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FILED

OCT 21 2024

SHASTA COUNTY SUPERIOR COURT
BY: M. SAECHAO, DEPUTY CLERK *MS*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA

ANDERSON/MILLVILLE RESIDENTS,)
an unincorporated association)
Petitioner)
v.)
COUNTY OF SHASTA; SHASTA)
COUNTY BOARD OF SUPERVISORS)
and DOES 1-20;)
Respondents)
PATRICK JONES, and DOES 21-100)
Real Parties in Interest)

Case No. 23CV-0203713

PETITIONER'S OPENING BRIEF

Date: December 5, 2024
Time: 9:00 am
Dept: 63

Judge: The Hon. Benjamin Hana

Date Action filed: November 21, 2023

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I. INTRODUCTION

Petitioner Anderson/Millville Residents challenges Respondents County of Shasta and Shasta County Board of Supervisors' ("County") October 24, 2024 approval of the Mitigated Negative Declaration ("MND") for the Zone Amendment 13-007 Project – High Plains Shooting Sports Center - ("Project"); the required findings under the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 *et seq.*; and the approval of the Project. The Initial Study/Mitigated Negative Declaration ("IS/MND") for the Project does not provide adequate environmental review under CEQA as substantial evidence supports a fair argument that the Project may have potentially significant environmental impacts to biological resources, water quality, noise, and public safety.

The record demonstrates that the Biological Review and other reports prepared for the Project and relied upon for the IS/MND minimized the Project's potentially significant impacts. Through the comments submitted by members of the public and experts in biological resources and noise, it is clear that the Project may have potentially significant impacts that were neither disclosed nor analyzed. The result is a shooting range that poses a risk to special status species and the public. Additionally, the noise generated from the Project will significantly impact the quiet rural character of the surrounding area. Given the disputes over the Project's impacts, CEQA mandates the preparation of an EIR. It is the function of an EIR, not a mitigated negative declaration, to resolve these conflicting claims. As the County failed to prepare an environmental impact report ("EIR"), the County's approval of the Project constitutes a prejudicial abuse of discretion and is contrary to law.

II. BACKGROUND INFORMATION

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A. The Project and Project Site

The Project, commonly known as the High Plains Shooting Sports Center Project, consists of 151.78-acre project site located at the northeast end of Leopard Drive, approximately 0.5-miles north of the Dersch Road and Leopard Drive intersection. (AR 68, 764.)

The Project consists of rezoning the Project site from Limited-Residential combined with Mobile Home and Building Site 40-Acre Minimum Lot Area (R-L-T-BA-40) zone district to the

1 Commercial Recreation (C-R) zone district and adoption of a conceptual development plan for an
2 outdoor gun range complex, gun club, long-rifle firing lines, handgun bays with berms to serve as
3 backstops, clay target trap and skeet shooting ranges, a 4,975-square-foot primary clubhouse with
4 a 3,272-square-foot attached covered patio area, a 1,025-square-foot attached caretaker's
5 residence, and a 699-square-foot law enforcement clubhouse with a 270-square-foot attached
6 covered patio. (AR 68.) Power for the facility would be provided primarily by roof-mounted
7 solar arrays with diesel generators housed in generator buildings to augment energy needs. (*Id.*)

8 The Project also consists of two clubhouses and a caretaker's residence to be served with
9 on-site wastewater treatment systems, potable water and fire suppression water from on-site
10 wells. (AR 68.) The shooting range would be open five days a week from 8:00 a.m. until dark
11 but in no case later than 8:00 p.m. (*Id.*) The Project includes large events to be held
12 intermittently with the largest events attracting up to 500 people. (*Id.*) Additional shooting
13 sports events would attract between 30 and 200 people, and large shooting events include RV
14 overnight dry camping in a designated parking area. (*Id.*)

15 The Project approvals require that certain long-range rifle targets only be in use for events
16 and that all ranges must be managed by a Range Officer for safety during operation. (AR 68.)
17 The Project approvals also require that the site be managed to prevent the spread of wildfire
18 based on weather conditions by closing during red flag warning days; maintaining fuels and
19 vegetation in accordance with recommendations and requirements for defensible space; and that
20 debris, bullet shells, fragment, casings, and clay targets, etc., must regularly be collected and
21 disposed of properly. (*Id.*)

22 **B. APPROVAL OF THE PROJECT**

23 On March 2, 2023, the County released the IS/MND for public review and comment. (AR
24 312-392, AR 5353-5354.) On April 7, 2023, the County released a revised IS/MND. (AR 255-
25 311.) There was no public review and comment period associated with the revised IS/MND.

26 On April 13, 2023 the Shasta County Planning Commission held a public hearing on the
27 proposed Project. (AR 1514, 1518.) The Planning Commission approved Resolution No.
28 2023-010 recommending that the Shasta County Board of Supervisors approve the MND and

1 Zone Amendment 13-007. (AR 1821-1823.)

2 On May 16, 2023, the Board of Supervisors held a public hearing on the proposed Project
3 and IS/MND. (AR 756-763, AR 1056, 1209.) After receiving numerous letters and receipt of
4 public testimony the Board continued the matter to a date uncertain in order to provide staff
5 time to evaluate and address the public comments and testimony. (AR 1209-1210; 1510-1511.)

6 On October 17, 2023, the County released a second revised IS/MND. (AR 67.) There
7 was no public review and comment period associated with the second revised IS/MND.

8 On October 24, 2023, the Board held a second public hearing on the proposed Project and
9 the Second Revised IS/MND. (AR 753-763, 764, 1269.) The Board took the following
10 actions: a) approved the 2nd Revised Environmental Initial Study & Mitigated Negative
11 Declaration for the Project (AR 1205-1207; 67-254); b) adopted the recommended findings
12 listed in the Planning Commission's April 13, 2023 Resolution 2023-010 (AR 34-35; 1205-
13 1207); and c) enacted Ordinance No. 378-2074 amending the Shasta County Zoning Plan
14 identified as Zone Amendment 13-007 for a 151.78 acre project site changing the zoning from
15 Limited-Residential combined with Mobile Home and Building Site 40-Acre Minimum Lot
16 Area (R-L-T-BA-40) zone district to the Commercial Recreation (C-R) zone district for the
17 development of an outdoor gun range complex and gun club. (AR 3-33.) The Board also
18 waived the second reading of the ordinance. (AR 1205-1207.) On October 27, 2023 the
19 County filed a Notice of Determination with County Clerk. (AR 1.)

20 **III. LEGAL ARGUMENT**

21 **A. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

22 "CEQA is a comprehensive scheme designed to provide long-term protection to the
23 environment. [Citation.] In enacting CEQA, the Legislature declared its intention that all public
24 agencies responsible for regulating activities affecting the environment give prime consideration
25 to preventing environmental damage when carrying out their duties. [Citations.] CEQA is to be
26 interpreted 'to afford the fullest possible protection to the environment within the reasonable
27 scope of the statutory language.' [Citation.]" (*Mountain Lion Foundation v. Fish & Game Com.*
28 (1997) 16 Cal.4th 105, 112.)

1 In evaluating proposed projects, a public agency must evaluate whether a possibility exists
2 that the project may have a significant environmental effect. (Pub. Resources Code, §§
3 21100(a), 21151(a).) If so, then the agency must conduct an initial threshold study. (*Id.*, §
4 21080.1; Title 14 California Code of Regulations (“CEQA Guidelines”), § 15063.) If the initial
5 study reveals that the project will not have any significant effect, then the agency may complete
6 a negative declaration that describes the reasons supporting the determination. (*Id.*, §§ 15063;
7 15064(f)(3); 15070(a).) If the initial study identifies potentially significant effects but the
8 applicant agrees to revisions in the project before the initial study and negative declaration are
9 released for public review and the revisions reduce the impact to less than significant, then a
10 mitigated negative declaration may be prepared. (*Id.*, §§ 15063(f)(2); 15070(b).) If the initial
11 study determines that any aspect of the project may cause a significant effect on the
12 environment, regardless of whether the overall effect of the project is adverse or beneficial, the
13 agency must prepare an EIR. (*Id.*; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68,
14 86; see also *Sundstrom v. County of Mendocino* (1982) 202 Cal.App.3d 296, 304-305.)

15 The Initial Study must provide the factual basis and the analysis for the determination that
16 a project will not have a significant impact on the environment. (See CEQA Guidelines §
17 15063(d)(3); *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 408;
18 *Sundstrom, supra*, 202 Cal.App.3d at 311.) An agency cannot be allowed to hide behind its own
19 failure to gather relevant data. (*Id.*) Thus, a negative declaration may only be prepared when, in
20 light of the whole record, no substantial evidence exists that the project may have a significant
21 environmental effect.

22 The EIR, with all its specificity and complexity, is the mechanism prescribed by CEQA to
23 force informed decision-making and to expose the decision-making process to public scrutiny.
24 (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th
25 892, 910; citing *No Oil, Inc., supra*, 13 Cal.3d at 86.) The central purpose of an EIR is to
26 identify the significant environmental effects of the proposed project, and to identify ways of
27 avoiding or minimizing those effects through the imposition of feasible mitigation measures or
28 the selection of feasible alternatives. (Pub. Resources Code, §§ 21002, 21002.1(a), 21061.) “An

1 EIR provides the public and responsible government agencies with detailed information on the
2 potential environmental consequences of an agency's proposed decision." (*Mountain Lion*
3 *Foundation v. Fish & Game Com., supra*, 16 Cal.4th at 113.) The EIR is "the heart of CEQA"
4 and "an environmental alarm bell whose purpose is to alert the public and its responsible
5 officials to environmental changes before they have reached the ecological point of no return."
6 (*Laurel Heights Improvement Association v. Regents of the Univ. of California ("Laurel Heights*
7 *I")* (1988) 47 Cal.3d 376, 392.) The EIR is the "primary means" of ensuring that public
8 agencies "take all action necessary to protect, rehabilitate, and enhance the environmental quality
9 of the state." (*Id., quoting* Pub. Resources Code, § 21001(a).) The EIR is also a "document of
10 accountability," intended "to demonstrate to an apprehensive citizenry that the agency has, in
11 fact, analyzed and considered the ecological implications of its actions." (*Laurel Heights I,*
12 *supra*, 47 Cal.3d at 392 *quoting* *No Oil, Inc., supra*, 13 Cal.3d at 86.)

13 1. THE FAIR ARGUMENT STANDARD

14 "In reviewing an agency's decision to adopt a mitigated negative declaration or a negative
15 declaration, a trial court applies the 'fair argument' test." (*City of Redlands v. County of San*
16 *Bernardino ("City of Redlands")* (2002) 96 Cal.App.4th 398, 405; *Gentry v. City of Murrieta*
17 (1995) 36 Cal.App.4th 1359, 1399.) The fair argument test requires that an agency "prepare an
18 EIR whenever substantial evidence in the record supports a fair argument that a proposed project
19 may have a significant effect on the environment." (*City of Redlands, supra*, 96 Cal.App.4th at
20 405; *quoting* *Gentry v. City of Murrieta, supra*, 36 Cal.App.4th at 1399-1400; *see Laurel Heights*
21 *Improvement Ass'n v. Regents of the Univ. of Cal. ("Laurel Heights II")* (1993) 6 Cal.4th 1112,
22 1123; *No Oil, Inc., supra*, 13 Cal.3d at 75, 82, 118.) "If there is substantial evidence in light of
23 the whole record before the lead agency that the project may have a significant effect on the
24 environment, an environmental impact report shall be prepared." (Pub. Resources Code, §
25 21080(d); § 21151(a).) If such evidence exists, the court must set aside the agency's decision to
26 adopt a negative declaration as an abuse of discretion in failing to proceed in a manner as
27 required by law. (*City of Redlands, supra*, 36 Cal.App.4th at 406; *Pala Band of Mission Indians*
28 *v. County of San Diego* (1998) 68 Cal.App.4th 556, 571.) Thus, an EIR must be prepared

1 "whenever it can be fairly argued on the basis of substantial evidence that the project may have
2 significant environmental impact" (*No Oil, Inc., supra*, 13 Cal.3d at 75) even if there is
3 substantial evidence to the contrary. (*Arviv Enterprises, Inc. v. South Valley Area Planning*
4 *Com.* (2002) 101 Cal.App.4th 1333, 1346; *Friends of "B" Street v. City of Hayward* (1980) 106
5 Cal.App.3d 988, 1002). Thus, the County must prepare an EIR instead of a negative declaration
6 if any substantial evidence in the record supports a fair argument that the Project may have a
7 significant effect on the environment, even if other substantial evidence supports the opposite
8 conclusion. (Pub. Resources Code § 21151(a); Guidelines § 15064(f)(1)-(2); *No Oil, Inc.,*
9 *supra*, 13 Cal.3d at 75; *Architectural Heritage Association v. County of Monterey* (2004) 122
10 Cal.App.4th 1095, 1109.) It is the function of an EIR, not a negative declaration, to resolve
11 these conflicting claims. (*See No Oil, Inc., supra*, 13 Cal.3d at 85.)

12 CEQA defines "environment" as "the physical conditions which exist within the area
13 which will be affected by a proposed project, including land, air, water...flora, fauna, noise..."
14 (Pub. Resources Code § 21060.5.) "Significant effect upon the environment" is described as "a
15 substantial or potentially substantial adverse change in the environment." (*See Pub. Resources*
16 *Code § 21068; CEQA Guidelines § 15382.*) A project may have a significant effect on the
17 environment if there is a reasonable probability that it will result in a significant impact. (*See No*
18 *Oil, Inc., supra*, 13 Cal.3d at 83; *Sundstrom, supra*, 202 Cal.App.3d at 309.) Even if the overall
19 effect of the project is beneficial, the lead agency must prepare an EIR if any part of the project
20 "either individually or cumulatively, may cause a significant effect on the environment."
21 (CEQA Guidelines § 15063(b)(1).) Thus, CEQA creates "a low threshold requirement" for the
22 initial preparation of an EIR and reflects a preference for resolving doubts in favor of
23 environmental review when the question is whether any such review is warranted. (*See No Oil,*
24 *Inc., supra*, 13 Cal.3d at 84; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225
25 Cal.App.3d 872, 880-881.)

26 CEQA and the CEQA Guidelines provide assistance in evaluating what constitutes
27 substantial evidence to support a "fair argument". (*See CEQA Guidelines § 15384(a)*
28 ("substantial evidence" means enough relevant information and reasonable inferences...that a

1 fair argument can be made to support a conclusion, even though other conclusions might also be
2 reached.”.) Substantial evidence consists of “fact, a reasonable assumption predicated upon
3 fact, or expert opinion supported by fact.” (Pub. Resources Code § 21080(e)(1); *see also* CEQA
4 Guidelines § 15384(b).) It does not include “argument, speculation, unsubstantial opinion or
5 narrative, evidence that is clearly inaccurate ...or evidence of social or economic impacts that do
6 not contribute to, or are not caused by, physical impacts on the environment.” (Pub. Resources
7 Code § 21080(e)(2).) Comments that present evidence of facts and reasonable assumptions from
8 those facts may constitute substantial evidence to support fair argument that the project may
9 have a significant effect on the environment. (*See City of Redlands, supra*, 96 Cal.App.4th at
10 590; *see also Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th
11 144, 152-153.) Relevant personal observations of area residents on nontechnical subjects qualify
12 as substantial evidence for a fair argument. (*Ocean View Estates Homeowner’s Assn., Inc. v.*
13 *Montecito Water District* (2004) 116 Cal.App.4th 396, 402.)

14 2. STANDARD OF REVIEW

15 In an action to set aside an agency’s determination under CEQA, the trial court reviews
16 whether the agency abused its discretion. Abuse of discretion is shown if (1) the agency has not
17 proceeded in a manner required by law, or (2) the determination is not supported by substantial
18 evidence. (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 39-40; *see also* Pub
19 Resources Code § 21168; Code of Civ. Proc. § 1094.5.)

20 Where the agency has failed to comply with CEQA’s procedural requirements, including
21 the disclosure requirements, or with CEQA’s substantive requirements concerning
22 environmental impacts, such non-compliance constitutes a prejudicial abuse of discretion
23 regardless of whether a different outcome would have resulted if the public agency had
24 complied with those provisions. (*Gentry v. City of Murrieta, supra*, 36 Cal.App.4th at 1375.)

25 Under CEQA the court must determine whether the agency has committed a prejudicial
26 abuse of discretion. (Pub. Resources Code, § 21168.) An abuse of discretion is established if: 1)
27 the agency’s determination or decision is not supported by substantial evidence; or 2) the agency
28 has failed to proceed in a manner required by law. (*Id.*) The court’s role in reviewing a

1 negative declaration is to determine whether substantial evidence in the record supports a fair
2 argument that the Project may have significant impacts. (*No Oil, Inc.*, *supra*, 13 Cal.3d at 75) A
3 decision to adopt a negative declaration must be set aside if substantial evidence exists of a
4 possible significant effect. (*Sundstrom*, *supra*, 202 Cal.App.3d at 310, n. 2.) “A governmental
5 agency must prepare an EIR on any project that may have a significant impact on the
6 environment.” (*City of Redlands*, *supra*, 96 Cal.App.4th at 405; Pub. Resources Code, § 21100.)
7 Whether the record contains sufficient evidence to support a fair argument is a question of law.
8 (*Consolidated Irrigation District v. City of Selma* (2012) 204 Cal.App.4th 187, 207.)

9 **B. APPROVAL OF THE MND VIOLATES CEQA’S REQUIREMENTS**

10 The County’s approval of the Project, based on an MND instead of an EIR violates CEQA
11 as substantial evidence supports a fair argument that the Project may have potentially significant
12 impacts. CEQA requires full disclosure of a project’s significant environmental effects so that
13 decision makers and the public are informed of consequences *before* a project is approved, to
14 ensure that government officials are held accountable for these consequences. (*Laurel Heights*
15 *II*, *supra*, 47 Cal.3d at 392.)

16 **1. Substantial Evidence Supports A Fair Argument That The Project May**
17 **Have Significant Environmental Impacts To Biological Resources**

18 The record before the County supports a fair argument that the Project may have
19 significant environmental impacts to biological resources. The record contains comments from
20 California Department of Fish and Wildlife (“CDFW”), which is the trustee agency for
21 California’s fish and wildlife resources. (AR 3956-3960; Fish & Game Code, §§ 711.7(a);
22 1820; Pub. Resources Code, § 21070; CEQA Guidelines, § 15386(a).) Fish & Game Code
23 section 1802 requires that CDFW consult with lead and responsible agencies and provide, as
24 available, the required biological expertise to review and comment on environmental
25 documents and impacts arising from a proposed project’s activities. (*See Center for Biological*
26 *Diversity v. Department of Forestry & Fire Protection* (2014) 232 Cal.App.4th 931, 953.) The
27 record also contains significant comments from Scott Cashen regarding the Project’s impacts to
28 biological resources. Mr. Cashen is an environmental biologist with 30 years of experience in

1 wildlife biology and natural resource management. (AR 3644.) As such, CDFW's and Mr.
2 Cashen's expert comments constitute substantial evidence that supports a fair argument that the
3 Project may have significant environmental impacts to biological resources.

4 **a. The IS/MND Relies Upon an Inadequate Biological Review**
5 **of the Project Site and the Adjacent Area**

6 The IS/MND's relies upon an inadequate Biological Survey which serves as the basis for
7 the IS/MND's discussion regarding the Project's potentially significant impacts to biological
8 resources. (See AR 77-79; 45651-5669.) While, a lead agency is not required to follow the
9 recommendations of wildlife agencies on how an impact should be studied, however, substantial
10 evidence must supports the agency's chosen methodology. (*North Coast Rivers Alliance v Marin*
11 *Mun. Water District* (2013) 216 Cal.App.4th 614, 643.) In the present matter, the record
12 demonstrates that 1) Wildlands Resource Managers ("WRM") failed to follow CDFW's
13 guidelines and protocols; 2) WRM's methodology is not supported by substantial evidence; and
14 3) substantial evidence supports a fair argument that the Project may have potentially significant
15 impacts to biological resources.

16 The Biological Review, and the supplemental reviews failed to follow CDFW's guidelines
17 and protocols for identifying protected plant species. (See AR 5651-5669 [Biological Review];
18 AR 414-419; AR 940-962; AR 3652 -3653 ["Because WRM's survey did not adhere to the eagle
19 survey protocols, the survey results do not provide substantial evidence that no eagle nests (or
20 territories) would be impacted by the Project."]; AR 3513-3516; AR 3501, 1649-1651.)¹ The
21 Biological Review failed to follow CEQA plant survey protocol. For instance, the plant survey
22 was conducted on January 21, 2017 and February 21, 2017 when the vernal pools would most
23 likely be full and as a result no threatened, endangered or sensitive species would be blooming
24 and able to be identified. (AR 451, AR 3514, 1491.) The wetland study is also inadequate as it
25 fails to include a survey for the endangered or threatened species commonly found in the area
26 which includes vernal pool fairy shrimp, vernal pool tadpole shrimp, or the western spadefoot
27 toad. (AR 446-462; see also 1491.)

28 ¹ As early as October 2013, CDFW informed the County of the importance of conducting
surveys based upon the appropriate protocols. (AR 4044-4055.)

1 A “sufficient discussion of significant impacts requires not merely a determination of
2 whether an impact is significant, but some effort to explain the nature and magnitude of the
3 impact. (*Id.*, citing *Cleveland National Forest Foundation v. San Diego Association of*
4 *Governments* (2017) 3 Cal.5th 497, 514-515.) Substantial evidence supports a fair argument that
5 the IS/MND failed to provide a timely and adequate biological review and thus, failed to provide
6 the requisite information for informed decision making, including an analysis of the Project’s
7 impacts to biological resources.

8 **b. The Project May Have a Significant Impact on Nesting Birds**

9 The IS/MND concluded that the Project would not have a significant impact to nesting
10 birds such as the bald eagle as there are no nesting locations on the Project site or within the
11 project vicinity. (AR 78.) This determination was also based in part on Mitigation Measure
12 XIIIa.1 (AR 90) that proposes earthen berms and noise barriers. (AR 78.)

13 CDFW concurred with Mitigation Measure IV.a.1 (AR 79) regarding “vegetation removal
14 and other ground disturbing activities outside of the nesting bird season, or with the
15 implementation of pre-construction surveys.” (AR 3957.) CDFW, however, pointed out that the
16 Project would generate a permanent substantial increase in ambient noise levels. (AR 3957,
17 citing IS/MND at 21-22 [AR 333-334].) CDFW pointed out that the IS/MND failed to “offer an
18 assessment or avoidance and minimization measures for potential impacts to nesting birds due to
19 substantial increase in ambient noise levels throughout the life of the Project.” (AR 3958.)

20 It should also be noted that the despite CDFW’s concern about the impact to nesting birds,
21 the biological evaluation in the original IS/MND contained no assessment of nesting birds on
22 the project site. (AR 322-324.) Moreover, the biological evaluation’s brief discussion of birds
23 in the project vicinity excludes any reference to bald eagles, golden eagles and ospreys which
24 are known to be present in the area. (*Id.*) (See Biological Review at AR 5662; *see also* AR
25 2495-2497 and AR 3625-3635 [Letters from Battle Creek Alliance Defiance Canyon Raptor
26 Rescue dated May 11, 2023 and October 20, 2023, respectively].)

27 CDFW then stated that “[e]levated noise levels are known to alter nesting behavior, which
28 may lead to next abandonment, therefore, CDFW strongly encourages a nesting bird assessment

1 of the perceived permanent elevated noise regime that is typical of shooting centers.” (*Id.*) This
2 assessment, however, was not completed. (See AR 333-334 [Revised IS/MND].) Instead, the
3 Staff Report discusses an April 6, 2023 letter from WRM disputing CDFW’s claims about
4 potential impacts associated to nesting birds from the operation of the Project. (AR 1641.)
5 WRM opined that “various factors, including the existing topography, would effectively reduce
6 and limit the impacts on nesting birds with the corridor.” (*Id.*, see also AR 1649, 3928.) It
7 should be noted, however, that WRM does not indicate that it has any expertise in noise, thus
8 such an opinion without personal knowledge of noise at the project site does not constitute
9 substantial evidence. (AR 957-959.) Also, WRM’s opinion is countered by the lay testimony of
10 Tracy Verhougstraete, who lives at “7447 Leopard Drive, which is located directly next to the
11 proposed gun range complex.” (AR 854.) Based upon her personal knowledge, Ms.
12 Verhougstraete states that the noise will be ever present as the plains are fairly flat and open and
13 “there are very few trees or hills to buffer the sound.” (*Id.*) This is not speculative as Ms.
14 Verhougstraete goes on to state that “[w]hen Supervisor Jones and his friends are there shooting
15 it sounds as if they are outsider our home.” (*Id.*) Thus, Ms. Verhougstraete has personal
16 knowledge of the noise impacts and her lay testimony constitutes substantial evidence that
17 counters WRM’s opinion. (*Ocean View Estates, supra*, 116 Cal.App.4th at 402; *Citizens Ass’n*
18 *for Sensible Development of Bishop v. County of Inyo* (1985) 172 Cal.App.3d 151, 173
19 [Relevant personal observations of area residents on non-technical subjects qualify as substantial
20 evidence for a fair argument.].) Thus, even assuming that WRM’s opinion regarding noise
21 constituted substantial evidence, this amounts to conflicting substantial evidence regarding the
22 project’s operation (noise from shooting) on nesting birds.

23 The record also contains expert opinion from Mr. Cashen that the Project may have
24 significant environmental impacts to biological resources. Mr. Cashen addressed WRM’s
25 response to impacts to nesting birds. (AR 3651, 3652.) Mr. Cashen pointed out that WRM did
26 not conduct the survey consistent with the U.S. Fish and Wildlife Services’ (“USFWS”) standard
27 protocols. (AR 3652.). WRM “conducted only one survey (in May), several months after the
28 courtship phase of both the golden eagle (December to January) and bald eagle (January to

1 March).” (*Id.*) As such “the survey did not encompass all potential nest sites within two miles
2 of the Project for golden eagles, or within one-half mile of the Project site for bald eagles.” (*Id.*)
3 “[T]he survey was limited to the Project site and ‘as far as [WRM] was able to visually inspect
4 from within the property boundary.’” (AR 3652-3653; see also AR 164, 3733.) Mr. Cashen
5 further opined that:

6 Bald eagle nests are usually located within one mile of key foraging areas.⁴⁹ Bear
7 Creek may be a key foraging area for bald eagles because it supports a diverse
8 assemblage of fish species, including anadromous fish, resident native fish, and
9 introduced fish. The fact that an adult bald eagle “was seen soaring off-site to the
10 east and southeast of the project area” during WRM’s breeding season survey
11 provides additional evidence that a bald eagle nest may be located near the Project
12 site. (AR 3653.)

13 Substantial evidence does not support WRM’s conclusion that impacts to eagle nests
14 would less-than significant. Mr. Cashen also identified WRM’s major omission regarding
15 eagle nests and buffer zones. (*Id.*) WRM acknowledged that eagle nests within a half mile of
16 the Project site could be negatively impacted by the Project. (AR 3653, 162-164.) Moreover,
17 WRM observed an adult bald eagle soaring off-site to the east and southeast of the project
18 during the breeding season survey indicating that a bald eagle nest may be located near the
19 Project site. (AR 3653, 163.) As WRM did not survey the area beyond the boundary of the
20 property except with binoculars, WRM’s determination is not supported by substantial
21 evidence especially in light of an eagle present during the survey. (AR 3653; AR 164.)

22 Disagreement among expert opinions over the Project’s significant impacts to biological
23 resources satisfies the fair argument standard mandating that the County prepare an EIR prior to
24 approval of the Project. (CEQA Guidelines, § 15064(g) *see also Clews Land & Livestock, LLC*
25 *v. City of San Diego* (2017) 19 Cal.App.5th 161, 192.)

26 **c. The IS/MND Failed to Address Special-Status and Fully Protected**
27 **Species**

28 As demonstrated and discussed by Mr. Cashen, “the IS/MND failed to analyze impacts to
numerous special-status species that may occur at the Project site.” (AR 3647, see also AR 77-
79.) The Biological Review for the IS/MND states the following about the annual grassland
habitat at the Project site: “[b]ird species common to the area include ... short-eared owl ...

1 northern harrier.” (AR 5661.) The Biological Review also lists the ringtail cat, a Fully
2 Protected species under California Fish and Game Code section 4700(b)(5), as a “common
3 species typical of the woodlands” at the Project site.² (*Id.*) The short-eared owl and northern
4 harrier are California Species of Special Concern. (AR 3648, AR 5174-5181, AR 5148- 5155.)
5 Habitat loss and degradation are primary threats to these species. (AR 3648; AR 5179; 5151-
6 5153.) Despite the Biological Review’s determination that the short-eared owl, northern
7 harrier, and ringtail cat could occur at the Project site, the IS/MND provides no analysis of nor
8 mitigation for impacts to these three species. (AR 5661; AR 77-79.)

9 The eBird database provides data on birds detected at various “hotspots.” A hotspot is
10 defined as a “public birding location where checklists are aggregated and you can view data
11 summaries.” (AR 3648.) The Leopard Dr.—Millville Plains Hotspot is a reliable source of
12 data on avian species that are likely to occur at the Project site as it is located approximately
13 400 feet from the Project site. (AR 3648.) Of the ten special-status species that have been
14 detected at the Leopard Dr.—Millville Plains Hotspot, only three were addressed in the Second
15 Revised IS/MND (AR 77-79), and only four of the species were subsequently addressed in
16 WRM’s supplemental reports responding to comments. (AR 163-166 [bald eagles and golden
17 eagles]; AR 154 [burrowing owls].)

18 WRM’s comments regarding burrowing owls stated “[b]urrowing owls are not found
19 within the northern Sacramento Valley.” (AR 154.) Based upon this WRM’s conclusions, the
20 Second Revised IS/MND ignores discussion of the burrowing owl except to state that it is listed
21 as a species of special concern. (AR 77.) As opined by Mr. Cashen, WRM’s response is
22 inconsistent with the range map published by the CDFW.” (AR 3648, AR 5164-5173.)
23 WRM’s responses is also contradicted by the presence of burrowing owls at the Leopard Dr.—
24 Millville Plains Hotspot, at other locations on Leopard Drive, and at Millville Plains Road west

25 ² Section 4700 provides in relevant part: “a fully protected mammal may not be taken
26 or possessed at any time. No provision of this code or any other law shall be construed to
27 authorize the issuance of a permit or license to take a fully protected mammal, and no permit or
28 license previously issued shall have any force or effect for that purpose. However, the
department may authorize the taking of a fully protected mammal for necessary scientific
research, including efforts to recover fully protected, threatened, or endangered species.”

1 of the Project site. (AR 3649; *see also* AR 5164-5173.) Thus, this clearly demonstrates that
2 burrowing owls could occur at the Project site which the IS/MND neither addresses nor
3 acknowledges.

4 WRM's also stated that "the range of the [grasshopper sparrow] does not extend into
5 Shasta County." (AR 156.) This is inconsistent with the range map published by the CDFW.
6 (AR 3649; *see also* AR 5157-5163.) Grasshopper sparrows have been detected along Millville
7 Plains Road, approximately 1.75 miles west of the Project site, and at several locations along
8 Parkville Road, approximately 2.75 to 4.15 miles southwest of the Project site. (*Id.*) The
9 IS/MND's failure to disclose and analyze the special status and fully protected species in the
10 Project area that could reasonably occur at the Project site results in an inadequate discussion
11 and analysis of the Project's impacts to biological resources. Moreover, Mr. Cashen's comments
12 regarding protected species meet the fair argument standard.

13 **d. The Project Will Have Significant Noise Impacts on Wildlife**

14 The IS/MND concluded that impacts to wildlife from noise generated from the Project
15 would be less than significant. (AR 78.) According to the IS/MND this decision is based upon
16 project design, operational hours and conclusions in WRM's Response to Additional
17 Information (AR 5434) and WRM's May 16, 2023 letter to the Shasta County Board of
18 Supervisors. (AR 149.) (AR 78.) After a review of literature regarding noise impacts to
19 wildlife, WRM's concluded that the if earthen berms are placed where recommended as part of
20 Mitigation Measure XIII.a.1 the noise impacts would be less-than-significant to wildlife. (AR
21 78; 5434-5439.)

22 Mr. Cashen, in detailed comments regarding noise impacts on wildlife, concluded that
23 noise generated from the project would adversely impact wildlife in the vicinity of the Project.
24 (AR 3653-3658.) Mr. Cashen identified numerous flaws in the Noise Technical Report.³ (*Id.*)
25 First, the Noise Technical Report failed to provide data on ambient noise levels which is
26 significant as "the impact that Project noise will have on wildlife depends on how much the
27 Project would increase noise levels above ambient levels." (AR 3653.)

28

³ The Noise Technical Report dated March 2017 is located at AR 5462-5486.

1 Second, the IS/MND reliance upon hourly noise levels to assess significance of the
2 Project's impacts on wildlife and human receptors is misleading and inappropriate. (AR 3654.)
3 Mr. Cashen points out that the impacts on wildlife depend on the nature of the stimulus. (*Id.*)
4 Gun shots are impulsive noise that impacts wildlife which causes them to perceive the noise as a
5 threat causing animals to flee or abandon habitat entirely. (*Id.*)

6 Third, the IS/MND and Noise Technical Report ("Noise Report") makes assumptions
7 about what the noise will consist of in terms of the guns and ammunition being fired. (AR 78;
8 AR 3654; AR 5480-5484.) The rate of fire is unreasonably low for both target practice and
9 organized shooting events. (AR 3654.) The impact analysis fails to account for the possibility
10 that multiple people would be actively shooting at a given time. (*Id.*)

11 Finally, Mr. Cashen points out that the IS/MND relies upon a Noise Report that focused on
12 noise impacts to residential homes within the general vicinity of the Project and not on the
13 impacts of noise on wildlife. (AR 3654; *see* AR 5462-5486; *see also* AR 5436; AR 416.) Thus,
14 the noise study with respect to wildlife is deficient as it was designed only to assess impacts to
15 humans and only provided estimates of noise levels at sensitive human receptors. (*See* AR 3655;
16 5462-5486.)

17 Mr. Cashen explains the Project's potentially significant impacts to bats, birds, and other
18 wildlife. (AR 3655-3658.) With respect to bats, the Project will substantial increase in ambient
19 noise levels during the day when bats are roosting and that may result in them abandoning their
20 roost. (AR 3655-3656.)

21 With respect to noise impacts on birds, CDFW and Mr. Cashen both commented on the
22 IS/MND's failure to adequately analyze the Project's impact to nesting birds due to noise
23 generated by the Project. (AR 3936, 3653-3658.) The IS/MND found the impacts to nesting
24 birds less than significant. (AR 78 relying upon WRM's response at AR 9959.) Mr. Cashen,
25 however, pointed out this determination is simply not supported by evidence and conflicts with
26 the scientific literature. (AR 3656.) CDFW commented that "elevated noise levels are known to
27 alter nesting behavior, that may lead to nest abandonment" and that the County should conduct a
28 nesting bird assessment of the elevated noise regime from the shooting. (*Id.*)

1 In concluding that the Projects' noise impacts on wildlife will not be significant the
2 IS/MND concludes the following:

3 Based on the project design, operational hours as well as conclusions in the
4 Response to Additional Information and the Response to the May 16, 2023 letter
5 to the Shasta County Board of Supervisors from Law Office of Donald Mooney,
6 which both found that the existing topography, proposed earthen berms and
7 incorporation of noise barriers as part of Mitigation Measure XIII.a.1 would
8 significantly reduce noise from gun firing, and that no nesting locations were
9 present on the project site or within the project vicinity, impacts to wildlife from
10 noise are considered to be less-than-significant. (AR 78.)

11 This conclusion, however, is not supported by substantial evidence. WRM stated "some
12 noise reduction mitigation will be needed to reduce off-site noise from the pistol and rifle ranges
13 and the clay sports shooting area." (AR 417-418.) Moreover, WRM repeated RCH's
14 recommendation that "barriers should probably be located immediately behind the shooters, so
15 the noise is attenuated at the shooter location." (AR 419.) Mitigation Measure XIII.a.1 does not
16 require installation of a noise barrier at the pistol ranges and does not require installation of a
17 noise barrier behind (west of) the shooters at the clay sports shooting area. (AR 90.) Instead, it
18 requires a noise barrier "as close as possible to the northern two firing locations ... to obstruct
19 line of sight from those firing locations to the residences to the north and northwest." (Id.).
20 Moreover, WRM merely assumed implementation of RCH's recommendations would reduce
21 noise impacts on wildlife to less-than-significant levels. (AR 419 ["If these barriers are placed
22 where recommended, we may assume that noise impacts to wildlife will be reduced to less than
23 significant."].) As discussed above, WRM acknowledged that RCH's Noise Report (and
24 associated recommendations) did not address impacts to wildlife. (See AR 5462-5486; see also
25 AR 5436; AR 416.) This invalidates WRM's ability to cite the noise study as justification for the
26 assumption that implementing RCH's recommendations would reduce the impacts on wildlife to
27 less-than-significant. (AR 3657-3658.) Finally, simply "because noise barriers "significantly
28 reduce noise from gun firing" does not mean Project noise levels would automatically be less-
than-significant under CEQA." (AR 3658.) The record needs to contain a determination that the
input is reduced to less than significant. (CEQA Guidelines, § 15074(b).) The reports do not
contain any quantification of the reduction and how that reduction would result in an impact

1 being reduced to less than significant apply to impacts to wildlife.

2 Not only does Mr. Cashen's opinion regarding noise impacts to wildlife constitute
3 substantial evidence supporting a fair argument, but the record demonstrates that a lack of
4 substantial evidence to support the County's conclusions contained in the IS/MND.

5 **e. The Project Will Have Significant Impacts to Wetlands**

6 The Project site contains approximately 11.75 acres of vernal swales, 0.428 acres of vernal
7 pools, and 2.221 acres of intermittent and ephemeral streams. (AR 79, 15.) The IS/MND states
8 that "the project footprint has been designed to avoid alteration of every identified wetland
9 area." (AR 79.) As demonstrated by Mr. Cashen, this statement is inconsistent with the Site
10 Plan. (AR 114; see AR 3658; 3668-3671.) Based upon his review of the Site Plan, Mr. Cashen
11 opined that the Project would directly impact numerous wetland features.

- 12 a) Vernal swale ("VS") number 12 would be directly impacted by the all-weather
13 (gravel) access road, joint utility trench, and perimeter fence.
- 14 b) Ephemeral stream ("ES") number 1 would be directly impacted by the all-
15 weather (gravel) access road, parking stalls, and potentially two pedestrian
16 bridges.
- 17 c) VS-1 would be directly impacted by the path (or road) to the sporting clay
18 stations. One of the stations is located on the edge of the swale.
- 19 d) Firing positions for the 300-, 500- and 600-yard targets would be located within
20 VS-1. The IS/MND states: "[t]hese firing positions would cause some disturbance
21 to the vernal swale."⁸³
- 22 e) VS-21 would be directly impacted by the trap field shooting stations and was
23 omitted from the Site Plan.⁸⁴ and
- 24 f) It appears VS-22 could be impacted by the joint utility trench and potentially the
25 skeet field; however, this feature was omitted from the Site Plan.⁸⁵
- 26 g) Several wetlands would be impacted by activities on the "trail to remain." (AR
27 3658; see also 3668-3671 [Site Plan marked identifying wetland features directly
28 impacted by the Project].)

29 Mr. Cashen also opined that the Project would have numerous indirect impacts to wetlands.
30 (AR 3658-3659.) The "highly valued functions of wetlands depend on their hydrological and
31 ecological connectivity to nearby areas." (AR 3659; AR 4455.) The USFWS provided the

1 following analysis of impacts to listed vernal pool crustaceans:

2 Habitat indirectly affected includes all habitat supported by destroyed upland
3 areas and swales, and all habitat otherwise damaged by loss of watershed, human
4 intrusion, introduced species, and pollution caused by the project (see Effects of
5 the Proposed Action below). Where the reach of these effects cannot be
6 determined definitively, all habitat within 250 feet of proposed development may
7 be considered to be indirectly affected. If any habitat within a vernal pool
8 complex is destroyed, then all remaining habitat within the complex may
9 potentially be indirectly affected. If any part of a vernal pool is destroyed, then
10 the entire pool is directly affected. (AR 3659; AR 5063.)⁴

11 “Mr. Cashen concluded that “the Project includes numerous activities that are inconsistent
12 with the maintenance of vernal pools (and swales).” (AR 3659; AR 5064-5065.) These
13 activities include, but are not limited to: (a) alteration of existing topography (AR 87); (b) the
14 construction of structures, roads, and trails; (c) removal and alteration of existing native
15 vegetation; and (d) installation of storm water drains (AR 4113, 4115-4116). Many of those
16 activities would occur within 250 feet of wetlands. (AR 3659.) Relying upon the USFWS’s
17 analysis, Mr. Cashen opined that those wetlands would be indirectly affected by the Project.
18 (*Id.*) Mr. Cashen’s opinion fair argument standard regarding the project’s impacts to wetlands.

19 The IS/MND also fails to disclose, analyze or mitigate the potentially significant impacts
20 associated with Mitigation Measure XIII.a.1 that requires installation of noise barriers at two
21 locations. (AR 90.) The installation of a noise barrier behind the rifle firing positions along the
22 southern property boundary may result in a significant environmental impact to Vernal Swale-1
23 (AR 3658.)

24 **f. The Project’s Potentially Significant Impacts to Vernal Pool
25 Crustaceans**

26 The Biological Review states that the Project site contains vernal swales that constitute
27 suitable habitat for the federally-listed vernal pool fairy shrimp and vernal tadpole shrimp.
28 (AR 5662; see also AR 79.) The Biological Review upon which the IS/MND relies upon
states: “As the vernal pools and swales are suitable habitat for the fairy and tadpole shrimp it

⁴ See U.S. Fish and Wildlife Service, 1996 February 28. Programmatic Formal
Endangered Species Act Consultation on Issuance of 404 Permits for Projects with Relatively
Small Effects on Listed Vernal Pool Crustaceans Within the Jurisdiction of the Sacramento Field
Office, California. (AR 5061-5077.).

1 is recommended that these features be avoided by the project design. Failure to do so may
2 result in a taking of a shrimp species due to modification of their habitat. (AR 5662.) The
3 IS/MND indicates that the firing positions for the 300-, 500- and 600-yard targets would
4 impact a large vernal swale. (AR 79.) The IS/MND, however, fails to disclose and analyze
5 the impacts to the vernal pool fairy shrimp and vernal pool tadpole shrimp resulting from these
6 firing positions. (AR 79; AR 3650; see also AR 5662.) Thus, the record supports a fair
7 argument that the impacts to the vernal pool fairy shrimp and vernal pool tadpole shrimp
8 remain potentially significant. (AR 3650.)

9 **g. The Project's Potentially Significant Impacts to Western Spadefoot**
10 **Toad**

11 The Project site includes habitat for the western spadefoot toad, a California Species of
12 Special Concern.⁵ (AR 77; AR 3650.) The IS/MND acknowledges that roads and various
13 construction activities associated with the Project could impact the western spadefoot; however,
14 it determined those impacts would be less-than-significant because: (a) road and vehicular access
15 to the site is limited and would not be located in a majority of the habitat that Western spadefoot
16 toad could occupy;" and (b) "the primary clubhouse with the attached caretaker's residence and
17 nearby generator shed are all located over 600-feet away from vernal swales or pools which
18 would serve as western spadefoot toad habitat." (AR 78.)

19 The IS/MND, however, fails to consider the Project's impacts to terrestrial habitat for the
20 western spadefoot. (AR 78, 3651.) While western spadefoot toad breed in temporary pools and
21 drainages, they spend most of the year below ground in terrestrial burrows. (AR 3651.). They

22
23 ⁵ Specie of Special Concern ("SSC") is a species, subspecies, or distinct population of an
24 animal native to California that currently satisfies one or more of the following (not necessarily
25 mutually exclusive): 1) is extirpated from the State or, in the case of birds, is extirpated in its
26 primary season or breeding role; 2) is listed as Federally-, but not State-, threatened or
27 endangered; meets the State definition of threatened or endangered but has not formally been
28 listed; 3) is experiencing, or formerly experienced, serious (noncyclical) population declines or
range retractions (not reversed) that, if continued or resumed, could qualify it for State
threatened or endangered status; or 4) has naturally small populations exhibiting high
susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify
it for State threatened or endangered status. SSC should be considered during the environmental
review process. (CEQA Guidelines, §§ 15380; 15063 and 15065.)

1 also move to and from breeding sites at distances up to 860 feet and may be even 1,200 feet.
2 (AR 3651; AR 4912.) Thus, as opined by Mr. Cashen, “the 50-foot buffers around potential
3 breeding sites would not be sufficient to prevent potentially significant impacts to the western
4 spadefoot.” (AR 3651.) Additionally, the Project’s use of lime and fertilizer could significant
5 impact the western spadefoot.” (AR 3651; AR 401; 4389.) Thus, substantial evidence in the
6 record supports a fair argument that the Project may have significant environmental impacts to
7 the terrestrial habitat for the western spadefoot toad.

8 **h. The IS/MND Fails to Address Potential Impacts to Bald Eagles and**
9 **Golden Eagles**

10 The IS/MND states that a review of the 2022 California Natural Diversity Database
11 (“CNDDDB”) inventory found that no species identified as a candidate, sensitive, or special-status
12 have been known to occur at the Project site. (AR 78.) WRM, however, failed to conduct
13 surveys for eagle nests pursuant to the USFWS standards and protocols. (AR 3652.) Instead
14 WRM relied upon one survey conducted at the wrong time of the year and did not encompass all
15 potential nests within 2 miles. (AR 3652; AR 953-957.) The evidence in the record, however,
16 indicates that bald eagles, which are listed as endangered under the California Endangered
17 Species Act, Fish & Game Code §§ 2050 *et seq.*, are present in the project vicinity. (AR 3651-
18 3653.) Despite the presence of bald eagles in the vicinity the IS/MND, however, contains no
19 assessment and/or discussion regarding the Project’s potential impacts to bald eagles.

20 Golden eagles are also present in the project vicinity. (AR 3651-3652.) While not a
21 listed species, along with bald eagles they are protected under the federal Bald and Golden
22 Eagle Protection Act (16 U.S.C., § 666-668d), the Migratory Bird Treaty Act (16 U.S.C. § 703-
23 712), and the Lacey Act (16 U.S.C. § 3371 *et seq.*)

24 Given the presence of golden eagles and bald eagles in the vicinity, including nests,
25 substantial evidence supports a fair argument that the Project may have potentially significant
26 environmental impacts to these two species. The IS/MND’s determination that the impacts to
27 eagle nests would be less-than-significant is not supported by substantial evidence. (See AR
28 953-956; 3651-3653.)

1 **i. The Project Has Potentially Significant Impacts to Oak Woodlands**

2 The Project includes the removal of seven oak trees which provide important tree canopy
3 for the blue oak woodland habitat and riparian habitat. (AR 78; AR 3664.) Oak woodlands
4 have the richest wildlife species abundance of any habitat in California, with over 330 species of
5 birds, mammals, reptiles, and amphibians depending on them at some stage in their life cycles.
6 (AR 3664.) The IS/MND concludes since the canopy loss amounts to roughly 2% in the Project
7 area the impact is considered less than significant on blue oak woodland habitat and riparian
8 habitat. (AR 78.) The IS/MND relies upon the Oak Woodland and Vegetation Conservation
9 Plan dated January 2, 2014. (AR 5771-5781.) The author of the report concluded that the
10 impact to oak woodland is less than significant. (AR 5775.)

11 Mr. Cashen, however, discussed the importance of the crown canopy and the ecological
12 value of the oak woodlands and concluded that “at a minimum, the Project would contribute to
13 the incremental loss of blue oak woodlands, which have experienced a significant decline
14 throughout the state” and that “the Project’s impacts on oak trees remain potentially
15 significant.” (AR 3665.) Thus, the administrative record contains substantial evidence
16 supporting a fair argument that the Project may have significant environmental impacts to blue
17 oak woodlands.

18 **j. The Project’s Significant Impacts to Grassland Habitat**

19 The IS/MND’s determination regarding impacts to grassland habitat relies upon incorrect
20 calculations regarding the amount of grasslands and the amount of grasslands impacted by the
21 Project and omits numerous areas of the Project that will impact the grassland habitat. (AR 77.)
22 The IS/MND states “[t]he overall impact to grassland habitat is 11.74 acres or 7 percent of the
23 151.78 acres and as grazing will continue in the winter months, only birds that nest in the shorter
24 grass could be impacted. (*Id.*) This is taken directly from WRM July 20, 2023 response to
25 Petitioner’s May 16, 2023 letter. (*See* AR 941.) WRM stated that “[t]he project footprint
26 constitutes 11.74 acres or 7% of the 151.78 acres within the project area (AR 941[Butler 2023,
27 see Table 1 on the following page].) Thus, less than 8% of the grassland habitat on the project
28 area will be impacted.” (AR 941.) WRM’s calculation is incorrect as the Project site contains

1 only 133.06 acres of grassland (not 151.78 acres) (AR 5659) and Table 1 (AR 942) does not
2 include the caretaker's residence, law enforcement clubhouse, covered patio areas, rifle shooting
3 areas, or handgun bays (which will have crushed rock base for water drainage and fire safety.⁶
4 (See AR 4108 [Environmental Management Plan].) The IS/MND and WRM's Biological
5 Review and subsequent reports failed to consider the functional loss of habitat due to gunfire and
6 other human disturbance. (AR 3666; see AR 5651; AR 940.) WRM opines that such impacts
7 would be limited to daylight hours and that it may be expected that wildlife would escape the
8 Project area during this time. (AR 418.) This essentially ignores the functional loss of habitat
9 due to gunfire and human disturbance. As opined by Mr. Cashen, "functional habitat loss occurs
10 when anthropogenic disturbance causes an animal to avoid otherwise suitable habitat." (AR
11 3666, fn. 134.) Based upon Mr. Cashen's comments and opinion, substantial evidence in the
12 record supports a fair argument that the Project may have significant environmental impacts to
13 grassland habitat.

14 **k. The Project's Significant Impacts to Movement Corridors and**
15 **Nursery Sites**

16 The IS/MND concludes that the Project is not expected to interfere with wildlife nor
17 impede the use of native nursery sites and that there are no wildlife nurseries present in the
18 project vicinity. (AR 79.) This conclusion, however, is not supported by evidence as there were
19 no surveys conducted to identify potential nurseries. (AR 3663-3664; AR 5651 [Biological
20 Review does not address native wildlife nursery sties].) As discussed by Mr. Cashen, not only
21 does the statement lack evidentiary support, the Project's impact may be significant not only to
22 migratory birds, but also to special-status plant and animal species. (AR 3663.) Mr. Cashen
23 opinion "vernal pool landscapes provide critically important habitat for migratory birds,
24 especially waterfowl and shorebirds that depend on intact vernal pools as refueling stations.
25 Even if one were to assume the Project would not physically alter any of the site's wetland
26 features, human disturbance (e.g., gunshot) associated with the Project would interrupt essential
27 feeding, resting, and reproductive behaviors, and would most likely result in functional loss of

28 ⁶ Figure 3 of the WRM's Biological Review calculated the amount of annual grassland
with vernal inclusions to be 133.0577 acres. (AR 5659.)

1 waterbird habitat at the Project site and adjacent areas. This impact would be significant not
2 only to migratory birds, but also to special-status plant and animal species because waterfowl
3 and shorebirds play an important role in the transport and dispersal of plant propagules and
4 branchiopod (e.g., fairy shrimp) cysts among vernal pool complexes.” (AR 3663-3664; citing
5 AR 5190; AR 5049, AR 4562.) Thus, the record supports a fair argument that the Project may
6 have a significant impact to wildlife species.

7 **I. The IS/MND’s Mitigation Measures for Biological Resources Fail to**
8 **Reduce the Project’s Impacts to Less than Significant**

9 **i. Mitigation Measure IV.a.1**

10 CEQA requires mitigation measures designed to minimize a project’s potentially
11 significant environmental impacts. (Pub. Resources Code, §§ 21002.1, 21100(b)(3); Guidelines,
12 15126.4(a)(1). A mitigation measure may reduce a significant impact without avoiding that
13 impact. (Guidelines, § 15370(b); *see also* Pub. Resources Code, § 21002.1(a), 21081(a)(1).)

14 The IS/MND includes Mitigation Measure IV.a.1 to minimize Project impacts on nesting
15 birds. (AR 79-80.) While Mitigation Measure IV.a.1 promotes compliance with the Migratory
16 Bird Treaty Act, 16 U.S.C. § 703 *et seq.* and California Fish and Game Code Section 3503, it
17 does not avoid or reduce to less than significant impacts to special-status birds because the
18 primary threat to special-status birds that could occur at the Project site is habitat loss and
19 degradation—not loss of an active nest. (AR 3666; 5148-5155.) The IS/MND, however, does
20 not incorporate mitigation for the direct and functional loss of habitat from the Project site. As
21 opined by Mr. Cashen, “functional habitat loss occurs when anthropogenic disturbance causes an
22 animal to avoid otherwise suitable habitat.” (AR 3666, fn. 134.) As a result, Mr. Cashen
23 concluded that “the Project’s impacts on special-status birds remain significant. Impacts on the
24 burrowing owl and grasshopper sparrow would be especially significant because the Project site
25 coincides with the edge of those species’ range. Populations at the geographic margins of a
26 species’ range are important for the long-term survival and evolution of the species, and they may
27 be critical to the species’ ability to adapt to long-term environmental perturbations, such as global
28 climate change.” (AR 3666 citing AR 4895-4891 [“The Conservation Value of Peripheral

1 Populations: the Supporting Science.”]) As substantial evidence supports a fair argument that
2 the Project will result in the habitat loss and degradation of habitat for special-status birds and
3 that impact is not mitigated, CEQA requires the preparation of an EIR.

4 **ii. Mitigation Measure IV.a.2b**

5 Mitigation Measure IV.a.2.b provides for the humane removal of roosting bats prior to
6 removal of the trees that are potentially suitable for bat roosting. (AR 80.) The mitigation
7 measure provides for exclusions of bats through a two-day tree removal process where the non-
8 habitat trees and brush are removed along with certain tree limbs on the first day and the
9 remainder of the tree on the second day. (*Id.*) However, as opined by Mr. Cashen, “[t]his
10 proposed two-day tree removal technique would not be effective for trees containing flightless
11 pups. It also would not prevent significant impacts to hibernating bats because the metabolic
12 cost of waking bats from hibernation (e.g., due to tree removal) can be very high and enough to
13 reduce their energy supply to the point where survival is not possible.” (AR 3667; citing 4678-
14 4840 [*California Bat Mitigation Techniques, Solutions, And Effectiveness*].) Thus, substantial
15 evidence in the record supports a fair argument that the mitigation measure, which provides for
16 a two-day tree removal technique, would not prevent significant impacts to flightless pups and
17 hibernating bats.

18 Mr. Cashen’s expert comments constitute substantial evidence supporting a fair argument
19 that the Project may have significant environmental impacts to biological resources. In such a
20 situation CEQA mandates the preparation of an EIR. As discussed above, it is the function of
21 an EIR, not a negative declaration, to resolve these conflicting claims. (See *No Oil, Inc.*,
22 *supra*, 13 Cal.3d at 85.) CEQA creates “a low threshold requirement” for the initial
23 preparation of an EIR and reflects a preference for resolving doubts in favor of environmental
24 review when the question is whether any such review is warranted. (See *No Oil, Inc.*, *supra*,
25 13 Cal.3d at 84; *Oro Fino Gold Mining Corp. v. County of El Dorado*, *supra*, 225 Cal.App.3d
26 at 880-881.) The comments submitted by CDFW and the public clearly meet the low-
27 threshold set by CEQA for preparation of an environmental impact report.

28 **2. The Project May Have Potentially Significant Impacts to Noise**

1 The record supports a fair argument that the Project may have significant environmental
2 impacts to noise. It is important to note that “the existing ambient noise at the project is
3 minimal.” (AR 3639; *see also* AR 5470.) The IS/MND, relying upon the Noise Report (AR
4 5462-5486),⁷ concluded that since the Project would exceed the Shasta County General Plan’s
5 noise thresholds, mitigation measures were incorporated into the project to reduce the noise level
6 by 6 dBA, which the County determined to be a level that is less-than-significant. (AR 90.)⁸
7 Mitigation measure XIII.a.1 mitigates noise levels by 6 dBA at the nearest sensitive receptors to
8 specified firing locations by requiring a sound attenuation noise barrier near the northern two
9 firing locations for the clay sports and the installation of a sound attenuation barrier as close as
10 possible to all the rifle firing locations along the southern property boundary. (AR 90.)

11 The record contains comments and an expert opinion from Pablo Daroux, an expert in
12 acoustics and vibrations. (AR 4058.) Mr. Daroux identified numerous flaws in the data relied
13 upon in the Noise Report as well as the analysis and conclusions in the noise study. (AR 3639-
14 3643.) As a result, Mr. Daroux concludes that in a number of areas the impacts are greater than
15 identified in the Noise Technical Report and the Project has the potential for significant adverse
16 impacts associated with noise. (*Id.*)

17 Mr. Daroux points out that the noise report ignores atmospheric effects because it provides
18 no consideration to wind or temperature inversion effects. (AR 3639-3640, compare AR 5462-
19 5488.) Mr. Daroux discussed that “widely accepted computer noise prediction models used by
20 the industry and even an international standard describe and provide tools for the calculation of
21 the potential adverse effects that atmospheric conditions can and routinely do create on the
22 propagation of noise over long distances.” (AR 3639.) The Noise Report, however, fails to
23 account for these. “This issue is specifically mentioned in the now outdated reference⁹ used by
24 the noise report which warns about significant effects of wind and “sound channels” created by
25

26 ⁷ The impacts of noise as a result of the project were assessed in the Noise Technical
27 Report – High Plains Shooting Sports Center, by RCH Group in March of 2017.

28 ⁸ As the County does not have a noise ordinance and no other standards apply to the
Project, the IS/MND relied upon the standards established in the County General Plan. (AR 89.)

⁹ *Caltrans Technical Noise Supplement (TeNS)*, 1998 edition, page 29, section N-2143.

1 thermal inversions, indicating that research by Caltrans has shown increases in noise levels of 3
2 decibels at distances as short as just 250 feet.” Mr. Daroux further pointed out that “[o]ther
3 studies and computer modeling software use even higher corrections for meteorological
4 conditions for longer prediction distances, reaching, for instance to 14 decibels enhancements
5 due to wind or to inversions at distances of 1,600 feet, which are significantly shorter than those
6 to many of the houses where predictions are made in this report.” (AR 3639-3640.)

7 Mr. Daroux also identifies that the noise study relies upon a simplistic prediction
8 methodology which lead to significant errors in the analysis and significantly under predicts
9 noise levels. (AR 3640.) Mr. Daroux commented that

10 “[t]he methodology and equations chosen for the prediction of noise levels by the
11 nearest homes are based on very simple assumptions that were designed for
12 highway noise prediction and for sound propagating for relatively short distances.
13 The assumptions made for the prediction are those contained in the Caltrans
14 design handbooks. Due to the significant inaccuracies related primarily to
15 atmospheric effects on noise such as wind direction and strength and thermal
16 inversions, but also due to ground impedance effects, these handbooks clearly
17 indicate that predictions by computer models have not been validated for
18 distances in excess of 500 feet.” (*Id.*)

19 Mr. Daroux concludes that the report overreliance on decay rates (or noise attenuation
20 rates) significantly under predicts noise levels, even if atmospheric effects are not taken into
21 consideration. (*Id.*)

22 The Noise Report also relies upon inaccurate and incomplete measurements, under-
23 estimates the number of rounds that could be fired each hour, and relies upon outdated
24 references. (AR 3641-3642.)

25 As discussed above, the IS/MND and Noise Report rely upon objectives in the Shasta
26 County General Plan. (AR 89, 5472.) The General Plan objectives that the Noise Report relies
27 upon are:

- 28 1. To *protect County residents* from the harmful and annoying effects of exposure to excessive noise.
2. To protect the economic base of the County by preventing incompatible land uses from encroaching upon existing or programmed land uses *likely to create significant noise impacts*.
3. To encourage the application of state-of-the-art land use planning methodologies in the area of managing and minimizing *potential noise conflicts*. (Emphasis added.)

1 Mr. Daroux concluded that “even conformity with the thresholds of significance of the
2 General Plan is not sufficient to mitigate the significant environmental effects caused by a
3 project yet the Noise Report uses the criteria in the Noise Element of the Shasta General Plan
4 exclusively. . .” (AR 3642.) Mr. Daroux then opines that these particular metrics are not
5 appropriate for the determination of adverse effects due to loud, short duration noises. (*Id.*)

6 Mr. Daroux’s expert comments constitute substantial evidence supporting a fair argument
7 that the Project may have a significant environmental impacts to noise. As a disagreement
8 among experts exists over the Project’s significant impacts to noise the fair argument standard
9 has been more than satisfied. Thus, CEQA mandates that the County prepare an EIR prior to
10 approval of the Project. (CEQA Guidelines, § 15064(g) see also *Clews Land & Livestock, LLC*,
11 *supra*, 19 Cal.App.5th at 192.)

12 **3. The IS/MND Improperly Defers Mitigation for Impacts to Water**
13 **Quality and the Mitigation Measure Lacks Enforceability**

14 The IS/MND fails to adequately disclose, discuss, and mitigate the Project’s impacts to
15 water quality. (See AR 87-88.) “Formulation of mitigation measures should not be deferred
16 until some future time.” (CEQA Guidelines, § 15126.4(a)(1)(B).) An environmental document
17 is inadequate if “[t]he success or failure of mitigation efforts . . . may largely depend upon
18 management plans that have not yet been formulated, and have not been subject to analysis and
19 review within the EIR. [citation omitted]. A study conducted after approval of a project will
20 inevitably have a diminished influence on decision making. Even if the study is subject to
21 administrative approval, it is analogous to the sort of post hoc rationalization of agency actions
22 that has been repeatedly condemned in decisions construing CEQA. [Citations.]” (*Sundstrom*,
23 *supra*, 202 Cal.App.3d at 307; *Communities for a Better Environment v. City of Richmond*
24 (2010) 184 Cal.App.4th 70, 92; see also *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th
25 1261, 1275] [deferral is impermissible when the agency “simply requires a project applicant to
26 obtain a biological report and then comply with any recommendations that may be made in the
27 report”]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777,
28 794 [“mitigation measure [that] does no more than require a report be prepared and followed, . .

1 . without setting any standards" found improper deferral].)

2 Mitigation measures must also be fully enforceable. (Pub. Resources Code, § 21081.6(b);
3 CEQA Guidelines, § 15126.4(a)(2); *Federation of Hillside & Canyon Associations v. City of Los*
4 *Angeles* (2000) 83 Cal.App.4th 1252, 1261.) “The purpose of these requirements is to ensure
5 that feasible mitigation measures will actually be implemented as a condition of development,
6 and not merely adopted and then neglected or disregarded. (See § 21002.1(b).)” (*Id.*)

7 The Mitigation Measure fails to identify the “original measurements” that will be used to
8 track water quality. (AR 87-88; 3662.) Thus, the adequacy of those measurements in
9 identifying water quality impacts resulting from the Project cannot be evaluated. (AR 3662.).
10 Moreover, as it is left to the Director of Resource Management to determine whether pH
11 conditions are present or persist at levels which could result in adverse conditions, the mitigation
12 measure lacks performance standards and enforceability. (AR 87-88; 3662; Pub. Resources
13 Code § 21081.6(b).) A mitigation performance standard must identify the specific criteria the
14 agency wills apply in determining that the impact will be mitigated. (*Sierra Club v County of*
15 *Fresno* (2018) 6 Cal.5th 502, 525.) In the present matter, the deferral of the measurements and
16 thresholds for acceptable pH levels (and other water quality parameters) constitutes deferred
17 mitigation without performance standards in violation of CEQA. (See CEQA Guidelines, §
18 15126.4(a)(1)(B); *CBE, supra*, 184 Cal.App.4th at 95.)

19 The IS/MND relies upon Mitigation Measure X.a.1 to address potential impacts associated
20 with non-lead bullets, which provides for the preparation of a Water Quality Control Plan. (*Id.*)
21 The IS/MND acknowledges that clay target shooting will result in target debris and ammunition
22 shotfall to land in areas with wetlands or hydrologic soils connected to the identified wetlands.
23 (AR 86.) Mr. Cashen commented that:

24 Clay targets that ‘land in areas with wetlands’ would alter (cover) the substrate of
25 those wetlands, which could have a significant impact on the viability of seeds
26 and cysts of sensitive plants and animals. *In addition, the IS/MND fails to*
27 *describe how clay targets and debris would be collected from wetlands without*
causing damage to those wetlands (e.g., through soil compaction and trampling
of plants and animals).

1 Although prohibiting lead ammunition would reduce the potential for water
2 resources to be impacted by lead, other types of heavy metals used in ammunition
3 are soluble. The IS/MND provides no analysis of how those metals would affect
4 water quality of the site's wetlands and associated organisms. For example, solid
5 copper or copper alloy (90-95% copper and 5-10% zinc) bullets are common
6 alternatives to lead. Copper is toxic to gill-breathing organisms (e.g., amphibian
7 larvae, vernal pool branchiopods), and zinc is known to be toxic to fish. (AR
8 3661-3662 [emphasis added].)

9 Thus, the record, through Mr. Cashen's comments, supports a fair argument the Project
10 may continue to have potentially significant impacts to wetlands.

11 Mitigation Measure X.a.1 seeks to address potential impacts associated with non-lead
12 bullets. (AR 87-88.) The mitigation measure provides that:

13 "In order to ensure that water quality is not significantly impacted by
14 concentrations of metals and materials from bullets and other debris, the applicant
15 shall prepare and submit a Water Quality Control Plan as described in the
16 Environmental Manager Plan prepared for the project. The Water Quality Control
17 Plan and shall [sic] provide for and minimize impacts on water quality and shall
18 include the following [5 items listed]." (*Id.*)¹⁰

19 The Mitigation Measure and the Water Quality Control Plan, however, lacks enforceable
20 performance standards for the mitigation.¹¹ (Pub. Resources Code, § 21081.6(b); CEQA
21 Guidelines, § 15126.4(a)(2).)

22 **4. The Project Has Potentially Significant Impacts to Public Safety**

23 Substantial evidence in the record supports a fair argument that the shooting range may
24 have significant environmental impacts to public safety. The shooting complex does not meet
25 minimum range safety standards for high powered rifles as established by the US Army and
26 the Department of Energy (DOE) as the 7,000-yard maximum range of several ammunition
27 types will impact dozens of homes, a veterinary clinic, and 5.55 miles of California Highway
28 44 (with an average traffic volume of 5,500 vehicles per day). (AR 3835.) In addition, a
National Rifle Association Staff paper states "A bullet from an errant shot or a miss may fly
several miles before it impacts the earth. A knowledge of maximum range (as well as what

¹⁰ The mitigation measure lists five items, none of which constitute performance standards. (AR 88.)

¹¹ The Environmental Management Plan does not rectify this issue as it fails to identify the water quality parameters to be measured aside from pH (water quality is determined by numerous parameters beyond pH). (AR 3662; citing AR 412.)

1 lies beyond the target area) can help a shooter assess whether it is or is not safe to fire.” This
2 NRA Staff paper lists the maximum range for a .450 Marlin at 7,000 yards. (AR 3836.)

3 The record further demonstrates the ineffectiveness of the Project’s downrange berms. For
4 example, the proposed downrange berms are 20 feet high. (AR 68, 73.) “Assuming the first
5 shot on a 300 yard range hits the center of the target four feet above the bottom of the berm, it is
6 easily seen that by inadvertently raising the muzzle of an 18-inch rifle barrel only 5/16 inch, the
7 next round will clear the top of the berm.”¹² (AR 3836, 79.) “[R]aising the barrel 5/32 inch will
8 cause the bullet to go over the top of the berm when firing on the 600-yard rifle range.” (AR
9 3836.)

10 Substantial evidence also supports a fair argument that the Project could impact vehicles
11 travelling on California Highway 44. (AR 3836.) “Averaging the Ahead AADT (Annual
12 Average Daily Traffic) and the Back AADT on Highway 44 at Millville Plains Road, there was
13 a traffic volume of 5,500 vehicles per day in 2017.” (*Id.*) From the USGS topographic maps
14 (AR 3838) 5.55 miles of California Highway 44 are within the 7,000 yards arcs of the four rifle
15 ranges. (AR 3836.) This poses a significant risk to the travelling public.

16 **CONCLUSION**

17 Based upon the foregoing, Petitioner respectfully requests that the Court grant the Petition
18 for Writ of Mandate and issue a writ of mandate directing the County to vacate and rescind
19 approval of the Mitigated Negative Declaration and the Project.

20 Dated: October 18, 2024

Respectfully submitted,

21 LAW OFFICE OF DONALD B. MOONEY

22
23 By 

24 Donald B. Mooney
25 Attorney for Petitioner
26 Anderson/Millville Residents
27
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¹² The firing positions for the rifle range are 300-, 500- and 600-feet. (AR 79.)

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PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 417 Mace Boulevard, Suite J-334, Davis, California; I am over the age of 18 years and not a party to the foregoing action. On October 18, 2024, I served a true and correct copy of

PETITIONERS' OPENING BRIEF

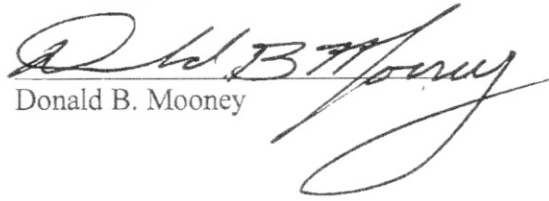
____ (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in the City of Davis, California.

X (by Federal Express) to the person at the address set forth below:

X (by Electronic Service) to the person at the email address set forth below:

Joseph Lamour Deputy County Counsel Shasta County Counsel 1450 Court Street, Suite 332 Redding, CA 96001-1675	<i>Representing Respondents County of Shasta and Shasta County Board of Supervisors Real Party in Interest</i>
Shon Northam Law Office of Shon Northam 1650 Oregon Street, Suite 116 Redding, CA 96001	<i>Representing Real Party in Interest Patrick Jones</i>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 18, 2024, at Davis, California.


Donald B. Mooney