveyed, and (b) what efforts shall be devoted to locating ponds that may have been missed during previous survey attempts. Eleven ponds were subject to fairy shrimp surveys in 2005/2005, 2014, or both years. MM 5.2-9 fails to identify which of these 11 ponds must be surveyed to determine occupation by WST. It is also somewhat unclear whether the “two focused surveys” refers to two visits to a pond, or multiple visits to a pond over a two-year period. (Ex. B, p. 23.)

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Because Mitigation Measure 5.2-9 does not clearly identify which ponds must be surveyed, what survey methods are required, or how additional occupied habitat would be mitigated if discovered, it constitutes ineffective, deferred, and vague mitigation in violation of CEQA.

In addition, Mr. Cashen found that MM-5.2-9 is fundamentally flawed **because it “does not establish the mitigation ratio for replacement habitat,” although the Court’s ruling** presumably requires that the ratio would be 1:1. (Ex. B, p. 23.) He explains that:

The currently proposed WST Plan involves creation of 1.07 acres of breeding habitat to replace 0.95 acres of breeding habitat impacted by the Project. This generates a surplus of 0.12 acres if a 1:1 ratio is applied. While MM 5.2-9 **requires the Applicant to provide habitat compensation for “additional occupied ponds” discovered during the pre-construction surveys**, it fails to identify where the habitat compensation would occur, especially if the **“additional occupied ponds” exceed 0.12 acres**. The vague pledge to modify the Spadefoot Relocation Plan such that it includes unspecified **“replacement of the additional occupied pond” is deferred mitigation and the crux of the Court Ruling**. (Ex. B, pp. 23-24.)

Because MM 5.2-9 also fails to establish a definitive mitigation ratio or identify where additional compensatory habitat would be provided—instead deferring these critical determinations to future planning in violation of CEQA—it is a vague, deferred mitigation measure in violation of CEQA.

Mr. Cashen further explains that Mitigation Measure 5.2-9’s **performance standards are fundamentally flawed**. (*See* Ex. B, pp. 24-27.) For example, the performance standard for hydrology of the created ponds is a minimum of 60 consecutive days of inundation (**“ponding”**) at least once during the 10-year monitoring period. (*Id.*, p. 24.) However, Mr. Cashen notes that this performance standard is flawed because achievement can be demonstrated based on a single 60-day ponding event during an undefined **“average or above-average” rainfall year, which could be satisfied by an exceptional rainfall year rather than demonstrating reliable habitat function**. (*Id.*, pp. 24-25.) He also points out that MM 5.2-9 improperly allows supplemental water to be used without clear limitations, granting the Project Biologist discretion to add water to the ponds. (*Id.*, p. 25.) In addition, Mr. Cashen found that the RPFSEIR’s **two WST performance standards** that pertain to reproduction at the mitigation ponds are flawed because the performance criteria require only minimal evidence of reproduction—such as the presence of a single egg mass or metamorph—without demonstrating long-term population viability. (*Id.*, pp. 25-27.) Therefore, Mr. Cashen concluded that these performance standards are inappropriate because they allow the WST mitigation program to be deemed successful even if the WST population is declining or functioning as a population sink. (*Id.*, pp. 26-27.)

Because Mitigation Measure 5.2-9 relies on vague, deferred, and unenforceable requirements and performance standards that fail to ensure replacement of impacted WST habitat, it is inadequate as a mitigation measure. The RPFSEIR also fails to support its conclusions with substantial evidence that MM 5.2-9 will reduce WST impacts to less-than-

significant in violation of CEQA. Thus, a revised and complete draft supplemental EIR should be prepared and recirculated that includes adequate mitigation to effectively reduce the Project's impacts on WST and potential breeding habitat.

2. The WST Plan's proposed mitigation design fails to ensure functional replacement habitat for WST.

Mr. Cashen reviewed the WST Plan and found that the mitigation plan improperly relies on constructed ponds that lack structural integrity and adequate hydrologic support. (Ex. B, pp. 19-20.) He also found that the WST Plan's proposed pond design and creation methods are not supported by hydrologic analysis. (*Id.*, p. 19.) According to Mr. Cashen, the constructed ponds are intended to rely primarily on rainfall and overland flow. (*Id.*) However, the WST Plan does not provide hydrologic modeling to demonstrate that these ponds can achieve the necessary depth or duration to support WST breeding under usual conditions. (*Id.*) As a result, Mr. Cashen concluded that the ponds would rarely reach their intended size or hydroperiod, particularly in average rainfall years. (*Id.*, p. 20.) Therefore, he concluded that the ponds as constructed in the WST Plan would not adequately replace the impacted aquatic habitat for WST. (*Id.*, pp. 19-20.)

In addition, Mr. Cashen identifies several deficiencies in the ecological suitability of the mitigation site, including the quality of the terrestrial habitat surrounding the breeding site. (*See* Ex. B, pp. 16-18.) Mr. Cashen found that WST Plan mischaracterizes suitable soils for burrowing, fails to ensure appropriate vegetation and slope conditions, and places the ponds in close proximity to trails and roads that increase the risk of disturbance and predation. (*Id.*) He also found that a substantial portion of the WST designated conservation area is located on slopes unlikely to be used by WST. (*Id.*, pp. 17-18.) This further demonstrates that the site selection for WST conservation was not based on the biological needs of the species. As such, **the WST Plan's proposed mitigation is inadequate. A revised EIR should be prepared and recirculated that includes mitigation designed with suitable terrestrial and aquatic habitat for WST.**

3. The WST mitigation plan may result in significant impacts from human disturbance that were not disclosed or analyzed in the RPFSEIR.

Mr. Cashen found that the WST mitigation plan's conservation area would be subject to substantial and ongoing human disturbance that is not adequately analyzed or mitigated in the RPFSEIR. (Ex. B, pp. 14-15.) According to Mr. Cashen:

Implementation of the proposed mitigation entails: (1) relocating the existing trail/road to provide a minimum of 20 feet between the ponds and trail/road; and (2) installation of a post-and-cable fence. These two activities would occur in an area that was not surveyed for sensitive biological resources, and consequently, they could cause significant impacts that were not analyzed in the EIR. (Ex. B, p. 15.)

Mr. Cashen also points out that the WST mitigation plan relies on minimal measures such as fencing and signage, which would not prevent access to the WST conservation area by people, dogs, or mountain bikers. (Ex. B, p. 15.) Nor would it prevent activities such as mountain bikers riding through ponds or using the berms as jumps or “rollers.” (*Id.*) Mr. Cashen further explains that recreational use, trail proximity, and maintenance activities would increase trampling, predation, and habitat degradation. (*Id.*) According to Mr. Cashen, even the installation of post-and-cable fencing may increase predation by providing hunting perches for predators, such as birds. (*Id.*) Mr. Cashen’s expert comments provide substantial evidence that the WST Plan’s proposed mitigation may cause unintended significant adverse impacts to WST and its habitat as a result of foreseeable human disturbance. A revised and complete draft supplemental EIR should be prepared and recirculated that adequately analyzes and mitigates these impacts.

4. The RPFSEIR includes mitigation for special-status plant species that conflicts with WST conservation.

Mr. Cashen also concluded that the RPFSEIR’s proposed special-status plant mitigation program would directly conflict with WST conservation efforts. (Ex. B, pp. 22-23.) For example, the mitigation program for special-status plants requires extensive, long-term ground disturbance—including soil translocation, repeated planting, irrigation, herbicide application, and frequent monitoring over a 10 to 20-year period—within and adjacent to WST conservation habitat. (*Id.*) Mr. Cashen explains that these mitigation activities would crush or displace western spadefoots, destroy burrows, compact soils, and expose toads to toxic substances. (*Id.*, p. 23.) The RPFSEIR fails to analyze these conflicts or their direct and cumulative impacts, rendering the WST and special-status plant mitigation inconsistent and ineffective.

Thus, a revised and complete supplemental draft EIR should be prepared and recirculated to resolve conflicts between the WST and special-status plant mitigation plans and ensure all mitigation measures are feasible, enforceable, and effective in reducing impacts.

5. The WST mitigation plan lacks enforceable and effective contingency mitigation measures.

According to Mr. Cashen, the WST Plan’s contingency mitigation measures are speculative and unenforceable. (Ex. B, pp. 27-28.) The WST Plan provides the following discussion of contingency mitigation:

Although this Plan is expected to be successful, two options are possible, including remediation of the existing pools should they not hold water for sufficient duration, which could include reinstallation of the clay liner and/or increasing pool depths. The second option would include alternative location(s) that may be used in the event that any of the proposed areas do not achieve success criteria. Should the proposed plan not be successful for some unanticipated reason, there are nearby sites which can be utilized as replacement site(s) such that the mitigation criteria are fulfilled. Such sites would be presented to the County and CDFW for concurrence prior to utilization. Bon Terra

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identified potential WST pond locations at the north end of the Project Site that could accommodate 0.52 acre of WST habitat. Other potential areas include nearby Marple Canyon which GLA previously identified as a location where up to one acre of seasonal pool habitat could be created. (WST Plan, p. 30.)

Mr. Cashen explains that rather than providing binding contingency mitigation for WST, the WST Plan merely identifies potential future locations for WST habitat without analysis, commitments, or assurances regarding ownership, management, or effectiveness. (Ex. B, p. 28.) These measures therefore function improperly as a secondary mitigation effort if the initial mitigation fails, rather than as a genuine contingency strategy. The County's failure to make these contingency measures enforceable mitigation further violates CEQA. A revised and complete supplemental draft EIR should be prepared and recirculated that includes clearly defined and enforceable contingency mitigation measures for WST.

6. Substantial evidence demonstrates a high likelihood that proposed WST habitat creation and translocation mitigation will not succeed.

Finally, Mr. Cashen cites evidence of prior WST translocation and habitat creation efforts that were only partially successful, with some failing entirely and others supporting limited breeding. (Ex. B, pp. 28-29.) According to Mr. Cashen, these results indicate a substantial risk that one or more mitigation ponds would fail—i.e., “a 50% chance that the mitigation will fail, but if it succeeds at the site level, only 1 of the 3 ponds (35%) will support successful breeding”—resulting in a net loss of WST breeding habitat. (*Id.*, p. 28) Despite this evidence, the RPFSEIR does not adopt more stringent mitigation measures or require adaptive management sufficient to guarantee success. Therefore, Mr. Cashen concluded that the WST mitigation plan fails to provide substantial evidence that WST impacts will be reduced to less-than-significant levels. (*Id.*, p. 29.)

In conclusion, as detailed by Mr. Cashen, the RPFSEIR relies on vague, deferred, unenforceable, and ineffective mitigation measures that fail to reduce impacts to WST and its habitat. Additionally, it fails to support its conclusions with substantial evidence that WST mitigation measures will reduce impacts to less-than-significant levels in violation of CEQA. A revised draft EIR should be prepared and recirculated that includes adequate mitigation for WST.

CONCLUSION

SAFER requests that the Board of Supervisors grant the appeal and deny approving this Project, and instead, direct staff to address these shortcomings in a revised and recirculated SEIR that fully analyzes and mitigates the Project's significant VMT and biological resources impacts prior to considering approvals for the Project.

Sincerely,

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A handwritten signature in cursive script, appearing to read "Victoria Yundt".

Victoria Yundt
Lozeau Drury LLP