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8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SHASTA  
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11 ANDERSON / MILLVILLE RESIDENTS,  
12 an unincorporated association,  
13 Petitioner,  
14 vs.

15 COUNTY OF SHASTA; SHASTA COUNTY  
16 BOARD OF SUPERVISORS and DOES 1-20,  
17 Respondents

18 PATRICK JONES, and DOES 21-100  
19 Real Parties in Interest  
20

Case No. 23CV-0203713

**PATRICK JONES, REAL PARTY  
IN INTEREST, BRIEF IN  
OPPOSITION TO PETITIONER'S  
OPENING BRIEF IN PETITION  
FOR WRIT OF MANDATE.**

Dept: 63

Judge: The Hon. Benjamin Hanna

Date Action Filed: 11-21-2023

Date of Hearing: 01-14-25

21  
22 Respondent, Patrick Jones, Real Party in Interest submits the **following OPPOSITION TO**  
23 **PETITIONER'S OPENING BRIEF.**  
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**I. INTRODUCTION**

October 24, 2023 the Shasta County Board of Supervisors (hereinafter "Board" lawfully and correctly approved the Mitigated Negative Declaration (hereinafter "MND") for the Zone Amendment 13-700 Project – High Plains Shooting Sports Center (hereinafter "Project"). The Board adopted the required findings under the California Environmental Quality Control Act (hereinafter "CEQA") under the California Public Resources Code section 21000 *et seq* and CEQA Guidelines (Title 14 California Code of Regulations section 15,000 *et seq.*) The Board approved the "Project."

Contrary to Petitioner's assertions, the Initial Study / MND for the Project absolutely provides more than adequate environmental review under CEQA. Indeed, the nearly six-thousand five-hundred (6,500) pages of the Administrative Record provides more than substantial evidence the environmental concerns and protections outlined in CEQA were satisfied by RPI JONES' studies and reports. Moreover, the High Plains Shooting Sports Center was the most intensely analyzed, scrutinized, and researched shooting project in the history of Shasta County. Under the voluminous amount of information, data, studies, and opinions, the Board accurately and correctly determined that an Environmental Impact Report (EIR) was not necessary under the circumstances. Rather, the Board lawfully determined that a Mitigated Negative Declaration course of action was the appropriate mechanism for this Project. There was no abuse of discretion by the Board.

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**II. BACKGROUND FACTS**

**A. GENERALLY**

RPI JONES respectfully refers the Court back to RPI Jones's VERIFIED ANSWER filed on October August 22, 2024 and hereby incorporates by reference the facts and information contained within that document into this Opposition. However, RPI JONES would like to provide some additional background facts not contained within the ANSWER.

First, the area in question for the Project has been rezoned to C-R (Commercial-

1 Recreation). Contrary to Petitioner's Claims, the Report to the Shasta County Planning  
2 Commission notes the "then-proposed" C-R Zone district is consistent with all general plan land  
3 use designations. As such, this area was properly rezoned by the Board.

4 ///

5 **B. APPROVAL OF THE PROJECT**

6 RPI JONES essentially concurs with Petitioner's statements in the Opening Brief  
7 regarding the approval of the Project. However, Petitioner fails to acknowledge that under  
8 CEQA only major changes or revisions require further public review and comment. Here, there  
9 were no changes, major or minor, that would have required further public review or comments.  
10 Moreover, Paul Hillman, the Resource Manager, and the Board both concurred there was no  
11 need for further public review and comment. (AR67.)

12 ///

13 ///

14 **III.**

15 **POINTS AND AUTHORITIES**

16 **And**

17 **ARGUMENT**

18 **A. CEQA / INITIAL STUDY**

19 The California Environmental Quality Act (CEQA) is a comprehensive scheme designed  
20 to provide long-term protection to the environment. [Citation.] In enacting CEQA, the  
21 Legislature declared an intention that all public agencies responsible for regulating activities  
22 affecting the environment give prime consideration to preventing environmental damage when  
23 carrying out administrative duties. (Citations.]. CEQA is to be interpreted to "afford the fullest  
24 possible protection to the environment within the reasonable scope of the statutory language."  
25 [Citation.]". (*Mountain Lion Foundation vs. Fish & Game Com.* (1997) 16 Cal.4<sup>th</sup> 105, 112.)

26 In evaluating proposed projects, a public agency must evaluate whether or not a  
27 possibility exists that the project may have a *significant environmental effect*. (*Pub. Resources*  
28 *Code* §§ 21100(a), 21151(a); emphasis added.) If so, the agency must conduct an initial

1 threshold study. (*Id.*, §21080.1; Title 14 California Code of Regulations (“CEQA” Guidelines”),  
2 §15063.). If the Initial Study reveals the project will not have any significant effect, then the  
3 agency may complete a negative declaration that describes the reasons supporting the  
4 determination. (*Id.*, §§15063; 15064(f)(3); 15070(a).)

5 The Initial Study must provide the factual basis and the analysis for the determination  
6 that a project will *not have a significant impact on the environment*. (See CEQA Guidelines  
7 §15063(d)(3); *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4<sup>th</sup> 398, 408;  
8 *Sundstrom vs. County of Mendocino* (1988) 202 Cal.App.3d 296, 311; emphasis added.) A  
9 Negative Declaration may be prepared when, in light of the whole record, *no substantial*  
10 *evidence* exists that the project may have a *significant environmental effect* (emphasis added.)

11 Here, as noted in the Initial Study, there was overwhelming evidence of NO significant  
12 impact on the environment. Stated more accurately, there was “less than significant impact on  
13 the environment.” (The Second Revised Environmental Initial Study and the Mitigated Negative  
14 Declaration (AR0067-00312.). Obviously, the Court is familiar with the Administrative Record.  
15 However, RPI JONES would like to highlight the extensive number of studies conducted in  
16 support of the Initial Study. This list is attached Exhibit “A” and incorporated herein by  
17 reference. The sheer volume of studies and information relied upon in support of, or that form  
18 the basis of, the Initial Study is unquestionable. Further, the conclusion of all these studies,  
19 across various aspects of environmental impact, is simply no significant impact or less than  
20 significant impact on the environment. Indeed, the whole record before the lead agency of  
21 Shasta County demonstrated the Project had “less than significant effect on the environment.”  
22 Thus, this Court should support the findings of the Board and adopt the Mitigated Negative  
23 Declaration in a manner as required by law thereby denying the Petition for Writ of Mandate.

24 ////

## 25 **B. MITIGATED NEGATIVE DECLARATION**

26 An agency may attach conditions to a negative declaration for the purpose of mitigating  
27 potential environmental effects. This is referred to as a “mitigated negative declaration.”  
28 Guidelines § 15070(b); Public Resources Code §21064.5.). A mitigated negative declaration

1 states that revisions in the project made or agreed to by the applicant would avoid the potentially  
2 significant adverse impacts and that there is no substantial evidence that the revised project will  
3 have a significant effect on the environment. (Pub. Res. Code §21064.5; Guidelines  
4 §15070(b)(2).)

5 In the case at bar, the initial determination of whether or not a proposed project needs an  
6 EIR (Environmental Impact Report), a negative declaration or is exempt, or a mitigated negative  
7 declaration is made by the Director of Resource Management who is the top environmental  
8 officer of the County. The last three Shasta County Director of Resource Management officers  
9 are Russ Mull, Rick Simon, and Paul Hillman. All three of these Officers analyzed and reviewed  
10 the Initial Study. All three of these Environmental Officers concluded that a Mitigated Negative  
11 Declaration was the appropriate process under CEQA. (See Initial Study AR312; the Revised  
12 Environmental Initial Study AR111; the Mitigated Negative Declaration AR111.). Stated  
13 differently, three sets of eyes all examined and scrutinized the project while reviewing the Initial  
14 Study independently yet reached the same conclusion. Moreover, the Shasta County Planning  
15 Commission, after a detailed analysis of the projected, reached the same conclusion: namely, a  
16 Mitigated Negative Declaration was the appropriate process under the CEQA. (AR34.). Last, but  
17 certainly not least, the Shasta County Board of Supervisors (hereinafter the Board) also  
18 conducted an independent review / analysis of the Initial Study. The Board majority voted to  
19 adopt the findings of the Initial Study thereby validating the Mitigated Negative Declaration and  
20 approved the Project.

21 ///

### 22 C. THE FAIR ARGUMENT STANDARD IS INAPPLICABLE

23 “In reviewing an agency’s decision to adopt a mitigated negative declaration or a  
24 negative declaration, a trial court applies the ‘fair argument’ test.” (*City of Redlands v. County*  
25 *of San Bernardino* (2002) 96 Cal.App.4<sup>th</sup> 398, 405; *Gentry v. City of Murrieta* (1995) 36  
26 Cal.App.4<sup>th</sup> 1359, 1399.). The fair argument test requires that an agency “prepare an EIR  
27 whenever substantial evidence in the record supports a fair argument that a proposed project may  
28 have a significant effect on the environment.” (*City of Redlands, supra*, 96 Cal.App.4<sup>th</sup> at 405;

1 quoting *Gentry v. City of Murrieta, supra*, 36 Cal.App.4<sup>th</sup> at 1399-1400.). If there is substantial  
2 evidence in light of the whole record before the lead agency that the project may have a  
3 significant effect on the environment than an environmental impact report shall be prepared.”  
4 (*Pub. Res. Code* §§ 21080(d) and 21151(a).) However, substantial evidence does not include  
5 “argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate  
6 or evidence of social or economic impacts that do not contribute to, or are not caused by,  
7 physical impacts on the environment.” (*Pub. Res. Code* § 21080(2)).

8 Here, Petitioner’s claim there is substantial evidence to support a *Fair Argument*. This is  
9 simply not true. On the contrary, there is substantial evidence in the Administrative Record that  
10 shows the three former Shasta County Director of Resource Management Officers, the Planning  
11 Commission, and the Board of Supervisors were all independently correct in adopting and using  
12 the Mitigated Negative Declaration standard. The Initial Study provided an actual factual basis  
13 and analysis that the Project will not have a significant impact on the environment. Moreover,  
14 the Initial Study also concluded the Project will improve the environment in some areas by  
15 controlling the overgrazing that previously resulted in substantial environmental damage to the  
16 entire Millville Plains.

17 California has identified two factors that contribute significantly to environmental  
18 damage. Those two factors are “disking” and “overgrazing.” The proposed Project in this case  
19 allows the environment to heal from decades of destruction as a result of “overgrazing.” The  
20 Mitigated Negative Declaration proves there is not a “substantial adverse change in the  
21 environment.” (*Pub. Res. Code* §21068; CEQA Guidelines § 15382.)

22 ///

#### 23 **D. STANDARD OF REVIEW**

24 There is no dispute regarding the standard of review in the case at bar. However,  
25 contrary to Petitioner’s argument, there was no abuse of discretion by the Board. First, the  
26 Board followed, exhaustively, all the procedures outlined in CEQA. Second, substantial  
27 evidence supports the Board’s decision to use a Mitigated Negative Declaration (MND):

28 At the outset, the Court should note the Initial Study provided a substantial amount of

1 expert studies, analysis, opinions, and conclusions. Ultimately, this voluminous amount of data  
2 led to the only appropriate decision that an MND was the process for the Project under CEQA.  
3 Indeed, as noted above, the prior Resource Management Directors, the Planning Commission,  
4 and the Board of Supervisors all exercised independent judgment when evaluating the Project.  
5 These independent and different entities all reached the same conclusion, based on the  
6 overwhelming level of detail in the Initial Study, that there was no substantial evidence of  
7 adverse environmental impact. Therefore, the MND was the appropriate under CEQA and the  
8 agency proceeded in a manner by law.

9 As this Court is aware from the Administrative Record, the Initial Study underwent a  
10 number of revisions. Of note, and absent from Petitioner's Writ and Opening Brief, is that each  
11 revision was scrutinized by the Army Corps of Engineers (hereinafter ACE) (AR 4134.). The  
12 ACE ultimately issued a "preliminary jurisdictional" water delineation (JD) and a 404 permit.  
13 (*Id.*). Based on factual information, the ACE stated [they] "concur with the water resource  
14 delineation for the sight." (*Id.*) Additionally, the California Department of Fish and Wildlife  
15 (CDFW) "concurs with the reorientation of the project to avoid sensitive habitats and associated  
16 species." (AR3936.). These are just two examples, of the many, throughout the Initial Study  
17 that show the Board lawfully complied with CEQA's procedural requirements including  
18 disclosure requirements and environmental impact requirements. Further, the Administrative  
19 Record amply demonstrates the Board complied with CEQA's procedural requirements.

20 ////

21 ////

#### 22 IV.

#### 23 APPROVAL OF THE MND DID NOT VIOLATE CEQA

24 Contrary to Petitioner's assertion, the Board's determination regarding an MND is  
25 supported by substantial evidence. Furthermore, there is no substantial evidence to support  
26 Petitioner's claim of a Fair Argument. Rather, Petitioner's claims are based on "speculation,  
27 unsubstantiated opinion or narrative, evidence that is clearly inaccurate or evidence of social or  
28 economic impacts that do not contribute to, or are not caused by, physical impacts on the



environment.” (*Pub. Res. Code* § 21080(e)(2)).

Petitioner references “comments” by the California Department of Fish and Wildlife saying “the record contains comments from CDFW.” (Petitioner’s Opening Brief Page 15, lines 18.5-19.5 [POB p.15:18.5-19.5]). However, Petitioner fails to identify any specific comments from CDFW in support of his argument. In actuality, the comments from CDFW buttress the Board’s decision to follow CEQA requirements and use the MND. Specifically, CDFW stated that CDFW “recognizes that Shasta County has taken the appropriate steps to identify and assess potential impacts to biological resources.” (AR3957.). Regarding vernal pool species, the CDFW concurs with the reorientation of the Project’s scope to avoid those sensitive habitats and associated species. (AR3958.)

Petitioner also references Scott Cashen’s comments in support of Petitioner’s claims. However, as noted above, Mr. Cashen’s comments are actually speculative and unsubstantiated opinion and often inaccurate regarding the subject matter. The Court should note that Mr. Cashen’s expertise is mainly solar power. As such, Mr. Cashen’s comments / opinions are not based on his experience in studying gun ranges. Further, there is no evidence in the Administrative Record, or in the public comments, or in the media, or anywhere that Mr. Cashen visited the site. Thus, Mr. Cashen’s comments and opinions should be accorded little to no weight given the fact he did not even bother to travel and study the Project in person.

RPI Jones’ biologist is a stark contrast from Mr. Cashen. Steve Kerns, a biologist, lives in Shasta County. Aside from being a biologist for decades, Mr. Kerns is also on the Shasta County Planning Commission though Kerns abstained from the vote on this project. Mr. Kerns visited the Project at least dozen times over a period of several years. (AR4170, 4268.) Mr. Kerns did the initial water delineation and subsequent delineation. Mr. Kerns ultimately received the approval from the Army Corps of Engineers which the issued the 404 permit.

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#### **A. THE BIOLOGICAL REVIEW SATISFIES CEQA STANDARDS**

Petitioner claims the IS / MND relied upon an inadequate biological review. As with Petitioner’s other claims, the Administrative Record also belies this claim. Indeed, as noted in

1 the AR, the Wildlife Resource Managers followed CDFW's guidelines and protocols. (AR4170,  
2 4268.). Further, the WRM methodology is supported by more than substantial evidence. (*Id.*)  
3 Petitioner is simply wrong in his assertion that substantial evidence supports a fair argument.  
4 Petitioner fails to recognize or acknowledge, whether intentional or not, the near total-avoidance  
5 of all wetlands, vernal pools, vernal swells, and ephemeral streams. Indeed, RPI Jones' cannot  
6 overstate enough the importance of protecting and improving the wetlands. The Project in the  
7 case at bar actually preserves, protects, and improves the environment unlike a myriad of  
8 projects in California.

9 RPI Jones' property deed is part of the 1890 Dersch Homestead. Historical farming in  
10 the area included disking the land which is responsible for a total loss of habitat for all species on  
11 the land. In fact, RPI Jones's neighbor, who is a plaintiff in this suit, disks his property. Unlike  
12 the neighbor, RPI Jones' Project went to great lengths to ensure that approximately ninety  
13 percent (90%) of the environment would remain in pristine condition with a future as a wildlife  
14 preserve.

15 ////

#### 16 1. CDFW's GUIDELINES FOR PROTECTED PLANTS

17 Petitioner claims the Biological Review failed to follow CDFW's guidelines and  
18 protocols for identifying protected plant species. Petitioner's claim is off target. In fact, RPI  
19 Jones worked closely with CDFW to identify *all* sensitive areas and to protect *all* sensitive  
20 species making the identification of each individual species unnecessary. Indeed, the total  
21 protection of the environment necessarily means that all species, protected or not, sensitive or  
22 not, would still receive the same environmental protections as delineated in the IS / MND. Cattle  
23 overgrazing causes significant degradation to land including depleted vegetation cover, increased  
24 soil erosion, soil compaction, loss of biodiversity, stream bed degradation, reduced water  
25 infiltration, the spread of invasive species, and disruption of habitat. (See Impact Analysis AR  
26 4287.) Here, the Project requires the elimination of overgrazing which will vastly improve the  
27 environment thereby benefitting all species. Thus, there was no need specifically identify the  
28 twenty-plus species.



1 In sum, the near total-avoidance philosophy negates any need for specific identification  
2 of species, whether plant, animal, amphibian, toad, or crustacean. The Court should also note  
3 that CDFW was consulted and advised there was no need to list specific species because of the  
4 near total avoidance approach / philosophy to this project. (AR 4170; 4268.)

5 ////

6 2. THE PROJECT DOES NOT SIGNIFICANTLY IMPACT NESTING BIRDS

7 RPI Jones would direct the Court to the AR that discusses the amount of noise already  
8 existing in the area. There is a shooting range one (1) mile due West of the Project. The  
9 shooting range is located at Wolf Sand & Gravel. This business also operates a gravel pit with  
10 heavy duty construction trucks and equipment. Also, this business is "permitted" and will be a  
11 landfill in the near future thereby increasing activity and noise levels. Additionally, many local  
12 residents described this area as a "shooting region" during the public comment period.  
13 (AR1269.) In essence, shooting happens nearly every day in the vicinity of the Project. Thus,  
14 Petitioner's reference to comments by Tracy Verhougstraete should be accorded little weight  
15 considering the historical shooting nature of the area. In fact, Mrs. Verhougstraete has a small  
16 shooting range on her property that includes a berm backstop.

17 Specifically, Petitioner claims the Project may have a significant impact on Nesting Birds  
18 including Bald Eagles, Golden Eagles, and Ospreys. This is not accurate. Wildland Resource  
19 Managers (WRM) are certified wildlife biologists. (AR3686-89.) Petitioner questions the  
20 credentials of the WRM staff since "WRM does not indicate that it has any expertise in noise."  
21 (Pet. Op. Br. p.18:7-8.) However, WRM biologist have a combined forty (40) years of  
22 experience working with a wide range of raptor species in the Northstate including nearly fifty  
23 (50) years of peer-reviewed publications. (*Id.*) WRM conducted a six man-hours of field  
24 observations looking for nests at the Project site. (*Id.*) WRM walked the entire property looking  
25 for evidence of Nests. (*Id.*) Most folks in Shasta County know that Bald Eagles, Golden Eagles,  
26 and Ospreys use the same nesting site / nest every year. The nests for these birds can weigh from  
27 two-to-six (2-6) hundred pounds. WRM observed no nests at the Project site. (*Id.*) No juvenile  
28 raptors of any species were noted during the survey. (*Id.*) Further, no neighbors or residents

1 have provided any documentation via video, photo, or otherwise that these nests exist.

2       Petitioner accords great deference to Mr. Cashen's opinion that the project "may have  
3 significant environmental impacts to biological resources." (Pet. Op. Br. p.18:23-28.). Again,  
4 this opinion is based on sheer conjecture and speculation and exists in the realm of "anything is  
5 possible." There is no hard data to support Mr. Cashen's opinions. In fact, as noted earlier, there  
6 is a shooting within one mile of the Project. Thus, any claim that the survey did not encompass  
7 all potential nesting sites within two miles is somewhat dubious. WRM used binoculars to assist  
8 in the survey. And, as noted above, there is simply no evidence of nesting sites.

9       Petitioner relies on Mr. Cashen's misleading opinion regarding "WRM not surveying the  
10 area beyond the boundary of the property except with binoculars." (Pet. Op. Br. p.19:16.5-17.5.)  
11 WRM did survey beyond the Project boundary with high-powered binoculars. (AR3653,  
12 AR136.). The magnification on the binoculars resulted in an eagle being sighted some distance  
13 away from the Project. However, this sighting does not provide even a reasonable inference of  
14 nesting. On the contrary, the lack of nests is substantial evidence there are no nesting sites.

15       The claim "there is a disagreement among the experts" is not accurate. There is a  
16 significant amount of evidence supporting the opinions in the Initial Study that ultimately  
17 concluded the Project has less than significant impact. Those opinions are supported by actual  
18 facts. Petitioner relies on Mr. Cashen to create a "disagreement" among experts. However,  
19 CEQA Guidelines §15604(g) requires the expert's opinions to be based on "facts supporting the  
20 opinion." (Guidelines §15604(g).). Here, Mr. Cashen's opinions are not supported by actual  
21 facts but rather rely on "maybe, possibly, usually, and potentially" which do not satisfy the  
22 Guidelines of "facts supporting the opinion."

23       Petitioner also makes a false claim that "Golden Eagles are also present in the vicinity."  
24 (Pet. Op. Br. 27:19.5.) Petitioner then falsely claims the "presence of bald eagles (plural)  
25 including nests" supports or lends "substantial evidence [for] a fair argument that the Project  
26 may have potentially significant environmental impacts to these two species." (Pet. Op. Br.  
27 27:23.5-26.5.) These claims are belied by the actual AR which shows there was not a single nest  
28 found in the area and only a SINGLE Bald Eagle was observed flying some distance away from

1 Project site. Thus, the claim of a "fair argument" on this issue is incredibly dubious.

2 ////

### 3 3. THE IS / MND ADDRESSED "OTHER SPECIES"

4 Petitioner claims the Biological Review failed to address or analyze the impact on a  
5 number of other animal species. Petitioner accurately states the Ringtail cat is a fully protected  
6 species. However, Petitioner then goes on to inaccurately state that the Project has  
7 "Woodlands." This is false. There are no woodlands within the Project. There are five (5) trees  
8 within the project slated for removal. These five (5) trees are not a woodland. Further, there is  
9 no evidence the Ringtail Cat lives within those five (5) trees. Rather, a much more likely home  
10 for any alleged Ringtail cats in the area would be the Bear Creek Gorge to the North of the  
11 Project that has thousands of trees.

12 Petitioner also claims the short-eared owl, the Northern Harrier, the burrowing owl, and  
13 the grasshopper sparrow are not addressed specifically in the Biological Review. However,  
14 Petitioner's claims are misplaced. The lack of specificity is addressed due to the Project's total-  
15 avoidance philosophy. At the risk of being redundant, this approach, seeks to preserve, protect,  
16 and improve the environment. Indeed, the two biggest threats to the species named above are  
17 agriculture and overgrazing. The Project is going to negate or remove these two hazards thereby  
18 improving the environment for the species named above. Moreover, there are no facts that  
19 demonstrate that these birds appear or were located on the Project property. The Project will  
20 actually increase the habitat should one of these species take up residence. These species are  
21 known to adapt well to human conditions as long as there is a suitable habitat.

22 ////

### 23 4. NOISE IMPACTS ON WILDLIFE

#### 24 a. Overview

25 Petitioner claims, relying on Mr. Cashen, the Project noise "would adversely impact  
26 wildlife in the vicinity of the Project." (Pet. Op. Br. 21:22-23.) However, Petitioner gives no  
27 specific facts to support this blanket assertion. Rather, Petitioner, presumably in support of this  
28 argument, states "Mr. Cashen identified numerous flaws in the Noise Technical Report." (Pet.

Op. Br. 21:24.) Simply claiming there are alleged defects or flaws in a report is not evidence that wildlife would be impacted by noise in levels. Indeed, there is no analytical nexus between the claim of wildlife being adversely affected by noise and purported flaws in reports. As will be discussed in more detail below, Petitioner claims are not supported by the evidence in the Administrative Record.

First, as noted above, the Wolf Sand & Gravel range is approximately one-mile due west of the Project. Thus, animals / wildlife in the area have already become habituated to gunshots / so-called "impulsive noise." Furthermore, there is no "noise ordinance" in Shasta County for residents in this area. (AR 4154.) As such, there is no "ambient noise" ordinance for wildlife in the area as well. Petitioner seems to base his claim on some unknown purported variance from "ambient noise levels" and any potential *increase* in noise levels at the project." (Pet. Op. Br. 21:25-27.) However, the Administrative Record shows the Noise Studies focused on Maximum Noise levels and concluded the impact on wildlife would be "less-than significant." (AR3654.). Thus, there is no need for some "data" on ambient levels.

b. The Administrative Record shows the Noise Levels do not adversely impact wildlife

Petitioner claims the Noise Technical Report (NTR) "failed to provide data on ambient noise levels which is significant . . . [due to some perceived increase]" (Pet. Op. Br 21:25-26.) This is a misleading claim. The October 16, 2023 RCH Group Letter (AR 3636-3638) discusses this exact issue. In the letter, Paul Miller discussed and rebutted the exact claim by Mr. Cashen about ambient noise levels. Miller writes "the March 12, 2014 sound study was focused on Maximum Noise Levels (LMAX) which are measurements representing the maximum peak noise levels from each round of gun firings." (AR3636-3638.) Miller then went on to state that the noise levels that were measured at the Project had a "less-than significant impact" with the proposed mitigation (noise barriers including natural topography.). Obviously, if a maximum noise level creates a "less-than significant impact" then there is no need to understand an ambient noise level with any perceived increase in the level.

WRM conducted a second study in response to the May 16, 2023 claims made by

1 Petitioner. This study is found in the AR pages 3673-3693. Of note, on page 3692, is WRM's  
2 conclusion that any bird species choosing to nest in the Project will become conditioned to the  
3 ambient noise levels. Indeed, we have a prime example of a nesting pair of Bald Eagles at Turtle  
4 Bay right alongside Highway 44. (AR3692.). This pair of Bald Eagles has been nesting /  
5 breeding successfully for years at this location. The Eagles actually have their own camera  
6 which is live-streamed or uploaded to Social Media. Anyone who travels into or out of Redding  
7 around 8 a.m. and 5 p.m. during the work week knows there is a tremendous amount of traffic  
8 and noise on Highway 44 roughly a hundred (100) yards next to the nest. (*Id.*) Just of note, this  
9 nest is adjacent to Turtle Bay, the Sheraton Hotel, and the Civic Auditorium.

10 Third, Mr. Cashen "identified numerous flaws in the Noise Technical Report." (Pet. Op.  
11 Br. p.21:24.) However, the "flaws" as noted by Mr. Cashen relate to speculation about  
12 "impulsive noises" and animal reactions to those noises. However, these claims are belied by  
13 actual evidence that animals adapt to surrounding environments provided the habitat is suitable.  
14 The Court again is directed to the Bald Eagles on Highway 44. But here, the Project will  
15 improve the environment by eliminating overgrazing. This should, in turn, encourage a healthy  
16 deer population. Indeed, the AR shows that wildlife tend to congregate around gun ranges  
17 learning that gun ranges are actually "safe" areas. (AR 5801, 5905, 6008, 6153.)

18 Mr. Cashen also claims the Project "potentially impacts bats." (Pet. Op. Br. 22:17.) This  
19 claim relates again to the five (5) trees erroneously referred to as "woodlands" by Petitioners. As  
20 noted in the AR, bats have pups in May and June. The pups can fly within three (3) weeks and  
21 leave the nursery at two months. The trees in question can be removed in September with no  
22 bats or pups and no hibernating bats present thereby reducing this to a "less-than significant  
23 impact" on bats. (AR80.) Of note, due east of the Project is essentially a forest of oak trees that  
24 constitute prime real estate for bat habitat.

25 ////

## 26 5. THE PROJECT WILL NOT HAVE SIGNIFICANT IMPACT TO WETLANDS

27 According to the Biological Review, there were no sensitive species resources present in  
28 the upland annual grassland features of the project (AR77.) Moreover, "the vernal features and

1 habitat present on the project site could support 20 species of either flora or fauna that are listed  
2 as either rare, threatened, endangered or a species of concern listed in the CNDDDB or California  
3 Native Plant Society List.” (*Id.*) The Project “was revised and the bullet backstop footprints  
4 were significantly scaled back and re-oriented.” (*Id.*). As a result, “the Project is designed to  
5 protect and entirely avoid nearly all designated wetland features that could serve as habitat for  
6 listed species.” (*Id.*)

7       Petitioner Claims the Project would directly impact numerous Wetland features including  
8 Vernal Swale (VS12) 12, Ephemeral Stream (ES1) 1, VS21, and VS22. Petitioner opines that  
9 the Project would somehow or in some fashion directly impact or “affect the wetlands.” This is  
10 an opinion without any supporting factual data. In fact, the opposite is true because Petitioner  
11 ignores the “Army Corps of Engineers (ACE) and California Department of Fish and Wildlife  
12 approval of the Project was significantly scaled back and reoriented to ensure that no wetlands  
13 would be altered in a significant manner.” (AR77.) As a result, and as noted above, the Project  
14 is designed to and entirely avoid nearly all designated wetland features that could serve as habitat  
15 for listed species.” (*Id.*) This philosophy cannot be overstated in this litigation. Thus, the fair  
16 argument does not apply in this context.

17 ////

18       6. The Project protects Vernal Pool Crustaceans and the Western Spadefoot Toad

19       Petitioner claims the Project fails to disclose and analyze the impacts to vernal  
20 crustaceans (fairy shrimp and tadpole shrimp) thereby concluding, without evidence, that  
21 somehow there is a “fair argument that the impacts to the vernal pool crustaceans remain  
22 potentially significant.” (Pet. Op. Br. 26:4-8.) Petitioner also claims the Project “will or could  
23 significantly impact the Western Spadefoot Toad (WST).” Again, Petitioner makes claims  
24 ignoring the evidence / record. Indeed, the AR shows “no wetlands would be altered in the  
25 Project in a significant manner.” (AR77.) Moreover, the CDFW did not recommend a survey  
26 for the Project as that relates to the WST because the Project was “designed to ensure that no  
27 wetland areas would be altered and to direct drainage from bullet backstop traps away from  
28 wetland, and since operational hours would not overlap with times which the toads typically



1 emerge from burrows.” (*Id.*)

2 ////

3 7. The Project does not significantly impact Grassland Habitat

4 Petitioner claims there will be a significant amount of loss of acreage of Grassland  
5 Habitat due to the Project. (Pet. Op. Br. 29:11-13.) RPI Jones agrees that there are only 133  
6 acres of Grassland on the Project with rest of the land being wetlands. However, RPI Jones takes  
7 umbrage with Petitioner’s Claims there will be a “functional loss due to gunfire.” (Pet. Op. Br.  
8 29:8-9.) In actuality, there is simply no evidence that animals will be adversely affected by the  
9 gunfire. Indeed, as noted above several times, wildlife / animals tend to get conditioned to the  
10 gunfire. Of note, there will be a stark improvement to ground-nesting birds through the  
11 elimination of overgrazing yet Mr. Cashen / Petitioner fail to acknowledge this unique aspect of  
12 the Project and improvement of the environment.

13 ////

14 8. The Project does not significantly impact Movement Corridors or Nursery Sites

15 Petitioner claims the Project “significantly impacts movement corridors and nursery  
16 sites.” (Pet. Op. Br. 29:14.) Again, as noted throughout the Administrative Record, the Project  
17 has adopted a “near total-avoidance philosophy.” As such, the Project seeks to preserve, protect,  
18 and improve the environment. Petitioner is simply making baseless and factually unsupported  
19 claims to manufacture a “fair argument” argument essentially “to put the ball in play.” However,  
20 there is no factual nexus between Petitioner’s claims and the actual raw data and information  
21 contained within the Administrative Record which belie Petitioner’s claims.

22 ////

23 9. THE IS / MND Mitigation Measures will reduce the Project’s impact

24 RPI Jones agrees with Petitioner’s statement of law in this area regarding CEQA  
25 requirements and the Public Resource Code. However, RPI Jones absolutely disagrees with  
26 Petitioner’s conclusions and erroneous analysis that there is a significant loss of habitat leading  
27 to “substantial evidence [supporting] a fair argument . . . [requiring] the preparation of an EIR.”  
28 (Pet. Op. Br 30:7, 31:1-3.) On the contrary, as noted throughout RPI Jones’ Opposition Brief, the

1 Project actually improves the habitat for any special, or not, birds that are currently or potentially  
2 present in the future. The Mitigation Measures employed throughout the Project amply  
3 demonstrate a "less than significant impact on the environment." Petitioner case is essentially  
4 resting wholly on the claims / comments / unsupported opinions of Mr. Cashen. However, Mr.  
5 Cashen simply attempts to disregard the myriad of studies, data, analysis, and conclusions that  
6 support the IS / MND. An EIR was and is simply not necessary to protect the environment given  
7 the vast amount of research, studies, analysis, data, evidence, and conclusions in the IS  
8 indicating an MND was the appropriate process for this Project.

9 ////

10 10. The IS / MND appropriately addresses Water Quality and Mitigation Measures  
11 Petitioner claims the IS / MND improperly defer mitigation for impacts on water  
12 quality and the mitigation measures lack enforceability. (Pet. Op. Br. 34:12-13.) Further,  
13 "the IS / MND fails to adequately disclose, discuss, and mitigate the Project's impacts to  
14 water quality." (*Id.* at 14-15.). Last, Petitioner claims the "Mitigation Measures fail to  
15 identify the 'original measurements' that will be used to track quality." (*Id.* at 7-8.).  
16 Then, concludes that "based on the record, Mr. Cashen's comments, [support] a fair  
17 argument the Project may continue to have potentially significant impacts to wetlands."  
18 (*Id.* at 36:6-7.)

19 Petitioner is correct that "Mitigation measures must be fully enforceable through  
20 permit conditions, agreements, or other legally-binding instruments. In the case of the  
21 adoption of a plan, policy, regulation, or other public project, mitigation measures can be  
22 incorporated into the plan, policy, regulation, or project design." (CEQA Guidelines  
23 §15126.4(a)(2). Here, RPI Jones would again respectfully direct the Court back to the  
24 Administrative Record which contains the IS and MND. There, the Court should note the  
25 Project was accompanied by an Ordinance to legally bind all the findings within the  
26 Administrative Record. The water quality control testing, including the Mitigation  
27 Measures, are subject to legal consequences should any particulate matter fall below or  
28 exceeds safe / state levels. Contrary to Petitioner's assertions, the Project absolutely



1 involves all the measures described in CEQA Guidelines §15126.4; namely, there is  
2 Governmental oversight for the water quality at the Project. (AR88, 5432.)

3 Further, the Shasta County Resource Manager and the Water Quality Control  
4 Board (Central Valley Regional Water Quality Control Board) will be tasked with  
5 regularly testing and analyzing the water quality at the Project. Notably, this agreement /  
6 process is also consistent with the two other gun ranges in Shasta County. (AR88, 5432.)

7 ////

#### 8 11. THE PROJECT DOES NOT JEOPARDIZE PUBLIC SAFETY

9 Petitioner claims “substantial evidence supports a fair argument that the shooting range  
10 may have a significant environmental impacts to public safety.” (Pet. Op. Br. 36:18-19.)  
11 Petitioner is misinformed and misquotes the AR. The typical rifle cartridge (e.g., 30-06, 30/30,  
12 etc) travels a maximum of two miles. There is no rifle cartridge that travels approximately 7,000  
13 yards (21k feet) except perhaps a .50 caliber BMG. However, that specific caliber is banned in  
14 California. More importantly, that caliber will not be fired at this range. Thus, Petitioner’s  
15 claims regarding the distances of bullet travel are not accurate especially the distance a .450  
16 Marlin can travel which is not 7,000 yards.

17 In contrast to Petitioner’s claims, the Record Range, located in Shasta County and in  
18 operation for over fifty (50) years, and Highway 299 are approximately within one mile of each  
19 other in *direct alignment*. (emphasis added.) There are no reported incidents of bullets striking  
20 vehicles in that time span. Similarly, the Redding Gun Club, also in operation for over fifty (50)  
21 years, and Deschutes Road are approximately a half-mile within each other. The Redding Gun  
22 Club is also in direct alignment with Deschutes Road. Yet, again, no issues of bullets striking  
23 vehicles in over 50 years. As noted in the AR, the Project’s berms are being constructed with the  
24 highest backstops in California and greatly exceed even the “Best Practices” advanced by the  
25 NRA.

26 ////

27 ////

28 ////

V.

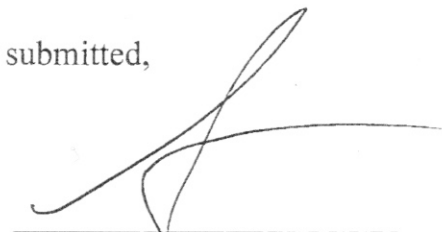
CONCLUSION

Based on the foregoing, RPI JONES requests this Honorable Court deny the Petition for Writ of Mandate.

Dated: 10/20/24

Respectfully submitted,

By:



SHON NORTHAM

Attorney for Respondent / Real Party  
in Interest Patrick Jones