

LAW OFFICE OF DONALD B. MOONEY
DONALD B. MOONEY (SBN 153721)
417 Mace Boulevard, Suite J-334
Davis, California 95618
Telephone: (530) 304-2424
Facsimile: (530) 212-7120
Email: dbmooney@dcn.org

Attorney for Petitioner
Anderson/Millville Residents

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CLERK OF THE SUPERIOR COURT
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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 REPLY BRIEF

Date: January 14, 2025

Time: 9:00 am

Dept: 63

Judge: The Hon. Benjamin Hana

Date Action filed: November 21, 2023

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I. INTRODUCTION

Real Party in Interest's Opposition Brief has several significant flaws as it makes many factual assertions without any references or citations to the administrative record. Moreover, the Opposition Brief lacks any significant legal arguments and references to the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 *et seq.* and the CEQA Guidelines, Title 14 California Code of Regulations, section 15000 *et seq.* Given the numerous factual assertions with no reference to the administrative record, most of the factual argument and discussion in the Opposition Brief should be disregarded by the court. Additionally, there are a number of issues such as noise impacts and impacts to golden eagles, bald eagles and oak woodlands that Real Party's Opposition Brief failed to respond to. As such, any opposition to those matters should be deemed waived and the court should rule accordingly.

Real Party's Opposition Brief fails to properly apply the appropriate standard of review regarding a challenge to an Initial Study/Mitigated Negative Declaration. ("IS/MND"). While Real Party acknowledges the fair argument standard the brief essentially dismisses in evaluating Petitioner's challenge to the IS/MND. For instance, Real Party argues that the since there were numerous studies and review by the County, any challenge is inappropriate. What Real Party attempts to apply is the substantial evidence standard that applies to a challenge to an Environmental Impact Report ("EIR"), not an IS/MND. CEQA and CEQA caselaw require the application of the fair argument standard of review and given the extensive substantial evidence in the record, a fair argument exists that the Project will have significant environmental impacts, thus CEQA mandates the preparation of an EIR.

II. LEGAL ARGUMENT

A. REAL PARTY'S BRIEF FAILS TO APPLY THE FAIR ARGUMENT STANDARD

While Real Party acknowledges that the appropriate standard of review is the *fair argument* standard, Real Party dismisses the application of the fair argument standard when he states that "substantial evidence supports the Board's decision to use a Mitigated Negative Declaration." (Opp. Br. 9.) Thus, instead of applying the fair argument standard, Real Party's Opposition Brief relies upon the substantial evidence standard and not the fair argument standard. (See *Laurel Heights*,

1 *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d
2 376, 392; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512. In reviewing for substantial
3 evidence, the court “may not set aside an agency’s approval of an EIR on the ground that an opposite
4 conclusion would have been equally or more reasonable,” for, on factual questions, the court’s task is
5 ‘not to weigh conflicting evidence and determine who has the better argument. (*Sierra Club, supra*, 6
6 Cal.5th at 511.) Thus, when reviewing an EIR the court must determine whether the agency
7 prejudicially abused its discretion either by failing to proceed in the manner required by law or by
8 reaching a decision that is not supported by substantial evidence. (Pub. Resources Code, § 21168;
9 *Sierra Club, supra*, 6 Cal.5th at 511; see discussion in Petitioner’s Opening Brief at 12-14.)

10 **B. REAL PARTY’S OPPOSITION BRIEF FAILS TO CONTAIN ADEQUATE CITATIONS TO THE**
11 **ADMINISTRATIVE RECORD**

12 A critical flaw in Real Party’s brief is the lack of citations to the administrative record. When a
13 party does not support its position with citation to the record, the court may “treat the issue as waived
14 or meritless and pass on it without further consideration.” (*Troensegaard v. Silvercrest Industries,*
15 *Inc.* (1985) 175 Cal.App.3d 218, 228; *Redevelopment Agency v. Rados Bros.* (2001) 95 Cal.App.4th
16 309, 317, fn. 6.) The brief contains numerous factual assertions with no citations to the administrative
17 record. At times the brief simply refers to court to the entire administrative record with no citations.
18 The brief contains numerous citations to the first page of large documents within the administrative
19 record with no jump cite to the specific portion of the document supporting the factual assertion.
20 Thus, the brief leaves it up to the Petitioner and the court to search through the administrative record
21 to find the supporting documentation, if any exists. This is not the role of the court. (See *Air*
22 *Couriers Internat. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923, 928 [brief must
23 support the argument by appropriate reference to the record; the court has no duty to search the record
24 for evidence and may disregard factual contentions not supported by proper citation].)

25 **C. APPROVAL OF THE MND VIOLATES CEQA’S REQUIREMENTS**

26 The County’s approval of the Project, based on an MND violates CEQA as substantial evidence
27 supports a fair argument that the Project may have potentially significant impacts. CEQA requires
28 full disclosure of a project’s significant environmental effects so that decision makers and the public
are informed of consequences *before* a project is approved, to ensure that government officials are

1 held accountable for these consequences. (*Laurel Heights II*, *supra*, 47 Cal.3d at 392.)

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

4 Real Party asserts that the Project includes the “near total-avoidance of all wetlands, vernal
5 pools, vernal swells, and ephemeral streams.” (Opp. Br. 12.) Real Party provides no citation for this
6 assertion. The brief further asserts that the Project “preserves, protects, and improves the environment
7 unlike a myriad of projects in California.” (*Id.*) The brief also asserts that the 90 percent of the of the
8 environment would remain in pristine condition with a future as a wildlife preserve.” (*Id.*) The brief
9 provides no citation to the administrative record to support these assertions.

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

12 Real Party asserts that he worked closely with CDFW to identify all sensitive areas and to
13 protect all sensitive species making the identification of each individual species unnecessary, but
14 provides no citation to support this assertion. (Opp. Br. 12.) Real Party further asserts that there will
15 be total protection of the environment but provides no citation to support the assertion.

16 As discussed in Petitioner’s Opening Brief, the Biological Review (AR 5651-5669) that the
17 MND relied upon (AR 77) failed to follow CDFW’s guidelines and protocols for identifying
18 protected plant species. (*See* AR 5651-5669 [Biological Review]; AR 414-419; AR 940-962; 3501.)
19 In a comment letter dated October 24, 2023 the Shasta Environmental Alliance pointed out the
20 deficiencies of the plant surveys:

21 Wildland Resource Managers Steven Kerns did not follow CEQA plant survey
22 protocol. Initially he did a plant survey on January 21 and February 18 when the
23 vernal pools would most likely be full and no threatened, endangered and sensitive
24 species would be blooming and able to be identified. He stated as much in his
25 Biological Survey. Instead, he inserted a plant survey for another property a mile
26 away which is not allowed by CDFW protocols. (See below). The survey must be
27 done on the project site. He also submitted a plant list done by Western Shasta
28 Resource Conservation District which does not meet many of the CDFW protocols.
The name and qualifications of the person conducting the survey are not included.
The date of the survey is not included. The WSRCD survey also admits that its plant
survey is incomplete as not all of the plants were blooming as stated in the survey.
Therefore, these additional plant lists do not meet CEQA requirements, and a new and
proper biological survey should be completed.¹

¹ The CDFW Protocols are located at AR 4049-4055 and attached to an October 13, 2013 letter from
PETITIONER’S REPLY BRIEF

1 The Planning Department did recognize the inadequacy of the Biological Survey and
2 directed the applicant Patrick Jones to do a more thorough survey. Wildlands
3 Resource Managers did do another survey on a single day on May 26, 2017,
4 following 29 days of no rain and several days over 100 degrees. In the supplemental
5 biological survey Kerns states: "This was done in the western half of the project area
6 by walking those areas between the vernal swales. At the time of the survey the grass
7 component had dried and showed signs of livestock grazing. Within the vernal swale
8 areas there was a limited amount. of green vegetation remaining." This supplemental
9 survey still does not meet the requirements of CEQA in that it does not cover the
entire project area, only the western portion, and it was done when most of the plants
were dried and thus past the blooming period and thus proper identification of
protected species could not be completed. (AR 3501; see AR 5651-5652, 5654-
5658.)

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

11 Real Party's discussion and argument that the Project will not have an impact nesting birds
12 lacks citations to the administrative record. (Opp. Br. 13.) The first paragraph contains numerous
13 factual assertions with no citations to the administrative record. The one citation in that paragraph is
14 to the cover page of the transcript to the Board of Supervisors' October 24, 2023 hearing on the
15 Project. It is not the role of the court to search through the administrative record in order to find
16 support for Real Party's factual assertions. (See *Air Couriers, supra*, 150 Cal.App.4th at 928.)

17 Real Party argues that the comments by Tracy Verhougstraete should be accorded little weight
18 given the historical shooting in the area and that Ms. Verhougstraete has a shooting range on her
19 property. (Opp. Br. 13.) Again, there is no citation to the administrative record to support either of
20 these statements. Moreover, Real Party does not address that Ms. Verhougstraete, who lives at "7447
21 Leopard Drive, which is located directly next to the proposed gun range complex" provided
22 comments based upon her personal knowledge and her lay testimony constitutes substantial evidence.
23 (*Ocean View Estates Homeowner's Assn., Inc. v. Montecito Water District* (2004) 116 Cal.App.4th
24 396, 402; *Citizens Ass'n for Sensible Development of Bishop v. County of Inyo* (1985) 172
25 Cal.App.3d 151, 173 [Relevant personal observations of area residents on non-technical subjects
26 qualify as substantial evidence for a fair argument.].) Moreover, her testimony convey her own
27 personal experience and knowledge from shooting at the project location: "[w]hen Supervisor Jones
28 and his friends are there shooting it sounds as if they are outsider our home." (*Id.*) Thus, Ms.

1 Verhougstraete has personal knowledge of the noise impacts. Real Party provides no factual nor legal
2 basis for discounting this lay testimony.

3 Real Party correctly states that Petitioner questions WRM's comments regarding noise impacts
4 on wildlife at this location as WRM does not indicate that any of the individual involved in the
5 analysis have any expertise on the dispersion noise. (Opp. Br. 13, see Opening Br. 18:7-8.) Real
6 Party does not address the specific objection. Instead Real Party asserts that the WRM biologists have
7 a combined 40 years of experience of working with raptors in the north state and describes what
8 WRM staff did to survey the area. (Opp.Br. 13:21-23.)

9 Real Party then attempts to dismiss Mr. Cashen's comments and opinions by arguing that his
10 opinion is conjecture and speculation and not supported by facts. (Opp. Br. 14:15-22.) To the
11 contrary, Mr. Cashen's comments and opinion are well supported by facts and constitute substantial
12 evidence. (See AR 3651-3653.) For example, Mr. Cashen identifies the WRM's claim to having done
13 "industry standard survey techniques" and then compares it to the U.S. Fish and Wildlife Service's
14 standards (protocols) for both golden eagle and bald eagle nest surveys. (AR 3651-3652.) Mr. Cashen
15 compared WRM's survey to the protocols and concluded that as WRM's survey did not adhere to the
16 eagle survey protocols, the survey results do not provide substantial evidence that the Project would
17 not impact eagle nests (or territories). (*Id.*)

18 Mr. Cashen then addressed WRM's failure to adequately address the USFWS's
19 recommendations for a buffer regarding eagle nests from recreational shooting activities. (AR 3653.)
20 Mr. Cashen further concluded and opined that:

21 Irrespective of this major omission, WRM's response acknowledges that eagle nests
22 within 1/2 mile of the Project site could be negatively impacted by the Project. This is
23 important because WRM did not survey all area within 1/2 mile of the Project site to
24 determine presence of eagle nests, nor does Mitigation Measure IV.a.1 require nest
25 surveys within 1/2 mile of the Project site prior to initiation of construction activities.
26 As a result, the IS/MND's determination that impacts to eagle nests would be less-
27 than-significant is not supported by substantial evidence. (AR 3653.)²

28 Moreover, Mr. Cashen's comments provide reference via footnotes the various studies, reports
and other documents that he relied upon in forming his opinion (AR 3653.)³

² Mitigation Measure IV.a.1 addresses vegetation removal and other ground-disturbance with construction activities and does not address nest surveys within the 1/2 mile buffer area as USFWS recommended. (AR 79-80.)

³ The documents referenced in Mr. Cashen's footnotes are included in the administrative record.

1 Real Party challenges the Petitioner's statement that golden eagles and bald eagles are present in
2 vicinity. (Opp. Br. 14.) Real Party ignores the evidence in the administrative record regarding the
3 presence of golden eagles and bald eagles in the Project vicinity. The comment letter submitted by
4 the Battle Creek Alliance Defiance Canyon Raptor Rescue indicates the presence of golden and bald
5 eagles in the project vicinity. (AR 3628-3633.) Battle Creek Alliance also indicated that it had
6 received 2 bald eagles, a golden eagle, and an osprey that were injured in the project area in the past
7 few years. (AR 3753.) The letter further discusses sighting of bald eagles and golden eagles in the
8 project area. (*Id.*) Mr. Cashen's comment letter also referred to the eBird database and the Leopard
9 Drive-Millville Plains Hotspot located approximately 400 feet from the Project site. (AR 3648.) That
10 data base identifies both golden eagles and bald eagles in the project vicinity. (*Id.*) Thus, Petitioner's
11 statement, as well as Mr. Cashen's statement, that eagles are present in the area is based upon verified
12 sighting of golden eagles and bald eagles in the Project vicinity and certainly within the buffer area
13 recommended by the USFWS.⁴

14 **c. The IS/MND Fails to Address Special-Status & Fully Protected Species**

15 Real Party's Brief challenges the Opening Brief's reference to "woodlands" at the Project site
16 as false. (Opp. Br. 15:7.) The IS/MND states: "Vegetation on site and in the surrounding area is
17 predominantly upland grasslands with the eastern areas adjacent to Bear Creek being surrounded by
18 Blue Oak Woodlands, sometimes mixed with Foothill Pine Woodlands, and riparian vegetation
19 along Bear Creek." (AR 69.) Additionally, Real Party's Biological Review identifies "blue
20 oak/gray pine" as habitat areas within the Project area. (AR 5661.) Thus, Real Party contradicts his
21 own Biological Review for the Project. Even if there are not woodlands directly on site, the
22 IS/MND indicates that they are in the surrounding area that is being studied in the IS/MND. (*Id.*)

23 Real Party's brief challenges Petitioner's argument that the IS/MND failed to address the
24 Project's potentially significant impacts to the short-eared owl, the Northern Harrier, the burrowing
25 owl and the grasshopper sparrow. (See Opp. Br. at 15:12-15.) In addition to arguing Real Party's
26 unsubstantiated claim of a "total-avoidance philosophy", Real Party asserts that "there are no facts
27

28 ⁴ Again, Real Party's brief contains no citations to support its statement claim that the administrative record
which shows there was not a single nest found in the area and only a single bald eagle as observed flying some
distance away from the Project site. (See Opp. Br. 14:27 to 15:1.)

1 that demonstrate that these birds appear or were located on the Project property.” (Opp. Br. 15;18-
2 19.) One only need review Real Party’s Biological Review to learn that the short-eared owl and
3 northern harrier are common to the area. (AR 5661.) In fact, “the short-eared owl and northern
4 harrier are California Species of Special Concern” and “habitat loss and degradation are primary
5 threats to both species.” (AR 3648.)

6 The IS/MND acknowledges that burrowing owls and grasshopper sparrow could be impacted
7 by winter-grazing. (AR 77.) A supplemental response by WRM asserts that burrowing owls and
8 grasshopper sparrows are not located in the project area. (AR 3031-3033.) Mr. Cashen, however,
9 pointed out that burrowing owls have been observed at the Leopard Dr.—Millville Plains Hotspot,
10 at other locations on Leopard Drive, and at Millville Plains Road west of the Project site. (AR
11 3649.) As to grasshopper sparrow, “WRM’s response is inconsistent with the range map published
12 by the California Department of Fish and Wildlife.” (AR 3649.) Moreover, “the detection of
13 grasshopper sparrows along Millville Plains Road, approximately 1.75 miles west of the Project site,
14 and at several locations along Parkville Road, approximately 2.75 to 4.15 miles southwest of the
15 Project site, provides strong evidence that grasshopper sparrows could occur at the Project site.”
16 (*Id.*) Thus, contrary to Real Party’s unsupported assertions the administrative record clearly
17 demonstrates that burrowing owls and grasshopper sparrows could occur at the Project site. (*Id.*)

18 In arguing that the IS/MND addressed other species, the Real Party’s Opposition Brief makes
19 several factual assertions about the Project and the Project’s lack of environmental impacts. (See
20 Opp. Br. 15-3-21.) The brief, however, does not contain a single citation to the administrative
21 record to support these factual assertions. (See Opp. Br. 15:3-21.) It is not the court’s role to search
22 the administrative record for evidence (*Air Couriers, supra*, 150 Cal.App.4th at, 928) and the court
23 may “treat the issue as waived or meritless and pass on it without further consideration.”
24 (*Troensegaard, supra*, 175 Cal.App.3d at 228; *Redevelopment Agency v. Rados Bros., supra*, 95
25 Cal.App.4th at 317, fn. 6.) Real Party continues to argue that the lack of specificity in the IS/MND
26 is due to the Project’s “total avoidance philosophy.” Real Party, however, provides no citation to the
27 administrative record, let alone to the IS/MND, that discusses a “total avoidance philosophy.” (Opp.
28 Br. 15.)

1 Finally, Real Party disagrees with Petitioner's argument that ringtail cats may be impacted by
2 the Project. Again, Real Party's argument contradicts his own Biological Review which lists the
3 ringtail cat, a Fully Protected species under California Fish and Game Code section 4700(b)(5), as a
4 "common species typical of the woodlands" at the Project site. (AR 5661.)

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

6 Real Party asserts that the Mr. Cashen's comments fail to provide an "analytical nexus between
7 the claim of wildlife being adversely affected by noise and purported flaws in reports." (Opp. Br.
8 16:2-3.) Real Party is mistaken as Mr. Cashen's comments constitute substantial evidence that
9 support a fair argument that the project may have significant noise impacts on wildlife. Mr. Cashen
10 provides detailed comments on the Noise Study's flaws regarding impacts to wildlife. (AR 3653-
11 3655.) Mr. Cashen further provided detailed comments regarding the failure of the IS/MND,
12 including the Noise Study, to provide an adequate analysis of noise impacts to nesting birds. (AR
13 3656-3657.) Mr. Cashen addressed WRM's conclusions regarding noise impacts on nesting birds
14 conflicts with scientific literature and how acute and erratic sounds effect wildlife. (AR 3656.) Mr.
15 Cashen addressed the significance of noise impacts on wildlife and Mitigation Measure XIII.a.1
16 requiring the implementation of noise barriers. (AR 3657.) The noise barriers were to address noise
17 impacts to the residences to the north and northwest. (*Id.*) They were not developed to address noise
18 impacts to wildlife. (*Id.*) WRM acknowledged that the Noise Report (and associated
19 recommendations) did not address impacts to wildlife. (*See* AR 5462-5486; *see also* AR 5436; AR
20 416.) This invalidates WRM's ability to cite the noise study as justification for the assumption that
21 implementing RCH's recommendations would reduce the impacts on wildlife to less-than-significant.
22 (AR 3657-3658.) Thus, Mr. Cashen pointed out the flaws in the Noise Study as it pertains to wildlife
23 and provided expert comments and opinions the noise impacts the project will have on wildlife. Mr.
24 Cashen's clearly established the that Noise Study failed to address impacts to wildlife and it was those
25 very flaws he identified that lead to this failure to analyze and address those impacts.

26 Real Party asserts that the administrative record shows that wildlife tend to congregate around
27 gun ranges learning that the gun ranges are actually "safe" areas. (Opp. Br. 17:16-17.) The brief
28 contains 4 citations to the administrative record. Each citation is to the first page of a document in

1 the administrative, but there is no jump cite to the specific portion of the document. A review of
2 those documents discloses that none of them stand for the proposition that wildlife tend to
3 congregate around gun ranges learning that the gun ranges are actually "safe" areas. (See AR 5801,
4 5905, 6008, 6153.) AR 5801 provides no discussion of benefits to wildlife as it only discussed the
5 impacts of lead shot on wildlife. (AR 5823, 5829, 5840.) AR 5904 is the same document as 5801.
6 AR 6008 discusses the shooting ranges impacts on wildlife because of the lead shot and actually
7 states that a range should plant plants that do not attract wildlife because of the danger. (AR 6014,
8 6021-6031, 6061-6062.) AR 6153 deals with Range Design Criteria and does not address wildlife.

9 In discussing the impacts to bats, Real Party again asserts that there are only five trees on the
10 Project site that Petitioner refers to as woodlands. (Opp. Br. 17:18-19.) Real Party provides no
11 citation to the record to support this assertion. The IS/MND states that approximately 17-acres of the
12 Project site is comprised of blue oak woodland or blue oak and foothill pine woodland. (AR 79.)
13 Moreover, while the project does not propose development in or near the riparian habitat area it does
14 provide for the removal of roughly seven oak trees in the blue oak woodland/grassland areas near the
15 western bank of Bear Creek to accommodate 500-, 600- and 1,000-yard bullet backstop berms. (*Id.*)
16 While the removal of the oaks could significantly impact roosting or nesting migratory bird, "the
17 removal of seven trees at the outer edge/grassland area of a 17-acre oak woodland and foothill pine
18 area would amount to roughly 2% of tree canopy loss in that area and would be considered a less-
19 than-significant impact on the blue oak woodland habitat and riparian habitat." (AR 79.)

20 Real Party claims that there are only five trees on the Project and no woodlands is simply not
21 supported by the administrative record. While Mitigation Measure IV.a.2 discusses the impacts to
22 bats, Mr. Cashen's comments clearly demonstrate that the noise will impact bats and the mitigation
23 measure may adequately protect the bats from significant impacts. (See Opening Br. 22:17-20.)

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

25 Real Party's brief claims that the Project "is designed to protect and entirely avoid nearly all
26 designated wetland features that could serve as habitat for listed species." (Opp. Br. 18:4-6; citing
27 AR 77.) Real Party then dismisses Mr. Cashen's opinion as being without any supporting factual
28 data. Thus, Real Party dismisses Mr. Cashen's comments without any discussion or analysis simply

1 because his opinion is not consistent with the IS/MND and the narrative he seeks to establish. Mr.
2 Cashen, however, provided very detailed analysis supported by facts within the IS/MND and the
3 record. (See AR 3658-3659; see also Petitioner's Opening Br. 18-19.) Moreover, he marked the
4 Site Plan to identify the wetland features that the Project will impact. (AR 3658, 3669-3671.)

5 This is the very essence of a disagreement among experts that satisfies the fair argument
6 standard. (CEQA Guidelines, § 15064(g) [Disagreement among expert opinions over the Project's
7 significant impacts to biological resources satisfies the fair argument standard mandating that the
8 County prepare an EIR prior to approval of the Project]; see also *Clews Land & Livestock, LLC v.*
9 *City of San Diego* (2017) 19 Cal.App.5th 161, 192.)

10 **f. The Project's Significant Impacts to Vernal Pool Crustaceans**

11 Real Party asserts that Petitioner since no wetlands would be altered in any way there cannot be
12 an impact to vernal swales that constitute suitable habitat for the federally-listed vernal pool fairy
13 shrimp and vernal tadpole shrimp and the Western Spadefoot Toad. (Opp. Br. 18:19-28.) Moreover,
14 Real Party claims that there is no evidence that the wetlands would be impacted. (*Id.*) Simply
15 because Real Party's Biological Review determined that there would be no impact to vernal
16 pools/swales is not the end of the discussion. Mr. Cashen's comments are based upon the language of
17 the Biological Review and the IS/MND. (See AR 3650, 79, 5662.) Based upon the facts set forth in
18 those documents, Mr. Cashen identified that the although the IS/MND indicates the firing positions
19 for the 300-, 500- and 600-yard targets would impact a large vernal swale (VS-1), it provides no
20 analysis of impacts to the vernal pool fairy shrimp and vernal pool tadpole shrimp. (AR 3650.) Mr.
21 Cashen then offered his expert opinion that given the IS/MND's failure to analyze these to VS-1, the
22 impacts to the species remains potentially significant. (*Id.*) Not only did Mr. Cashen identify a
23 potentially significant impact that was not mitigated, this constitute substantial evidence supporting a
24 fair argument that the Project may have significant impacts to fairy shrimp and tadpole shrimp.

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

26 Real Party asserts that CDFW did not recommend a survey for Western Spadefoot Toad
27 because the Project was designed to ensure that no wetland areas would be altered and to direct
28 drainage from the bullet backstops traps away from wetland. (Opp. Br. 18:25-28.) Real Party's brief

1 does not address Mr. Cashen's comments regarding the Project's impacts to terrestrial habitat for the
2 western spadefoot. (AR 78, 3651.) As discussed in Petitioner's Opening Brief, western spadefoot
3 toad breed in temporary pools and drainages, they spend most of the year below ground in terrestrial
4 burrows. (AR 3651.) They also move to and from breeding sites at distances up to 860 feet and may
5 be even 1,200 feet. (AR 3651; AR 4912.) Mr. Cashen opined that "the 50-foot buffers around
6 potential breeding sites would not be sufficient to prevent potentially significant impacts to the
7 western spadefoot." (AR 3651.) Additionally, the Project's use of lime and fertilizer could
8 significant impact the western spadefoot." (AR 3651; AR 401; 4389.) Real Party's brief does not
9 address any of these issues.

10 **h. The IS/MND Fails to Address Potential Impacts to Bald Eagles and Golden**
11 **Eagles, and Oak Woodlands.**

12 Real Party's brief fails to address the issue raised in Petitioner's Opening Brief regarding
13 potential impacts to Bald Eagles and Golden Eagles. Also, other than claiming that no woodlands
14 exist on the Project site, (Opp. Br. 15:7) Real Party fails to address the issues regarding impacts to
15 Oak Woodlands. "By failing to argue the contrary, plaintiffs concede this issue." (*DuPont Merck*
16 *Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 566. [By failing to argue the
17 contrary, a party concedes the issue]; *Glendale Redevelopment Agency v. Parks* (1993) 18
18 Cal.App.4th 1409, 1424 [issue impliedly conceded by failing to address it].)

19 **i. The Project's Significant Impacts to Grassland Habitat**

20 Real Party's Brief fails to address Mr. Cashen's comments regarding impacts to grassland
21 habitat and asserts with no citation to the administrative record that wildlife/animals tend to get
22 conditioned to the gunfire and that there will be "stark improvement to ground-nesting birds through
23 the elimination of overgrazing. (Opp. Br. 19:8-12.) As such the court may "treat the issue as waived
24 or meritless and pass on it without further consideration." (*Troensegaard, supra*, 175 Cal.App.3d at
25 228.)

26 **j. The Project's Impacts to Movement Corridors and Nursery Sites**

27 Real Party again asserts that the since the Project has a "near total-avoidance philosophy" that
28 cannot be any impacts to movement corridors or nursery sites. (Opp. Br. 19:16-17.) Moreover, Real

1 Party asserts that any claim to the contrary is baseless and factually unsupported. And that there is no
2 factual nexus between Petitioner's claims and the actual raw data and information within the
3 administrative record. (*Id.*) Real Party, however, fails to provide any citations to the administrative
4 record to support this claim. As such the court may "treat the issue as waived or meritless and pass on
5 it without further consideration." (*Troensegaard, supra*, 175 Cal.App.3d at 228.)

6 As set forth in Petitioner's Opening Brief and Mr. Cashen's comments, his opinion regarding
7 impacts to movement corridors and nursery sites is supported by substantial evidence in terms of the
8 review of the IS/MND, the Biological Review, and the scientific literature cited and referenced in his
9 comments. (AR 3664.) Real Party, however, takes the position that any comments that contradict
10 the IS/MND or Biological Review are baseless and cannot be supported by substantial evidence.
11 Yet, Real Party offers no citations to the administrative record or any further basis to support this
12 repeated claim. Mr. Cashen's comments regarding the Project's impacts to movement corridors and
13 nursery sites is exactly the type of disagreement among experts contemplated by CEQA and the
14 CEQA Guidelines that mandates the preparation of an EIR. (CEQA Guidelines, § 15064(g) see also
15 *Clews Land & Livestock, LLC, supra*, 19 Cal.App.5th at 192.)

16 **k. The IS/MND's Mitigation Measures for Biological Resources Fail to**
17 **Reduce the Project's Impacts to Less than Significant**

18 Real Party's brief state that the IS/MND's Mitigation Measures "amply demonstrate a less than
19 significant impact on the environment." (Opp. Br. 20:2-3.) Real Party provides no citation to the
20 record to support this assertion. Real Party asserts Mr. Cashen "attempts to disregard the myriad of
21 studies, data, analysis and conclusions that support the IS/MND." (*Id.* at 20:4-6.) Yet, Real Party
22 fails to identify what studies, data, analysis and conclusions Mr. Cashen disregarded, let alone cite to
23 the administrative record for the court to review. Contrary to Real Party's assertions, Mr. Cashen's
24 comment letter provides extensive documentation of the documents he reviewed that include the
25 IS/MND, all of WRM's comments, including the Biological Review, as well as reference to dozens of
26 scientific literature. (See AR 3644-3671.)

27 Real Party then concludes that an EIR is not necessary to protect the environment given the vast
28 amount of research, studies, analysis, data, evidence, and conclusions in the IS indicating an MND
was the appropriate process for this Project. (Opp. Br. 20:6-8.) This is not the standard of review

1 under CEQA for evaluating the adequacy of an IS/MND and whether the agency must prepare an
2 EIR. Under the fair argument standard, an EIR must be prepared when there is substantial evidence
3 in the record to support a “fair argument” that a project may entail significant environmental effects,
4 even if other substantial evidence indicates that there will not be such an impact. (*Stanislaus*
5 *Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 151; CEQA Guidelines, §
6 15064.) Mr. Cashen’s comments regarding mitigation measures clearly constitute substantial
7 evidence supporting a fair argument and Real Party offers no citations to the administrative nor legal
8 authority to dispute Mr. Cashen’s expert opinions.

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

10 While Real Party’s Brief addressed Petitioner’s argument regarding the Project’s noise impacts
11 to wildlife, it ignores Petitioner’s argument regarding noise impacts. (Petitioner’s Opening Brief pp.
12 31:28 to 34:11.) Thus, Real Party has waived any opposition regarding that issue. (*DuPont Merck*
13 *Pharmaceutical Co. v. Superior Court, supra*, 78 Cal.App.4th at 566. [By failing to argue the
14 contrary, a party concede the issue]; *Glendale Redevelopment Agency v. Parks, supra*, 18
15 Cal.App.4th at 1424 [issue is impliedly conceded by failing to address it].)

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

18 Real Party’s brief fails to address the issue raised in Petitioner’s Opening Brief that Mitigation
19 Measure X.a.1 (AR 87-88) fails to identify the “original measurements” that will be used to track
20 water quality. (Opening Br. 35:7-18.) Real Party simply directs the court to the IS/MND and says that
21 the water quality testing, including the Mitigation Measures, are subject to legal consequences. That
22 does not even come close to responding to Petitioner’s argument regarding the Mitigation Measure’s
23 inadequacies for lack of performance standards and the deferral of the mitigation measure. “By failing
24 to argue the contrary, plaintiffs concede this issue.” (*DuPont Merck Pharmaceutical Co. v. Superior*
25 *Court* (2000) 78 Cal.App.4th 562, 566. [By failing to argue the contrary, a party concede the issue];
26 *Glendale Redevelopment Agency v. Parks* (1993) 18 Cal.App.4th 1409, 1424 [issue is impliedly
27 conceded by failing to address it].)

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

Real Party disputes Petitioner’s argument that the Project may have significant impacts to

1 public safety. But once again, Real Party provides no citations to the administrative record to
2 support his challenge to Petitioner's argument.

3 Real Party discusses the .50 BMG, but that was never mentioned by the Petitioners in the
4 Administrative Record, since it is a specialized cartridge and not the typical ammunition used by
5 sportsmen. What was mentioned in the AR was the .300 Winchester Magnum with a maximum
6 range of between 6,994 yards (3.97 miles) and 6,577 yards (3.74 miles), depending on ammunition.
7 (AR 2965.) Thus, the administrative record supports the claim of the distance travelled and nothing
8 in record supports Real Party's assertions.

9 Real Party compares the proposed shooting complex on Millville Plains to the Record Range
10 and the Redding Gun Club, apparently to give the impression that because "there are no reported
11 incidents of bullets striking vehicles [in over 50 years]" that the Millville Plains rifle range would
12 have similar results. As noted in the administrative record: "The Applicant mentioned the Record
13 Range and its proximity to California Highway 299. The Record Range is a Law Enforcement
14 Training Facility and not open to the general public. Neophyte shooters and parents teaching their
15 young children how to safely handle and shoot rifles would not be shooting at this range. The
16 Applicant correctly discussed the Redding Gun Club, and its 100 yard rifle range only 0.5 miles from
17 Deschutes Road. However, what the Applicant didn't mention was that his proposed 300 yard rifle
18 range has only a 20 foot high berm as a backstop, whereas the Redding Gun Club has a 110 foot high
19 hill behind its 100 yard rifle range." (AR 3465.) Furthermore, any rifle bullets going over the 110
20 foot high hill would clear Deschutes Road whereas errant rifle bullets from the proposed shooting
21 complex could hit many homes and businesses, in addition to State Highway 44. (AR 2632.)

22 Real Party incorrectly states "As noted in the AR, the Project's berms are being constructed
23 with the highest backstops in California and greatly exceed even the 'Best Practices' advanced by the
24 NRA." (Opp. Br. 21:23-24.) The proposed rifle range backstops are 20 feet high. (AR 788-789.)
25 Nothing in the record supports Real Party's assertion that these are the highest backstops in California
26 and exceed the NRA's Best Practices.

27 As the NRA does not allow anyone to rely on their *Range Source Book* to design a rifle range,
28 the Real Party states Best Practices can be found in the Administrative Record. (AR 5801-6264.)

1 Under DOE Range Design Criteria (AR 6153-6268) two of these best practices, if followed, would
2 prevent or make impossible the construction of the planned shooting complex due to safety concerns
3 from errant rifle shot: 1) the most popular hunting rifles in North America, any or all of which could
4 be used on the proposed rifle ranges if constructed, would place dozens of homes and over 5 miles
5 of California State Highway 44 within the Surface Danger Zone. Surface Danger Zones should be
6 established to contain all projectiles and debris caused by firing ammunition...The primary danger
7 area established for the impact of all rounds extends 5° to either side of the left and right limits of fire
8 and downrange to the maximum range of any ammunition to be used on the range." (AR 6173.) 2)
9 Instead of a mountain or hill, the natural terrain is essentially flat. To achieve a backstop tall enough
10 to capture rounds fired at 15° muzzle elevation would require "Natural terrain such as a mountain or
11 a hill provides an excellent backstop for firing. The terrain should be high enough to capture rounds
12 fired at up to a maximum 15° muzzle elevation." (AR 6175.) Thus, it would be impossible to
13 construct backstops to meet the Best Practices.

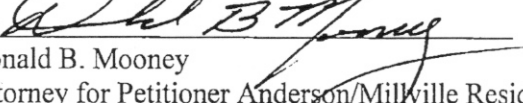
14 **CONCLUSION**

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

18
19 Dated: December 30, 2024

Respectfully submitted,

20 LAW OFFICE OF DONALD B. MOONEY

21
22 By 
23 Donald B. Mooney
24 Attorney for Petitioner Anderson/Millville Residents
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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 December 30, 2024, I served a true and correct copy of

PETITIONERS' REPLY BRIEF

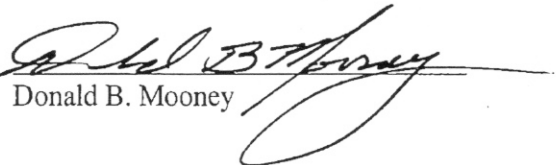
_(by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in the City of Davis, California.

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 December 30, 2024, at Davis, California.


Donald B. Mooney