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November 28, 2016

Chair Pedroza
Board of Supervisors
1195 Third St., Ste. 310
Napa, CA 94559

Re: Walt Ranch Appeal

Dear Chair Pedroza,

Following are our remarks in response to rebuttal from the Applicant.

Greenhouse Gas

The applicant has reiterated that the EIR's analysis and mitigation of GHG impacts from cutting down 14,000 trees was appropriate. That is simply not the case.

1. The EIR accounts for GHG emissions from the removal of trees in terms of loss of carbon sequestration based on CalEEMod emission factors. Given that information on the trees to be removed has been collected, it should be used to calculate a sequestration loss based on site-specific data rather than using a generic figure which results in the same amount of loss regardless of the number, type, and size of trees. We raised these issues previously, but the applicant did not present any evidence or argument in response.

As we have stated, CalEEMod was not designed for agricultural projects. Instead, for these type of projects, users are asked (User Tip 12, CalEEMod.com) to contact their air quality districts for guidance and recommendations. The applicant has presented no evidence that guidance for an agricultural project was sought.

1A. A related issue is using a conservation easement over other trees as mitigation for the loss of sequestration. Besides being disallowed by CalEEMod as a means of reducing vegetation sequestration loss, this step does not reduce the *number* that represents such loss, at all. There was no discussion of the failure to reduce the calculated number. As the applicant conceded, there is no published appellate decision that upholds this approach to mitigation of GHG impacts. The cases the applicant cited, which upheld land preservation as mitigation for loss of farmland and/or habitat, are simply not analogous.

The only way to mitigate the permanent loss of carbon sequestration from the removal 14,000 trees is to generate replacement sequestration, most obviously by planting new trees. If this is infeasible for whatever reason, then the EIR must say so explicitly, with supporting analysis, and declare that the project in fact will have significant unmitigated GHG impacts.

2. There is no assessment of impacts from GHG emissions from disposal of trees. It is unquestioned that tree disposal whether from decomposition, burning or other means, results in emissions including carbon dioxide (CO₂), methane (CH₄), a super-pollutant GHG-wise, and nitrous oxide (N₂O).

The EIR and Response to Comments have taken two approaches to this Comment on the impact of tree disposal, neither persuasive.

The first is that BAAQMD doesn't require that projects include biogenic emissions. The two reasons for this claimed by staff – that the “huge range of materials and processes” means accurate and reliable estimates can't be made and besides, biogenic emissions are small relative to other emissions – are not true for trees. There is one material – wood – and calculating emissions from tree disposal is not unusual. And yes, the emissions from disposal can be a multiple of the sequestration loss. What's more, the impact of tree removal on GHG dwarfs the emissions from other aspects of this project.

Staff has also indicated that emissions from tree disposal are a one-time effect which can't be compared to the 100 year sequestration loss figure which is used. This is not a reason to ignore the impact. Additionally, a graph showing the impact over a 100 year period of different methods of disposing of one bone dry ton of biomass (such as wood chips), was provided to the county by the Quercus Group in their original September 15, 2014 comments.

CEQA requires an assessment of both direct and indirect impacts. Biogenic emissions result from tree disposal, and this cannot be ignored by the EIR.

The second approach in response to comments regarding the lack of an assessment of tree disposal emissions is that they are somehow included in the CO₂e figures used to calculate GHG impact. This is not accurate.

We are well aware that the CO₂e designation is intended to include non-CO₂ emissions in the form of a CO₂ equivalent. However, simply adding an e to CO₂ does not also add methane and nitrous oxide, nor the black carbon from burning wood. Thus, Table 6-2 from the EIR contains the term CO₂e, in the header for the last column. But the footnote to the GHG figure for tree removal clearly indicates that this simply represents CO₂ sequestration loss and not emissions from the disposal of the trees.

Similarly, the output files from CalEEMod (DEIR, App. H, item 10.1) show that the CO₂e figure for vegetation land change only includes CO₂ and not the methane (CH₄) or nitrous oxide (N₂O) that would indicate it is related to tree disposal.

In short, there is no assessment of the GHG impacts of tree disposal, which will likely be significant. We note that the failure to respond to our and others' requests for information on the method of disposing of the trees, other than by saying that regulations would be followed, does not meet the standard of “good faith, reasoned analysis” required for comment responses under CEQA, and renders the EIR doubly inadequate.

Impacts on Sensitive Wildlife

The applicant also reiterated that their treatment of the impact on sensitive species was appropriate and that mitigation rendered the impacts to less than significant. General assertions were made during their presentation that any remaining disputes were simply differences of opinions between experts. In the case of sensitive species, this is not the case.

In fact, the initial reports and surveys on biological resources that the EIR relied upon to assess impacts and craft mitigation are in substantial accord with the experts who testified for the appellants. What is not in accord are the conclusions that the EIR drew from their own experts. In other words, there is no substantial evidence to support the EIR's conclusions regarding sensitive species, and there is considerable evidence that some impacts identified by the applicant's own experts were ignored.

This can be seen by the reports and surveys on California Red-Legged Frogs (CRLF), Foothill Yellow-Legged Frog (FYLF) and Western Pond Turtle (WPT).

Examples:

Staff response to comments that the 2012 CRLF survey for the Milliken watershed portion of the project failed to include surveys during breeding season, is that the lack of such surveys did not invalidate the late summer survey. Their own survey however, besides being too old (2012), indicates that a breeding season survey was not only expected, but it was characterized as the completion of the protocol level surveys (CYLF 2012 survey, p. 13: "Breeding season surveys in 2013 would complete the updated protocol-level surveys.").

It is also clear that the limited stream buffers (55' for streams, 20 feet for ephemeral streams) are inadequate and represent a failure to recognize the amount of land within CRLF's habitat. From the 2012 survey, p. 6-7):

... CRLF can occur in ephemeral streams or ponds, ...

During the non-breeding season, CRLF aestivate. Aestivation habitat is potentially all aquatic and riparian areas that provide cover, moisture, and cooler temperatures during the dry season within 300 feet of riparian areas. ... This habitat is essential for the survival of this species.

In addition, CRLF can disperse from breeding sites and migrate towards other populations or habitats. CRLF have been known to travel long distances, from 0.25 miles to two miles away, in a straight line (i.e., point-to-point migrations) rather than using corridors in between habitats (USFWS, 2002).

The survey also indicates that fragmentation, which is occurring in Walt, has been an issue with CRLF.

These statements indicate that CRLF use substantially more territory than a 55' stream buffer will protect, including ephemeral streams. Reports on WPT and FYLF also indicate that they have larger habitats than will be protected by the limited stream buffers that are offered as mitigation.

Comments have also been submitted which indicate that the sensitive species will be impacted by trucks driving through their habitat, including use of the truck turn-arounds within the buffer area. The FYLF survey attached to the 2007 Biological Resources Assessment (again, too old) at p. D-1 notes

that these frogs like to attach their eggs to “large cobble and boulders, although they may also be attached to small cobble, gravel/pebble, or underwater woody debris. . . Egg masses are usually laid in open areas along a stream where very little shading occurred. “

If that is not enough to suggest that graveled stream truck crossings may present a risk to FYLF, the survey concludes at p. D-6): “Construction or ground disturbance in the creeks, as well as increased vehicular traffic through fording areas, could cause direct loss of FYLF.”

And yet, despite comments on the point, the potential for death by road kill has not been assessed.

Finally, we turn to the issue of “prime habitat” for WPT. In point of fact, this habitat was chosen by humans based on design factors (“drainage width, depth, cover, and upland habitat, slope and soil” WPT Habitat, AES 2009), rather than being an attempt to protect the largest populations of WPT found during breeding season.

Having identified the “prime habitat” without reference to any survey of what sites WPT commonly frequent or where they breed, the EIR then claims it protects most of their prime habitat. There is no substantial evidence that the chosen areas are in fact, where there are the most turtles and/or where they breed.

In sum, the Sierra Club urges the Board of Supervisors to grant its appeal and reverse the PBES Director’s decision approving the ECP for the Project, and direct staff to prepare a revised draft EIR that addresses the deficiencies raised by all appellants during this process before taking any further action on the Project. Specifically, the revised draft EIR should include the following points at a minimum:

1. Protocol-level surveys for CRLF in the Milliken watershed, to include the breeding season
2. Identification of the prime habitat for WPT by sites of larger breeding season populations
3. Identification of habitat more in keeping with EIR experts advice on terrestrial use by CRLF, WPT and FYLF
4. Assessment of impact of changing stream levels, pesticide-laden run-off, pesticide drift, and risk of road kill in stream crossings, truck turn-arounds within the buffers, and upland areas, with specific mitigation measures identified
5. A site-specific, quantitative analysis of carbon sequestration loss from the removal of 14,000 trees that takes into account the number, size and type of trees, with appropriate mitigation that does not comprise mere land preservation.
6. A site-specific, quantitative analysis of impacts of GHG emissions from tree disposal, that accounts for the disposal method used, with appropriate additional mitigation.

Sincerely,



Nancy Tamarisk
Chair, Napa Sierra Club Executive Committee